

**BEFORE THE HARYANA REAL ESTATE REGULATORY
AUTHORITY, GURUGRAM**

Date of Decision: 14.03.2024

NAME OF THE BUILDER		RAHEJA DEVELOPERS LIMITED	
PROJECT NAME		"RAHEJA'S ARANYA CITY"	
S. No.	Case No.	Case title	APPEARANCE
1.	CR/2054/2023	Anil Kalra V/S Raheja Developers Limited and Mr. Nayan Raheja	Shri Pardeep Kumar Advocate Shri Garvit Gupta Advocate
2.	CR/20562023	Vandana Kalra V/S Raheja Developers Limited and Mr. Nayan Raheja	Shri Pardeep Kumar Advocate Shri Garvit Gupta Advocate

CORAM:

Shri Vijay Kumar Goyal

Member

ORDER

1. This order shall dispose of both the complaints titled as above filed before this authority under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the rules and regulations made there under or to the allottee as per the agreement for sale executed inter se.
2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, "Raheja's Aranya City" (Residential Plotted Colony) being

developed by the same respondent/promoter i.e., M/s Raheja Developers Limited. The terms and conditions of the buyer's agreements, fulcrum of the issues involved in all these cases pertains to failure on the part of the promoter to deliver timely possession of the units in question, seeking refund of the paid-up amount along with interest.

3. The details of the complaints, reply to status, unit no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount and relief sought are given in the table below:

Project Name and Location	Raheja Developers Limited at "Raheja's Aranya City" situated in Sector- 11 & 14, Sohna, Gurugram.	
Possession Clause: - 4.2 Possession Time and Compensation <i>That the seller shall sincerely endeavor to give possession of the plot to the purchaser within thirty-six (36) months from the date of the execution of the Agreement to sell and after providing of necessary infrastructure specially road sewer & water in the sector by the Government, but subject to force majeure conditions or nay Government/Regulatory authority's action, inaction or omission and reasons beyond the control of the seller. However, the seller shall be entitled for compensation free grace period of six (6) months in case the development is not within the time period mentioned above. In the event of his failure to take over possession of the plot provisionally and/ or finally allotted within 30 days from the date of intimation in writing by the seller, then the same shall lie at his/her risk and cost and the purchaser shall be liable to pay @ Rs. 50/- per sq. yds. of the plot area per month as holding charges for the entire period of such delay...."</i>		
Occupation certificate: - Not received		
Complaint No. & Case Title	CR/2054/2023 Anil Kalra V/S Raheja Developers Limited and Mr. Nayan Raheja	CR/2056/2023 Vandana Kalra V/S Raheja Developers Limited and Mr. Nayan Raheja
Reply status	23.10.2023	23.10.2023
Unit no.	Plot no. D-168 [As per page no. 37 of the complaint]	Plot no. D-162 [As per page no. 37 of the complaint]
Area admeasurin g	360.990 sq. yds. [As per page no. 37 of the complaint]	360.990 sq. yds. [As per page no. 37 of the complaint]



Date of agreement to sell	16.07.2014 [As per page no. 35 of the complaint]	16.07.2014 [As per page no. 35 of the complaint]
Due date of handing over of possession	16.01.2018 (Due date to be calculated 36 months from the date of execution of BBA i.e., 16.07.2014 plus 6 months grace period)	16.01.2018 (Due date to be calculated 36 months from the date of execution of BBA i.e., 16.07.2014 plus 6 months grace period)
Offer of possession	Not offered	Not offered
Total Consideration / Total Amount paid by the complainant(s)	TSC: Rs.1,25,81,055/- (As per payment plan on page no. 55 of the complaint) AP: Rs.1,18,84,742/- (As per customer ledger on page no. 69 of the complaint)	TSC: Rs.1,36,62,130/- (As per payment plan on page no. 55 of the complaint) AP: Rs.1,29,65,817/- (As per customer ledger on page no. 69 of the complaint)
The complainant in the above complaint(s) has sought the following reliefs: 1. Direct the respondent to refund the entire amount of Rs.1,18,84,742/- paid by the complainant along with interest at the prescribed rate on the paid amount from the date of payment till actualisation. 2. Direct the respondent not to create any charge, lien, or third-party rights in any manner upon the plot till final realization of the amount by the Hon'ble court along with up to date interest. 3. To impose maximum penalty under section 61 of the Act for violation of section 11(4)(a) and section 13 of the Act of 2016. 4. To impose maximum penalty under section 59 of the Act for non-registration of the project and contravention of section 3 of the Act of 2016.		
Note: In the table referred above, certain abbreviations have been used. They are elaborated as follows: Abbreviation Full form TSC Total Sale consideration AP Amount paid by the allottee(s)		

4. The aforesaid complaints were filed against the promoter on account of violation of the agreement to sell and allotment letter against the allotment of units in the project of the respondent/builder and for not handing over the possession by the due date, seeking refund of the amount paid along with interest.
5. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter/

respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.

