



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Date of Decision	04.11.2024
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Name of the Builder		RAHEJA DEVELOPERS LTD		
Project Name		KRISHNA HOUSING SCHEME		
Sr. no.	Complaint no. and date of filing	Title of the case	Appearance on behalf of complainant	Appearance on behalf of respondent
1.	2682 of 2023 10.01.2024	<b>1. Sunil Thapa</b> <b>2. Sunita Thapa</b> Both residents of K-2-906, Central Park , Golf Course road, Sector-42,DLF Phase-IV, Gurugram-122009. Vs. <b>M/s Raheja Developers Ltd</b> Through its Managing Director, Regd. Address: W4D,204/5,Keshav Kunj, Western Avenue,Cariappa Marg, Sainik farms, New Delhi-110062.	Mr. Himanshu Moga, counsel for the complainants.	None appeared on behalf of respondent.
2.	81 of 2024 25.01.2024	<b>Smriti Tiwari Chaudhary</b> 104, Block E, Shiv Vihar, Prem Nagar,	Ms. Himani, proxy counsel for Mr. Harshit Batra, counsel for the complainant through VC.	None appeared on behalf of respondent.

		Najafgarh, New Delgi- 110043 Vs. <b>Raheja Developers Ltd</b> W4D,204/5,Keshav Kunj, Western Avenue,Cariappa Marg, Sainik farms, New Delhi- 110062.		
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**CORAM: Nadim Akhtar  
Chander Shekhar**

**Member  
Member**

**ORDER (NADIM AKHTAR-MEMBER)**

1. This order shall dispose off above two captioned complaints filed by the complainants before this Authority 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.
2. The core issues emanating from the above captioned complaints are similar in nature. The complainants in the above referred Complaint No. 2682 of 2023 and other captioned complaint are allottees of the project namely; "Krishna Housing Scheme" being developed by the same



respondent/ promoter, i.e., Raheja Developers Ltd. The fulcrum of the issue involved in the above captioned cases pertains to failure on the part of the respondent/promoter to deliver timely possession of the unit in question and both the complainant(s) are now seeking refund of their paid amount along with the interest. Despite giving various opportunities, respondent failed to file replies in both the above captioned cases.

### A. UNIT AND PROJECT RELATED DETAILS

3. The particulars of the project, the details of sale consideration, the amount paid by the complainants, date of proposed handing over possession, delay period, if any, have been detailed in the following table:

Sr. no.	Particulars	Details of complaint no.2682 of 2023	Details of complaint no.81 of 2023
1.	Name of the project	Krishna Housing Scheme, Sector-14, Sohna, Haryana	Krishna Housing Scheme, Sector-14, Sohna, Haryana
2.	Unit no	4001, Tower B1, 4 <sup>th</sup> floor	9002, Tower E2, 9 <sup>th</sup> floor,
3.	Carpet area	345.45 sq. ft.,	452.33 sq.ft
4.	Date of allotment	Not available	14.09.2016
5.	Date of execution of builder agreement buyer	29.06.2016 (as per pleadings)	14.09.2016
6.	Due date of offer of possession	27.04.2019	27.04.2019
7.	Possession clause in BBA (Clause 10.02)	<i>"The Company shall sincerely endeavour to complete the construction and offer the possession of the said unit within forty eights (48) months from the date of the receiving of environment clearance or sanction of building plans whichever is later</i>	<i>"The Company shall sincerely endeavour to complete the construction and offer the possession of the said unit within forty eights (48) months from the date of the receiving of environment clearance or sanction of building plans whichever is later</i>



		<i>("Commencement Period"), but subject to force majeure clause of this Agreement and timely payments of instalment by the Allottee(s)....."</i>	<i>("Commencement Period"), but subject to force majeure clause of this Agreement and timely payments of instalment by the Allottee(s)....."</i>
8.	Total sale price	₹12,80,380/-	₹16,57,258 /-
9.	Amount paid by complainant	₹11,94,156/-	₹7,04,472/-
10.	Offer of possession	Not given.	Not given.

