



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	2361 of 2023
Date of filing:	18.10.2023
First date of hearing:	23.11.2023
Date of decision:	18.03.2024

COMPLAINT NO. 2361 OF 2023

Anubhav Jain S/o Sh. Anil Kumar Jain

Kiran residency, # D-5, Plot no.79, Sector-56

Gurugram, Haryana

.....COMPLAINANT

Versus

Raheja Developers Limited

W4d-204/5, Keshav Kunj, Cariappa Marg,

Western Avenue, Sainik Farms,

New Delhi-110062

.....RESPONDENT

CORAM: Nadim Akhtar

Member

Chander Shekhar

Member

Date of Hearing: 18.03.2024

Present: - Mr.Munish Kumar Garg, counsel for the complainant through VC.

None for the respondent.

ORDER (NADIM AKHTAR-MEMBER)

1. Present complaint has been filed by the complainant under Section 31 of the Real Estate (Regulation & Development) Act, 2016 (Hereinafter referred as RERA Act of 2016) read with Rule 28 of the Haryana Real Estate (Regulation & Development) Rules, 2017 for violation or contravention of the provisions of the Act of 2016 or the Rules and Regulations made thereunder, wherein it is inter-alia prescribed that the promoter shall be responsible to fulfil all the obligations, responsibilities and functions towards the allottee as per the terms agreed between them.

A. FACTS OF THE COMPLAINT

i. That in October 2017 while seeking to invest in a property, complainant was introduced to the respondent's forthcoming projects scheme under 'Deen Dayal Jan Awas Yojna' namely; "Akshara" in Sector-14 Gurugram- Sohna- Alwar Road, Sohna Development Plan 2031, Gurugram, Haryana and being impressed, the complainant decided to invest in the said project.



- ii. That based on the respondent's assurances, on 24.11.2017 the complainant applied for booking of a residential plot/unit and paid an advance booking amount of Rs.2,25,000/- vide Application No.DDOL1480 having order no.1480 for the same. True copy of the application no.DDOL1480 having order no.1480 dated 24.11.2017 is annexed as Annexure C-1 and true copy of the payment receipt dated 24.11.2017 is annexed as Annexure C-2.
- iii. That as per the terms and conditions of the application, after successful completion of the booking, the allotment of the said unit was to happen through draw of lot.
- iv. Thereafter, respondent intimated to the complainant vide letter dated 27.07.2018, that the complainant's name was not in the list of successful allottees of First Phase (allotment of 50% plots out of total available plots as per DDJAY Policy) and as such the respondent is stepping ahead for final draw of Phase-I. It is pertinent to note that the draw of lots as mentioned above was done without any intimation to the complainant and even further the complainant was not provided with any other option but to opt for final Phase-II draw which was intimated to be done in next 3 months. True copy of the respondent's letter dated 27.07.2018 is annexed as Annexure C-3.
- v. However, respondent failed to conduct the Phase-II draw for 11 months and much after the lapse of 3 months' time as communicated



by them, respondent vide email dated 24.06.2019 intimated the date of draw as 26.06.2019. However, the respondent failed to intimate the results of Phase-II draw to the complainant even after the complainant's email dated 28.06.2019 seeking results of draw. That the respondent further replied vide email dated 02.07.2019, however, instead of providing the results of draw, respondent simply intimated that the allotment letter has been sent to successful allottees.

- vi. That not receiving any satisfactory reply or allotment from the respondent, complainant vide email dated 09.07.2019 requested for cancellation of booking of the unit and refund of his paid amount in case of non-allotment. That pursuant to the same, the respondent vide email dated 15.07.2019 accepted the cancellation request of the complainant and further accepted to refund the amount to the amount. However, the respondent failed to provide the timelines and mode of refund and upon repeated requests and reminders from the complainant, the respondent replied to refund the amount within 90 days i.e., by 15.10.2019.
- vii. That the complainant further requested for clarification, mode and status of refund several times, however the respondent failed to provide any satisfactory reply and vide its email dated 29.09.2019 intimated that refund will be given as per policy and in case of delay 7% interest will be provided.



