



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: [www.haryanarera.gov.in](http://www.haryanarera.gov.in)

Complaint no.:	2083 of 2023
Date of filing:	20.09.2023
First date of hearing:	18.10.2023
Date of decision:	22.07.2025

**Vivek Khurana and Others**

**Parties name**

1. Vivek Khurana S/o Late Shri J N Khurana
2. Sarthak Khurana S/o Vivek Khurana
3. Samarth Khurana S/o Vivek Khurana

C-202, Suncity Heights, Suncity, Sector 54  
Gurgaon – 122003, Haryana

.....COMPLAINANT (S)

Versus

**Raheja Developers Ltd.**

W4D, Cariappa Marg, Keshav Kunj,  
Western Avenue, Sainik Farms,  
New Delhi DL 110062 IN

.....RESPONDENT

**CORAM: Dr. Geeta Rathee Singh**  
**Chander Shekhar**

**Member**  
**Member**

**Date of Hearing: 22.07.2025**

**Present:-** Adv. Arpita Ld. counsel for complainant through VC  
Adv. Shubhnit Hans Ld. counsel for respondent through VC

**ORDER**

1. Present Complaint has been filed by complainants under Section 31 of The Real Estate (Regulation & Development) Act, 2016 (for short 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 allottees 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 complainants, date of proposed handing over the possession, delay period, if any, have been detailed in the following table:

Sr. No	Particulars	Details
1.	Name of the project	Raheja's OMA, , comprising of 2 phases i.e. Sansara and Akasha Tower located at sector- 2A, Dharuhera
2.	Name of the promoter	Raheja Developers Ltd..



3.	RERA registered or not	Registered in 2 phases as "Sansara Residencies" and "Akasha Tower" vide registration no(s) vide 29 of 2017 and 30 of 2017 respectively. Currently suspended
4.	Unit no.	T-210
5.	Unit area	760 sq. ft.
6.	Date of allotment	24.06.2013
7.	Substitution of name letter	11.12.2020
8.	Date of agreement to sell	24.06.2013
9.	Deemed date of possession	<p>24.12.2017 ( as per clause 4.2 of agreement )</p> <p><u>Clause 4.2</u></p> <p><i>"That the Seller shall sincerely endeavor to give possession of the Unit to the Purchaser within 36 months in respect of "SANSARA" Independent Floors(48) months in respect of "AKASHA TOWER" from the date of the execution of the Agreement to Sell and after providing of necessary infrastructure specially road, sewer &amp; water in the sector/ to the complex by the Government, but subject to force majeure conditions or any Government/Regulatory authority's action, inaction or omission and reasons beyond the control of the</i></p>



		<i>Seller. However the Seller shall be entitled for compensation free grace period of six (6) months in case the construction is not completed within the time period mentioned above..."</i>
10.	Basic sale price of unit	Rs. 30,21,000/-
11.	Amount paid by the complainant	Rs. 19,45,323 /-
12.	Offer of possession	Not given

### B. FACTS OF THE COMPLAINT

3. Facts of the complaint are that wife of complainant Vivek Khurana and mother of complainants Sarthak and Samarth Khurana i.e. Shubhi Khurana had booked an apartment bearing no. T-210, admeasuring area 760 sq. ft. on 2<sup>nd</sup> floor of Tower in respondent's project namely Raheja's OMA situated at Dharuhera, on 31.10.2013.
4. That on 24.06.2013 the agreement to sell was executed between wife of complainant Vivek Khurana and mother of complainants Sarthak and Samarth Khurana i.e. Shubhi Khurana and respondent. As per clause 4(2) of said agreement *"The seller shall sincerely endeavor to give possession of the Unit to the purchaser within 48 months in respect of 'AKASHA TOWER' from the date of the Agreement to sell along with grace period of six (6) months"*. Therefore, the due date of handing over of possession as per the Agreement was 24.12.2017.





