



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	1000 of 2023
Date of filing:	24.04.2023
First date of hearing:	26.07.2023
Date of decision:	22.07.2024

COMPLAINT NO. 1000 OF 2023

Mr Abhishek Kaushik,

H.no. 1228/12, Street no. 02, Shanti Nagar,
Kurukshetra, Haryana, 136119

....COMPLAINANT

Versus

M/s Raheja Developers Ltd.

406, Fourth Floor, Rectangle One, D-4, District Centre, Saket,
New Delhi-110017, through its Managing Director

.....RESPONDENT

CORAM: Nadim Akhtar

Member

Chander Shekhar

Member

Date of Hearing: 22.07.2024

Hearing: 4th

Present: - Mr. Dhruv Lamba, Id 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. UNIT AND PROJECT RELATED DETAILS

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

S.No.	Particulars	Details
1.	Name of the project	Krishna Housing Scheme, Sector-14, Sohna, Distt. Mewat (Haryana)
2.	Name of the promoter	M/s Raheja Developers Limited



3.	Unit No. allotted	7007, 7 th floor, Tower A
4.	Unit area	630.86 sq. ft as carpet area +99.61 sq.ft as balcony area
5.	Date of allotment	06.01.2016
6.	Date of Builder Buyer Agreement	06.01.2016
7.	Due date of offer of possession	27.04.2019
8.	Possession clause in BBA	Clause 5.2: Possession Time "The Company shall sincerely endeavour to complete the construction and offer the possession of the said unit within 48 months from the date of the receiving of environment clearance or sanction of building plans whichever is later("Commitment Period") but subject to force majeure clause of this Agreement and timely payment of instalment by the allottee(s)....."
9.	Total sale consideration	₹23,20,901/-
10.	Amount paid by complainant	₹23,05,704/-
11.	Offer of possession	Not given till date

B. FACTS OF THE COMPLAINT

3. That the respondent M/s Raheja Developers Limited issued an advertisement w.r.t launching of an affordable housing complex namely "Krishna Housing" situated at Sector – 14, Sohna, District



Mewat to be developed under 'Affordable Housing Policy-2013' bearing license no. 115 of 2014 dated 20.08.2014, issued by Director, Town and Country Planning Department (DTCP), Haryana, Chandigarh.

4. That the complainant booked an apartment in the project of the respondent. On 10.07.2015, respondent issued a provisional allotment letter in favour of complainant confirming the allotment of 2-bedroom flat bearing no. 7002 at 7th Floor in Tower E1 admeasuring 452.33 sq. ft. carpet area chargeable @ Rs.3600 per sq. ft. The total cost of the flat was mentioned as Rs.16,57,258/-. Copy of provisional allotment letter dated 10.07.2015 annexed as the Annexure P-1.
5. That the application for booking the area of subject unit was mentioned to be 650 sq. ft. and in the provisional allotment letter the same was reduced to 452.33 sq. ft. The present complainant raised this objection and wrote a letter dated 28.07.2015 in this regard to the respondent which was duly received by the respondent. Copy of letter dated 28.07.2015 w.r.t. objection raised by the complainant is annexed as Annexure P-2.
6. Thereafter, respondent issued another letter of allotment to the complainant on 06.01.2016 wherein 2-bedroom flat bearing no. 7007 at 7th Floor in Tower A admeasuring 630.86 sq. ft. carpet area and



99.61 sq. ft. balcony area was allotted. Copy of allotment letter dated 06.01.2016 is annexed as Annexure P-3.

7. That on the same day, i.e., 06.01.2016, an agreement to sell was executed inter-se the respondent and the complainant. As per **clause 4.1** , the total sale consideration of the unit is Rs.23,20,901/- and according to clause 5.2, the respondent has promised to give possession of the subject unit within 48 months from the date of receiving of Environment clearance or sanction of building plan whichever is later. It is matter of fact that vide letter dated 07.05.2015, the respondent has intimated the complainant that the building plans for the subject project were originally approved by DTCP, Haryana, Chandigarh on 12.11.2014 and the environment clearance was obtained by the competent authority on 09.03.2015. Letter dated 07.05.2015 issued by the respondent to the complainant is annexed as Annexure- P/4 and agreement to sell dated 06.01.2016 is annexed as Annexure-P/5.
8. That, till date the complainant has paid an amount of Rs.23,05,704/- towards the total sale consideration of the subject unit. Copy of Customer ledger is annexed as Annexure P-6.
9. That the respondent has failed to deliver the possession of the unit on time which has caused huge financial losses and additionally more significantly mental agony to the complainant. It is pertinent to



mention here that the construction work of project has not started for long and there is no possibility to given possession of the subject apartment in near future to the complainant.

