

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

**Complaint no.** : 1685 of 2022  
**Date of complaint** : 13.04.2022  
**Date of order** : 03.07.2024

Gowrishankar S/o Sadasivam Kothandaraman,  
R/o: - TFB Abhirami Ishwaryam, 7/4, Rani Annadurai  
Street, Raja Annamalaipuram, Chennai-600028.  
(Through Special Power of Attorney Holder  
Mrs. Gowrimanohari Venkataraman)  
R/o: - T-4, Madhurams Apartment no. 19, Balakrishna  
Street, Mylapore, Chennai-600004.

**Complainant**

Versus

M/s Raheja Developers Limited.  
**Regd. Office at:** W4D, 204/5, Keshav Kunj,  
Cariappa Marg, Western Avenue,  
Sainik Farms, New Delhi- 110062.

**Respondent**

**CORAM:**  
Ashok Sangwan

**Member**

**APPEARANCE:**  
Madhuri Negi (Advocate)  
Garvit Gupta (Advocate)

Complainant  
Respondent

**ORDER**

1. The present complaint has been filed by the complainant/allottee 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 provisions of the Act or the



Rules and regulations made there under or to the allottee as per the agreement for sale executed *inter se*.

**A. Unit and project related details**

2. 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. N.	Particulars	Details
1.	Name of the project	"Raheja's Revanta", Sector 78, Gurugram, Haryana
2.	Project area	18.7213 acres
3.	Nature of the project	Residential group housing colony
4.	DTCP license no. and validity status	49 of 2011 dated 01.06.2011 valid up to 31.05.2021
5.	Name of licensee	Sh. Ram Chander, Ram Sawroop and 4 Others
6.	RERA Registered/ not registered	Registered vide no. 32 of 2017 dated 04.08.2017
7.	RERA registration valid up to	04.02.2023 5 Years from the date of revised Environment Clearance
8.	Unit no.	C-042, 4 <sup>th</sup> floor, Tower/block- C (Page no. 58 of the complaint)
9.	Unit area admeasuring	2225.90 sq. ft. (super area) (Page no. 58 of the complaint)
10.	Date of execution of agreement to sell	04.09.2014 (Page no. 56 of the complaint)
11.	MoU	14.10.2014 (page 37 of complaint)
12.	Possession clause	<b>4.2 Possession Time and Compensation</b> <i>That the Seller shall sincerely endeavor to give possession of the Unit to the purchaser within thirty-six (36) months in respect of 'TAPAS' Independent Floors and forty eight (48) months in respect of 'SURYA TOWER' from the date of the execution of the Agreement to sell and after providing</i>



	<p><i>of necessary infrastructure specially road sewer &amp; water in the sector by the Government, but subject to force majeure conditions or any Government/ Regulatory authority's action, inaction or omission and reasons beyond the control of the Seller. <b>However, the seller shall be entitled for compensation free grace period of six (6) months in case the construction is not completed within the time period mentioned above.</b> The seller on obtaining certificate for occupation and use by the Competent Authorities shall hand over the Unit to the Purchaser for this occupation and use and subject to the Purchaser having complied with all the terms and conditions of this application form &amp; Agreement To sell. In the event of his failure to take over and /or occupy and use the unit 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 compensation @ Rs.7/- per sq. ft. of the super area per month as holding charges for the entire period of such delay....."</i></p>
<p>13.</p>	<p><b>Grace period</b></p> <p><b>Allowed</b></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 stipulated timeframe of 48 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 occupation certificate by September 2018. As per agreement to sell, the construction of the project is to be completed by September 2018 which is not completed till date. <b>Accordingly, in the present case the grace period of 6 months is allowed.</b></p>

14.	Due date of possession	04.03.2019 (Note: - 48 months from date of agreement i.e., 04.09.2014 + 6 months grace period)
15.	Total sale consideration as per payment plan at page no. 90 of complaint	Rs.1,90,58,524/-
16.	Amount paid by the complainant	Rs.2,21,89,587/- (as per customer ledger dated 20.06.2024 submitted on proceedings dated 03.07.2024)
17.	Occupation certificate /Completion certificate	Not received
18.	Offer of possession	Not offered