6. The facts of all the complaints filed by the complainant/allottee are also similar. Out of the above-mentioned case, the particulars of lead case **CR/2054/2023 titled as Anil Kalra V/S Raheja Developers Limited and Mr. Nayan Raheja (C.M.D, Raheja Developers Limited)** are being taken into consideration for determining the rights of the allottee(s) qua refund of the amount paid.

A. Unit and project related details

7. The particulars of unit details, sale consideration, the amount paid by the complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S. No.	Particulars	Details
1.	Name and location of the project	"Raheja's Aranya City", Sector 11 & 14, Sohna, Gurugram
2.	Nature of the project	Residential Plotted Colony
3.	Project area	107.85 acres
4.	DTCP license no.	19 of 2014 dated 11.06.2014 valid up to 10.06.2018
5.	Name of licensee	Standard Farms Pvt. Ltd. and 9 others
6.	RERA Registered/ not registered	Registered vide no. 93 of 2017 dated 28.18.2017 valid up to 27.08.2022
7.	Unit no.	Plot No. D-168 (As per page no. 37 of the complaint)
8.	Unit area admeasuring	360.990 sq. yds. (As per page no. 37 of the complaint)
9.	Date of execution of	16.07.2014



	agreement to sell	(As per page no. 35 of the complaint)
10.	Possession clause	<p>4.2 Possession Time and Compensation</p> <p><i>That the seller shall sincerely endeavor to give possession of the plot to the purchaser within thirty-six (36) months from the date of the execution of the Agreement to sell and after providing of necessary infrastructure specially road sewer & water in the sector by the Government, but subject to force majeure conditions or nay Government/Regulatory authority's action, inaction or omission and reasons beyond the control of the seller. However, the seller shall be entitled for compensation free grace period of six (6) months in case the development is not within the time period mentioned above. In the event of his failure to take over possession of the plot provisionally and/ or finally allotted within 30 days from the date of intimation in writing by the seller, then the same shall lie at his/her risk and cost and the purchaser shall be liable to pay @ Rs. 50/- per sq. yds. of the plot area per month as holding charges for the entire period of such delay...."</i></p> <p>(As per page no. 42 of the complaint)</p>
11.	Grace period	<p>Allowed</p> <p>As per clause 4.2 of the agreement to sell, the possession of the allotted unit was supposed to be offered within a</p>

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		stipulated timeframe of 36 months plus 6 months of grace period. It is a matter of fact that the respondent has not completed the project in which the allotted unit is situated and has not obtained the part completion certificate by July 2017. As per agreement to sell, the construction and development work of the project is to be completed by July 2017 which is not completed till date. Accordingly, in the present case the grace period of 6 months is allowed.
12.	Due date of possession	16.01.2018 (Note: 36 months from the date of execution of BBA i.e., 16.07.2014+ six months grace period) (Inadvertently mentioned as 11.01.2018 in proceedings dated 14.03.2024)
13.	Total sale consideration	Rs.1,25,81,055/- (As per payment plan on page no. 55 of the complaint)
14.	Amount paid by the complainant	Rs.1,18,84,742/- (As per customer ledger on page no. 69 of the complaint)
15.	Occupation Certificate/ completion certificate	Not received
16.	Offer of possession	Not offered
17.	Email sent by the complainant seeking refund	23.04.2023 (As per page no. 83 of the complainant)

