



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	1225 of 2023
Date of filing:	31.05.2023
First date of hearing:	26.07.2023
Date of decision:	22.07.2024

COMPLAINT NO. 1225 OF 2023

Gautam Pal,

B-3 Lehari Colony,

Near Hedgewar Hospital, East Arjun Nagar

Vishwas Nagar, North East Delhi-110032.

.....COMPLAINANT

Versus

M/s Raheja Developers Limited

W4 D-204/5, Keshav Kunj, Cariappa Marg,

Western Avenue, Sainik Farms,

New Delhi-110062 through its Directors.

.....RESPONDENT

CORAM: Nadim Akhtar

Member

Chander Shekhar

Member

Date of Hearing: 22.07.2024

Hearing: 4th

Present: Ms. Surbhi Garg, counsel for complainant through VC.

None present 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 complainants, date of proposed handing over the possession, delay period, if any, have been detailed in the following table:



S.No.	Particulars	Details
		Complaint no. 1225 of 2023
1.	Name of the project	Krishna Housing Scheme, Sector-14, Sohna, Haryana
2.	Name of the promoter	M/s Raheja Developers Limited
3.	Unit No. allotted	3005, 3 rd floor, Tower C1
4.	Unit area (Super built up area)	414.37.sq.ft
5.	Date of allotment provisional allotment	10.07.2015
6.	Date of Builder Buyer Agreement	Not executed
7.	Due date of offer of possession	27.04.2019
8.	Possession clause in application form	<i>Clause 21: "The Company shall sincerely endeavour to offer possession of the said flat to the applicant(s) within the validity period of 4 years of sanction/clearance of building plans or receipt of environmental clearance whichever is later subject to force majeure conditions which inter-alia include</i>



		<i>strike, lockout,</i> ”
9.	Total sale consideration	₹15,24,022/-
10.	Amount paid by complainant	₹13,53,449/- as per receipts attached
11.	Offer of possession	Not given

B. FACTS OF THE COMPLAINT

3. That the respondent had published a newspaper advertisement for Krishna Housing Scheme, an affordable housing project located in Sector-14, Sohna , Haryana. Complainant, being lured by the offer and facilities provided by the respondent applied for a 1 BHK Unit (Type) in the said project by paying a registration fee of Rs.76,201/- on 29.12.2014 vide Cheque No. 493009 drawn on UCO Bank, Karkardooma Court Branch, Delhi. Further, an amount of Rs.2,355/- was paid on 31.12.2014 vide Cheque No. 493010 by the complainant to the respondent. Application form of the Housing Scheme along with the receipt of the first payment of Rs.76,201/- is annexed at Annexure A/1.
4. That respondent intimated the complainant vide letter dated 07.05.2015 regarding the revision of the building plan, the necessary building and environment clearances that had been obtained by the respondent for the project. It was mentioned in the letter that apart



from the originally approved building plans dated 12.11.2014 by the office of the Director General, Town and Planning, Haryana vide memo no. ZP-1016/AD (RA)/2014/26023, subsequently granted 'in principal approved' on 27.04.2025 vide memo no. ZP-1016/ad (RA)/2015/6585. It was informed that environment clearance for the project had been granted on 09.03.2015 vide memo no. SEIAA/HR/2015/284. Letter dated 07.05.2015 is annexed as Annexure A/2.

5. That complainant was issued a provisional allotment letter dated 10.07.2015; vide which the complainant was provisionally allotted a one bedroom flat bearing No.3005, 3rd floor, Tower C1 in the respondent's housing project, selected through a draw of lots. However, it is pertinent to mention that the complainant did not receive any intimation regarding the allotment until the complainant himself inquired about it via email dated 25.07.2015. Be that as it may, the deficiency in service and lack of professionalism was patent from the very beginning as the respondent failed to send and intimate about the provisional allotment and the provisional allotment letter dated 10.07.2015 was sent by the respondent only after receiving the complainant's email. Email dated 25.07.2015 sent by the complainant is annexed at Annexure A/3 and provisional allotment letter dated 10.07.2015 is annexed as Annexure A/4.



6. That respondent raised and sent a demand letter dated 11.07.2015, demanding a sum of Rs.3,15,472/-. Demand letter dated 11.07.2015 sent by the respondent is annexed at Annexure A/5.
7. That it is relevant to mention that on 02.05.2017, the respondent sent a notice to the complainant via email for "Final Notice of Cancellation of Allotment in Raheja KHS", in case the pending dues are not paid within a period of 15 days. Upon receipt of the notice, the complainant approached the respondent to discuss the issue and the same was resolved through amicable discussions, whereby the complainant agreed to pay the pending amount and the respondent agreed to waive the penalty and interest levied on the pending amount. Email dated 02.05.2017 sent by the respondent is annexed as Annexure A/6.
8. That complainant thereafter made the payment of Rs.4,46,944/- on 15.05.2017 and Rs.4,46,943/- on 25.06.2017. Receipt dated 15.05.2017 is annexed as Annexure A/8 (Colly) and copy of receipt dated 25.06.2017 and cheque dated 25.06.2017 is annexed at Annexure A/9 (Colly).
9. Thereafter, an amount of Rs.1,90,503/- was paid vide cheque dated 26.07.2017 and respondent duly issued a receipt dated 01.08.2017 to the complainant. Copy of receipt dated 01.08.2017 is annexed at



Annexure A/10 (Colly). As on today, complainant had paid total amount of Rs.13, 53,449/- to the respondent.