## B. Facts of the complaint

3. The complainant has made the following submissions: -

- I. That the present complaint is duly signed verified by the sister of the complainant i.e. Mrs. Gowrimanohari Venkataraman, who is authorised to represent the complainant vide power of attorney dated 20.08.2009.
- II. That in the year 2014, the complainant was contacted by ICICI Securities Ltd., a subsidiary of ICICI Bank Ltd. who introduced the respondent for investment options to the complainant.
- III. That the complainant is an allottee in respect of Flat no. C-042, 4th Floor admeasuring 2225.900 sq. ft. (approx.) super area in Tower-C in the project of the respondent named "Raheja's Revanta" situated at Sector 78, Gurugram.
- IV. That ICICI Securities introduced the complainant to the respondent and persuaded the complainant to invest in the buy-back scheme vouching for the credibility of the respondent. The basic scheme structure was that 25% of the funding would be provided by the



investor/complainant and the balance 75% would be funded by ICICI Bank. Further at the end of 3 years, the investor was to have two options: (a) leave the investment with a guaranteed return at which time the developer will take over the loan; or (b) take over the loan to buy the property and continue with the investment. The complainant, being an NRI having his home/native in Chennai did not wish to own a home in Delhi and invested in the scheme purely as an investment as ICICI Securities had assured the complainant of a guaranteed return upon the complainant exercising the buy-back option.

- V. That ICICI Securities, along with ICICI Bank and ICICI Home Finance Company Limited, coordinated with the complainant and the respondent to have a Memorandum of Understanding ("MOU") dated 14.10.2014 executed between them, wherein the basic scheme structure described above is articulated. Thereafter, the respondent and ICICI Securities put the complainant in touch with ICICI Bank, who offered the finance and ICICI Bank along with the respondent and the complainant entered into various agreements/documents such as tri-partite agreement, MOU, agreement to sell, etc. in respect of the above said unit.
- VI. That as per the transaction documents, the complainant had the option of opting for buy-back of the flat by the respondent, which was the original investment opportunity offered to the complainant. The complainant would facilitate the finance to the respondent and would receive a return on the investment made by the complainant in terms of the transaction documents and the respondent would begin paying the instalments to ICICI Bank. Further, as per the transaction documents, upon expiry of the period of 36 months, the complainant



opted for the buyback scheme. The ICICI Securities was also aware that the complainant had opted for the buy-back scheme, which option was accepted by the respondent, however, the respondent began avoiding repayment of the instalments soon after. Also, as per the email dated 10.01.2017, the complainant stated that, "As I have property with Raheja in subvention buy back scheme, property details mentioned below, I would like to go with the buyback process...". Thus, the complainant had clearly called upon for the subvention buy back scheme within the period of three years from the date of booking of the flat i.e. 04.09.2014.

- VII. That ICICI Bank started harassing the complainant for payment of instalment, which the respondent was to pay to ICICI Bank. However, due to the constant harassment, the complainant had paid 8 instalments on behalf of the respondent. Though the respondent assured the complainant for repayment of this amount vide various emails, however, only one instalment was repaid to the complainant. In fact, even ICICI HFC communicated to the respondent to look into the matter of reimbursing the instalments paid by the complainant. It is clear from the various communications that the ICICI Bank, ICICI Securities, ICICI HFC and the respondent were all aware of the nature of the investment made by the complainant and the exercise of buy-back option by the complainant. Also, the respondent had informed the complainant that they are unable to honor the buyback proposal due to unfavourable market conditions. Moreover, the construction of the flat had also not progressed as per the terms of the transaction documents to which ICICI Bank paid no attention to nor any inquiry was made as to the progress of the project.



VIII. That as per the transaction documents, the ICICI Bank was required to take prior written confirmation/approval from the complainant before releasing any amount to the respondent. Further, the agreement to sell, original of which is with ICICI Bank, clearly sets out the payment schedule. In addition, the payment schedule is also incorporated by reference into the tri-partite agreement executed with ICICI Bank. As such, ICICI Bank is fully aware of and bound by the payment schedule. Amongst other things, as per the payment schedule, no further amount was payable to the respondent until start of construction of 15th floor of the building. Pertinently, the tri-partite agreement, sets out the respective obligations of the parties to one-another. It appears that ICICI Bank has failed to monitor the progress of construction and advanced monies in an indiscriminate manner, without prior written approval by the complainant. ICICI Bank has not even made inquiries into the progress of construction and no inquiry has been made by them either. ICICI Bank has disbursed money to the respondent without any intimation to the complainant.

IX. In view of the above, the complainant is entitled to get a refund of the total amount paid to the respondent. However, the rate of interest agreed between the parties as per the MOU was @ 18% per annum, it was again agreed by the respondent vide email dated 28.09.2017 and thus, the rate of interest payable on the refund amount works out to 18% per annum.

**C. Relief sought by the complainant:**

4. The complainant has sought following relief(s).
  - i. Direct the respondent to refund the amount paid by the complainant with interest @18%.



