



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	884 of 2023
Date of filing:	11.04.2023
First date of hearing:	19.07.2023
Date of decision:	18.11.2024

Daya Singh
S/o Sh. Biru Ram
R/o VPO Kaimla, Tehsil Gharaunda,
District Karnal (Haryana)

.....COMPLAINANT

Versus

RAS Development Pvt. Ltd. (through its authorized person)

Registered Office: 812, 812A, 203,
Chiranjiv Tower, Nehru Place,
New Delhi-110019

.....RESPONDENT

CORAM: Nadim Akhtar

Member

Chander Shekhar

Member

Hearing: 5th

Present: - Adv. Wazir Singh, counsel for the complainant through VC.

Adv. Shubhmit Hans, counsel for the respondent through VC.

ORDER (NADIM AKHTAR –MEMBER)

1. Present complaint has been filed by the complainant on 11.04.2023 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 RERA, 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 complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following table:

S.No.	Particulars	Details
1.	Name and location of the project	“RAS Basera”, Sector 16, Taraori Karnal, Haryana
2.	Name of the promoter	M/s RAS Developments Pvt. Ltd.
3.	RERA registered/not registered Unit No.	Registered vide registration no. 283 of 2017 dated 10.10.2017
5.	Unit No.	1107/ Tower- A-7
6.	Carpet area	479.51 sq. ft.



7.	Date of allotment	13.03.2018
8.	Date of builder Buyer Agreement	Not executed
9.	Deemed date of possession	13.03.2021 (3 years from the date of allotment, i.e., 13.03.2018)
10.	Total sale consideration	₹14,88,530/-
11.	Amount paid by complainant	₹2,25,000/-
12.	Offer of possession	Not given till date

B. FACTS OF THE COMPLAINT

1. Case of the complainant is that the respondent, RAS Developers Pvt. Ltd., initiated the development of an Affordable Group Housing project named "*RAS BASERA*" located at G.T. Road, Sector-16, Taraori, District Karnal, under the *Affordable Group Housing Policy 2013*. The project, purportedly registered with HRERA, was promoted as legally compliant. However, the project was incorrectly listed as *RAS Residency-2* in the online complaint system, though the company remains RAS Developers Pvt. Ltd.
2. That the complainant applied for a flat in the project and was allotted Unit No. 1107, Tower A-7, admeasuring 479.51 sq. ft., via an allotment letter dated 13.03.2018 (*Annexure C-2*). The total consideration for the flat was ₹14,88,530/-, out of which the complainant paid ₹2,25,000/- in installments. The complainant's ability to proceed with the purchase was contingent upon



obtaining a loan, for which the respondent assured the project was legally valid and registered under RERA.

3. That unfortunately, complainant suffered a paralysis attack and was unable to secure a loan for purchasing the said flat. The respondent failed to execute the sale agreement, despite receiving a significant portion of the payment. The complainant relied on the respondent's assurance that the agreement would be executed upon payment of 10% of the total sale consideration. Payment details are reflected in the customer ledger dated 23.07.2018 (*Annexure C-3*).
4. That after receiving the allotment letter, complainant repeatedly approached the respondent's office and requested to execute the sale agreement and finalize terms. However, the respondent ignored these requests. Later, officials of the respondent company demanded further payments and threatened to cancel the allotment, if payments were not made. The complainant, pointed out that the allotment letter alone could not enforce illegal demands, requested the respondent to fulfill their obligations.
5. That frustrated by the respondent's behavior, complainant sought refund of the paid amount ₹2,25,000/-. However, the respondent's Sales Executives imposed an unlawful condition requiring the complainant to sign a cancellation letter to initiate the refund process. Under pressure, the



complainant signed the cancellation letter (*Annexure C-4*) but has not received any refund to date.

6. That the complainant subsequently served a legal notice through his advocate on 27.09.2022, demanding the refund of the amount along with interest within 15 days. However, the respondent failed to provide any response (*Annexure C-6*).
7. That despite multiple requests and submissions, respondent has not refunded the amount paid by the complainant. It is pertinent to note that no sale agreement was executed between the parties, and no possession date was stipulated. The respondent, having collected a significant portion of the sale consideration, is legally obligated to deliver possession within a reasonable timeframe or refund the amount paid with interest.
8. That due to the inordinate delay in completing the project and the respondent's failure to adhere to legal norms, the complainant seeks a refund of the amount paid, along with interest for the undue delay. As per legal precedents, such as *Suman Gupta & Anr. v. Parsvnath Developer Ltd.* (*Complaint No. 318/2021, decided on 15.12.2022*), the complainant is entitled to relief in similar circumstances.

