



HARERA
GURUGRAM

Complaint No. 197 of 2023

**BEFORE THE HARYANA REAL ESTATE REGULATORY
AUTHORITY, GURUGRAM**

Complaint no. : 197 of 2023
Date of complaint : 18.01.2023
Date of decision : 16.08.2024

Ruchi Bhatia

R/o: - House no. 48, Sector - 4, Urban Estate, Gurugram,
Haryana.

Complainant

Versus

M/s Raheja Developers Limited.
Having Regd. Office at: W4D, 204/5, Keshav Kunj,
Western Avenue, Cariappa Marg, Sainik Farms,
New Delhi-110062.

Respondent

CORAM:

Sanjeev Kumar Arora

Member

APPEARANCE:

Rohit Oberoi (Advocate)

Garvit Gupta (Advocate)

Complainant
Respondent

ORDER

1. This complaint has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provisions of the Act or the Rules and regulations made thereunder or to the allottee as per the agreement for sale executed *inter se*.

A. Unit and project related details

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

S. N.	Particulars	Details
1.	Name of the project	"Raheja's Aranya City", Sectors 11&14, Sohna Gurugram
2.	Project area	107.85 acres
3.	Nature of the project	Residential plotted colony
4.	DTCP license no. and validity status	25 of 2012 dated 29.03.2012 valid up to 28.03.2018
5.	Name of licensee	Ajit Kumar and 22 Others
6.	RERA Registered/ not registered	Registered vide no. 93 of 2017 dated 28.08.2017
7.	RERA registration valid up to	27.08.2022
8.	Unit no. /Plot	E-73 [page no. 21 of complaint]
9.	Unit area admeasuring	294.57 sq. yds. (Page no. 21 of the complaint)
10.	Allotment letter	N.A.
11.	Date of execution of agreement	16.10.2014 (page 47 of complaint)
12.	Date of booking	08.07.2014 [as per page 49 of complaint]
14.	Due date of possession	16.04.2018 16.10.2017 +6 months grace period

		(As per possession clause 4.2 on Page 55 of complaint)
15.	Total sale consideration	Rs. 1,03,00,156/- (per customer ledger dated 22.08.2018 on page 72 of complaint)
16.	Amount paid by the complainant	Rs. 1,02,95,537/- (per customer ledger dated 22.08.2018 on page 72 of complaint)
17.	Completion certificate	Not received
18.	Offer of possession without obtaining part CC	Not offered
19.	Legal notice seeking refund	24.11.2022 (as on page 73 of complaint)

B. Facts of the complaint

3. The complainant has made the following submissions in the complaint: -
- I. That the Complainant mustered all her life savings and hard-earned money and booked one dwelling unit being a plot in the project titled as "RAHEJA'S ARANYA CITY", plot bearing No. E-65, admeasuring 310.670 sq. mt. for a total sale consideration along with tax of Rs. 1,09,01,571/- (Rupees One Crore Nine Lakhs One Thousand Five Hundred Seventy One Only), by paying the booking amount of Rs.9,32,010/- (Rupees Nine Lakhs Thirty Two Thousand ten Rupees Only), on 08.07.2014. Thus, reposing the trust in a household brand M/s Raheja Developers Limited having over 25 years' presence in India and being given the commitment that the Respondent would stand by their commitments as they have done so far in the Industry. The booking was under the

10:15:10:10:10:10:10:10:05, plan with 05% to be paid at possession as per the commitment of the officials of the Respondent.

- II. That the Complainant who was able to finally overcome the obstinate attitude of the Respondent was in for a shock that the stamp paper as was affixed with the Apartment Buyer Agreement (ABA) is back dated i.e. 06.08.2014 and the agreement is being executed on 16.10.2014. The ABA was executed by the Respondent's officials after more than 03 months of having taken the Allotment and also after having received 25% of the sale consideration and allotted one plot bearing no. E-65 measuring 310.670 sq yds.
- III. That the Complainant who kept on paying the installments and till September 2016 had paid 95% of the amount. That it would be pertinent to point out that even in the ABA is a clause 4.2 states that "the Seller shall sincerely Endeavour to give possession of the plot to purchaser within 36 months from the date of execution of the Agreement to Sell and after providing of necessary infrastructure specially road, sewer & water in the sector 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".
- IV. It is submitted that the Complainant has till date paid an amount of Rs.1,02,75,612/-, to the Respondent being 95% of the sale consideration as was decided at the time of booking and had paid each and every amount of the said plot as demanded by the Respondent but the Respondent kept on delaying the possession of the said plot.
- V. That it is submitted that the Complainant not having received any cogent response from the Respondent and again having made to wait, lost all her faith in the commitments of the Respondent, was constrained to send a

