HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	**1099 of 2023**
Date of filing:	**23.05.2023**
First date of hearing:	**26.07.2023**
Date of decision:	**17.03.2025**

Renu Jain, W/o Sh. Vinod Jain,
R/o K31/25 A, Model Town-III, New Delhi-110009.

.....COMPLAINANT

Versus

Raheja Developers Limited
W4d-204/5, Keshav Kunj, Cariappa Marg,
Western Avenue, Sainik Farms,
New Delhi-110062

.....RESPONDENT

CORAM: Nadim Akhtar **Member**

Chander Shekhar **Member**

Present: - Adv. Parveen, Counsel for the complainant.

Adv. Arpita, Counsel for the respondent through VC.

ORDER (NADIM AKHTAR-MEMBER)

1. Present complaint has been filed by the complainant on 23.05.2023 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 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 of the project	Krishna Housing Scheme, Sector-14, Sohna, Haryana.
2.	Name of the promoter	M/s Raheja Developers Limited.
3.	Unit No. allotted	2007, 2nd floor, Tower E3
4.	Unit area (Carpet	452.33 sq.ft.

	area)	
5.	Date of allotment	07.11.2016
6.	Date of Builder Buyer Agreement	07.11.2016
7.	Due date of offer of possession	27.04.2019
8.	Possession clause in BBA	***"Clause 5.2: Possession Time*** *"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)."*
9.	Total sale consideration	₹16,57,258/-
10.	Amount paid by complainant	₹16,57,258/-
11.	Offer of possession	Not given

B. FACTS OF THE COMPLAINT

i. Case of the complainant is that the respondent had launched their project namely; "Krishna Housing Scheme" in Sector 14 , Sohna, Haryana. Being interested in the said project, complainant had

applied for one 2BHK unit in the project of the respondent. Vide provisional allotment letter dated 09.02.2016, complainant was allotted unit no. 2007, 2nd floor in Tower E3, against total consideration amount of ₹16,57,258/-, having an approximate carpet area of 452.33sq ft. in Krishna Housing Scheme at Sector 14, Sohna.

ii. Thereafter, Builder Buyer Agreement (BBA) was executed between the complainant and respondent on 07.11.2016 which is annexed at page no.38 of complaint file. As per agreement, respondent promised to handover the possession of unit within 48 months from the date of approval of building plans or on receipt of environment clearance whichever is later. However, respondent failed to fulfil its promise of handing over of the unit to the complainant.

iii. Respondent has miserably failed to deliver the possession of fully constructed and developed unit as per the specifications shown in the brochure and as promised in BBA. Thus there is an inordinate delay in handing over the possession of the unit.

iv. That due to the above acts of the respondent and the unfair terms and conditions of the Builder Buyer Agreement, the complainant has been unnecessarily harassed mentally as well as financially, therefore, the respondent is liable to compensate the complainant on account of the aforesaid act of unfair trade practice. There is a

prima facie case in favour of the complainant and against the respondent for not meeting its obligations under the Buyers Agreement and the Real Estate (Regulation and Development) Act. 2016, which makes them liable to answer to this Hon'ble Authority. That the respondent has neither handed over the possession of the flat nor refunded the amount deposited by her along with interest to the complainant which is against the law, equity and fair play. Therefore, complainant being an aggrieved person, is filing the present complaint before this Hon'ble Authority for seeking certain directions cast upon the respondent.

C. RELIEFS SOUGHT

3. Complainant has sought following reliefs :

(i) Amount of ₹16,57,258/- paid by the complainant till date.

(ii) Adequate interest @18 % be paid per annum.

(iii) Any other compensation that Authority deems fit.

(iv) That the complaint be decided forthwith considering the seniority of the complainant and her husband who have already gone through immense mental trauma and agony.

D. REPLY ON BEHALF OF RESPONDENT

4. Notice was served to the respondent on 26.05.2023 which got successfully delivered on 01.06.2023. Despite availing five opportunities, respondent failed to file its reply till date. Therefore,

Authority deems it fit to struck off the defence of the respondent and decide it ex-parte on the basis of record available on file.