5. The respondent/promoter put in appearance through company's A.R and Advocate and marked attendance on 02.11.2022 and 10.03.2023. Despite specific directions it failed to comply with the orders of the authority. It shows that the respondent is intentionally delaying the procedure of the court by avoiding filing of the written reply. Therefore, vide proceeding dated 16.11.2023, it was observed that, "*Despite ample opportunities, the respondent has not complied with the directions of the Authority. The reply has not been filed even after lapse of one year and there is no justification to provide any further opportunity to the respondent. In view of the above, the defence of the respondent is struck off.*"
6. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submissions made by the complainant.

**D. Jurisdiction of the authority**

7. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

**D.I Territorial jurisdiction**

8. 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.





**D.II Subject-matter jurisdiction**

9. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee 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.

10. 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.

**E. Findings on the relief sought by the complainant.**

**E.I. Direct the respondent to refund the entire amount deposited alongwith 18% rate of interest.**

11. In the present complaint, the complainant intends to withdraw from the project and is seeking return of the amount paid by him in respect of subject unit along with interest @18% from the date of payment until realization in terms of MoU executed between the parties dated 14.10.2014.
12. Clause 8 of the MoU dated 14.10.2014 is reproduced as under for ready reference: -

*"8. It is hereby agreed by the parties that the purchaser/ Investor within a time frame of 33 months to 36 months from the date of booking, shall be entitled to call upon the developer in writing, to cancel the aforesaid booking at a guaranteed premium compensation of Rs. 1400/- per square feet and in such a case the Developer / its nominees shall cancel the said booking within 60 days of expiry of 36 months from the date of booking. It is hereby clarified that the Developer shall over and above the*



*guaranteed premium compensation amount shall also be liable for refund of the entire amount paid by the purchaser along with service tax so recovered from the purchaser till date by the Developer".*

13. The complainant was allotted a unit bearing no. C-042, 4<sup>th</sup> floor, Tower-C in project of the respondent named "Raheja's Revanta" at Sector 78, Gurugram. The complainant has submitted that ICICI Securities introduced the complainant to the respondent and persuaded the complainant to invest in the buy-back scheme vouching for the credibility of the respondent. The basic scheme structure was that 25% of the funding would be provided by the investor/complainant and the balance 75% would be funded by ICICI Bank. Further at the end of 3 years, the investor was to have two options: (a) leave the investment with a guaranteed return at which time the developer will take over the loan; or (b) take over the loan to buy the property and continue with the investment. The complainant vide email dated 10.01.2017 called upon for subvention buy back scheme within the period of three years from the date of booking i.e., 04.09.2014. However, the respondent vide email dated 22.02.2018 informed the complainant that they are unable to honour the buyback proposal due to unfavourable market conditions.
14. After careful reading of the clause mentioned above, it is determined that as per clause 8 of the MOU, the buy-back scheme of the allotted unit was applicable within a time frame of 33<sup>rd</sup> month to 36<sup>th</sup> month from the date of booking i.e., from June 2017 to September 2017. However, the complainant has expressed his desire to withdraw from the project only on 10.01.2017 which is prior to the applicable period as agreed between the parties vide clause 8 of MoU dated 14.10.2014.
15. The Authority is of view that in case the allottee intends to withdraw from the project, 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.

16. As per clause 4.2 of the agreement to sell dated 04.09.2014 provides for handing over of possession and is reproduced below:

**4.2 Possession Time and Compensation**

*That the Seller shall sincerely endeavor to give possession of the Unit to the purchaser **within** thirty-six (36) months in respect of 'TAPAS' Independent Floors **and forty eight (48) months in respect of 'SURYA TOWER' 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 any 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 construction is not completed within the time period mentioned above.** The seller on obtaining certificate for occupation and use by the Competent Authorities shall hand over the Unit to the Purchaser for this occupation and use and subject to the Purchaser having complied with all the terms and conditions of this application form & Agreement To sell. In the event of his failure to take over and /or occupy and use the unit 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 compensation @ Rs.7/- per sq. ft. of the super area per month as holding charges for the entire period of such delay....."*

17. At the outset, it is relevant to comment on the preset possession clause of the agreement wherein the possession has been subjected to providing necessary infrastructure specially road, sewer & water in the sector by the government, but subject to force majeure conditions or any government/regulatory authority's action, inaction or omission and reason beyond the control of the seller. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottee that even a single default by the allottee in making payment as per the



plan may make the possession clause irrelevant for the purpose of allottee and the commitment date for handing over possession loses its meaning. The incorporation of such a clause in the agreement to sell by the promoter is just to evade the liability towards timely delivery of subject unit and to deprive the allottee of his right accruing after delay in possession. This is just to comment as to how the builder has misused his dominant position and drafted such a mischievous clause in the agreement and the allottee is left with no option but to sign on the dotted lines.