Legal Notice by her legal counsel. Thereafter, a Legal Notice dated 24.11.2022 was sent on the Complainant's behalf to the Respondents which was duly delivered. That the Complainant got a Letter from the Respondent dated 21.11.2022, wherein it was stated that the Respondent agrees that there is delay in handing over the possession to the Complainant, however the Complainant should not seek refund but should sell the plot at a higher rate in the market.

- VI. In the aforesaid facts and circumstances, the Complainant left with no other option is forced to approach this Hon'ble Authority to take not of the illegalities of the Respondent and direct them to refund the entire hard earned money of the Complainant which they have usurped for the last more than 8 years.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s).
- I. Direct the respondent to refund the entire amount paid by the complainant.
 - II. Direct the respondent to pay litigation cost of Rs. 2,00,000/-
5. On the date of hearing, the authority explained to the respondent /promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent.

6. The respondent contested the complaint on the following grounds: -
- a) That the complaint is neither maintainable nor tenable and is liable to be out-rightly dismissed. The agreement to sell was executed between both the parties prior to the enactment of the Act, 2016 and the provisions laid down in the said Act cannot be enforced retrospectively. Although, the provisions of the Act, 2016 are not

applicable to the facts of the present case in hand yet without prejudice and in order to avoid complications later on, the respondent has registered the project with the authority. The said project is registered under the provision of the Act vide registration no. 93 of 2017 dated 28.08.2017.

- b) That the complaint is not maintainable for the reason that the agreement contains an arbitration clause which refers to the dispute resolution mechanism to be adopted by the parties in the event of any dispute as clause 13.2 of the buyer's agreement.
- c) That the complainant has not approached this authority with clean hands and have intentionally suppressed and concealed the material facts in the present complaint. The present complaint has been filed by them maliciously with an ulterior motive and it is nothing but a sheer abuse of the process of law. The true and correct facts are as follows: -
- That the complainants, after checking the veracity of the project namely, 'Raheja's Aranya City, Sector 11 and 14, Sohna, Gurgaon had applied for allotment of a plot vide a booking application form. They agreed to be bound by the terms and conditions of the booking application form. The complainants were aware from the very inception that the plans as approved by the concerned authorities are tentative in nature and that the respondent might have to effect suitable and necessary alterations in the layout plans as and when required.
 - That based on the application for booking, the respondent vide its allotment offer letter, allotted to the complainant plot no. E-65. The complainant signed and executed the agreement to sell and the complainant agreed to be bound by the terms contained therein.

- That the respondent raised payment demands from the complainant in accordance with the mutually agreed terms and conditions of allotment as well as of the payment plan and the complainant made the payment of the earnest money and part-amount of the total sale consideration and is bound to pay the remaining amount towards the total sale consideration of the plot along with applicable registration charges, stamp duty, service tax as well as other charges payable at the applicable stage.
- That the possession of the plot is supposed to be offered to the complainant in accordance with the agreed terms and conditions of the buyer's agreement.
- Despite the respondent fulfilling all its obligations as per the provisions laid down by law, the government agencies have failed miserably to provide essential basic infrastructure facilities such as roads, sewerage line, water, and electricity supply in the sector where the said project is being developed. The development of roads, sewerage, laying down of water and electricity supply lines has to be undertaken by the concerned governmental authorities and is not within the power and control of the respondent. The respondent cannot be held liable on account of non-performance by the concerned governmental authorities. The respondent company has even paid all the requisite amounts including the external development charges (EDC) to the concerned authorities. However, yet, necessary infrastructure facilities like 60-meter sector roads including 24-meter-wide road connectivity, water and sewage which were supposed to be developed by HUDA parallelly have not been developed.

