



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: [www.haryanarera.gov.in](http://www.haryanarera.gov.in)

<b>Complaint no.:</b>	<b>1618 of 2023</b>
<b>Date of filing:</b>	<b>24.07.2023</b>
<b>First date of hearing:</b>	<b>31.08.2023</b>
<b>Date of pronouncement:</b>	<b>13.08.2024</b>

**Manish Singh S/o Sh. Birendra Singh,**

R/o- F-203, Parkview City-2, Sector 49, Sohna Road, Gurugram, Haryana,  
Presently At, 503, ENBD Building, AL Nahda, Dubai.

.....COMPLAINANT

Versus

**M/S Raheja Developers Limited**

Office At: -W4D, 204/5, Keshav Kunj Cariappa Marg,  
Western Avenue, Sainik Farms New Delhi  
South Delhi-110062

Also, At: -W4d, Cariappa Marg, Keshav Kunj,  
Western Avenue, Sainik Farms New Delhi-110062

.....RESPONDENT

**CORAM: Dr. Geeta Rathee Singh**  
**Chander Shekhar**

**Member**  
**Member**

**Date of pronouncement: 13.08.2024**

**Present:** - Mr. Arjun Kundra, ld. counsel for the complainant.  
None for the respondent.

*Geeta Rathee*

**ORDER**

1. Present complaint has been filed by complainant under Section 31 of The Real Estate (Regulation & Development) Act, 2016 (for short 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. UNIT AND PROJECT RELATED DETAILS AS MENTIONED IN COMPLAINT**

2. The Particulars of the project, details of sale consideration, amount paid by the complainants, date of proposed handing over the possession, delay period, if any, have been detailed in the following table:

S.No.	Particulars	Details
1.	Name of the project	Raheja's "OMA" at Sectors-2A, Dharuhera, Haryana
2.	Nature of the Project	Group Housing Project
3.	Name of the promoter	Raheja Developers Limited
4.	RERA registered/not registered	Registered vide Registration No. 29 of 2017 dated 02.08.2017 and 30 of 2017 dated 02.08.2017,

*Rathore*

		cancelled vide order dated 07.07.2021.
5.	Unit No. allotted	T-1106, 11 <sup>th</sup> floor
6.	Unit area	1355 sq. ft.
7.	Date of allotment	28.06.2013
8.	Date of Agreement to sell	28.06.2013
9.	Due date of offer of possession	28.12.2017 as per clause 4.2 of agreement, reproduced below:- <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 36 months in respect of the "Sansara" Independent Floors and 48 months in respect of the "Akasha Tower" from the date of execution of the Agreement to Sell and after providing of necessary infrastructure specially road, sewer &amp; water in the sector/to the complex by the Government, but subject to force majeure conditions or any Govt/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"</i>
10.	Total sale consideration	Rs.35,02,000/-
11.	Amount paid by complainant	Rs 34,41,156/-(as per complaint)
12.	Offer of possession	Not given



**B. FACTS OF THE COMPLAINT AS STATED BY THE  
COMPLAINANT**

3. Case of the complainant is that in the year 2011, respondent company had launched a group housing project namely "Raheja's OMA" at Sectors-2A, Dharuhera, Haryana and complainant approached the representatives of respondent company with respect to the booking of unit in project of the respondent.
4. That an apartment no. T-1106, measuring: 1355 sq. ft. at 11<sup>th</sup> floor of the project was allotted in the name of the mother of complainant i.e. Mrs. Kanchan Singh vide allotment letter dated 28.06.2013 for the total sale consideration amounting to Rs. 35,02,000/-. Agreement to sell was also executed on the same day of allotment i.e. on 28.06.2013. It is pertinent to mention that on account of continued ill health of complainant's mother, the unit was transferred/ nominated in the name of the complainant in the year 2013.
5. That the allottee was proposed a down payment plan by the respondent, whereby, he was asked to pay 95% of the total sale consideration within 60 days of booking itself, whereas, only 5% amount was to be paid at the time of offer of possession. Complainant paid 95% of the sale consideration i.e. Rs.34,41,156/- even before the date of issue of allotment letter i.e. by 07.03.2013 as allotment letter was issued after 3



months i.e. on 28.06.2013. Rest amount was to be paid at the time of offer of possession, however till date no offer has been made by respondent.