10. That the facts and circumstances as enumerated above are conclusive evidence that service is deficient on the part of the respondent and as such he is liable to be punished and compensate the complainants of the money paid by him along with interest and litigation cost.
11. That due to the acts of the respondent and the deceitful intent as evident from the facts outlined above, the complainant has been unnecessarily harassed mentally as well as financially, and therefore the respondent is liable to compensate the complainants on account of the aforesaid unfair trade practice.
12. That the complainant being an aggrieved person is filing the present complaint under section 31 with this Hon'ble Authority for the violation of various provisions of the RERA, Act of 2016.
13. That the complainant wish to withdraw from the project as there is no sign of delivery of the possession of the subject unit in the near future and there is a delay of more than three and a half years till today.



C. RELIEFS SOUGHT

14. Complainant has sought following reliefs :

- i. The respondent party may kindly be directed to refund the amount paid by the complainant along with interest as per provisions of Act of 2016.
- ii. Any other relief which the Hon'ble Authority/Adjudicating Officer deems fit and proper in the facts & circumstances of the present complaint.
- iii. That in the interest of justice, this Authority / Adjudicating Officer should pass strict and stringent orders against errant Promoters and developers who take huge investments from innocent investors and then deny them the right to take possession as agreed at the time of sale. The purpose and legislative intent behind setting up this authority should also be kept into consideration while deciding the present complaint as the Respondent has not only treated the Complainants unfairly but many other such buyers.

D. REPLY ON BEHALF OF RESPONDENT

15. Notice was served to the respondent on 28.07.2023 which got successfully delivered on 29.07.2023. Despite availing three opportunities respondent failed to file its reply. Therefore, Authority deems it fit to struck off the defence of the respondent and decide the complaint ex-parte on the basis of the record available on file.



E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT

16. Counsel for complainant reiterated the facts of the complaint and requested the Authority to grant the relief of refund of the paid amount along with interest and decide the case ex-parte as respondent has failed to file his reply. None has appeared to assist the Authority.

F. ISSUE FOR ADJUDICATION

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

G. OBSERVATIONS AND DECISION OF AUTHORITY

18. The 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 "Krishna Housing Scheme" which is an Affordable Housing Scheme being developed by the promoter namely; Raheja Developers Ltd. and complainant was allotted unit no.7007, 7th floor, Tower A, in said project at sector-14, Sohna, Haryana. The builder buyer agreement was executed between the parties on 06.01.2016. Complainant had paid a total amount of ₹23,05,704/- against the basic sale price of ₹23,20,901/-.

19. As per Clause 5.2 of agreement, respondent/developer was under an obligation to hand over the possession to the complainant within 48



months from the date of approval of building plans or grant of environment clearance whichever is later. That respondent M/s Raheja Developers Ltd, respondent/ developer received approval of building plans on 27.04.2015 and got the environment clearance on 09.03.2015. That means, as per possession clause, a period of 48 months is to be taken from 27.04.2015 and therefore, date of handing over of possession comes to 27.04.2019.

20. Period of 4 years is a reasonable time to complete the development works in a project and handover the possession to the allottee, however, respondent failed to hand over the possession to the complainant. After paying his hard earned money, legitimate expectations of the complainant would be that possession of the unit will be delivered within a reasonable period of time. However, respondent has failed to fulfill its obligations as promised to the complainant. 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, 2016.

21. 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.



22.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;

23.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".

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., 22.07.2024 is 9%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e., 11%.

24.From above discussion, it is amply proved on record that the respondent has not fulfilled its obligations cast upon him 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 to the complainant the paid amount of ₹23,05,704/- 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% (9% + 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 at the rate of 10.85% till the date of this order and total amount works out as per detail given in the table below:

Sr.no	Principal amount	Date of payment	Interest accrued till 22.07.2024
1.	₹121440/-	21.10.2015	₹117042/-
2.	₹479093/-	23.10.2015	₹461452/-



3.	₹300630/-	25.01.2016	₹281044/-
4.	₹290507/-	19.08.2016	₹253457/-
5.	₹290113/-	31.03.2017	₹233529/-
6.	₹324927/-	01.09.2017	₹246473/-
7.	₹324927/-	29.01.2018	₹231784/-
8.	₹116045/-	03.03.2020	₹56061/-
9.	₹58022/-	02.12.2020	₹23239/-
	Total=₹23,05,704/-		₹19,04,081/-
Total amount to be refunded by respondent to complainant= ₹23,05,704/- + ₹19,04,081/- = ₹42,09,785/-			

H. DIRECTIONS OF THE AUTHORITY

25.Hence, the Authority hereby passes this order and issue following directions under Section 37 of the RERA Act of 2016 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 an amount of ₹42,09,785/- to the complainant as specified in the table provided in para 24 of this order. It is further clarified that respondent will remain liable to pay the interest to the complainant till the actual realization of the amount.
- (ii) Respondent is also directed to deposit the cost of ₹10,000/- payable to the Authority and ₹5000/- payable



to the complainant imposed vide order dated 18.03.2024 and also deposit cost of ₹5000/- payable to the Authority and ₹2000/- payable to the complainant imposed vide order dated 07.11.2023, respectively.

- (iii) 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.

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


.....
CHANDER SHEKHAR
[MEMBER]


.....
NADIM AKHTAR
[MEMBER]