- That the time period for calculating the due date of possession shall start only when the necessary infrastructure facilities will be provided by the governmental authorities and the same was known to the complainant from the very inception. That non-availability of the infrastructure facilities is beyond the control of the respondent and the same also falls within the ambit of the definition of 'force majeure' condition as stipulated in Clause 4.4 of the agreement to sell.
 - That development of the township in which the plot allotted to the complainant is located is 50% complete and the respondent shall hand over the possession of the same to the complainant after its completion subject to the complainant making the payment of the due installments amount and on availability of infrastructure facilities such as sector road and laying providing basic external infrastructure such as water, sewer, electricity etc. as per terms of the application and agreement to sell. The photographs showing the current status of the development of the plot in which the plot allotted to the complaint is located. Despite the occurrence of such force majeure events, the respondent has completed the development of the project and has already been granted part completion certificate on 11.11.2016. Under these circumstances passing any adverse order against the respondent at this stage would amount to complete travesty of justice
7. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submissions made by the parties.

E. Jurisdiction of the authority

8. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial jurisdiction

9. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. In the present case, the project in question is situated within the planning area of Gurugram district. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

E.II Subject-matter jurisdiction

10. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

Section 11

.....

(4) The promoter shall-

(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

Section 34-Functions of the Authority:

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

11. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be

decided by the adjudicating officer if pursued by the complainant at a later stage.

12. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in *Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. 2021-2022 (1) RCR (Civil), 357 and reiterated in case of M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022* wherein it has been laid down as under:

"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. if the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."

13. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the cases mentioned above, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

F. Findings on the objections raised by the respondent

- F.I. Objection regarding agreement contains an arbitration clause which refers to the dispute resolution system mentioned in agreement.

14. The respondent has contended that clause 13.2 of the agreement to sell entered into between contains a clause 13.2 relating to dispute resolution between the parties. The clause reads as under: -

"All or any disputes arising out or touching upon in relation to the terms of this Application/Agreement to Sell/ Conveyance Deed including the interpretation and validity of the terms thereof and the respective rights and obligations of the parties shall be settled through arbitration. The arbitration proceedings shall be governed by the Arbitration and Conciliation Act, 1996 or any statutory amendments/ modifications thereof for the time being in force. The arbitration proceedings shall be held at the office of the seller in New Delhi by a sole arbitrator who shall be appointed by mutual consent of the parties. If there is no consensus on appointment of the Arbitrator, the matter will be referred to the concerned court for the same. In case of any proceeding, reference etc. touching upon the arbitrator subject including any award, the territorial jurisdiction of the Courts shall be Gurgaon as well as of Punjab and Haryana High Court at Chandigarh".

15. However, as per the documents available on record, no agreement to sell has been executed between the parties.
16. The respondent contended that as per the terms & conditions of the application form duly executed between the parties, it was specifically agreed that in the eventuality of any dispute if any with respect to the provisional booked unit by the complainants, the same shall be adjudicated through arbitration mechanism. The authority is of the opinion that the jurisdiction of the authority cannot be fettered by the existence of an arbitration clause in the buyer's agreement as it may be noted that section 79 of the Act bars the jurisdiction of civil courts about any matter which falls within the purview of this authority, or the Real Estate Appellate Tribunal. Thus, the intention to render such disputes as non-arbitrable seems to be clear. Also, section 88 of the Act says that the provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force. Further, the authority puts reliance on catena of judgments of the Hon'ble Supreme

Court, particularly in *National Seeds Corporation Limited v. M. Madhusudhan Reddy & Anr. (2012) 2 SCC 506*, wherein it has been held that the remedies provided under the Consumer Protection Act are in addition to and not in derogation of the other laws in force, Consequently the authority would not be bound to refer parties to arbitration even if the agreement between the parties had an arbitration clause. Similarly, in *Aftab Singh and Ors. v. Emaar MGF Land Ltd and Ors., Consumer case no. 701 of 2015 decided on 13.07.2017*, the National Consumer Disputes Redressal Commission, New Delhi (NCDRC) has held that the arbitration clause in agreements between the complainant and builder could not circumscribe the jurisdiction of a consumer forum.

