



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	3413 of 2022
Date of filing:	04.01.2023
Date of first hearing:	02.03.2023
Date of decision:	05.12.2023

1. Sh. Rajesh Kapoor S/o Late Sh. Ashok Kapoor
2. Mrs. Himani Kapoor W/o Sh. Rajesh Kapoor

Both R/o I-71, DDA Flats, Naraina Vihar,

New Delhi- 110028

.....COMPLAINANTS

**Versus**

Raheja Developers Ltd,

R/o Registered office W4D, 204/5,

Keshav Kunj, Western Avenue,

Sainik Farms,

New Delhi- 110062.

.....RESPONDENT

**CORAM: Dr. Geeta Rathee Singh  
Nadim Akhtar**

**Member  
Member**

**Present:** - Sh. Harshit Joon Advocate, Counsel for the complainants through VC.

None for the respondent.

**ORDER (NADIM AKHTAR - MEMBER)**

1. Captioned complaint has been filed on 04.01.2023 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 fulfill 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 have been detailed in following table:

S. No.	Particulars	Details
1.	Name of project	Raheja's OMA, Sector 2-A Dharuhera(Rewari)
2.	Nature of the Project	Residential Group Housing
3.	RERA registered/not registered	Registered no. 29 of 2017 dated 02.08.2017 and 30 of 2017 dated 02.08.2017
4.	Unit No.	IF24-02 in Sansara
5.	Unit area	1904.280 sq.ft.
7.	Date of builder buyer agreement	14.06.2013



8.	Deemed Date of Possession as per clause 4.2 of BBA	Within 36 months from execution of BBA, i.e., 14.06.2016
8.	Total sale price	₹74,55,796/-
9.	Amount paid by complainant	₹66,71,217/-

**B. FACTS OF THE CASE AS STATED IN THE COMPLAINT FILED BY THE COMPLAINANT**

3. Complainants had booked unit in the project of the respondent in the year 2013. Unit bearing no. IF24-02 was allotted to complainants vide builder buyers agreement (hereinafter referred as BBA) executed on 14.06.2013, between the allottees and respondent-promoter, copy of the same has been annexed as Annexure C-1 (Pg. 14-48 of complaint book)
4. According to clause 4.2 of the BBA, respondent committed to give possession of the allotted unit within 36 months in respect of "SANSARA" independent floor from the date of the execution of the agreement to sell and after providing of necessary infrastructure specially road, sewerage, etc. by the government and 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 months in case the construction is not completed within the time



period mentioned above. Total sale price of the apartment was Rs. 74,55,796/- out of which complainants had paid an amount of Rs. 66,71,217/- between the years 2012-2017. Statement of account and receipts of the paid amounts have been filed by the complainants along with an affidavit on 10.10.2023 in the registry of the Authority.

5. Complainants further alleged that there is no development at site and the project cannot be completed in near future. Possession of booked unit was to be handed over to complainants by 14.06.2016 along with grace period of 6 months but respondent, after inordinate delay of almost seven years, have failed to handover the possession till date. Therefore, complainants have prayed for relief of refund of the amount paid by complainants till date along with the prescribed rate of interest.
6. During hearing, learned counsel for complainants stated that captioned matter be disposed of in terms of earlier decided complaint no. 529 of 2018 titled as **Kapil Jain and Anu Jain Vs Raheja Developers Pvt Ltd** by the Authority vide order dated 01.04.2022, whereby same relief was allowed.



**C. RELIEFS SOUGHT:**

7. The complainants in their complaint have sought following reliefs:
- i. To give necessary directions to the respondent to refund the amount paid by the complainants along with the interest and compensation as per the provisions of the RERA Act,2016.
  - ii. To impose penalty upon the respondent as per Section 60 of RERA Act for wilful default committed by them.
  - iii. To impose penalty upon the respondent as per the provisions of Section 61 of RERA Act for contravention of Section 12, Section 14, Section 15 and Section 16 of RERA Act.
  - iv. To issue directions to make liable every officer concerned, i.e., Director, Manager, Secretary or any other officer of the respondent's company at whose instance, connivance, acquiescence, neglect any of the offences has been committed as mentioned in Section 69 of RERA Act,2016 to be read with HRERA Rules, 2017.
  - v. To issue direction to pay cost of litigation.
  - vi. Any other relief which is deemed fit by this Hon'ble Authority.



**D. REPLY:**

8. As per office record notice to respondent was successfully delivered on 17.01.2023. Thereafter matter was listed for hearing on 02.03.2023, 30.05.2023 and 21.09.2023 whereby respondent was given opportunity to file reply but respondent choose not to file reply. Today also, respondent neither appeared nor filed reply till date. Since the proceedings before this Authority are summary proceedings and sufficient opportunities have already been granted to the respondent to file reply, however, respondent choose not to file reply and respondent's defense is struck of and matter has been heard on merits. Respondent was also directed vide order dated 30.05.2023 to pay cost of ₹ 5000/- payable to Authority and ₹ 2000/- payable to complainants for not filing reply in time but same has not been paid till date.

