



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	1182 of 2024
Date of filing:	06.09.2024
First date of hearing:	21.10.2024
Date of decision:	26.05.2025

1. Kaushal Kishore Singh, S/o Sh. Surender Prasad Singh

2. Ashwani Kumar Singh, S/o Sh. Kaushal Singh Kishore

Both residents of: A1-419, 1st floor,
Madhuvihar, New Delhi-110059.

.....COMPLAINANTS

Versus

1. M/s Raheja Developers Limited

W4D-204/5, Keshav Kunj, Cariappa Marg,
Western Avenue, Sainik Farms,
New Delhi-110062

2. PNB Housing Finance Ltd.

Regd. Office: 9th floor, Antrikshi Bhawan
22 Kasturba Gandhi Marg, New Delhi- 110001.

.....RESPONDENTS

CORAM: Nadim Akhtar
Chander Shekhar

Member
Member

ORDER (NADIM AKHTAR-MEMBER)

1. Present complaint has been filed by the complainants on 06.09.2024 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 complainants, 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	9005, 9 th floor, Tower E4
4.	Unit area (Carpet area)	452.33 sq.ft.



5.	Date of allotment	23.12.2015
6.	Date of Builder Buyer Agreement	23.12.2015
7.	Due date of offer of possession	27.04.2019
8.	Possession clause in BBA	<p><i>"Clause 5.2: Possession Time</i></p> <p><i>"The Company shall sincerely endeavour to complete the construction and offer 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("Commitment Period") but subject to force majeure clause of this Agreement and timely payments of instalment by the Allottee(s)....."</i></p>
9.	Total sale consideration	₹16,57,258/-
10.	Amount paid by complainant	₹12,91,108 /-
11.	Offer of possession	Not given

B. BRIEF FACTS OF THE COMPLAINT ARE AS UNDER:

- (i) Case of the complainants are that complainants booked a unit in the project "Krishna Housing Scheme" situated in Sector 14, Sohna, Nuh



(Gurugram), Haryana by paying booking amount of ₹85,463/- on 26.12.2014 in respect of booked flat.

(ii) Respondent no.1 issued allotment letter dated 23.12.2015 and allotted unit no.9005, 9th floor, in Tower E4 having carpet area of 452.33 sq.ft , in the project of the respondent no.1 governed by Affordable Housing Policy 2013. Copy of allotment letter is annexed as Annexure C1.

(iii) That on 23.12.2015, Builder Buyer's Agreement (BBA) was executed inter-se the respondent promoter and the complainants, which is annexed as Annexure C-2. 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. Environment clearance was issued on 09.03.2015 and building plan were sanctioned on 27.04.2015. However, till date respondent has not offered the possession of the unit.

(iv) That as per the payment schedule attached with the agreement executed between the parties, complainants made regular payments of installments on demand raised by the respondent no.1, i.e, builder from time to time. Copy customer ledger is attached at page no.6 of application dated 10.03.2025. However, respondent no.1 failed to honour its contractual liabilities till date.



- (v) That main grievance of the complainants in the present complaint is that despite the fact that complainants had paid ₹12,91,108/-, respondent no.1 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 to the complainants. A tripartite agreement was executed among complainants, respondent no.1 and 2, copy of which is attached as Annexure C-4. Complainants tried to communicate with the respondent no.1 but did not get any satisfactory reply from respondent no.1.
- (vi) Complainants time to time contacted the officials of respondent no.1 to know the status of the construction of the project and representative of respondent no.1 assured that project will be completed on time. That the respondent no.1 has neither handed over the possession of the unit nor refunded the amount deposited along with interest to the complainants which is against the law, equity and fair play. Therefore being aggrieved person, complainants are filing the present complaint before this Hon'ble Authority.

C. RELIEFS SOUGHT:

3. Complainants have sought following reliefs :
- i. Direct the respondent no.1 to refund a sum of ₹12,91,108/- paid by the complainants in lieu of allotment of residential unit.



- ii. Direct the respondent no.1 to grant interest in favour of the complainants as per RERA Act.
- iii. Direct the respondent no.1 to pay the damages and compensation in favour of the complainants and against the respondent.
- iv. Direct the respondent no.1 to compensate the complainants for mental trauma and agony in favour of the complainants and against the respondent.
- v. Award the cost and legal expenses of the present proceedings in favour of the complainants and against the respondent.
- vi. Pass any other order in the interest of justice.