6. That complainant submits that the terms of the agreement are unilateral, arbitrary and unfair. Complainant's mother even objected to the same, however she was threatened with the cancellation of the allotment and forfeiture of the paid amount. It is submitted that respondent abused his dominant position and employed unfair trade practices. He miserably failed in completing the construction and development of the apartment within the prescribed time frame. As per the Clause 4.2 of the agreement to sell dated 28.06.2013, the possession of the unit was to be handed over latest by 28.06.2017. The relevant clause 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 36 months in respect of the "Sansara" Independent Floors and Forty-Eight (48) months in respect of the "Akasha Tower" from the date of execution of the Agreement to Sell and after providing of necessary infrastructure specially road, sewer & water in the sector/to the complex 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"*

7. That possession of the apartment/unit has been due since June 2017 however till date respondent has miserably failed to offer possession of



fully constructed and developed unit as per the specifications shown in the brochure and as promised in agreement to sell. Thus, there is an inordinate delay in handing over the possession of the unit and there is no sign of completion of the same in the near future. Complainant has been deprived of the use of his money since 2017, whereas, the respondent continues to enjoy the hard-earned money of the complainant without any repercussions. Complainant had requested the respondent several times for possession of his unit but to no avail and there is already a delay of more than 6 years and the possession of the unit is not in sight in any foreseeable future.

8. That complainant has now moved to United Arab Emirates, Dubai and is no longer interested in the unit. Therefore, with the intervention of this Hon'ble Authority, complainant seeks the relief of refund of his paid amount along with interest at prescribed rate from the date of respective payments, until realization.
9. That from the date of booking of the apartment till date, the respondent has never informed the complainant about any force majeure or any other circumstances which were beyond their reasonable control of the respondent and has led to the delay in the completion and development of the project within the time prescribed in the agreement. It is clear that the delay in the construction of the project is intentional and solely due to the deliberate negligence and deficiency on the part of the



respondent. The delay of more than 6 years from the date of proposed delivery of the present unit is in no way reasonable and no reason can be attributed to such delay except the willful and deliberate negligence and ignorance of the respondent. There has never been any communication from the respondent intimating the complainant of any such circumstances. The complainant on the other hand has tried his best to approach the respondent for the redressal of his grievances but to no avail.

10. Hence, the present complaint.

**C. RELIEFS SOUGHT**

11. In view of the facts of the case, complainant has sought following reliefs :

- i. Direct the respondent company to refund a sum of Rs 34,41,156/- to the complainant along with prescribed rate of interest, from the date of respective instalments and until actual realization; and
- ii. May pass any other order as this Hon'ble Authority may deem fit under the facts and circumstances of the matter;

**D. REPLY**

12. Notice was served to the respondent on 26.07.2023 which got successfully delivered on 29.07.2023. Respondent was granted opportunities vide hearings held on 31.08.2023, 06.12.2023 and 21.05.2024, however respondent failed to file reply or appear before



the Authority and argue the case. Today also, none has appeared on behalf of respondent. It is pertinent to note that proceedings before the Authority are summary in nature and can be decided on basis of documents available on record. Sufficient opportunity has been afforded to respondent to represent itself and file reply and also to argue the matter. Since reply has not been filed and none is appearing to argue on behalf of respondent, the Authority decides to proceed with this matter ex-parte.

**E. ISSUE FOR ADJUDICATION**

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

**F. OBSERVATIONS AND DECISION OF AUTHORITY**

14. Authority has gone through the facts of complaint as submitted by the complainant. In light of the background of the matter, Authority observes that complainant booked a unit in the project namely "Raheja's OMA" at Sector-2A, Dharuhera, Haryana. Unit no. T-1106, 11<sup>th</sup> floor, measuring 1355 sq. feet was allotted to original allottee namely, Mrs. Kanchan Singh vide allotment letter dated 28.06.2013. Thereafter, an agreement for sell dated 28.06.2013 was executed between the parties. The said unit was subsequently transferred in favour of complainant by the original allottee of the unit i.e. Mrs. Kanchan Singh in 2013, however the document of endorsement is





undated. Complainant in his complaint file has admitted that the unit was transferred/ nominated in his name in the year 2013. Therefore, the same is accepted and it is observed that complainants' mother transferred the unit in the name of complainant in year 2013 itself.

15. Complainant has made payment of Rs. 34,41,156/- to the respondent out of the total sale consideration amounting to Rs.35,02,000/- i.e. more than 98% of the sale consideration. On perusal of receipts annexed with the complaint it is observed that all such payments were made till 07.03.2013 which is even before the date of allotment and execution of agreement to sell.

16. Complainant in the complaint filed by him disputes the agreement executed by him to be unfair and arbitrary with its terms being alleged to be one-sided. It is asserted by the complainant that he had unequal bargaining power. Authority observes that since present agreement to sell constitutes the sole basis of subsisting relationship of the parties, both the parties are lawfully bound to obey the terms and conditions enunciated therein. It is pertinent to mention that here the agreement was executed prior to the coming in force of Real Estate (Regulation and Development) Act, 2016 (RERA Act in brief). Therefore, agreement executed prior to the coming into force of the Act or prior to registration of project with RERA cannot be reopened.