**E. ISSUES FOR ADJUDICATION:**

9. Whether the complainants are entitled to refund of amount deposited by them along with interest in terms of Section 18 of Act of 2016?

**F. OBSERVATIONS OF THE AUTHORITY:**

10. The Authority has gone through the documents placed on record and observes that there is no dispute regarding the fact that complainants had booked a unit no. IF24-02, admeasuring 1904.28 sq.ft. in the real estate project, namely, "Raheja's OMA", "Sansara" independent floors



located at Sector 2-A Dharuhera, Rewari being developed by promoter namely, "Raheja Developers Limited", for total sale consideration of ₹ 74,55,796/-. Builder buyer agreement was signed on 14.06.2013 and complainant had paid an amount of ₹ 66, 71,217/- against the total sale consideration.

It is the case of the complainants that they are aggrieved by the fact that the respondent had promised to deliver the possession of the unit/floor within 36 months along with grace period of 6 months, i.e., by 14.12.2016. However, till date neither possession has been handed nor respondent is in a position to handover possession in near future, thus relief of refund of paid amount along with interest be granted to them.

11. On the other hand, respondent neither appeared nor filed reply till date. Therefore, respondent defense is struck off and matter is being decided on documents available in file.
12. It is observed that as per Section 11(4)(a) of the RERA Act 2016, the promoter shall be responsible for all obligations, (responsibilities) and function under the provisions of this Act or the rules and regulations made thereunder or to the allottees, as per the agreement for sale. In the present case, it is matter of fact that complainants had made payment of Rs. 66,71,217/- to the respondent and respondent was under an obligation to handover possession by 14.12.2016 including grace



period of 6 months (as per clause 4.2 of BBA). Furthermore, it is admitted fact that the respondent promoter has till date not handed over possession nor completed the construction of the unit, thus, the respondent has failed to fulfill his obligation to handover the possession within stipulated/ agreed time. Further, despite being granted adequate opportunities, respondent has failed to file/submit any documents in its defense to show that construction of the project is complete and occupation certificate has been received from the competent Authority. The innocent allottee who had invested his hard earned money in the project in the year 2013 with the hope to get a house 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.

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

In this regard the Hon'ble Supreme Court in above mentioned judgment had settled 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.

14. Further, in consonance to the above mentioned judgment passed by Hon'ble Supreme in case of *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of U.P & Ors*, this Authority has earlier also passed similar orders in complaint no. **529 of 2018 titled as Kapil Jain and Anu Jain Vs Raheja Developers Pvt Ltd** decided on 01.04.2022, involving similar/ identical facts. Thus, the Authority decides to dispose of the captioned matter in same terms of the above stated complaint. Relevant part of which has been reproduced below for reference:



“iii) Next argument of respondents is that the project could not be completed on account of diversion of funds from RERA account by the financier M/s DMI Finance Pvt. Ltd. Here again respondents are severely contradicting themselves. On one hand they are stating that project is not registered, but in the same breath they are saying that M/s DMI Finance Pvt. Ltd. is taking away money from RERA Account of the project. Again respondents have failed to even check facts of the matter.

iv) Regardless of above position, respondent-company has got loan of Rs.55 crores sanctioned, out of which admittedly Rs.33 crores have been disbursed. Nothing at all has been stated where this amount of Rs. 33 crores has been invested, and whether it has been invested in the project or invested somewhere else. They have not even stated what properties have been hypothecated against the loan. Respondents have failed to submit quarterly progress and have not even submitted any certificate of Chartered Accountant that said loan which has been got sanctioned for the project has been invested on the project itself.

On the other hand admittedly however, money collected from complainants has not been invested on the project. Nothing at all has been stated as to how much money was collected from complainants and how much money has been invested. RERA Act mandates that at least 70% money collected from allottees is to be invested on development of the project.

v) As per provisions of RERA Act and Rules no lien could have been created on the RERA account. 70% of the money received from the allottees has to be invested on the project. The respondent promoters appears to have severely defaulted in respect of legal obligations cast upon them under RERA Act. They have got the project registered and have operated RERA account as per law, but respondents have created lien in favour of of M/s DMI Finance Pvt. Ltd. without even informing the Authority about it. It is a blatant illegality committed by the respondents which in fact amounts to breach of law and trust. The allottees had entrusted their money with the promoter

*with an expectation that the same will be invested in the project and their booked apartment will be delivered in time. The promoter on the other hand, dealt with the money so deposited by the allottee-complainants like its private money and allowed a lien to be created in favour of 3<sup>rd</sup> party.*

*vi) There appears to be a clear mismanagement of funds by the respondent. The project ought to have been completed with the help of Rs.33 crores raised by way of loan and the money contributed by complainant-allottees. Only a detailed forensic audit would reveal whether the money collected by way of loan and installments paid by the complainants have been invested in the project or the said money has been diverted towards other purposes.*

