


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

Complaint no. : 5055 of 2023
Date of complaint : 31.10.2023
Date of order : 04.12.2024

Sweekeow Yap Rahman,
R/o: - N-266, New Palam Vihar,
Phase-1, Gurugram-122017.

Complainant


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:
Gaurav Rawat (Advocate)
Garvit Gupta (Advocate)

Complainant
Respondent

ORDER

1. The present 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 to the allottee as per the agreement for sale executed *inter se* them.



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. No.	Particulars	Details
1.	Name of the project	"Raheja Trinity", Sector 84, Gurugram,
2.	Project area	2.281 acres
3.	Nature of the project	Commercial colony
4.	DTCP license no. and validity status	26 of 2013 dated 17.05.2013 valid up to 16.05.2019
5.	Name of licensee	Sh. Bhoop Singh and Others
6.	RERA Registered/ not registered	Registered vide no. 24 of 2017 dated 25.07.2017
7.	RERA registration valid up to	25.01.2023 For a period commencing from 25.07.2017 to 5 years from the date revised Environment Clearance + 6 months grace period in view of Covid- 19
8.	Shop/Commercial space no.	406 (Page no. 19 of complaint)
9.	Date of booking	05.03.2016 (page 16 of complaint)
10.	Allotment letter	Not provided
11.	Date of execution of buyer's agreement	Not executed
12.	Possession clause	Not Provided
13.	Due date of possession	05.03.2019 [Calculated as per <i>Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018 - SC); MANU/SC/0253/2018</i>]
14.	Total sale consideration	Cannot be ascertained



12.	Amount paid by the complainant	Rs.4,47,573/- [as per payment receipt/acknowledgement at page 16 and 19 of complaint]
13.	Completion Certificate	Not Received
14.	Offer of possession	Not offered

B. Facts of the complaint

3. The complainant has made the following submissions: -

- I. That the complainant booked a commercial space/unit in the project of the respondent named "Raheja Trinity" situated at Sector-84, Gurugram by paying a sum of Rs.1,68,579/- and the same was acknowledged by the respondent vide receipt no. RDTRI/00677/51-16.
- II. That the complainant further, on demand of the respondent, paid a sum of Rs.2,78,994/- and the same was acknowledged by the respondent vide acknowledgement cum allotment letter no. 280 and unit no. 406 was allotted to the complainant.
- III. That due to the malafide intentions of the respondent and non-delivery of the commercial unit, the complainant has accrued huge losses on account of the career plans of her children and herself and the future of the complainant and her family are rendered dark as the planning with which the complainant invested her hard-earned monies have resulted in sub-zero results and borne thorns instead of bearing fruits.
- IV. That the respondent to dupe the complainant in their nefarious net did not even execute any space buyer agreement in the name of the complainant which is unilateral, arbitrary and illegal. The respondent

didn't even bother to care about the development of the project till date. It has been 7 years, but the builder is yet to complete the project.

- V. That the complainant has visited the respondent's office several times but to no avail. Even during year 2016 to 2023, the builder/respondent has not yet completed the project. That as of now, the registration license of the respondent stands expired and the project status is reflected as "lapsed project" on the website of Authority. The complainant tried to approach the builder for knowing the reason for inordinate delay, but builder didn't reply. The respondent didn't disclose the date of possession but assured the complainants that delay penalty shall be paid at the time of offer of possession.
- VI. That the respondent extracted the hard-earned monies of the complainant in the guise of allotting a commercial space in her name, however, even after 7 years, the respondent has not even issued any allotment letter to her for the same. The respondent has even abandoned his project.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):

- I. Direct the respondent to refund the entire paid-up amount along with prescribed rate of interest.

D. Reply by the respondents:

5. The respondent/promoter put in appearance through Advocate and marked attendance on 08.02.2024, 10.04.2024, 22.05.2024, 17.07.2024 and 09.10.2024. 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 proceedings dated 09.10.2024, the defence of the respondent was struck off. However, in the interest of justice, the respondent was given a liberty to file written submissions within a period of two weeks, but the same has not been submitted by it till date.

6. 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 submission made by the complainant.

E. Jurisdiction of the authority

The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial jurisdiction

7. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. 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

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

Section 11(4)(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.

9. 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.