B. Facts of the complaint:

8. The complainant has made the following submissions in the complaint:
- I. That in the year 2013-2014, the respondent through numerous advertisements and brochures invited public at large for booking and purchasing residential plots in the residential plotted colony known as 'Raheja's Aranya City' and offered to sell residential plots to be carved out at sectors-11 and 14, Sohna, Gurugram, Haryana, claiming that the township project would have easy access to facilities such as water, sewage and electricity. The respondents lured the general public to invest in the project with vide publicity and advertisements through brochures, newspapers etc.
 - II. That banking on the respondents repeated assurances, statements, promises, confirmations, obligations, and commitments of providing international standard housing complex with inter alia the aforesaid facilities, the complainant was allured and finally was thereby, induced to deposit money into the project, with dreams of promised features and a promise of delivery of the project in a time bound manner. The property dealers/agents hired for marketing the project approached the complainant for booking a plot in the project of the respondents showing him the rosy pictures.
 - III. That from the aforesaid advertisements and assurances of the respondents, the complainant was induced to part with his hard-earned money for booking the promised plot. The standardised application form for booking the said plot was submitted on 17.04.2014 by making payment of Rs.10,81,063/- (with extra bank charges of Rs.56/-) by RTGS transfer in favour of Raheja Developers.
 - IV. That the complainant asked for the copy of agreement to sell and it was after several weeks of chasing, the agreement was provided, however

since at that time money had already gone to the respondents, the complainant had to sign on dotted lines on a pre-signed agreement to sell dated 16.07.2014 and allotted a plot no.D-168 admeasuring 360.990 sq. yds. in favour of complainant in its project with the assurances that the respondents would deliver the actual, physical and peaceful possession of the plot with all facilities and amenities like road parks, streetlights, sewerage etc. complete in all respect within stipulated time.

V. That thereafter, the complainant paid Rs.1,08,03,704/- (with extra bank charges of Rs.25/-) by RTGS transfer on the 18.06.2014 and started paying the said amount as per the demand of the respondent on time and who received the same from time to time accordingly while assuring the timely delivery of possession of the plot which was due on 16.01.2018, but the respondents miserably failed to deliver the possession of the aforesaid plot within the agreed period as per agreement to sell dated 16.07.2014. The respondents never intimated the complainant about the date and time of handing over the possession of the aforesaid plot and even till date, the respondents had been miserably failed to handover the possession of the aforesaid plot to the complainant despite there being inordinate delay of more than 3 years from the due date i.e., 16.01.2018. The respondents failed to handover the possession till date. Though the complainant contacted the respondents continuously for knowing the status of the project, but he was kept in dark by them in order to conceal their deficiency in service and inordinate delay.

VI. That after completion of three years, the complainant started chasing and visiting the respondents, wherein respondents cited certain clearances, approvals and litigations with government as reasons for delay and express their inability to deliver till these are resolved, no

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details were given and no information were given. On 15.12.2022, the complainant sent a mail to the respondent regarding status and when he can expect to get the possession.

- VII. That respondents sent a reply email dated 20.01.2023 to the complainant e-mail dated 15.12.2022 saying that they are making every possible effort in order to deliver the project at the earliest possible time with the best of infrastructure and that they will keep us informed about the progress of the project and to get, the complainant have to pay Rs.1,18,84,742/-, so that formalities for possession can be initiated, else already paid money will be forfeited and claims made.
- VIII. That the complainant came to know recently that there is no development of the residential colony on the spot. The respondents have not yet carved out the roads, parks, streets etc. and other facilities and amenities are also not available. There is no arrangement of water and sewer on the spot. The roads as promised by them are yet to be laid down till date and further, the respondent is yet to mark out the plots to be allotted to the complainant and intimate them of the same and other allottees. Even till date, the respondents have not offered the possession of the plot which makes abundantly clear that it has no intention to develop the colony.
- IX. That the due date of offer of possession is 36 months with six months grace period, the respondents were required to complete the project and offer possession of the allotted plot to the complainant by 16.01.2018, whereas as on 04.02.2023, Raheja customer care emailed saying that they are expecting the occupancy certificate in the next 6 months and will be aligning with the infrastructure development of the area. No photographs were provided, despite repeated requests by the complainant.