- viii. That it is pertinent to mention here that as per Clause 1 (vii) of the Booking Form and DDJAY Affordable Plotted Housing Policy 2016, 'Non-successful applicants shall be refunded back the application fee within 90 days of holding the draw of lots. If the company is not in a position to refund the application fee within the aforesaid period, the company shall refund the said amount with simple interest at the rate of 7% per annum calculated for the period beyond 90 days from the date of draw of lots in complete discharge of its obligation.'
- ix. That the respondent miserably failed to adhere to the given timelines for refund time and again even after numerous emails, calls and reminders from the complainant from time to time and further failed to fulfil its promises and assurances to refund the amount time and again and the respondent merely kept on prolonging the payment without any satisfactory reason or reply.
- x. That respondent, thereafter, sought the bank account details of the complainant vide email dated 28.10.2021. However, no refund was credited to the bank account of the complainant till date. True copy of the email communications exchanged between complainant and the respondent dated 29.06.2019 & 16.02.2022 are annexed herewith as Annexure C-4 (COLLY).
- xi. That having left with no other option, complainant issued a Legal Notice dated 30.03.2022 to the respondent seeking refund with



interest, however, the respondent neither complied nor replied to the said legal notice till date. True copy of the Legal Notice dated 30.03.2022 along with its postal receipts and tracking reports is annexed as Annexure C-5 (COLLY). It is pertinent to mention that the respondent had assured to refund the amount on various occasions but failed to comply with the same time and again. As such the respondent has breached the fundamental term of the scheme by inordinately delaying in refunding the amount and not providing adequate compensation in line with the provisions of the RERA Act,2016.

- xii. That the complainant was made to make advance deposit on the basis of information contained in the brochure scheme, which is false on the face of it. That moreover, the Respondent's lackadaisical approach in conducting open and clean draw of lots, providing communication of same to the complainant, refund of amount to non-allottees, as also non-compliance with applicable rules and regulations is itself clear of the malafide intentions of the respondent.
- xiii. That the respondent had committed gross violation of the provisions of the RERA Act by not refunding the amount as per scheme and further as per assurances given and thereafter by not giving the interest and compensation to the complainant. Being aggrieved with the action of the respondent, complainant filed a Complaint on 06.07.2022 before the Hon'ble RERA, Gurugram being Complaint No.CR/4629/2022



wherein notice was issued to the respondent but the respondent failed to appear or file their reply. That during the hearing of the said complaint, the Hon'ble RERA, Gurugram found that the subject project falls under village Raisika, District Mewat, which falls under the jurisdiction of Hon'ble RERA, Panchkula. Accordingly, Hon'ble RERA, Gurugram returned the complaint vide its order dated 25.08.2022 for filing the same before the competent bench at Panchkula. True Copy of the Order passed by Ld. RERA, Gurugram dated 25.08.2022 is annexed as Annexure C-6.

xiv. That the respondent has committed various acts of omission and commission by making incorrect and false statement in the advertisement material as well as by committing other serious acts as mentioned in the complaint. The draw of lots in the project were made without any intimation and even upon not drawing/ allotting any property to complainant, the refund of complainant's amount has been inordinately delayed. The respondent has resorted to misrepresentation. Hence, the present complaint is filed by the complainant before this Hon'ble Authority. The complainant, therefore, seek direction to the respondent to refund the amount of Rs.2,25,000/- paid alongwith interest @ 18% p.a. as payment towards delay refunding the amount in question.



B. RELIEFS SOUGHT

2. Complainant has sought following reliefs :

- i. Direct the respondent to refund the amount of ₹2,25,000/- paid by the complainant to the respondent on 24.11.2017.
- ii. Direct the respondent to pay interest @ 18% p.a. on the said pending amount of Rs.2,25,000/- from the date of receipt of amount i.e. 24.11.2017 till the date of refund by the Respondent towards delay in refunding the said amount in question as per provisions of The Real Estate (Regulation and Development) Act, 2016 and Haryana Real Estate (Regulation and Development) Rules, 2017;
- iii. Direct the respondent to pay a sum of Rs.55,000/- to the complainant towards the cost of the litigation;
- iv. In case of failure to give possession the allottee wishes to withdraw from the project and without prejudice to any other remedy available seeks return of the amount received by the promoter in respect of the allotted unit with interest at the prescribed rate.