F. Findings on the relief sought by the complainant

F. I Direct the respondent to refund the entire paid-up amount along with prescribed rate of interest.

10. The complainant has submitted that he has booked a commercial space/unit in the project of the respondent named "Raheja Trinity" situated at Sector-84, Gurugram by paying a sum of Rs.1,68,579/- and the same was duly acknowledged by the respondent vide receipt no. RDTRI/00677/51-16 dated 05.03.2016. The complainant further, on demand of the respondent, paid a sum of Rs.2,78,994/- and the same was acknowledged by it vide acknowledgement no. 280 dated 28.06.2016 vide which a space bearing no. 406 in the said project was allotted to her. However, even after 7 years, the respondent has neither even issued any allotment letter to her nor has executed any space buyer agreement for the same. The complainant due to the neglectful behaviour of the respondent filed the present complaint pleading for refund along with interest before this authority.
11. Before coming to the facts of the case, it is to be seen as to the receipt issued by the respondent/promoter falls within the definition of agreement, as per section 2(e) of the contract Act, 1872 and which provides that:

"Every promise and every set of promise forming the consideration for each other is an agreement."

12. Further, section 10 of the act defines the conditions under which the agreement made fall with the definition of contract and the same provides as under:

"All agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object and are not herby expressly declared to be void."

13. There are a large number of cases coming to the notice of the authority wherein the builder had taken the whole or partial amount of money and only issued receipt against the allotment of a unit either in the exiting or in its upcoming project at Gurugram. Neither it issued any allotment letter nor executed any builder buyer's agreement. The holders of those receipt/allotments are harassed a lot to act on the basis of the documents issued by the developer and has to run here and there to initiate any civil or criminal action against the builder. This position existed in Pre- RERA cases as after the enforcement of the Act of 2016, a promoter is obligated to comply with the provisions of the Act and follow the same while receiving any money against allotment of unit and execution of builder buyer agreement.
14. The document/receipt so issued in favour of a person can be termed as an agreement for sale to put the developer before RERA Authority, compelling it to fulfil its obligations against the holder of that document. The promoter is duty bound to explain the reasons for which it has kept such a huge amount for so long, considering the fact that the promoter company is not a bank or non- banking financial company (NBFC). In case of failure on the part of promoter to give an explanation, it shall be liable to refund the principal amount deposited by the allottee.

15. In the present complaint, the complainant intends to withdraw from the project and is seeking return of the amount paid by her 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)

16. **Admissibility of refund along with prescribed rate of interest:** The complainant is seeking refund the amount paid by her at the prescribed rate of interest 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., 04.12.2024 is **9.10%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **11.10%**.
19. In the instant matter even after lapse of more than 8 years from the date of payment till the filling of complaint, no buyer's agreement has been executed inter- se parties. Therefore, the due date of possession cannot be ascertained, and the complainant cannot be expected to wait endlessly for the unit/space 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....."*
20. That the authority is of the considered view that the Act, 2016 ensures the allottee's right to information about the project and the unit. That knowledge about the timelines of the delivery of possession forms an inseparable part of the agreement as the respondent is not communicating the same to the complainant/allottee. Hence, it is violation of the Act, and shows its unlawful conduct.
21. **Due date of possession:** The Hon'ble Supreme Court in the case of ***Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018 - SC); MANU /SC /0253 /2018*** observed that *"a person cannot be made to wait indefinitely for the possession of the flats allotted to them and they are entitled to seek the refund of the amount paid by them, along with compensation. Although we are aware of the fact that when there was no delivery period stipulated in the agreement, a*

reasonable time has to be taken into consideration. In the facts and circumstances of this case, a time period of 3 years would have been reasonable for completion of the contract.

22. In view of the above-mentioned reasoning, the date of payment/booking i.e. 05.03.2016 is to be treated as provisional allotment letter and is ought to be taken as the date for calculating due date of possession. Therefore, the due date of handing over of the possession of the unit/space comes out to be 05.03.2019.
23. The Authority, after considering the facts stated by the parties and the documents placed on record is of the view that the complainant cannot be expected to wait endlessly for the allotment of unit/space and is well within her right for seeking refund under section 18(1) of the Act, 2016.
24. 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 plot in accordance with the terms of provisional allotment letter 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 allotment of unit/space with interest at such rate as may be prescribed.
25. 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 Rules, 2017 *ibid.*

G. 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 amount i.e., Rs.4,47,573/- received by it from the complainant 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.

27. Complaint stands disposed of.

28. File be consigned to registry.

(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 04.12.2024