- X. That the complainant subsequently came to know, that there are no developments and there is no infrastructure in place in phase 2 of the project. It is bare land 3 kms away from the main road and extremely difficult to access. The complainant deposited a sum of Rs.1,18,84,742/- with the respondents. Though as per clause 4.2 of the agreement to sell dated 16.07.2014, the respondents were required to pay compensation @ Rs.50/- per sq. yds. of the super area per month, which is never sufficient and never as per law. However, despite paying more than 94% of the total sale consideration, the respondent failed to complete the project and handover possession of the developed plot in all respects to the complainant within a period of 36 months inclusive of grace period of six months i.e., on 16.01.2018.
- XI. That on 23.04.2023, the complainant sent an email to the respondents seeking refund on account of misrepresentation and non-performance, to which no response has been received from the respondents till date.
- XII. That the complainant was always been kept in dilemma by the respondents and he has been under tremendous pressure of not having any definite and timely delivery of possession of the residential plot despite parting with huge amount of Rs.1,18,84,742/- from his hard-earned money. He has also been suffering huge mental and physical harassment besides having lost an opportunity to have some other property by investing the huge amount paid to the respondents. So, the complainant decided to withdraw from the project and sought refund of the amount deposited with the respondent besides interest and compensation. The complainant besides the refund of amount paid by his along with interest are also entitled for a sum of Rs.20,00,000/- as damages suffered by him in the hands of respondents.

XIII. That till date, the project has not been completed. The project site is left as a construction site. Even after repeated approaches and requests, the respondents failed to adhere to their contractual obligation to handover the possession of the said plot to the complainant.

C. Relief sought by the complainant:

9. The complainant has sought following relief(s):
- i. Direct the respondent to refund the entire amount of Rs.1,18,84,742/- paid by the complainant along with interest at the prescribed rate on the paid amount from the date of payment till actualisation.
 - ii. Direct the respondent not to create any charge, lien, or third-party rights in any manner upon the plot till final realization of the amount by the Hon'ble court along with up to date interest..
 - iii. To impose maximum penalty under section 61 of the Act for violation of section 11(4)(a) and section 13 of the Act of 2016.
 - iv. To impose maximum penalty under section 59 of the Act for non-registration of the project and contravention of section 3 of the Act of 2016.
10. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent:

11. The respondents have contested the complaint on the following grounds:
- a. That the complaint is neither maintainable nor tenable and is liable to be out-rightly dismissed. The agreement to sell was executed between the complainant and the respondent no.1 prior to the

enactment of the Act, 2016 and the provisions laid down in the said act cannot be enforced retrospectively. Although the provisions of the Act, 2016 are not applicable to the facts of the present case in hand yet without prejudice and in order to avoid complications later on, the respondent no.1 has registered the project with the Hon'ble Authority. The said project is registered under RERA with Registration No. 93 of 2017 dated 28.08.2017. That this Authority has no jurisdiction to adjudicate upon the present complaint.

- b. That the complaint is not maintainable for the reason that the agreement contains an arbitration clause which refers to the dispute resolution mechanism to be adopted by the parties in the event of any dispute i.e., clause 13.2 of the agreement to sell, which is reproduced for the ready reference of this Authority-

"All or any disputes arising out or touching upon in relation to the terms of this Application/Agreement to Sell/ Conveyance Deed including the interpretation and validity of the terms thereof and the respective rights and obligations of the parties shall be settled through arbitration. The arbitration proceedings shall be governed by the Arbitration and Conciliation Act, 1995 or any statutory amendments/ modifications thereof for the time being in force. The arbitration proceedings shall be held at the office of the seller in New Delhi by a sole arbitrator who shall be appointed by mutual consent of the parties. If there is no consensus on appointment of the Arbitrator, the matter will be referred to the concerned court for the same. In case of any proceeding, reference etc. touching upon the arbitrator subject including any award, the territorial jurisdiction of the Courts shall be Gurgaon as well as of Punjab and Haryana High Court at Chandigarh".

- c. That the respondent no.1 is a reputed real estate company having immense goodwill, comprised of law abiding and peace-loving persons and has always believed in satisfaction of its customers. The respondent no.1 has developed and delivered several prestigious projects such as 'Raheja Atlantis', 'Raheja Atharva', 'Raheja Shilas' and 'Raheja Vedanta' and in most of these projects large number of families have already shifted after having taken possession and

Resident Welfare Associations have been formed which are taking care of the day to day needs of the allottees of the respective projects.

