



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	1162 of 2023
Date of filing:	17.05.2023
First date of hearing:	26.07.2023
Date of pronouncement:	20.08.2023

COMPLAINT NO. 1162 OF 2023

Richa Sahu and Rahul Kumar Singh

Both R/o A-51, Vaastu Apartments,

Sector-55, Gurugram- 122011.

.....COMPLAINANTS

VERSUS

Raheja Developers Limited

W4D-204/5, Keshav Kunj,

Western Avenue, Sainik Farms,

New Delhi-110062

.....RESPONDENT

CORAM: Dr. Geeta Rathee Singh

Chander Shekhar

Member

Member

Present: - Adv. Arjun Kundra, Learned counsel for the complainant.

None for the respondent.

Geeta Rathee

ORDER

1. Present complaint has been filed by complainants 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 THE COMPLAINT:

2. 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	Krishna Housing Scheme, Sector-14, Sohna, Haryana
2.	Name of the promoter	Raheja Developers Limited
3.	RERA registered/not registered	Registered vide Registration No. 21 of 2017 dated 06.07.2017.
4.	Unit No. allotted	10012, 10 th floor, Tower A (2 BHK flat)
5.	Unit area (Carpet area)	630.86 sq.ft. Carpet area 99.61 sq. ft. balcony area.



6.	Date of Agreement to sale	04.03.2016
7.	Due date of offer of possession	10.06.2019 as per clause 5.2 of agreement, reproduced below:- <i>The Company shall sincerely endeavor to complete the construction and offer the possession of the said unit within forty eight (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 installment by the allottee(s).</i>
8.	Total sale consideration	Rs.23,20,901/-
9.	Amount paid by complainant	Rs.21,04,695/- (as per complaint)
10.	Offer of possession	Not given

B. FACTS OF THE COMPLAINT AS STATED BY THE COMPLAINANTS

3. Facts of the complaint are that in the year 2013, respondent company had launched their project namely "Krishna Housing Scheme" at Sector-14, Sohna, Gurgaon, Haryana under the provisions of Affordable Housing Policy 2013 and complainants booked a unit, jointly in the name of the Mrs. Richa Sahu and her husband, Mr. Rahul Kumar Singh in said project of the respondent.



4. That following a successful draw of lots held on 06.07.2015 at HUDA Gymkhana Club, Sector-29, Gurgaon, complainants were allotted a two bedroom flat bearing no. 10012 at 10th floor in Tower A of the project vide allotment letter dated 04.03.2016 for a total sale consideration of Rs. 23,20,901/-. Copy of the allotment letter dated 04.03.2016 is annexed as Annexure-C1.
5. On the same day i.e., on 04.03.2016, an agreement to sell was also signed between the parties. As per clause 5.2 of the agreement to sell, the possession of the unit would be handed over within 48 months from the date of receiving of environment clearance or sanction building plans whichever is later. Copy of the agreement to sell is annexed as Annexure-C2. It is stated that the environment clearance for the said project was received by the respondent company on 09.03.2015 and the building plans were sanctioned on 10.06.2015, and the same is a public document. Therefore, respondent was supposed to deliver possession of the unit by 10.06.2019 as per terms of agreement to sell.
6. That the respondent company further registered the said project under the provisions of the Real Estate (Regulation and Development) Act, 2016 vide registration No. 21 of 2017, dated 06.07.2017. The said registration certificate was valid for a period commencing from 06.07.2017 to 09.03.2020. However, the same was not renewed after



its expiry on 09.03.2020. Copy of the Registration Certificate of the Project is annexed as Annexure - C3.

7. That it is clear and unambiguous that the possession of the unit has been due since 10.06.2019. That even after a delay of almost 4 years and continuing no legal offer of possession has been made to complainants till date and even after a delay of almost 4 years the project is far from completion. Complainants cannot be expected to wait endlessly for the possession of the unit. *[Fortune Infrastructure vs. Trevor D' Lima decided by the Hon'ble Supreme Court on 29th January 2021 in CA No. 3533-3534/2017]*. Hence, the complainants have decided to withdraw from this project and seek refund of the amount paid by them along with interest.
8. It is pertinent to mention that during the month of April 2020, complainants received an e-mail from the respondent regarding closure of their office in lockdown period, due to COVID-19 stating that they will be utilizing this time to address and resolve the pending concerns of the complainants. Copy of the email dated 09.04.2020, written on behalf of the respondent is annexed as Annexure -C5. However, the assurances of the respondent were completely false and misleading as from the date of booking of the unit till its due date of possession, i.e., 10.06.2019, respondent had never informed the complainants about any force majeure or any other circumstances which were beyond the



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. Thus, delay caused in the construction of the project is intentional and solely due to the deliberate negligence and deficiency on the part of the Respondent. In fact, as of today, even after a lapse of 4 years from the due date of possession, the construction is far from completion.