5. That the unit was later endorse in favour of the complainants due to demise of the original allottee vide letter dated 11.12.2020. An amount of Rs.19,43,226/- stand paid against basic sale price of Rs. 30,21,000/-
6. That the complainants kept asking respondent for a refund of the full amount paid by them as there was no progress at the construction site but the respondent kept raising demands without fulfilling the promise of completion of project of construction. Therefore, the complainants did not comply to such illegal demands.
7. The respondent has utterly failed to fulfil his obligations to deliver the possession in time or refund the money along with the interest and has caused mental agony, harassment and huge losses to the complainants.
8. That the respondent is a habitual defaulter and defaulted in its various other projects by not delivering the possession of the units in time. It is tactics of the respondent to cheat and dupe the innocent and gullible buyers by diverting the money collected from them for their own use or benefits.
9. That the respondent company has cheated the complainants and duped them into paying a handsome amount knowing fully well that they haven't even procured the approvals and licenses as required under law. They have accepted this fact orally before the complainants and very tactfully avoided any documented information regarding this illegality.
10. That it is pertinent to mention herein that in a similar matter this Hon'ble Authority vide common judgment dated 01.04.2022 passed in complaint



case No. 529 of 2018 titled **Kapil Jain and Anu Jain Vs. Raheja Developers Ltd. Etc.** directed the Respondent to refund the amount along with interest to the allottees in the same project. That the complainants squarely falls within the ambit of the judgment.

**C. RELIEF SOUGHT**

11. Complainants in its complaint sought following reliefs :

- i. To direct the respondent to refund the entire amount paid by the complainants along with prescribed rate of interest from the date of respective deposits till its actual realisation;
- ii. To direct the respondent to pay the compensation of Rs. 10,00,000/-(Ten Lacs Only) for causing mental agony, harassment to the complainants;
- iii. To direct the respondent to pay the compensation of Rs. 1,00,000/- (Rupees One Lac only) towards legal costs;
- iv. To conduct such inquiry under Section 35 of the Act into the affairs of the respondent
- v. Grant any other relief as this Hon'ble Forum deems fit in the peculiar facts and circumstances of the present complaint.

**D. REPLY ON BEHALF OF RESPONDENT**

12. Notice was served to the respondent on 21.09.2023 which got successfully delivered on 25.09.2023. Thereafter, captioned case was listed for hearing on 18.10.2023, 21.05.2024 and 22.10.2024 respectively, however respondent neither appeared nor filed any reply. On hearing



dated 11.03.2025 Adv. Tanya appeared on behalf of respondent however no reply was filed. She requested for an opportunity to file reply. Authority granted last opportunity to respondent counsel to file its reply subject to cost of Rs. 25,000/- payable to Authority and Rs. 10,000/- payable to complainants failing which matter shall be decided on documents placed on record. However, no reply has been filed by respondent till date. Authority is of the view that proceedings before this Authority are summary proceedings, sufficient opportunities have already been granted to the respondent to file reply, any further delay shall defeat the ends of justice for an allottee. Thus, rights of defence of respondent is struck off and matter is proceeded ex-parte against respondent on considering documents available on file.

**E. ORAL SUBMISSION MADE BY COMPLAINANTS**

During hearing Ld. counsel for complainants reiterated the submissions as stated in his written submission.

**F. ISSUE FOR ADJUDICATION**

Whether the complainants are entitled for 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 THE AUTHORITY**

The Authority has gone through the facts of complaint as submitted by the complainants. In the light of the background of the matter as captured





in this order and also submissions made by complainants, Authority observes that:

13. It is matter of fact that Shubhi Khurana w/o complainant Vivek Khurana and mother of complainants Sarthak Khurana and Samarth Khurana had booked an apartment no.T-210 admeasuring area 760 sq. ft. in 2013 in the real estate project "Akasha Tower" situated at Sector -2A, Dharuhera. As per applicant ledger dated 28.10.2020 an amount of Rs.19,45,323 /- stand paid against basic sale price Rs. 30,21,000/- till year 2017. It is alleged that till date possession has not been offered to complainants. Therefore complainants in exercise their right under Section 18 of RERA Act, 2016 wish to withdraw from project and are demanding refund of the amount paid along with interest.
14. It is also matter of record that respondent vide its letter dated 11.12.2020 had substituted the legal heirs i.e. complainants as allottees after demise of the original allottee i.e. Shubhi Khurana meaning thereby that with effect from 11.12.2020 complainants had stepped into the shoes original allottee for all the purposes
15. On perusal of agreement to sell dated 24.06.2013, Authority observe that as per clause 4.2 of agreement respondent/developer was under an obligation to handover possession to the complainants within 48 months from the date of the execution of the agreement to sell alongwith a grace





period of 6 months i.e. by 24.12.2017. Relevant clause is reproduced as under:

*"That the Seller shall sincerely endeavor to give possession of the Unit to the Purchaser within (48) months in respect of "AKASHA TOWER" from the date of the execution of the Agreement to Sell and after providing of necessary infrastructure specially road, sewer & water in the sector/ to the complex by the Government, but subject to force majeure conditions or any Government/Regulatory authority's action, inaction or omission and reasons beyond the control of the Seller. However the Seller shall be entitled for compensation free grace period of six (6) months in case the construction is not completed within the time period mentioned above..."*

Therefore, as per terms of agreement to possession was to be offered by 24.12.2017. However, possession has not been offered to the complainants till date meaning thereby respondent thereby failed to perform/fulfil its part of the contract. Further, it is noted that Authority vide its order dated 07.07.2021 in complaint no. 1083 of 2019 had suspended the registration granted to the 2 phases of the project Raheja's OMA namely "Sansara Residencies" and "Akasha Tower" vide registration no.29 of 2017 and 30 of 2017. There appears to be no possibility of the project being completed in the near future. In such circumstances an allottees who has invested his hard earned money in the project cannot be made to wait for an indefinite time.

16. Authority observe that facts of the present complaint are similar to complaint case no.529 of 2018 titled as **Kapil Jain and Anu Jain Vs.**



**Raheja Developers Ltd. Etc.** wherein Authority in its order dated 01.04.2022 had directed respondent to refund the amount along with interest to allottees as construction of project was not complete and registration certificate of the project had been cancelled. Present complainants also falls within the ambit of this judgement. Therefore, aforesaid judgement is applicable on this complaint also.

17. Furthermore, 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 allottees 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 allottees such as in the present case seeking refund of the paid amount along with interest on account of delayed delivery of possession. Complainants in the present case wishes to withdraw from the project of the respondent, therefore, Authority finds it fit cases for allowing refund along with interest in favour of complainants.

18. The definition of term 'interest is defined under Section 2 (za) of the RERA Act, 2016 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]*

*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., 22.07.2025 is 8.90%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e., 10.9%.

19. Thus, respondent will be liable to pay the complainant interest from the date amounts were paid till the actual realization of the amount. Authority directs respondent to refund to the complainant the paid amount of Rs.19,45,323/- 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 10.9% (8.90.% + 2.00%) from the date amounts were paid till the actual realization of the amount. Authority has got calculated the total amount along with interest at the rate of 11.10% till the date of this order and total amount works out to Rs. **43,55,706** /- as per detail given in the table below:

Sr.no	Principal amount (Rs.)	Date of payment	Interest accrued till 22.07.2025(Rs.)
1.	240693	10.04.2017	221494



2.	469006	30.12.2012	654383
3.	312671	31.10.2012	441961
4.	220150	19.12.2013	283465
5.	241218	17.09.2013	317414
6.	238129	20.06.2013	319795
7.	223456	07.11.2016	212204
	Total- Rs. 19,45,323		Total – Rs. 24,10,383/-
Total interest= Rs. 43,55,706/- Monthly interest= 17,428/-			

20. With regard to relief under clause 11(iv) i.e. to conduct inquiry under Section 35 of the RERA Act, 2016 into the affairs of respondent it is observed that the same is neither part of the pleadings nor was it argued/pressed upon by the complainants during the course of hearing therefore, no observation is made in this regard.

21. Complainants are also seeking compensation of Rs. 10,00,000/- for mental agony, harassment and a sum of Rs. 1,00,000/- as litigation expenses. In this regard 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.**" 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 compensation

#### **H. DIRECTIONS OF THE AUTHORITY**

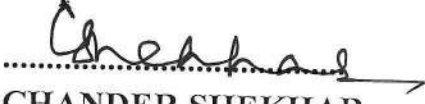
22. Hence, the Authority hereby passes this order and issues following directions under Section 37 of the Act to ensure compliance of obligation cast upon the promoter as per the function entrusted to the Authority under Section 34(f) of the Act of 2016:

- (i) Respondent is directed to refund entire amount of Rs. 43,55,706/- to the complainants. It is further clarified that respondent will remain liable to pay the interest to the complainants uptill the time period provided u/s 2(z) of RERA Act,2016.
- (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.





23. Captioned complaint is accordingly Disposed of. File be consigned to record room after uploading of the order on the website of the Authority.

  
CHANDER SHEKHAR  
[MEMBER]

  
DR. GEETA RATHEE SINGH  
[MEMBER]