C. RELIEFS SOUGHT

9. Complainant has sought following reliefs:



- i. To allow the present compliant in favour of the complainant and against the respondent/promoter.
- ii. To refund the full deposited money which is withheld with the respondent along with interest @ 18% per annum from the date of deposited till realization in accordance with section 18(I), Section 19(4) of the Real Estate (Regulation and Development) Act 2016 and Rule 15 & 16 of Haryana Real Estate(Regulation & Development) Rules, 2017;
- iii. To direct the respondent to pay Rs. 5 lacs to the complainant on account of mental harassment caused for delay in possession of the flat;
- iv. To direct the opposite party to pay Rs. 2 lacs under section 12 of the Real Estate (Regulation and Development Act 2016);
- v. To direct the opposite party to reimburse litigation cost of Rs. 50,000/- to the complainant;
- vi. To issue any other order or direction as this Hon'ble Authority deems fit in view of the above narrated facts and the circumstances of the case.



D. REPLY ON BEHALF OF RESPONDENT

10. That the respondent asserts that the complaint is not maintainable before the authority on the grounds that the complainant's intention was solely to invest for speculative gains and profit-making rather than genuine residential purposes.
11. That the respondent confirms that the project, "*RAS Basera*", is duly registered with the Haryana Real Estate Regulatory Authority (HRERA) under Registration No. 283 of 2017, dated 10.10.2017, located at Village Padhana, District Karnal, Haryana.
12. That the complainant had agreed to purchase a flat for a total sale consideration of ₹14,88,530/-. On 13.10.2017, the complainant paid ₹75,000/- as the booking amount, which included the application fee and 5% of the basic cost.
13. Under the agreed time-linked payment plan, the complainant was required to pay ₹2,97,706/- within 30 days of booking, i.e., by 12.11.2017. However, the complainant failed to make the full payment and instead deposited only ₹1,50,000/- in installments as ₹75,000/- on 09.03.2018 and ₹75,000/- adjusted from another booking (*Unit No. A5-503*) to the complainant's account on 23.07.2018 as a benefit.



14. That the respondent claims that despite issuing several reminders, including a letter dated 26.10.2018 (*Annexure R-1*), the complainant failed to clear the outstanding amount of ₹3,33,199/- as per the payment schedule.
15. Due to non-payment, the respondent canceled the allotment in 2021. The respondent requested the complainant to submit original documents to facilitate further proceedings.
16. The respondent acknowledges that the complainant paid a total of ₹2,25,000 against the total sale consideration of ₹14,88,530 (*Annexure R-2*). Following the cancellation, the respondent issued a cheque dated 07.08.2024 for ₹1,21,074/- after deducting ₹25,000/- + GST + 5% of the flat cost as per the *Affordable Housing Policy (Amended) 2019*. The complainant, however, did not accept the cheque (*Annexure R-3*).
17. That the complainant failed to submit the original documents required for processing the refund. Instead of cooperating, the complainant approached the Authority to seek a refund, despite the respondent's willingness to refund the adjusted amount in compliance with the amended policy.

E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT

18. Learned counsel for the complainant stated that the respondent failed to execute a sale agreement and refund payments after allotting a flat in their



affordable group housing project, "RAS BASERA," registered under HRERA. Despite assurances of legal compliance, the respondent demanded additional payments, threatened cancellation, and imposed unlawful conditions for refund initiation. The complainant, unable to proceed due to health issues, paid ₹2,25,000/- but received no refund despite signing a cancellation letter and issuing a legal notice. Thus, complainant prays for a relief of refund of the amount paid by complainant along with interest.

19. On the other hand, the learned counsel for the respondent stated that the respondent is willing to refund the amount paid by the complainant. However, they attributed the cancellation of the allotment to the complainant's failure to make timely payments as per the agreed schedule, despite multiple reminders. The respondent proposed to refund the amount after deducting ₹25000/-, 5% of the total sale consideration, along with applicable GST, as per the provisions of the Amended Affordable Housing Policy, 2019. They justified the deduction as covering administrative and operational costs incurred during the booking and allotment process and maintained that the refund offer remains valid, subject to the complainant returning the original documents.

F. ISSUE FOR ADJUDICATION

20. Whether the complainant is entitled for refund of the amount deposited by him along with interest in terms of Section 18 of RERA, Act of 2016?



