



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

Complaint no. : 4855 of 2023
Date of complaint : 25.10.2023
Date of order : 28.08.2024

1. Ghan Shyam Sharma,
2. Lokesh Sharma,
Both R/o: - A-903, Plot no.- 19B,
Aastha Apartments, Sector-6, Dwarka, Delhi-110075.

Complainants

Versus

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

Respondent

CORAM:
Ashok Sangwan

Member

APPEARANCE:
Yogesh Kumar Goyal (Advocate)
Garvit Gupta (Advocate)
Krishna Saroff (Advocate)

Complainants
Respondent no.1
Respondent no.2

ORDER

1. The present complaint has been filed by the complainant/allottees 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 provision of the Act or the Rules and regulations made there under or to the allottees 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 complainants, 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 Vanya", Gulmohar Tower, Sector 99A, Gurugram, Haryana
2.	Project area	2.28 acres
3.	Nature of the project	Group Housing Project
4.	DTCP license no. and validity status	64 of 2013 dated 20.07.2013 valid upto 19.07.2017 72 of 2014 dated 01.08.2014 valid upto 31.07.2019
5.	Name of licensee	Ajit Kaur D/o Pritpal singh
6.	RERA Registered/Not Registered	8(a) of 2018 dated 01.02.2018 Valid upto 31.12.2022
7.	Unit no.	A-076, 7 th floor, Tower-A (Page no. 29 of the complaint)
8.	Unit area admeasuring	984.45 sq. ft. (carpet area) (Page no. 29 of the complaint)
9.	Date of execution of agreement to sell	06.06.2017 (Page no. 24 of the complaint)
10.	Date of tripartite agreement	29.08.2017 (page 17 of R-2 reply)
11.	Date of allotment letter	13.06.2017 (Page no. 23 of the complaint)
12.	Possession clause	<p>19. POSSESSION OF THE APARTMENT</p> <p>19.1 "The Company agrees and understands that timely delivery of possession of the Apartment is the essence of the Agreement. The Company, based on the approved plans and specifications, assures to hand over possession of the Apartment in a period of 48 Months plus/minus 6 Months variable grace period ("Commitment Period") from the date of execution of this Agreement for sale... "</p> <p style="text-align: right;"><i>[emphasis supplied]</i></p> <p style="text-align: right;">(Page no. 38 of the complaint).</p>

13.	Due date of possession	06.06.2022 [48 months from the agreement to sell i.e., 06.06.2017 + 6 months grace period is allowed being unqualified+ 6 months as per HARERA notification no. 9/3-2020 dated 26.05.2020 for the projects having completion date on or after 25.03.2020]
14.	Total sale consideration	Rs.73,52,176/- (exclusive of taxes) (As per BBA on page no. 52 of the complaint)
15.	Amount paid by the complainants	Rs.39,30,917/- (As per CRA at page 17 of complaint)
16.	Occupation certificate	Not obtained
17.	Offer of possession	Not offered

B. Facts of the complaint

3. The complainants have made the following submissions: -

- I. That the complainants were allotted a residential apartment bearing no. A-076, Tower-A, having super area 984.45 sq. ft. (approx.) in the project of the respondent named "Raheja Vanya" Sector 99A, Gurugram, vide agreement to sell dated 06.06.2017 for a total sale consideration of Rs.73,52,176/- against which the complainants have paid a sum of Rs.39,30,917/- till date.
- II. That as per clause 19.1 of the agreement the respondent was under obligation to hand over the possession of the property by 12.06.2021.
- III. That the complainant had made various communications with the respondent regarding possession of flat and delayed interest, but the respondent had never given a satisfactory answer.
- IV. That the complainants had obtained a housing loan from the respondent no. 2 on the subject flat booked with the respondent no.1. Further, both the respondents colluded and cheated the complainants by not providing possession of the flat in time. So, the

complainants are filing the present complaint before this Authority for refund of entire amount along with interest as per the Act, 2016.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s).
 - I. Direct the respondent to refund the paid-up amount alongwith prescribed rate of interest.
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.
6. The respondent no.1 put in appearance through its Advocate and marked attendance on 31.01.2024 and 21.02.2024. Despite specific directions for filing of reply, it failed to comply with the orders of the authority. It shows that the respondent was intentionally delaying the procedure of the court by avoiding filing of written reply. Therefore, in view of above, vide order dated 13.03.2024, the defence of the respondent no.1 was struck off.
7. The respondent no.2 has contested the complaint on the following grounds: -
 - i. That the role of the answering respondent is solely confined to providing financial assistance in furtherance of the loan agreement to purchase the respective unit/apartment and the answering respondent has fulfilled all its obligations under the loan agreement and tri partite agreement.
 - ii. That the complainants have grievances with the respondent no. 1 regarding delivery of the unit. Therefore, the answering respondent cannot be made a party to the present case.