10. That as Para 21 of the Terms and Conditions outlined in the application form, it was contractually stipulated that the construction of the said premises would be completed within a period of 4 years. However, despite the passage of almost eight years since then, the complainant remains unaware of the current status of his flat and fate of his hard-earned money.
11. That respondent did not hand over the vacant physical possession of the unit to the complainant. The possession of the said flat was to be handed over to the complainant within the above-mentioned time-period but the respondent failed to discharge his duty thereby constituting a clear breach of duty and establishing a deficiency in services on the part of the respondent.
12. That as per the "Affordable Housing Policy 2013" of the Haryana Government which was specifically intended to encourage planning and completion of 'Group Housing Projects' within a targeted time frame, a period of 4 years has been specified as per the scheme to necessarily complete the project. As per Affordable Housing Policy, 2013, the license for a project cannot be renewed after the expiry of the 4-year period from the date of commencement. The respondent's project has exceeded this time period, with almost 8 years having



elapsed and with only 10% of the construction being completed. The respondent's project has exceeded this time period, with almost 8 years having elapsed and with only 10% of the construction being completed.

13. Therefore, complainant filed the present complaint before the Authority after being aggrieved by the conduct of the respondent.

C. RELIEFS SOUGHT

14. Complainant has sought following reliefs:

- (i) Order of refund of the entire amount of Rs.13,53,449/- paid by the complainant along with interest at 18% per annum from date of each payment till realization of dues by the complainant;
- (ii) Order to the effect that the respondent be estopped from charging the Service Tax/GST illegally from the complainant;
- (iii) Direct the respondent to pay a sum of Rs.1,00,000/- towards the litigation expenses incurred by the complainant;
- (iv) Such further relief may also be granted in favour of the complainant and against the respondent as the Hon'ble Authority deems just, fair and expedient.

D. REPLY ON BEHALF OF RESPONDENT

15. Notice was served to the respondent on 09.06.2023 which got successfully delivered on 14.06.2023. 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.3005, 3rd floor, Tower C1 vide allotment letter dated 10.07.2015, in said project at sector-14, Sohna, Haryana. Complainant had paid a total sum of ₹13,53,449/- against the basic sale consideration price of ₹15,24,022/-. No builder buyer agreement was executed between the parties, but the fact remains that



respondent allotted the unit in favour of complainant and said allotment was governed "Affordable Housing Policy- 2013". As per clause 5 (iii) (b) of said policy, possession to be offered within 4 years from date of sanction of building plans or receipt of environmental clearance. Furthermore, perusal of clause 21 of application form submitted by the complainant reveals that possession of unit was to be offered within 4 years from date of sanction of building plans or receipt of environmental clearance whichever is later.

19. Therefore, on conjoint reading of both the clauses, respondent/developer was under an obligation to hand over the possession to the complainant within 4 years from the date of approval of building plans or grant of environment clearance whichever is later. That 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 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 ₹13,53,449/- 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%) 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% 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.	₹76201/-	17.01.2015	₹79802/-
2.	₹2355/-	29.01.2015	₹2458/-
3.	₹446944/-	15.05.2017	₹353710/-
4.	₹446943/-	25.06.2017	₹348187/-
5.	₹190503/-	01.08.2017	₹146285/-
6.	₹190503/-	29.06.2018	₹127225/-
	Total=₹13,53,449/-		₹10,57,667/-
Total amount to be refunded by respondent to complainant= ₹13,53,449/- + ₹10,57,667/- = ₹24,11,116/-			

25. Relief under clause 2 neither argued nor pressed upon by the complainant. Therefore, no direction is passed by the Authority in this regard.

26. Further, the complainant is seeking compensation towards litigation charges. It is observed that Hon'ble Supreme Court of India in Civil Appeal Nos. 6745-6749 of 2027 titled as "*M/s Newtech Promoters*



and Developers Pvt Ltd. V/s State of U.P. & ors.” (supra,), has held that an allottee is entitled to claim compensation & litigation charges under Sections 12, 14, 18 and Section 19 which is to be decided by the learned Adjudicating Officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the learned Adjudicating Officer having due regard to the factors mentioned in Section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses. Therefore, the complainants are advised to approach the Adjudicating Officer for seeking the relief of litigation expenses.

H. DIRECTIONS OF THE AUTHORITY


27.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 an amount of ₹24,11,116/- 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) Also, respondent is directed to deposit the cost of ₹5000/- payable to the Authority and ₹2000/- payable to the complainant imposed by the order dated 07.11.2023 and ₹10,000/- payable to the Authority imposed vide order dated 18.03.2024.
- (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.

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


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CHANDER SHEKHAR
[MEMBER]


.....
NADIM AKHTAR
[MEMBER]