9. That the complainants have never defaulted in any instalment and made all the payments on time. Till date, the complainants have already made the payment amounting to Rs.21,04,695/- . A copy of the complainant's ledger dated 09.04.2020, as maintained by the respondent company is annexed as Annexure - C4.
10. That the complainants have made several attempts to seek refund of the amount paid by them to the respondent towards the sale consideration of the unit however, the respondent has neither refunded the amount nor had delivered the possession of the unit till date and has unjustly enriched itself.
11. Feeling aggrieved, complainants have filed this complaint seeking refund of their paid amount along with prescribed rate of interest as provided under the Real Estate (Regulation and Development) Act, 2016 and its rules and regulations framed under.



C. RELIEFS SOUGHT

12. Complainants have sought following reliefs :
- a. Direct the respondent company to refund the total amount paid by the Complainants i.e., Rs. 21,04,695/- along with the prescribed rate of Interest @15% p.a. as per the act from the date of respective payment until its actual realization; and/or
 - b. Grant pendente-lite and future interest @18% from the date of filing of the suit till the date of full realization;
 - c. May pass any other order or orders as this Hon'ble Authority may deem fit under the facts and circumstances of the matter;

D. REPLY ON BEHALF OF RESPONDENT

13. Notice was served to the respondent on 18.05.2023 which got successfully delivered on 25.05.2023. Thereafter matter was listed for hearing on 26.07.2023; 07.11.2023 and 21.05.2024 whereby respondent was given ample opportunities to file reply, however respondent neither appeared nor filed reply till date. Proceedings before this Authority are summary proceedings and sufficient opportunities granted to the respondent to file reply, however, no reply has been filed, therefore, defence of the respondent is struck off and matter is proceeded ex-parte against the respondent.



E. FINDINGS AND OBSERVATIONS OF THE AUTHORITY

14. The Authority has gone through the facts of complaint as submitted by the complainants. In light of the background of the matter, Authority observes that complainants booked unit in the project “Krishna Housing Scheme” which is an Affordable Housing Scheme being developed by the respondent/promoter namely ‘Raheja Developers Ltd’ and complainants were allotted unit no. 10012, 10th floor, Tower A in the said project at Sector-14, Sohna, Haryana vide allotment letter dated 04.03.2016. Agreement for sale was also executed between the parties on 04.03.2016. Complainants had paid a total sum of ₹21,04,695/- against the total sale consideration price of ₹23,20,901/
15. As per clause 5.2 of the agreement respondent/developer was under obligation to hand over the possession to the complainants within 48 months from the date of approval of building plans or grant of environment clearance whichever is later subject to force majeure circumstances. It comes to the knowledge of the Authority while dealing with the cases against the same respondent namely i.e. “M/s Raheja Developers Ltd”, the respondent/ developer received approval of building plans on 27.04.2015 and got the environment clearance on 09.03.2015. Meaning thereby, deemed date of possession comes to 27.04.2019. It is pertinent to mention that even after receiving huge

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amount Rs. 21,04,695/- from the complainants, respondent had delayed the possession by five years. Till date, respondent has failed to file/submit any documents in its defence to show that construction of the project is complete or likely to be completed in near future or occupation certificate has been applied to the competent Authority for the project in question. The innocent allottee who had invested his hard earned money in the project with the hope to get a house and who was to get possession of the unit by 27.04.2019 cannot be forced/compelled to wait endlessly for the unit, and specifically when there is no bonafide effort shown on part of the promoter to complete the project. Since respondent has miserably failed to fulfill its obligations as promised to the complainants to deliver possession as per builder buyer agreement. Thus, complainants are at liberty to exercise their 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 the Real Estate (Regulation and Development) Act, 2016.

16. 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 allottees such as in the present case seeking refund of the paid amount along with interest on account of delayed delivery of possession. The complainants wishes to withdraw from the project of the respondent, therefore, Authority finds it to be fit case for allowing refund in favour of complainants.

17. 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;

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".

18. 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., 06.08.2024 is 9.1%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e., 11.1%.
19. 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 complainants are entitled for refund of deposited amount along with interest. Thus, respondent will be liable to pay the complainants interest from the date the amounts were paid till the



actual realization of the amount. Authority directs respondent to refund to the complainants the paid amount of Rs.21,04,695/- 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 11.1% (9.1% + 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 11.1% till the date of this order and total amount works out to **Rs. 39,18,389/-** as per detail given in the table below:

Sr.no	Principal amount (Rs.)	Date of payment	Interest accrued till 20.08.2024 (Rs.)
1.	1,20,000/-	04.02.2016	1,13,895/-
2.	4,80,000/-	09.03.2016	4,50,617/-
3.	5,64,657/-	02.07.2016	5,10,345/-
4.	2,90,113/-	07.01.2017	2,45,533/-
5.	2,90,113/-	10.07.2017	2,29,300/-
6.	34,815/-	31.07.2017	27,295/-
7.	3,24,997/-	30.01.2018	2,36,709/-
	Total=Rs.21,04,695/-		Rs. 18,13,694/-
Total amount to be refunded by respondent to complainant= Rs.21,04,695/- +Rs. 18,13,694/- = Rs. 39,18,389 /-			

F. DIRECTIONS OF THE AUTHORITY



20. 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. 39,18,389** /- to the complainants. Further, respondent is directed to pay cost of ₹5000/- payable to the Authority and Rs. 2000/- payable to complainants imposed vide order dated 07.11.2023.
- (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.
21. **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]