18. **Due date of handing over possession and admissibility of grace period:** As per clause 4.2 of the agreement to sell, the possession of the allotted unit was supposed to be offered within a stipulated timeframe of 48 months plus 6 months of grace period, in case the construction is not complete within the time frame specified. 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 occupation certificate by September 2018. However, the fact cannot be ignored that there were circumstances beyond the control of the respondent which led to delay in completion of the project. Accordingly, in the present case the grace period of 6 months is allowed.
19. **Admissibility of refund along with prescribed rate of interest:** The complainant is seeking refund of the amount paid by him at the rate of 18% interest in view of clause 8 of the MoU dated 14.10.2014. However, the legislature in its wisdom in the subordinate legislation, under the provision of rule 15 of the rules vide notification dated 12.09.2019, has determined that 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%. the prescribed rate of interest. Further, the complainant has not exercised the right of buyback within the prescribed period as mentioned in clause 8 of the MoU dated 14.10.2014. Thus, the complainant is not entitled to relief whatsoever relief claimed by him in terms of clause 8 of the MoU dated 14.10.2014 in view of reasoning mentioned above. Therefore, in this case as the complainant/allottee intends to withdraw from the project after commencement of the Act, 2016, the amount paid by him shall be refunded alongwith interest at prescribed rate as provided under rule 15 of the rules. Rule 15 has been reproduced 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.*

20. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.
21. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 03.07.2024 is **8.95%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.95%**.
22. On consideration of the circumstances, the documents, submissions and based on the findings of the authority regarding contraventions as per provisions of rule **28(1)**, the authority is satisfied that the respondent



is in contravention of the provisions of the Act. By virtue of clause 4.2 of the agreement to sell dated form executed between the parties on 04.09.2014, the possession of the subject unit was to be delivered within a period of 48 months from the date of execution of buyer's agreement which comes out to be 04.09.2018. As far as grace period is concerned, the same is allowed for the reasons quoted above. Therefore, the due date of handing over of possession is 04.03.2019.

23. Keeping in view the fact that the allottee/complainant wishes to withdraw from the project and demanding return of the amount received by the promoter in respect of the unit with interest on failure of the promoter to complete or inability to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. The matter is covered under section 18(1) of the Act of 2016.
24. The due date of possession as per agreement for sale as mentioned in the table above is 04.03.2019. The authority has further, observes that even after a passage of more than 5.2 years till date neither the construction is complete nor the offer of possession of the allotted unit has been made to the allottees by the respondent/promoter. The authority is of the view that the allottee cannot be expected to wait endlessly for taking possession of the unit which is allotted to him and for which he has paid a considerable amount of money towards the sale consideration. Further, the authority observes that there is no document place on record from which it can be ascertained that whether the respondent has applied for occupation certificate/part occupation certificate or what is the status of construction of the project. In view of the above-mentioned fact, the allottee intends to



withdraw from the project and is well within the right to do the same in view of section 18(1) of the Act, 2016.

25. Moreover, the occupation certificate/completion certificate of the project where the unit is situated has still not been obtained by the respondent /promoter. 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 he has 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 allottees 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....."*

26. 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. it was observed:

*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."*



27. 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 for sale or duly completed by the date specified therein. Accordingly, the promoter is liable to the allottee, as the allottee wishes 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.
28. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such, the complainant is entitled to refund of the entire amount paid by him at the prescribed rate of interest i.e., @10.95% p.a. (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*.

**F. Directions of the authority**

29. 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 respondent/promoter is directed to refund the amount i.e., Rs.2,21,89,587/- received by it from the complainant along with interest at the rate of 10.95% 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 deposited amount.

- ii. Out of total amount so assessed, the amount paid by the bank /payee if any, be refunded in the account of bank and the balance amount along with interest will be refunded to the complainant.
  - iii. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.
  - iv. The respondent is further directed not to create any third-party rights against the subject unit before full realization of the paid-up amount along with interest thereon to the complainant and even if, any transfer is initiated with respect to subject unit, the receivables shall be first utilized for clearing dues of complainant-allottee.
30. Complaint stands disposed off.
31. File be consigned to registry.

  
(Ashok Sangwan)  
Member

Haryana Real Estate Regulatory Authority, Gurugram  
Dated: 03.07.2024