- iii. That based on the application of the complainants, a loan amount of Rs.52,24,802/- was sanctioned by the answering respondent in their favour vide a sanction letter dated 26.08.2017. That out of the said sanctioned amount, a sum of Rs.27,72,794/- was disbursed to the builder.
 - iv. That the respondent no.1 confirmed that they had sold the said apartment and granted permission to mortgage the said apartment to the answering respondent vide a letter dated 20.09.2017.
 - v. That the respondent no.2 plays no role attributable to that of a promoter and are only acting in the capacity of a financier and as such Section 12 & 18 of Act, 2016 are not attracted. That the answering respondent is not liable for the actions of the builder in the event of any delay in delivery of the project.
 - vi. That as the flat was under construction, a tri-partite agreement was executed amongst the complainants, answering respondent and the builder being respondent no.1 on 29.08.2017.
 - vii. That by virtue of clause 4 of the agreement, the answering respondent is entitled to recover the loan amount and the complainants are duly bound to pay the EMIs regularly irrespective of the stage of construction of the said flat.
 - viii. That the complainants have no locus-standi to file this instant complaint against the answering respondent.
8. 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 complainants.

D. Jurisdiction of the authority

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

D.I Territorial jurisdiction

10. 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.

D.II Subject-matter jurisdiction

11. 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.

12. 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.

E. Findings on the relief sought by the complainants.

E. I Direct the respondent to refund the paid-up amount along with interest.

13. In the present complaint, the complainants intend to withdraw from the project and are seeking return of the amount paid by them in respect of subject unit 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)

14. Clause 19.1 of the agreement to sell dated 06.06.2017 provides for handing over of possession and is reproduced below:

19.1 POSSESSION OF THE APARTMENT

"The Company agrees and understands that timely delivery of possession of the Apartment is the essence of the Agreement. The Company, based on the approved plans and specifications, assures to hand over possession of the Apartment in a period of 48 Months plus/minus 6 Months variable grace period ("Commitment Period") from the date of execution of this Agreement for sale..."

15. **Due date of handing over possession and admissibility of grace period:** As per clause 19.1 of the agreement to sell, the possession of the allotted unit was supposed to be offered within a stipulated timeframe of 48 months from the date of execution of agreement plus 6

months of grace period. Given the fact that the grace period was unqualified, the due date of possession was 06.12.2021. Further, an extension of 6 months is granted to the respondent in view of notification no. 9/3-2020 dated 26.05.2020, on account of outbreak of Covid-19 pandemic. Therefore, the due date of possession comes out to be 06.06.2022.

16. **Admissibility of refund along with prescribed rate of interest:** The complainants/allottee intends to withdraw from the project and are seeking refund of the amount paid by them in respect of the subject unit 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.

17. 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.
18. 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., 28.08.2024 is **9.10%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **11.10%**.
19. Keeping in view the fact that the complainants/allottee wish to withdraw from the project and are demanding return of the amount

received by the promoter in respect of the unit with interest on failure of the promoter to complete or inability to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. The matter is covered under section 18(1) of the Act of 2016.

20. The due date of possession as per agreement for sell as mentioned in the table above is 06.06.2022. The authority has further, observes that even after a passage of more than 2.2 years till date neither the construction is complete nor the offer of possession of the allotted unit has been made to the allottees by the respondent/promoter. The authority is of the view that the allottees cannot be expected to wait endlessly for taking possession of the unit which is allotted to them and for which they have paid a considerable amount of money towards the sale consideration. Further, the authority observes that there is no document place on record from which it can be ascertained that whether the respondent has applied for occupation certificate/part occupation certificate or what is the status of construction of the project. In view of the above-mentioned fact, the allottees intend to withdraw from the project and are well within the right to do the same in view of section 18(1) of the Act, 2016.

21. Moreover, the occupation certificate/completion certificate of the project where the unit is situated has still not been obtained by the respondent/promoter. The authority is of the view that the allottees cannot be expected to wait endlessly for taking possession of the allotted unit and for which he has 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....."

22. 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."

23. 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 unable to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. Accordingly, the promoter is liable to the allottees, as the allottees wish to withdraw from the project, without prejudice to any other remedy available, to return the amount received by it in respect of the unit with interest at such rate as may be prescribed.

24. 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/promoter is established. As such, the complainants are entitled to refund of the entire amount paid by them 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 Rules, 2017 ibid.

25. Out of total amount so assessed, the amount paid by the bank/payee be refunded in the account of bank and the balance amount along with interest will be refunded to the complainants.

F. Directions of the Authority:

26. 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 complainants 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 realization of the amount.
- ii. Out of total amount so assessed, the amount paid by the bank/payee be refunded in the account of bank and the balance amount along with interest will be refunded to the complainants.
- iii. 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.

27. Complaint stands disposed of.
28. File be consigned to registry.


(Ashok Sangwan)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 28.08.2024



HARERA
GURUGRAM