C. REPLY ON BEHALF OF RESPONDENT

3. Notice was served to the respondent on 23.10.2023 which got successfully delivered on 27.10.2023. Despite availing two opportunities respondent failed to file reply on time. Also, it came to notice of Authority in other cases of respondent that no one is appearing on behalf of respondent despite giving several opportunities. Therefore, Authority deems fit to struck off the defence and decide the matter ex-parte on the basis of record available on the file.

D. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT

4. Counsel for complainant reiterated the facts of complaint and stated that as per the order dated 23.11.2023, complainant was directed to file copy of agreement executed between the parties. He stated that no agreement was executed between the parties. However, complainant had applied for allotment and paid an amount of ₹2,25,000/- to the respondent and as per Annexure C3 at page no.52, complainant was considered eligible for allotment in second phase of draw of lots.

ISSUE FOR ADJUDICATION

5. Whether the complainant is entitled to refund of booking amount deposited by him along with interest in terms of Section 18 of Act of 2016?



E. OBSERVATIONS AND DECISION OF AUTHORITY

6. The Authority has gone through the facts of complaint as submitted by the complainant. In light of the background of the matter, Authority observes as follows:

- i. It is admitted fact that complainant applied for booking of residential flat/unit in project of respondent namely; Akshara under Deen Dayal Jan Awas Yojana Affordable Plotted Housing Policy 2016 in Sector-14 Sohana, Haryana, having license no.33 of 2017 dated 16.06.2017 and HRERA registration no. 6 dated 23.06.2017 on 24.11.2017 by paying an advance booking amount of ₹2,25,000/- vide application no.DDOL1480 and true copy of payment receipt dated 24.11.2017 are annexed as Annexure C1 and C2. That as per the terms and conditions of the application, after successful completion of booking, allotment of unit was to happen through draw of lots.
- ii. That vide letter dated 24.07.2018, respondent admitted that complainant applied for allotment of unit in said project of respondent and intimated the complainant that his name was not in list of successful allottees of first phase and now respondent is stepping ahead for allotment of DDJAY Housing Scheme: HRERA Registration no. HRERA-PKL-MEW-11-2018 of 2018 dated 24.07.2018, having license no.88 of 2017, dated 24.07.2017



which is being launched at a price of ₹25000/- per. sq. yard and informed that in case complainant is interested in allotment under this scheme, complainant is required to make payment at rate of ₹19000/- per sq. yard only. In case respondent failed to receive the consent of applicant/complainant within 10 days from the letter date, allotment shall be considered for the final draw of phase-I. Copy of said intimation by respondent is annexed as Annexure C-3.

iii. After a gap of almost one year, vide email dated 24.06.2019, respondent informed that second draw of plots in "Akshara Affordable Housing Scheme" will be held on 26.06.2019. However, respondent failed to intimate the results of phase II draw to the complainant even after complainant email on 28.06.2019 seeking results of draw. Respondent vide its email dated 02.07.2019, informed that demand letter and allotment letter has already been sent to all the successful applicants. Receiving no satisfactory reply from respondent, complainant vide his email dated 09.07.2019 requested the respondent to refund the amount in case of non-allotment by the respondent. In reply to this, respondent vide email dated 09.07.2019, informed the complainant that his name is in the waiting list #47 and request the complainant to present at mentioned address of the respondent. On 15.07.2019,



respondent accepted the cancellation of complainant and stated that same will be refunded as per the DDJAY policy. Thereafter, various communications between the complainant and respondent took place for refund of amount and on 26.07.2019, respondent informed the complainant that respondent will refund the amount within 90 days from the date of receiving such request. That means it is confirmed that respondent agrees to refund the amount of complainant within 90 days from date of request, that is, 15.07.2019. Thereafter, various other communications took place between complainant and respondent for refund which can be ascertained from the emails attached by the complainant as Annexure C4. However, despite all these communications and request by the complainant, respondent failed to refund the paid amount of complainant.