- d. That the complainant, after checking the veracity of the project namely, 'Raheja's Aranya City- Phase 2', Sector 11 and 14, Sohna, Gurugram had applied for allotment of a plot vide his booking application form and agreed to be bound by the terms and conditions in it. The complainant was aware from the very inception that the plans as approved by the concerned authorities are tentative in nature and that the respondent no.1 might have to effect suitable and necessary alterations in the layout plans as and when required.
- e. That based on the application for booking, the respondent no.1 allotted the plot no. D-168 to the complainant vide its allotment offer letter. It is submitted that the complainant signed and executed the agreement to sell on 16.07.2014 and the complainant agreed to be bound by the terms contained therein.
- f. That the respondent no.1 raised payment demands from the complainant in accordance with the mutually agreed terms and conditions of allotment as well as of the payment plan and the complainant made the payment of the earnest money and part-amount of the total sale consideration and is bound to pay the remaining amount towards the total sale consideration of the plot along with applicable registration charges, stamp duty, service tax as well as other charges payable at the applicable stage.
- g. That despite the respondent no.1 fulfilling all its obligations as per the provisions laid down by law, the government agencies have failed miserably to provide essential basic infrastructure facilities

such as roads, sewerage line, water and electricity supply in the sector where the said project is being developed. The development of roads, sewerage, laying down of water and electricity supply lines has to be undertaken by the concerned governmental authorities and is not within the power and control of the respondent. The respondent no.1 cannot be held liable on account of non-performance by the concerned governmental authorities. The respondent company has even paid all the requisite amounts including the External Development Charges (EDC) to the concerned authorities. However, yet necessary infrastructure facilities like 60-meter sector roads including 24-meter-wide road connectivity, water and sewage which were supposed to be developed by HUDA parallelly have not been developed.

- h. That the time period for calculating the due date of possession shall start only when the necessary infrastructure facilities will be provided by the governmental authorities and the same was known to the complainant from the very inception. It is submitted that non-availability of the infrastructure facilities is beyond the control of the respondent no.1 and the same also falls within the ambit of the definition of 'Force Majeure' condition as stipulated in agreement to sell.
- i. That the respondent no.1 shall hand over the possession of the same to the complainant subject to the complainant making the payment of the due instalments amount and on availability of infrastructure facilities such as sector road and laying providing basic external infrastructure such as water, sewer, electricity etc. as per terms of the application and agreement to sell. It is submitted that despite the occurrence of such force majeure events, the respondent no.1 has

completed the part development of the project and has already been granted part completion certificate on 11.11.2016. Under these circumstances passing any adverse order against the respondents at this stage would amount to complete travesty of justice.

- j. That the Hon'ble Authority in **Abhishek Agarwal & Others vs Cosmos Infra Engineering India Private Limited** complaint No.1834 of 2018 has held that where the physical progress of the complainant unit is nearly 50 percent, the refund is allowed then it shall hamper the completion of the project.
- k. That the Hon'ble Authority in **Greenopolis Welfare Association vs Orris Infrastructure Ltd** and others complaint no.225 of 2018 has held that order of refund would be completely prejudicial and detrimental not only to the interest of the vast majority of the allottees which opposes it, but at the same time would end up completely destroying any possibility of implementation and completion of project.
- l. That the Hon'ble Authority in **Ajay Kumar Manocha and Other vs Spaze Towers Pvt Ltd & ors** complaint No.1324 of 2018 has held that refund of the deposited amount will also have adverse effect on the other allottees.

12. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of those undisputed documents and submissions made by the parties.

E. Jurisdiction of the authority:

13. The respondent has raised a preliminary submission/objection the authority has no jurisdiction to entertain the present complaint. The

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objection of the respondent regarding rejection of complaint on ground of jurisdiction stands rejected. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial jurisdiction

As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana, the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. In the present case, the project in question is situated within the planning area of Gurugram district. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

E.II Subject-matter jurisdiction

Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottees as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

Section 11.....

(4) The promoter shall-

(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

Section 34-Functions of the Authority:

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

14. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

15. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors.*** SCC Online SC 1044 decided on 11.11.2021 and followed in ***M/s Sana Realtors Private Limited & others V/s Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022*** wherein it has been laid down as under:

"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. if the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."

16. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the matter of ***M/s Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors.*** and ***M/s Sana Realtors Private Limited & others V/s Union of India & others (supra)***, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the amount paid by him.

F. Findings on objections raised by the respondents:

F.I Objection regarding jurisdiction of authority w.r.t. buyer's agreement executed prior to coming into force of the Act.