**B. COMPLAINT NO. 2682 OF 2022 IS TAKEN AS LEAD CASE AND**

**BRIEF FACTS OF COMPLAINT ARE AS UNDER:**

- (i) Complainants invested their hard money for unit no. 4001, 4<sup>th</sup> floor, Tower B1, having carpet area of 345.45 sq.ft , in the project namely; "Krishna Housing Scheme" situated in Sector 14, Sohna, Nuh (Gurugram), Haryana, having total sale consideration of ₹12,80,380/- under the Affordable Housing Policy 2013. That Builder Buyer's agreement was executed inter-se the respondent promoter and the complainants on 29.06.2016 which is annexed as Annexure A1. As per clause 5.2 of said agreement, the builder proposes to complete the construction and offer of the possession of the said unit within forty-eight (48) months from the date of the receiving of environment clearance or sanction of building plans whichever is later. Respondent got the environment clearance on 9<sup>th</sup> March, 2015 and got building plan approved on 12.11.2014, that means respondent was required to provide possession



of the premises on or before 9<sup>th</sup> March 2019. That as per the payment schedule attached with the agreement executed between the parties, the complainants made regular payments of installments on demand raised by the respondent builder from time to time. Copies customer ledger is attached as Annexure A-5 (Colly).

(ii) Complainants were shocked to receive a letter dated 13.04.2023 from the respondent stating that anticipated date for completion of project is August 2025. Respondent further stated that in the event respondent fails to fulfil their commitment by the aforesaid date, they will refund the principal amount alongwith applicable delay compensation. Copy of letter dated 13.04.2023 is attached as Annexure A-6. After receiving the letter complainants visited the office of the respondent but no satisfactory reply was provided by the respondent and thereafter respondent wrote an email dated 28.07.2023 to respondent inquiring about the project. Respondent replied vide email dated 29.07.2023 that project will tentatively be completed by 4<sup>th</sup> Quarter of 2025. A copy of email dated 29.07.2023 along with trailing email dated 29.07.2023 are annexed as Annexure A-7.

(iii) That main grievance of the complainant in the present complaint is that despite the fact that complainants have paid Rs.11,94,156/-, the respondent has miserably failed to deliver the possession of fully constructed and developed unit as per the specifications promised in



BBA. That there is an inordinate delay in handing over the possession of the unit.

(iv) That the respondent has neither handed over the possession of the unit nor refunded the amount deposited along with interest to the complainant which is against the law, equity and fair play. Therefore being aggrieved persons, filing the present complaint before this Hon'ble Authority.

(v) That as per section 18 of the RERA Act 2016, the promoter/respondent is liable to pay interest on delayed possession or return of amount and to pay compensation to the allottees of an apartment, building, or project for a delay or failure in handing over of such possession as per the terms and agreement of the sale.

(vi) That the complainants want to withdraw from the project. The promoter has not fulfilled their obligation as per obligations on the promoter under section 12, 11 (4), and 19(4), therefore the promoter is obligated to refund the paid amount along with interest at the prescribed rate.

### **C. RELIEFS SOUGHT**

4. Complainants have sought following reliefs :

- i. Respondent may be directed to pay to refund to the complainants an amount of Rs.11,94,156/- along with interest from the date of payments made to the builder till the actual date of its realization as per the applicable provisions RERA/Law;





- ii. Respondent may be directed to make the payment of interest amount which the Complainants were forced to pay against the home loan obtained by them;
- iii. Respondent may be directed to make payment towards litigation cost that has been incurred by the Complainants in filing the present application;
- iv. The respondent be directed to make payment of Rs.10,00,000/- to the Complainants towards mental agony and torture being faced by the complainants over the years for having to wait endlessly for the possession of the Premises;
- v. Pass such other orders as the Hon'ble Commission may deem fit and proper in the interest of justice, equity and good conscience.

**D. REPLY ON BEHALF OF RESPONDENT**

5. Notice was served to the respondent on 12.01.2024 which got successfully delivered on 16.01.2024. Despite giving three opportunities respondent failed to file his reply on time. Therefore, Authority deems it fit to struck off the defence of the respondent and decide it ex-parte, as per record available on the file.

**E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT**

6. Counsel for complainants 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 on behalf of respondent to assist the Authority.

**F. ISSUE FOR ADJUDICATION**

7. Whether the complainants in both the above captioned complaints are entitled to refund of the amount deposited by them along with interest in terms of Section 18 of RERA Act of 2016?