- iv. In regard to refund, the respondent also sought the bank details from the complainant and complainant give the bank details on 29.10.2021. Still the conclusion is that respondent failed to refund the amount even after lapse of more than 2 years. Complainant also issued legal notice to the respondent on 30.3.2022 which is annexed as Annexure C5. However, respondent failed to give any satisfactory reply to this.



- v. Now, considering the facts and circumstances, it is clear that as per clause 1 (vii) of policy, respondent was under an obligation to refund the amount paid by the complainant within 90 days. However, respondent failed to fulfil its obligations as per the terms and conditions of the policy. Taking into consideration the communications between the parties, it is proved that complainant tried his level best to sought refund from the respondent, however, respondent failed to refund the amount to the complainant. Also, it is on record that respondent launched the housing scheme and invited the applications from the applicants and allotment was given to successful allottees. The facts remains that complainant was not the successful applicant in the draw of lots. Therefore, in case on non-allotment complainant chooses to seek refund of ₹2,25,000/- paid by the him, but the respondent failed to adhere to promises made by him to the complainant. The respondent is enjoying the paid amount of complainant for the last almost 5 years.
- vi. No doubt that neither any allotment nor proper formal agreement was executed between the parties but by way of application in project of respondent, the respondent had accepted the booking payment of ₹2,25,000/- from the complainant for allotting a specific plot in its real estate project and the parties had been



acting in relationship of allottee and promoter. Definition of allottee, promoter and real estate project is referred as per the provisions of RERA Act. As per Section 2(d) of the RERA Act, "allottee" is defined as follows:

(d) "allottee" in relation to a real estate project, means the person to whom a plot apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given. on rent:

Definition of "promoter" under section 2(zk) is provided below:

(zk) "promoter" means,—

(i) a person who constructs or causes to be constructed an independent building or a building consisting of apartments, or converts an existing building or a part thereof into apartments, for the purpose of selling all or some of the apartments to other persons and includes his assignees; or

Further, as per Section 2(zj) & (zn) of the RERA Act,2016.

"project" & "real estate project" are defined respectively as follows:

(zj) "project" means the real estate project as defined in clause

(zn):

(zn) "real estate project means the development of a building or a building consisting of apartments, or converting an existing



building or a part thereof into apartments, or the development of land into plots or apartments, as the case may be, for the purpose of selling all or some of the said apartments or plots or building, as the case may be, and includes the common areas, the development works, all improvements and structures thereon, and all easement, rights and appurtenances belonging thereto;

A conjoint reading of the above sections shows that respondents are promoters in respect of allottees of units/plots sold by it in its real estate project-Akshara and therefore there exists a relationship of an allottee and promoter between the parties. Since, relationship of an allottee and promoter between complainants and respondents is established and the issues/transaction pertains to the real estate project developed by respondent, hence, provisions of RERA Act, 2016 apply to the matter and Authority has the jurisdiction to deal with the matter. Furthermore, the preamble of the Real Estate (Regulation and Development) Act, 2016 provides as under.

An Act to establish the real estate regulatory authority for regulation and promotion of the real estate sector and to ensure sale of plot, apartment or building, as the case may be, or sale of real estate project, in an efficient and transparent manner and to protect the interest of consumers in the real estate sector and to establish an adjudicating mechanism for speedy dispute redressal and also to establish the appellate tribunal to hear appeals from the decisions, directions or orders of the real



estate regulatory authority and the adjudicating officer and for matters connected therewith or incidental thereto;

The Real Estate (Regulation and Development) Act, 2016 basically regulates relationship between buyer (i.e. allottee) and seller (i.e. promoter) of real estate, i.e., plot, apartment or building, as the case may be and matters incidental thereto. So, the issues involved in complaint and relief sought are well within the ambit of the Authority.