E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT:

5. Ld. counsel for complainant reiterated the facts of the complaint and stated that as per orders dated 22.07.2024, complainant was directed to clarify the amount paid by the complainant to the respondent. In compliance to said order complainant has filed an application dated 18.12.2024, mentioning the details of amount paid by the complainant. Complainant press upon relief of refund of amounting to ₹16,57,258/- alongwith interest. Respondent was directed to file its reply, however no reply has been filed by the respondent. Ld counsel for respondent requested for one more opportunity to file reply.

F. ISSUE FOR ADJUDICATION

6. Whether the complainant is entitled to refund of amount deposited by her along with interest in terms of Section 18 of the RERA Act of 2016?

G. OBSERVATIONS AND DECISION OF AUTHORITY

7. Authority has gone through the facts of the complaint as submitted by the complainant. In light of the background of the matter, Authority observes that complainant booked a unit in the project "Krishna Housing Scheme" which is an Affordable Housing Scheme being developed by the promoter namely; Raheja Developers Ltd.

and complainant was allotted unit no.2007, 2nd floor, Tower E3, in said project at sector-14, Sohna, Haryana. The builder buyer agreement was executed between the parties on 07.11.2016. Complainant had paid a total of ₹16,57,258/- against the basic sale price of ₹16,57,258/-.

8. As per clause 5.2 of agreement respondent/developer was under an obligation to hand over possession to the complainant within 48 months from the date of approval of building plans or grant of environment clearance whichever is later. 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.

9. Period of 4 years is a reasonable time to complete development works in the project and handover possession to the allottee, however, respondent failed to hand over possession to the complainant. After paying her hard earned money, legitimate expectations of the complainant would be that possession of the unit will be delivered within a reasonable period of time. However, respondent has failed to

fulfill its obligations as promised to the complainant. Thus, complainant is at liberty to exercise her 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.

10. 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 to be fit case for allowing refund in favour of complainant.

11. 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;*

12. Complainant is claiming interest of 18% on the paid amount. In this regard Authority observes that the legislature in its wisdom in the subordinate legislation under the provisions 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. 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".*

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., 17.03.2025 is 9.10%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e., 11.10%.

13. 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 is entitled for refund of deposited amount along with interest. Thus, respondent will be liable to pay the complainant interest from the date the amounts were paid till the actual realization of the amount. Authority directs respondent

to refund to the complainant the paid amount of ₹16,57,258/- 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 11.10% (9.10% + 2.00%) from the dates amounts were paid till the actual realization of the amount. Authority has got calculated the total amount along with interest calculated at the rate of 11.10% till the date of this order and total amount works out as per detail given in the table below:

Sr.no	Principal amount	Date of payment	Interest accrued till 17.03.2025
1.	₹85,800/-	01.01.2016	₹87776/-
2.	₹40,000/-	04.01.2016	₹40884/-
3.	₹45,800/-	04.01.2016	₹46813/-
4.	₹85,800/-	02.03.2016	₹86184/-
5.	₹2,00,000/-	02.03.2016	₹200895/-
6.	₹2,00,000/-	22.03.2016	₹199678/-
7.	₹3,58,200/-	30.03.2016	₹356752/-
8.	₹50,000/-	02.09.2016	₹47426/-
9.	₹1,00,000/-	03.10.2016	₹93909/-

10.	₹1,00,000/-	01.11.2016	₹93027/-
11.	₹1,00,000/-	02.12.2016	₹92084/-
12.	₹1,00,000/-	03.01.2017	₹91111/-
13.	₹1,91,658/-	02.03.2017	₹171241/-
	Total=₹16,57,258/-		₹16,07,780/-
Total amount to be refunded by respondent to complainant= ₹16,57,258/- + ₹16,07,780/- = ₹32,65,038/-			

H. DIRECTIONS OF THE AUTHORITY

14. Hence, the Authority hereby passes this order and issues 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 paid amount of ₹16,57,258/- with interest of ₹16,07,780/-. It is further clarified that respondent will remain liable to pay interest to the complainant till the actual realization of the amount.

(ii) Respondent is also directed to pay total cost of ₹15,000/- payable to the Authority and ₹7000/- payable to the complainant imposed by the Authority vide orders dated 07.11.2023 and 18.03.2024.

(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.

15. Disposed off. File be consigned to the record room, after uploading of the order on the website of the Authority.

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CHANDER SHEKHAR
[MEMBER]

.....
NADIM AKHTAR
[MEMBER]