**G. OBSERVATIONS AND DECISION OF AUTHORITY**

8. The Authority has gone through the facts of complaint as submitted by the complainants. In light of the background of the matter, Authority observes as follows:

(i) That complainants booked and allotted a unit in the project "Krishna Housing Scheme" which is an Affordable Housing Scheme being developed by the promoter namely; Raheja Developers Ltd. and complainants were allotted unit no.4001, 4<sup>th</sup> floor, tower B1, in said project at sector-14, Sohna, Haryana. The builder buyer agreement was executed between the parties, as per the pleadings of the complainants, on 29.06.2016. Complainants had paid a total of ₹11,94,156/- against the total sale price of ₹12,43,620/-.

(ii) As per clause 5.2 of agreement respondent/developer was under an obligation to hand over possession to the complainants within 48





months from the date of approval of building plans or grant of environment clearance whichever is later. Relevant clause is reproduced as under :

*"The Company shall sincerely endeavour to complete the construction and offer the possession of the said unit within 48 months from the date of the receiving of environment clearance or sanction of building plans whichever is later ("Commitment Period") but subject to force majeure clause of this agreement and timely payments of instalment by the allottee(s)."*

It came to the knowledge of the Authority while dealing with other cases against the same respondent namely; 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.

(iii) Period of 4 years is a reasonable time to complete development works in the project and handover possession to the allottees, however, respondent failed to hand over possession to the complainant. After paying their hard earned money, legitimate expectations of the complainants would be that possession of the unit will be delivered within a reasonable period of time. However, respondent failed to fulfill their obligations as promised to the



complainants. Thus, complainants are at liberty to exercise their right to withdraw from the project on account of default on the part of respondent to offer legally valid possession and seek refund of the paid amount along with interest as per section 18 of RERA Act, 2016.

(iv) 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 fit cases for allowing refund in favour of complainant.

(v) The definition of term ‘interest’ is defined under Section 2(z) of the Act which is as under:

*(z) "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;*

(vi) 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".*

(vii) 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., 04.11.2024 is 9.10%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e., 11.10%.

(viii) 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 complainant(s) are entitled for refund of deposited amount along with interest. Thus, respondent is liable to pay the complainants interest from the date the amounts were paid till the actual realization of the amount.

(ix) Therefore, Authority allows refund of paid amount along with interest to the both the complainants 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 11.10% (9.10% + 2.00%) from the



date amounts were paid till the actual realization of the amount. Authority has got calculated the total amounts along with interest as per detail given in the table below:

Sr. no.	Complaint no.	Amount paid	Interest	Total amount to be refunded to the complainant
1.	2682 of 2023	₹11,94,156/-	₹971581/-	₹ 21,65,737 /-
2.	81 of 2024	₹7,04,472/-	₹623306/-	₹ 13,27,778/-

- (x) Relief under clause (ii) in complaint no. 2682 of 2023 was neither argued nor pressed upon by the complainants during the course of hearing, therefore, no observation is made in this regard.
- (xi) Reliefs under clause (ii) in complaint no. 61 of 2024, i.e., to take suo moto action against the builder for not registering the above project, was neither argued nor pressed upon by the complainants during the course of hearing, therefore, no. observation is made in this regard.
- (xii) Further, the complainants in complaints nos. 2682 of 2023 are seeking compensation on account of mental agony, litigation cost and physical harassment caused to the complainants. 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**

9. Hence, the Authority hereby passes this order and issue following directions under Section 37 of the Act to ensure compliance of obligation cast upon the promoter as per the function entrusted to the Authority under Section 34(f) of the Act of 2016:

- (i) Respondent is directed to refund the amount to the complainants as specified in the table provided in para- 8(ix) of this order. It is further clarified that respondent will remain liable to pay the interest to the complainants till the actual realization of the amount.
- (ii) Respondent is also directed to deposit the costs of ₹5000/- payable to the Authority and ₹2000/- payable to the complainants in complaint nos. 2682 of 2023 and 81 of






2024 (Total cost of ₹10,000/- payable to the Authority and ₹4,000/- payable to the complainants).

- (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.

**Disposed off.** Files be consigned to the record room after uploading of the order on the website of the Authority.

  
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**CHANDER SHEKHAR**  
[MEMBER]

  
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**NADIM AKHTAR**  
[MEMBER]