17. While considering the issue of maintainability of a complaint before a consumer forum/commission in the face of an existing arbitration clause in the builder buyer agreement, the Hon'ble Supreme Court in case titled as *M/s Emaar MGF Land Ltd. V. Aftab Singh in revision petition no. 2629-30/2018 in civil appeal no. 23512-23513 of 2017 decided on 10.12.2018* has upheld the aforesaid judgement of NCDRC and as provided in Article 141 of the Constitution of India, the law declared by the Supreme Court shall be binding on all courts within the territory of India and accordingly, the authority is bound by the aforesaid view. The relevant para of the judgement passed by the Supreme Court is reproduced below:

"25. This Court in the series of judgments as noticed above considered the provisions of Consumer Protection Act, 1986 as well as Arbitration Act, 1996 and laid down that complaint under Consumer Protection Act being a special remedy, despite there being an arbitration agreement the proceedings before Consumer Forum have to go on and no error committed by Consumer Forum on rejecting the application. There is reason for not interjecting proceedings under Consumer Protection Act on the strength an arbitration agreement by Act, 1996. The remedy under Consumer Protection Act is a remedy

provided to a consumer when there is a defect in any goods or services. The complaint means any allegation in writing made by a complainant has also been explained in Section 2(c) of the Act. The remedy under the Consumer Protection Act is confined to complaint by consumer as defined under the Act for defect or deficiencies caused by a service provider, the cheap and a quick remedy has been provided to the consumer which is the object and purpose of the Act as noticed above."

18. Therefore, in view of the above judgements and considering the provisions of the Act, the authority is of the view that complainant is well within the right to seek a special remedy available in a beneficial Act such as the Consumer Protection Act and RERA Act, 2016 instead of going in for an arbitration. Hence, we have no hesitation in holding that this authority has the requisite jurisdiction to entertain the complaint and that the dispute does not require to be referred to arbitration necessarily.

F.II Objection regarding jurisdiction of authority w.r.t. buyer's agreement executed prior to coming into force of the Act.

19. The respondent has raised another objection that the authority is deprived of the jurisdiction to go into the interpretation of or rights of the parties inter-se in accordance with agreement to sell executed between the parties and no agreement for sale as referred to under the provisions of the Act or the said rules has been executed inter se parties. However, as per the documents available on record, no agreement to sell has been executed between the parties.
20. Moreover, the authority is of the view that the Act nowhere provides, nor can be so construed that all previous agreements will be re-written after coming into force of the Act. Therefore, the provisions of the Act, rules and agreement have to be read and interpreted harmoniously. However, if the Act has provided for dealing with certain specific provisions/situation in a specific/particular manner, then that situation will be dealt with in accordance with the Act and the rules after the date of coming into force of the Act and the rules. Numerous provisions of the Act save the

provisions of the agreements made between the buyers and sellers. The said contention has been upheld in the landmark judgment of **Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and others. (W.P 2737 of 2017)** decided on 06.12.2017 which provides as under:

"119. Under the provisions of Section 18, the delay in handing over the possession would be counted from the date mentioned in the agreement for sale entered into by the promoter and the allottee prior to its registration under RERA. Under the provisions of RERA, the promoter is given a facility to revise the date of completion of project and declare the same under Section 4. The RERA does not contemplate rewriting of contract between the flat purchaser and the promoter.....

122. We have already discussed that above stated provisions of the RERA are not retrospective in nature. They may to some extent be having a retroactive or quasi retroactive effect but then on that ground the validity of the provisions of RERA cannot be challenged. The Parliament is competent enough to legislate law having retrospective or retroactive effect. A law can be even framed to affect subsisting / existing contractual rights between the parties in the larger public interest. We do not have any doubt in our mind that the RERA has been framed in the larger public interest after a thorough study and discussion made at the highest level by the Standing Committee and Select Committee, which submitted its detailed reports."

21. Also, in appeal no. 173 of 2019 titled as **Magic Eye Developer Pvt. Ltd. Vs. Ishwer Singh Dahiya**, in order dated 17.12.2019 the Haryana Real Estate Appellate Tribunal has observed-

"34. Thus, keeping in view our aforesaid discussion, we are of the considered opinion that the provisions of the Act are quasi retroactive to some extent in operation and will be applicable to the agreements for sale entered into even prior to coming into operation of the Act where the transaction are still in the process of completion. Hence in case of delay in the offer/delivery of possession as per the terms and conditions of the agreement for sale the allottee shall be entitled to the interest/delayed possession charges on the reasonable rate of interest as provided in Rule 15 of the rules and one sided, unfair and unreasonable rate of compensation mentioned in the agreement for sale is liable to be ignored."