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17. The contention of the respondents is that authority is deprived of the jurisdiction to go into the interpretation of, or rights of the parties inter-se in accordance with the agreement to sell executed between the parties and no agreement for sale as referred to under the provisions of the Act or the said rules has been executed inter se parties. The authority is of the view that the Act nowhere provides, nor can be so construed, that all previous agreements will be re-written after coming into force of the Act. Therefore, the provisions of the Act, rules and agreement have to be read and interpreted harmoniously. However, if the Act has provided for dealing with certain specific provisions/situation in a specific/particular manner, then that situation will be dealt with in accordance with the Act and the rules after the date of coming into force of the Act and the rules. Numerous provisions of the Act save the provisions of the agreements made between the buyers and sellers. The said contention has been upheld in the landmark judgment of **Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and others. (W.P 2737 of 2017)** which provides as under:

119. *Under the provisions of Section 18, the delay in handing over the possession would be counted from the date mentioned in the agreement for sale entered into by the promoter and the allottee prior to its registration under RERA. Under the provisions of RERA, the promoter is given a facility to revise the date of completion of project and declare the same under Section 4. The RERA does not contemplate rewriting of contract between the flat purchaser and the promoter.....*

122. *We have already discussed that above stated provisions of the RERA are not retrospective in nature. They may to some extent be having a retroactive or quasi retroactive effect but then on that ground the validity of the provisions of RERA cannot be challenged. The Parliament is competent enough to legislate law having retrospective or retroactive effect. A law can be even framed to affect subsisting / existing contractual rights between the parties in the larger public interest. We do not have any doubt in our mind that the RERA has been framed in the larger public interest after a thorough study and discussion made at the highest level by the Standing Committee and Select Committee, which submitted its detailed reports."*

18. Also, in appeal no. 173 of 2019 titled as **Magic Eye Developer Pvt. Ltd. Vs. Ishwer Singh Dahiya**, in order dated 17.12.2019 the Haryana Real Estate Appellate Tribunal has observed-

"34. Thus, keeping in view our aforesaid discussion, we are of the considered opinion that the provisions of the Act are quasi retroactive to some extent in operation and will be applicable to the agreements for sale entered into even prior to coming into operation of the Act where the transaction are still in the process of completion. Hence in case of delay in the offer/delivery of possession as per the terms and conditions of the agreement for sale the allottee shall be entitled to the interest/delayed possession charges on the reasonable rate of interest as provided in Rule 15 of the rules and one sided, unfair and unreasonable rate of compensation mentioned in the agreement for sale is liable to be ignored."

19. The agreements are sacrosanct save and except for the provisions which have been abrogated by the Act itself. Further, it is noted that the agreement to sell has been executed in the manner that there is no scope left to the allottee to negotiate any of the clauses contained therein. Therefore, the authority is of the view that the charges payable under various heads shall be payable as per the agreed terms and conditions of the agreement subject to the condition that the same are in accordance with the plans/permissions approved by the respective departments/competent authorities and are not in contravention of any other Act, rules, statutes, instructions, directions issued thereunder and are not unreasonable or exorbitant in nature.

F.II Objection regarding complainant are in breach of agreement for non-invocation of arbitration.

20. The respondents have raised an objection that the complainant has not invoked arbitration proceedings as per the provisions of agreement to sell which contains provisions regarding initiation of arbitration proceedings in case of breach of agreement. The following clause has been incorporated w.r.t arbitration in the agreement to sell:

"Clause 13.2: All or any disputes arising out of touching upon or relating to the terms of this Agreement to Sell/ Conveyance Deed including the interpretation and

validity of the terms hereof and the respective rights and obligations of the parties, which cannot be amicably settled, shall be settled through arbitration. The arbitration proceedings shall be governed by the Arbitration and Conciliation Act, 1996 or any statutory amendments/modifications thereof for the time being in force. The arbitration proceedings shall be held at the Office of the Seller in New Delhi by a sole arbitrator who shall be appointed by mutual consent of the parties, if there is no consensus on appointment of the Arbitrator, the matter will be referred to the concerned court for the same. In case of any proceeding, reference etc. touching upon the arbitration subject including any award, the territorial jurisdiction of the courts shall be Gurgaon as well as of Punjab and Haryana High Court at Chandigarh."