Thus, complainant is at liberty to exercise his right to withdraw from the project on account of default on the part of respondent to offer legally valid possession and seek refund of the paid amount along with interest as per section 18 of RERA Act.

Further, Hon'ble Supreme Court in the matter of "***Newtech Promoters and Developers Pvt. Ltd. versus State of Uttar Pradesh and others***" in Civil Appeal no. 6745-6749 of 2021 has highlighted that the allottee has an unqualified right to seek refund of the deposited amount if delivery of possession is not done as per terms agreed between them. Para 25 of this judgement is reproduced below:

"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."

The decision of the Supreme Court settles the issue regarding the right of an aggrieved allottee such as in the present case seeking refund of the paid amount along with interest on account of delayed delivery of possession. The complainant wishes to withdraw from the project of the respondent, therefore, Authority finds it to be fit case for allowing refund in favour of complainant.

vii. The definition of term 'interest' is defined under Section 2(za) of the Act which is as under:

(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.



Explanation.-For the purpose of this clause-

(i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;

(ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;

viii. Rule 15 of HRERA Rules, 2017 provides for prescribed rate of interest which is as under:

"Rule 15. Prescribed rate of interest- (Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19] (1) For the purpose of proviso to section 12; section 18, and sub sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%: Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public".

ix. Consequently, as per website of the state Bank of India i.e., <https://sbi.co.in>, the highest marginal cost of lending rate (in short



MCLR) as on date, i.e.,18.03.2024 is 8.85%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e., 10.85%.

- x. From above discussions, it is amply proved on record that the respondent has not fulfilled its obligations cast upon them under RERA Act, 2016 and the complainant is entitled for refund of deposited amount along with interest. Thus, respondent will be liable to pay the complainant interest from the date the amounts were paid till the actual realization of the amount. Authority directs respondent to refund the paid amount of ₹ 2,25,000/- along with interest to the complainant at the rate prescribed in Rule 15 of Haryana Real Estate (Regulation and Development) Rules, 2017, i.e., at the rate of SBI highest marginal cost of lending rate (MCLR)+ 2 % which as on date works out to 10.85% (8.85% + 2.00%) from the date amounts were paid till the actual realization of the amount. Authority has got calculated the total amount along with interest calculated as per detail given in the table below:

Sr.no	Principal amount	Date of payment	Interest accrued till 18.03.2024
1.	₹2,25,000/-	24.11.2017	₹1,54,300/-
Total amount to be refunded by respondent to complainant= ₹2,25,000/- + ₹1,54,300/- = ₹3,79,300/-			

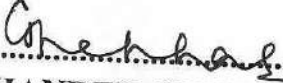
xi. Further, the complainant is seeking litigation expenses. It is observed that Hon'ble Supreme Court of India in Civil Appeal Nos. 6745-6749 of 2027 titled as "*M/s Newtech Promoters and Developers PvL Ltd. V/s State of U.P. & ors.*" (supra,), has held that an allottee is entitled to claim compensation & litigation charges under Sections 12, 14, 18 and Section 19 which is to be decided by the learned Adjudicating Officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the learned Adjudicating Officer having due regard to the factors mentioned in Section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses. Therefore, the complainant is advised to approach the Adjudicating Officer for seeking the relief of litigation expenses.

F. DIRECTIONS OF THE AUTHORITY

v. Hence, the Authority hereby passes this order and issue following directions under Section 37 of the Act to ensure compliance of obligation cast upon the promoter as per the function entrusted to the Authority under Section 34(f) of the Act of 2016:



- (i) Respondent is directed to refund amount of ₹3,79,300/- to the complainant as specified in the table provided in para(x) of this order. It is further clarified that respondent will remain liable to pay the complainant interest till the actual realization of the amount.
- (ii) A period of 90 days is given to the respondent to comply with the directions given in this order as provided in Rule 16 of Haryana Real Estate (Regulation & Development) Rules, 2017 failing which, legal consequences would follow.
- vi. **Disposed off.** File be consigned to record room after uploading of the order on the website of the Authority.


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CHANDER SHEKHAR
[MEMBER]


.....
NADIM AKHTAR
[MEMBER]