A handwritten signature in blue ink, appearing to read 'S. Patil', with a horizontal line underneath.

17. Further, as complainant was allotted unit no.T-1106 on 11<sup>th</sup> floor in the project OMA. As per brochure attached by complainant, real estate project "Raheja's OMA" comprised of independent low rise floor and Akasha Tower. Since, complainant was allotted a unit on 11<sup>th</sup> floor, it is apparent that the unit/ flat was located in high rise "Akasha Tower" in project of Raheja's OMA. As per the clause 4.2 of the agreement to sell dated 28.06.2013, the possession of the unit in Akasha Tower was to be handed over latest within 48 months from the date of execution of the agreement to sell. However, complainant has failed to deliver possession within the stipulated period of time. The relevant clause 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 36 months in respect of the "Sansara" Independent Floors and Forty-Eight (48) months in respect of the "Akasha Tower" from the date of execution of the Agreement to Sell and after providing of necessary infrastructure specially road, sewer & water in the sector/to the complex 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"*

As per the above clause, respondent was obliged to deliver possession of unit within 48 months from the date of agreement to sell along-with grace period of 6 months in case construction is not competed within



the prescribed time period. Complainant in his complaint has also alleged that since there was no force majeure event during 48 months as stipulated for completion of construction, delay is solely attributable to negligence on part of respondent, thus respondent should not be given benefit of 6 months grace period to determine the deemed date of possession. In this regard Authority observes that as per clause 4.2, respondent is entitled to grace period of 6 months in case construction is not completed within time mentioned i.e. 48 months, however same is not subject to any condition whether delay has to be on account of force majeure condition. It simply provides for a period of 48 months along-with additional 6 months if construction is not completed. Thus deemed date of possession shall be 48 months from the agreement to sell plus 6 months as admittedly construction was not completed within 48 months. Accordingly, deemed date of possession as per clause 4.2 comes to be 28.12.2017. Therefore, 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 demand refund of the paid amount along with interest as per section 18 of RERA Act, 2016.

18. Furthermore, Hon'ble Supreme Court in Civil Appeal No. 6745-6749 of 2021 titled as "*M/s Newtech Promoters and Developers Pvt. Ltd.*



*Vis State of U.P & Ors."* 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 judgment 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 along-with interest in favour of complainant.

19. As per Section 18 of Act, interest shall be awarded at such rate as may be prescribed. The definition of term 'interest' is defined under Section 2(z) of the Act which is as under:



"2(z) "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-

(1) 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;"

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 (NCLR) 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. 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. 01.08.2024 is 9.00%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e. 11.00%.
21. Accordingly, respondent will be liable to pay the complainant interest from the date amounts were paid till the actual realization of the



amount. Hence. Authority directs respondent to refund to the complainant the paid amount Rs.34,41,156/-along with interest 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 11.00% (9.00% + 2.00%) from the date amounts were paid till the actual realization of the amount.

22. Complainant has annexed receipts vide which amount of Rs.34,41,156/- has been paid to respondent by allottee against the total sale consideration. Therefore, on the basis of documents/proofs placed on record by complainant, the amount of Rs.34,41,156/-is taken as final amount for calculation of interest.
23. Authority has got calculated the total amount to be refunded along with interest calculated at the rate of 11.00% till the date of this order, the details of which are given in the table below-

Sr.no	Principal amount (Rs.)	Date of payment	Interest accrued till 13.08.2024 (Rs.)
1.	4,83,072/-	28.12.2012	6,18,292/-
2.	10,00,000/-	28.02.2013	12,61,233/-
3.	10,00,000/-	28.02.2013	12,61,233/-
4.	9,58,084/-	07.03.2013	12,06,346/-
	Total=Rs.34,41,156/-		43,47,104/-



Total amount to be refunded by respondent to complainant=  
Rs.34,41,156/- + Rs. 43,47,104/- = **Rs. 77,88,260 /-**

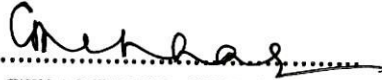
**G. DIRECTIONS OF THE AUTHORITY**

24. Hence, the Authority hereby passes this order and issues 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 the entire amount of Rs. 77,88,260/- to the complainants.

(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.

25. **Disposed of.** File be consigned to record room after uploading of the order on the website of the Authority.

  
.....  
CHANDER SHEKHAR  
[MEMBER]

  
.....  
DR. GEETA RATHEE SINGH  
[MEMBER]