21. The respondents contended that as per the terms & conditions of the agreement to sell duly executed between the parties, it was specifically agreed that in the eventuality of any dispute, if any, with respect to the provisional booked unit by the complainant, the same shall be adjudicated through arbitration mechanism. The authority is of the opinion that the jurisdiction of the authority cannot be fettered by the existence of an arbitration clause in the agreement to sell as it may be noted that section 79 of the Act bars the jurisdiction of civil courts about any matter which falls within the purview of this authority, or the Real Estate Appellate Tribunal. Thus, the intention to render such disputes as non-arbitrable seems to be clear. Also, section 88 of the Act says that the provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force. Further, the authority puts reliance on catena of judgments of the Hon'ble Supreme Court, particularly in **National Seeds Corporation Limited v. M. Madhusudhan Reddy & Anr. (2012) 2 SCC 506**, wherein it has been held that the remedies provided under the Consumer Protection Act are in addition to and not in derogation of the other laws in force, consequently the authority would not be bound to refer parties to arbitration even if the agreement between the parties had an arbitration clause. Further, in **Aftab Singh and ors. v. Emaar MGF Land Ltd and ors., Consumer**

case no. 701 of 2015 decided on 13.07.2017, the National Consumer Disputes Redressal Commission, New Delhi (NCDRC) has held that the arbitration clause in agreements between the complainant and builders could not circumscribe the jurisdiction of a consumer.

22. While considering the issue of maintainability of a complaint before a consumer forum/commission in the fact of an existing arbitration clause in the builder buyer agreement, the Hon'ble Supreme Court has upheld the aforesaid judgement dated 13.07.2017 of NCDRC in case titled as *M/s Emaar MGF Land Ltd. V. Aftab Singh in revision petition no. 2629-30/2018 in civil appeal no. 23512-23513 of 2017 decided on 10.12.2018*. The relevant para of the judgement passed by the Supreme Court is reproduced below:

"25. This Court in the series of judgments as noticed above considered the provisions of Consumer Protection Act, 1986 as well as Arbitration Act, 1996 and laid down that complaint under Consumer Protection Act being a special remedy, despite there being an arbitration agreement the proceedings before Consumer Forum have to go on and no error committed by Consumer Forum on rejecting the application. There is reason for not interjecting proceedings under Consumer Protection Act on the strength an arbitration agreement by Act, 1996. The remedy under Consumer Protection Act is a remedy provided to a consumer when there is a defect in any goods or services. The complaint means any allegation in writing made by a complainant has also been explained in Section 2(c) of the Act. The remedy under the Consumer Protection Act is confined to complaint by consumer as defined under the Act for defect or deficiencies caused by a service provider, the cheap and a quick remedy has been provided to the consumer which is the object and purpose of the Act as noticed above."

23. Therefore, in view of the above judgements and considering the provisions of the Act, the authority is of the view that complainant is well within his rights to seek a special remedy available in a beneficial Act such as the Consumer Protection Act and Act of 2016 instead of going in for an arbitration. Hence, we have no hesitation in holding that this authority has the requisite jurisdiction to entertain the complaint and that the dispute does not require to be referred to arbitration necessarily.

F.III Objection regarding delay due to force majeure circumstances

24. The respondent no. 1-promoter raised the contention that the construction of the project was delayed due to force majeure conditions such as strike, lock out, civil commotion or by reason of war, enemy or terrorist action, earthquake, any act of God or is abnormally delayed due to non-availability of necessary infrastructure facilities like 60 meter sector roads including 24 meter wide road connectivity, water, power, sewer lines to be provided by the government for carrying out development activities, environment and pollution clearances and non-payment of instalment by different allottees of the project but all the pleas advanced in this regard are devoid of merit. The agreement to sell was executed between the parties on 30.06.2014 and the respondent no. 1 before obtaining licenses from DTCP has undertaken to provide all services at its own level till the same is provided by public authorities and hence cannot take plea of delay on account of non-availability of infrastructure facilities like 60 meter roads including 24 meter wide road connectivity etc. Thus, the promoter respondent no. 1 cannot be given any leniency on the basis of aforesaid reasons and it is well settled principle that a person cannot take benefit of his own wrong.

G. Findings on the relief sought by the complainant:

G.I Direct the respondent to refund the entire amount of Rs.1,18,84,742/- paid by the complainant along with interest at the prescribed rate on the paid amount from the date of payment till actualisation.

25. The complainant was allotted a unit in the project of respondent no. 1 "Raheja's Aranya City", in Sector 11& 14, Sohna, Gurugram vide allotment letter for a total sum of Rs.1,25,81,055/-. An agreement to sell dated 16.07.2014 was executed between the parties and the complainant started paying the amount due against the allotted unit and paid a total sum of Rs.1,18,84,742/-.