*Authority decides to send a copy of this order to the Project Section to initiate inquiry in the matter.*

*8) Respondents-promoters have not submitted any time-line as to when project is likely to be completed. They are only hiding behind bald technicalities like jurisdiction of the Authority to justify their utter failure in completing the project. Photographs of the projects presented by complainants clearly show that the project is at very preliminary stages. It is not possible to be completed in foreseeable future. Since nothing substantial is happening on the ground, the promoters are going to find it difficult to arrange more money either from the allottees or from financiers. In any case, respondent is in serious disputes with both of them.*

*9) In such circumstances, when there is no hope of completion of project in foreseeable future, Authority is duty bound to allow relief of refund as prayed by complainants. Accordingly, Authority orders refund of entire amount paid by complainants along with interest".*

15. Hence, Authority hereby allows refund in favour of complainants. As per Section 18 of Act, interest shall be awarded at such rate as may be prescribed in Rule 15 of HRERA Rules, 2017. Section 18 is reproduced below for reference:



18. *Return of amount and compensation.—(1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building,—*

*(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or*

*(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, he shall be liable on demand to the allottees, in case 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 that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:*

*Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.*

*(2) The promoter shall compensate the allottees in case of any loss caused to him due to defective title of the land, on which the project is being developed or has been developed, in the manner as provided under this Act, and the claim for compensation under this subsection shall not be barred by limitation provided under any law for the time being in force.*

*(3) If the promoter fails to discharge any other obligations imposed on him under this Act or the rules or regulations made thereunder or in accordance with the terms and conditions of the agreement for sale, he shall be liable to pay such compensation to the allottees, in the manner as provided under this Act.*

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".*

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

*"2(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;"*

16. 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. 05.12.2023 is 8.75%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e. 10.75%.
17. Accordingly, respondent will be liable to pay the complainants interest from the date amounts were paid till the actual realization of the amount. Hence, Authority directs respondent to refund to the



complainants the paid amount 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 10.75% (8.75% + 2.00%) from the date amounts were paid till the actual realization of the amount.

18. Authority has got calculated the total amount along with interest at the rate of 10.75% till the date of this order and said amount works out to ₹ 1,35,87,354.24/- (₹66,71,547.24/- + ₹ 69,15,807/-) as per detail given in the table below:

Serial No.	Principal Amount	From Date	Interest Amount
1.	6,48,969/-	16.11.2012	7,71,611/-
2.	9,73,453/-	14.01.2013	11,40,500/-
3.	3,24,490/-	05.07.2013	3,63,736/-
4.	2,25,258/-	05.07.2013	2,52,502/-
5.	1,12,489/-	05.07.2013	1,26,094/-
6.	9,70,235/-	04.09.2013	10,70,149/-
7.	6623/-	20.09.2013	7,274/-
8.	9868/-	14.10.2013	10,768/-
9.	240/-	17.10.2013	262/-
10.	3,46,756/-	20.12.2013	3,71,537/-
11.	3503/-	14.01.2014	3728/-
12.	3,46,984/-	26.03.2014	3,61,971/-
13.	3505/-	16.04.2014	3635/-

14.	88/-	19.04.2014	91/-
13.	3,46,706/-	08.08.2014	3,47,896/-
14.	3503/-	27.10.2014	3,432/-
15.	6,67,999/-	19.02.2015	6,31,927/-
16.	6748/-	24.03.2015	6,318/-
17.	3,22,519/-	18.06.2015	2,93,799/-
18.	3258/-	29.07.2015	2929/-
19.	3,22,519/-	05.08.2015	2,89,240/-
20.	3258/-	24.09.2015	2874/-
21.	3,22,519/-	01.10.2015	2,83,826/-
22.	3258/-	23.11.2015	2816/-
23.	3,22,908/-	15.12.2015	2,77,035/-
24.	3262/-	05.04.2016	2691/-
25.	3,25,635/-	03.08.2016	2,57,125/-
26.	3289.24/-	08.11.2016	2503/-
27.	41,705/-	16.10.2017	27,538/-
Total	₹66,71,547.24/-		₹ 69,15,807/-

19. Further, complainants have sought various other relief's of cost under clause ii, iii, iv mentioned at page 11 of the complaint book. In this regard it is observed that said relief's have nowhere been claimed by the complainants in their pleadings nor pressed by them during arguments. Hence, complainants prayers mentioned at clause ii, iii, iv mentioned at page 11 of complaint book are rejected.



**H. DIRECTIONS OF THE AUTHORITY**

20. 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 amounts of ₹ 1,35,87,354.24/- to the complainants as specified in the table provided in para 17 of this order.

(ii) Respondent is also directed to pay earlier imposed cost of ₹ 5000/- payable to Authority and ₹ 2000/- payable to complainants, vide order dated 30.05.2023.

(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.

21. Captioned complaint is, accordingly, **disposed of**. File be consigned to the record room after uploading orders on the website of the Authority.

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

  
.....  
**NADIM AKHTAR**  
**[MEMBER]**