G. OBSERVATIONS AND DECISION OF AUTHORITY

21. The Authority has gone through rival contentions. In light of the background of the matter as captured in this order and also the arguments submitted by both the parties, Authority observes that the complainant booked a unit in the real estate project; "RAS Basera" being developed by the promoter namely; "RAS Developments Pvt. Ltd." and in consonance to the same, complainant was allotted unit no. 1107, eleventh floor in Tower no. A-7, admeasuring 479.51 sq. ft. in the project known as "RAS Basera" situated at GT Road, Sector-16, Taraori, Karnal, Haryana via allotment letter dated 13.03.2018. No Builder Buyer Agreement is executed between the parties. Complainant has paid a total sum of ₹2,25,000/- against the total sale consideration of the unit amounting to ₹14,88,530/- .
22. On perusal of file, it is evident that no Builder-Buyer Agreement is executed between the parties. Instead, only an allotment letter, dated 13.03.2018, was issued. Significantly, the allotment letter does not include a possession clause specifying a date for handing over possession. Thus, to calculate a deemed date of handing over of possession, reference has been made to the observation of the Hon'ble Apex Court in 2018 STPL 4215 SC titled as M/s Fortune Infrastructure (now known as M/s Hicon Infrastructure) and anr. for reckoning the deemed date of possession as 3 years from the date of



booking/allotment. Therefore, the deemed date of possession in the present complaint is taken 3 years from the date of issuance of Allotment letter (i.e. 13.03.2018) which turns out to be 13.03.2021.

23. Furthermore, respondent has challenged the maintainability of the case on the ground that *the complainant invested in the project solely for speculative purposes and profit-making rather than personal use. As such, the complaint is liable to be dismissed.* In this regard, Authority observes that “any aggrieved person” can file a complaint against a promoter if the promoter contravenes the provisions of the RERA Act, 2016 or the rules and regulations. In the present case, complainant is aggrieved person who have filed a complaint under section 31 of the RERA Act, 2016 against the promoters for violation/contravention of the provisions of the RERA Act, 2016 and the Rules and Regulations made thereunder. Here it is important to emphasize upon the definition of the term allottee under the RERA Act 2016, reproduced below:-

“Section 2(d): Allottee: in relation to a real estate project, means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent.”



In view of the above mentioned definition of allottee as well as upon careful perusal of allotment letter dated 13.03.2018, it is clear that complainant is an allottee as Unit no. 1107, eleventh floor in Tower no. A-7, admeasuring 479.50 sq. ft. in the project known as "RAS Basera" situated at GT Road, Sector-16, Taraori Karnal, Haryana was allotted to him by the respondent promoter. The concept/ definition of investor is not provided or referred to in RERA Act, 2016. As per the definitions provided under section 2 of the RERA Act, 2016, there will be "promoter" and "allottee" and there cannot be a party having status of an investor. Further, the definition of "allottee" as provided under RERA Act, 2016 does not distinguish between an allottee who has been allotted a plot, apartment or building in a real estate project for self consumption or for investment purpose. The Maharashtra Real Estate Appellate Tribunal in its order dated 29.01.2019 in appeal no. 0006000000010557 titled as **M/s Srushti Sangam Developers Ltd. vs Sarvapriya Leasing (P) Ltd. and Anr.** had also held that the concept of investors is not defined or referred to in the Act. Thus, the contention of the promoter that allottees being investor are not entitled to protection of this Act stands rejected.

24. Authority observes that complainant had opted for a Time-Linked Payment Plan. The Time-Linked Payment Plan is designed to ensure that the



complainant makes payments in a staggered manner based on the construction progress. The complainant has complied with the payment schedule, as evidenced by the payment receipts and the customer ledger annexed by the complainant. Even respondent in his reply has admitted receiving of amount paid by the complainant. However, the respondent failed to meet the agreed construction milestones, leading to a significant delay in the completion of the project, and no possession is provided within the stipulated time frame. Moreover, by failing to adhere to the Time-Linked Payment Plan, the respondent has not only breached the terms of the agreement but has also failed to meet the essential condition of delivering possession or executing the Builder-Buyer Agreement. The respondent's failure to execute the Builder-Buyer Agreement and deliver possession as per the agreed timelines makes the complainant eligible for relief under RERA, as the promoter is bound to deliver possession within a reasonable period after receiving substantial payments. As per averment of the complainant, instead of completing the project within the stipulated time, the respondent issued a cancellation notice to the complainant, informing him that the complainant's unit had been cancelled. Given the inordinate delay the respondent's cancellation notice cannot be sustained in the eyes of the law. Furthermore, both the parties have failed to annex the said cancellation letter in their pleadings. Conclusively, it

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is the respondent who has failed to fulfill their contractual obligations, and thus they are responsible for the delay. The complainant had no obligation to continue payments when no progress was made, and they had already been deprived of their rightful possession long after the contractual deadline.