26. The due date of possession as per the possession clause of the agreement to sell is 16.01.2018. There is delay of 5 years 3 months 23 days on the date of filing of the complaint i.e., 09.05.2023. The counsel for the complainant during proceedings of the day dated 14.03.2024 stated that the unit is not yet completed, nor any offer of possession has been made though the due date has elapsed way back in 2018. The counsel for the respondent confirmed that the completion certificate in respect of the phase in which the unit is situated is not yet received.

27. The authority is of the view that the allottee cannot be expected to wait endlessly for taking possession of the allotted unit and for which they have paid a considerable amount towards the sale consideration and as observed by *Hon'ble Supreme Court of India in Ireo Grace Realtech Pvt. Ltd. Vs. Abhishek Khanna & Ors., civil appeal no. 5785 of 2019*, decided on 11.01.2021:-

" The occupation certificate is not available even as on date, which clearly amounts to deficiency of service. The allottee cannot be made to wait indefinitely for possession of the apartments allotted to them, nor can they be bound to take the apartments in Phase 1 of the project....."

28. Further in the judgement of the Hon'ble Supreme Court of India in the cases of *Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (Supra)* reiterated in case of *M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020* decided on 12.05.2022 observed as under:

25. The unqualified right of the allottee to seek refund referred Under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the

allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed.

29. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottee as per agreement for sale under section 11(4)(a). The promoter has failed to complete or unable to give possession of the unit in accordance with the terms of agreement to sell or duly completed by the date specified therein. Accordingly, the promoter is liable to the allottee, as the allottee wish to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of the unit with interest at such rate as may be prescribed.
30. The prescribed rate of interest as per Rule 15 of Rules, 2017 payable by the promoter to the allottee or by the allottee to the promoter, as the case may be, shall be the State Bank of India highest marginal cost of lending rate plus two percent.
31. The authority hereby directs the promoter to return the amount received by him i.e., Rs.1,18,84,742/- with interest at the rate of 10.85% (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

G.II To impose maximum penalty under section 61 of the Act for violation of section 11(4)(a) and section 13 of the Act of 2016.

32. The complainant has sought the above-mentioned relief for violation of section 11(4)(a) and section 13 of the Act of 2016. Firstly, section 11(4)(a) speaks that the promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or

the rules and regulations made thereunder or to the allottee as per agreement for sale. In the present complaint, the promoter has miserably failed to complete or unable to give possession of the unit accordance with the terms of agreement to sell or duly completed by the date specified therein. Thus the promoter is liable to the allottee to pay the amount received by him from the complainant /allottee as the allottee wishes to withdraw from the project. The relief for violation of section 11(4)(a) has already been granted in terms of the refund of the paid-up amount. As per Article 20(2) of the Constitution of India, a person cannot be punished twice for the same offence. Secondly, section 13 of the Act of 2016 restricts the promoter from taking an advance of more than 10% without entering into an agreement for sale. The agreement to sell in the present complaint was executed prior to the Act of 2016 and the Act of 2016 cannot be applied retrospectively. In view of the afore-mentioned facts, no direction can be issued to this effect.

G.III To impose maximum penalty under section 59 of the Act for non-registration of the project and contravention of section 3 of the Act of 2016.

33. The complainant in his complaint and the respondent in its reply had mentioned that the project of the respondent is duly registered with the Authority under registration no. 93 of 2017. And as per the website of the Authority, the project is duly registered by interim RERA on 28.08.2017 which was valid up to 27.08.2022. As the project is already registered with the Authority, no violation of contravention of section 3 of the Act of 2016. Thus, no direction to this effect.

H. Directions of the Authority:

34. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations

cast upon the promoter as per the function entrusted to the authority under section 34(f):

- i. The respondents are directed to refund the amount i.e., **Rs.1,18,84,742/-** received by him from the complainant along with interest at the rate of 10.85% p.a. as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the amount.
 - ii. A period of 90 days is given to the respondents to comply with the directions given in this order and failing which legal consequences would follow.
 - iii. The respondents are further directed not to create any third-party rights against the subject unit before full realization of paid-up amount along with interest thereon to the complainant, and even if, any transfer is initiated with respect to subject unit, the receivable shall be first utilized for clearing dues of allottee-complainant.
35. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
36. Complaints stand disposed of. True certified copy of this order shall be placed in the case file of each matter.
37. Files be consigned to registry.

V.1-3
(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 14.03.2024