22. The agreements are sacrosanct save and except for the provisions which have been abrogated by the Act itself. Further, it is noted that the agreements have been executed in the manner that there is no scope left

to the allottee to negotiate any of the clauses contained therein. Therefore, the authority is of the view that the charges payable under various heads shall be payable as per the agreed terms and conditions of the agreement subject to the condition that the same are in accordance with the plans/permissions approved by the respective departments/competent authorities and are not in contravention of any other Act, rules, statutes, instructions, directions issued thereunder and are not unreasonable or exorbitant in nature.

G. Findings on the relief sought by the complainant.

G.1 Direct the respondent to refund the entire amount paid so far for the said plot.

23. In the present complaint, the complainant intends to withdraw from the project and is seeking return of the amount paid by her in respect of subject unit/plot along with interest at the prescribed rate as provided under section 18(1) of the Act. Sec. 18(1) of the Act is reproduced below for ready reference.

"Section 18: - Return of amount and compensation

18(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."

(Emphasis supplied)

24. **Due date of possession:** As per the documents available on record, BBA has been executed between the parties on 16.10.2014 and the due date of

possession comes out to be 16.04.2018(36 months from the date of execution of agreement + 6 months of grace period).

25. **Admissibility of refund along with prescribed rate of interest:** The complainant intends to withdraw from the project and is seeking refund of the amount paid by them in respect of the subject plot with interest at prescribed rate as provided under rule 15 of the rules. Rule 15 has been reproduced 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.

26. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.
27. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 16.08.2024 is **9.10%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **11.10%**.
28. On consideration of the circumstances, the documents, submissions and based on the findings of the authority regarding contraventions as per provisions of rule **28(1)**, the authority is satisfied that the respondent is in contravention of the provisions of the Act. The possession of the plot was to be offered to the allottee by 16.04.2018, however the same has not been offered till date. Further, the authority observes that there is no



document placed on record from which it can be ascertained that whether the respondent has applied for completion certificate/part completion certificate or what is the status of construction of the project. In view of the above-mentioned fact, the allottee intend to withdraw from the project and is well within her right to do the same in view of section 18(1) of the Act, 2016.

29. The completion certificate/part completion certificate of the project where the plot is situated has still not been obtained by the respondent/promoter. The authority is of the view that the allottee cannot be expected to wait endlessly for taking possession of the allotted unit/plot and for which they have paid a considerable amount towards the sale consideration and as observed by Hon'ble Supreme Court of India in ***Ireo Grace Realtech Pvt. Ltd. Vs. Abhishek Khanna & Ors., civil appeal no. 5785 of 2019, decided on 11.01.2021***

"... The occupation certificate is not available even as on date, which clearly amounts to deficiency of service. The allottees cannot be made to wait indefinitely for possession of the apartments allotted to them, nor can they be bound to take the apartments in Phase 1 of the project....."

30. Further in the judgement of the Hon'ble Supreme Court of India in the cases of ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (supra) reiterated in case of M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020*** decided on 12.05.2022. it was observed

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."

31. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottee as per agreement for sale under section 11(4)(a). The promoter has failed to complete or is unable to give possession of the plot in accordance with the terms of agreement for sale or duly completed by the date specified therein. Accordingly, the promoter is liable to the allottee, as she wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by it in respect of the unit/plot with interest at such rate as may be prescribed.
32. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such, the complainant is entitled to refund of the entire amount paid by her at the prescribed rate of interest i.e., @11.10% p.a. (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 ibid.

H. Directions of the authority

33. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):


- i. The respondent/promoter is directed to refund the entire amount received by it from the complainant i.e., Rs. 1,02,95,537/-along with interest at the rate of 11.10% p.a. as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the deposited amount.
- ii. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.
- iii. The respondent is further directed not to create any third-party rights against the subject plot before full realization of the paid-up amount along with interest thereon to the complainant. Even if, any transfer is initiated with respect to subject plot, the receivables shall be first utilized for clearing dues of allottee/complainant.

34. Complaint stands disposed of.

35. File be consigned to registry.

Dated: 16.08.2024

HARERA
GURUGRAM


(Sanjeev Kumar Arora)

Member
Haryana Real Estate
Regulatory Authority,
Gurugram