25. Furthermore, the respondent has failed to substantiate their claim that any amount paid by the complainant was refunded after the cancellation of the unit. The respondent in his reply asserts that a cheque for ₹1,21,074/- was issued to the complainant on 07.08.2024, in accordance with the provisions of the Affordable Housing Policy (Amended) 2019, which involved a deduction of ₹25,000/- + GST + 5% of the flat cost, the complainant has not accepted the said cheque. The respondent's claim that the cheque was issued and the refund was processed is refuted by the complainant, which clears the fact that no amount has been received by the complainant till date. However, the complainant's refusal to accept the cheque does not alter the fact that no funds have been refunded to the complainant, as the cheque was not encashed, and the complainant continues to seek a full refund. Furthermore, the respondent has failed to produce any document or evidence clearly specifying the conditions under the Affordable Housing Policy that would justify deducting 5% of the cost of the flat from refund amount or outlining the eligibility criteria for applying such deductions. Without such documentation, the



respondent's claim lacks legal and procedural support, making it baseless. The Affordable Housing Policy may have provisions applicable in specific circumstances, but in the absence of explicit terms, the deduction cannot be arbitrarily imposed on the complainant. Moreover, any policy or provision under the Affordable Housing Policy cannot supersede the statutory rights of homebuyers guaranteed under RERA. The Real Estate (Regulation and Development) Act, 2016, was enacted to safeguard the interests of the homebuyers and ensure transparency in real estate transactions. It unequivocally grants homebuyers the right to a full refund along with interest if the promoter fails to deliver possession within the agreed timeline or fails to execute a Builder-Buyer Agreement.

26. Lastly, the complainant cannot be expected to wait indefinitely for possession when the respondent has not demonstrated any significant progress in construction. Thus, the inordinate delay in completing the project and the failure to deliver possession justify the complainant's request for a refund of the amounts paid along with interest. Given the circumstances, the Authority finds that the complainant is entitled to a refund of the money paid, as well as compensation for the delay caused by the respondents' negligence in completing the project.



27. 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.

28. 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;

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”.

29. 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., 18.11.2024 is 9.1%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e., 11.1 %.
30. From above discussions, it is amply proved on record that the respondent have not fulfilled its obligations cast upon them under RERA Act, 2016 and the complainant is entitled for refund of her deposited amount along with interest as per RERA rules, 2017. Accordingly, respondent will be liable to pay the interest to the complainant from the dates when amounts were paid till the actual realization of the amount. Hence, Authority directs the respondent to refund the paid amount to the complainant 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 11.1% (9.1% + 2.00%) from the date amounts were paid till the actual realization of the amount.

Authority has got calculated the total amount to be refunded along with interest calculated at the rate of 11.1% from the date of payment till the date of this order, which comes to ₹3,92,618/- (₹2,25,000/- (principal amount)



+₹1,67,618/- (interest accrued till 18.11.2024). According to the receipts/statement of accounts provided by the complainant, details of which are given in the table below –

Sr.no	Principal amount	Date of payments	Interest accrued till 18.11.2024
1.	₹75,000/-	13.10.2017	₹59,165/-
2.	₹75,000/-	12.03.2018	₹55,743/-
3.	₹75,000/-	23.07.2018	₹52,710/-
Total	₹2,25,000/-		₹1,67,618/-
Total amount to be refunded by respondent to complainant= ₹2,25,000/- + ₹1,67,618/- = ₹3,92,618/-			

31. Further, complainant is seeking ₹5 lacs on account of mental harassment caused for deay in possession of the flat, 2 lacs under section 12 of the real estate (Regulations and Development) Ac, 2016 and ₹50,000/- for litigation cost. 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

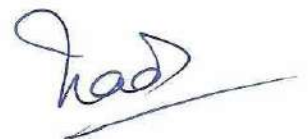
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adjudged by the learned Adjudicating Officer having due regard to the factors mentioned in Section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses. Therefore, the complainant is advised to approach the Adjudicating Officer for seeking the relief of litigation expenses.


H. DIRECTIONS OF THE AUTHORITY

32. 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 entire amount deposited by the complainant along with interest of @ 11.1% to the complainant as specified in the table provided above in para no 30 from the dates when amounts were paid till the actual realization of the amount.
- (ii) 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 against the respondent.



33. Hence, the complaint is accordingly **disposed of** in view of above terms. File be consigned to the record room after uploading of the order on the website of the Authority.


CHANDER SHEKHAR
[MEMBER]


NADIM AKHTAR
[MEMBER]