D. REPLY ON BEHALF OF RESPONDENT

4. Notice was served to the respondent on 11.09.2024 which got successfully delivered on 14.09.2024. Despite giving three opportunities, i.e, approximately 217 days from first hearing, i.e., 21.10.2024 and imposition of cost, the respondent failed to submit the reply till date. The Real Estate (Regulation and Development) Act, 2016, is a beneficial legislation aimed at providing speedy and efficacious redressal to grievances of allottees and other stakeholders. In furtherance of this objective, the proceedings before the Authority have been made summary in nature. Such expeditious adjudication is achievable only if the parties



involved, both the complainants and the respondent, submit their pleadings in a time-bound manner.

In light of the respondent's repeated non-compliance despite availing numerous opportunities and keeping in consideration the summary procedure, the Authority deems it appropriate to strike off the respondent's defence and proceed to decide the present complaint ex-parte, as per record available on the file.

E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANTS AND RESPONDENTS

5. Ld. 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. Proxy counsel for respondent no.1 requested for some more time to file reply, as she has been recently engaged by the respondent no.1.

F. ISSUE FOR ADJUDICATION

6. Whether the complainants are entitled to get 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

7. The Authority has gone through the facts of the complaints as submitted by the complainants. In light of the background of the matter, Authority observes that complainants booked unit in the project "Krishna Housing Scheme" which is an Affordable Housing Scheme being developed by the respondent/promoter namely; Raheja Developers Ltd. and complainants were allotted unit no.9005, 9th floor, Tower E4, in the said project at Sector-14, Sohna, Haryana. The builder buyer agreement was executed between the parties on 23.12.2015. Complainants had paid a total sum of ₹12,91,108/- against the basic sale consideration price of ₹16,57,258/- . As per clause 5.2 of the agreement respondent/developer was under an obligation to hand over the possession to the complainants within 48 months from the date of approval of building plans or grant of environment clearance whichever is later.
8. It came to the knowledge of the Authority while dealing with other cases against the same respondent no.1 namely; M/s Raheja Developers Ltd, that the 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 4 years is to be taken from 27.04.2015 and therefore, date of handing over of possession comes to 27.04.2019. Period of 4 years is a reasonable time to complete



development works in the project and handover possession to the allottee, however, respondent no.1 failed to hand over possession to the complainants. 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 no.1 has failed to fulfill its 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 no.1 to offer legally valid possession and seek refund of the paid amount along with interest as per section 18 of RERA Act.

9. 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 complainants wishes to withdraw from the project of the respondent, therefore, Authority finds it fit cases for allowing refund in favour of complainant.

10. 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;

11. 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".

12. 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., 26.05.2025 is 9.10%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e., 11.10%.

13. From the above discussions, it is amply proved on record that the respondent no.1 has not fulfilled its obligations cast upon him under RERA Act, 2016 and the complainants are entitled for refund of deposited amount along with interest. Thus, respondent no.1 is liable to



pay the complainants interest from the dates amounts were paid by the complainants till the actual realization of the amount.

14. Therefore, Authority allows refund of paid amount along with interest to 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	Principal amount	Date of payment	Interest accrued till 26.05.2025
1.	₹42303/-	08.03.2016	₹43316/-
2.	₹207157/-	08.03.2016	₹212116/-
3.	₹2962/-	03.08.2016	₹2900/-
4.	₹207157/-	18.05.2017	₹184648/-
5.	₹331452/-	05.01.2016	₹345736/-
6.	₹85763/-	01.08.2015	₹93554/-
7.	₹207157/-	03.08.2016	₹202792/-
8.	₹207157/-	27.07.2017	₹180239/-



	Total=₹12,91,108/-		₹12,65,301/-
Total amount to be refunded by respondent to complainant= ₹12,91,108/- + ₹12,65,301/- = ₹25,56,409/-			

15. Further, complainants are seeking compensation on account of mental agony, harassment caused to the complainants and 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 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.

K. DIRECTIONS OF THE AUTHORITY


16. 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- 14 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 directed to deposit the cost of ₹5000/- payable to the Authority and ₹2000/- payable to the complainant.
- (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 be initiated against the respondent.

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


CHANDER SHEKHAR
[MEMBER]


NADIM AKHTAR
[MEMBER]