

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

Complaint no. : 3640 of 2024
Date of complaint : 08.08.2024
Date of decision : 25.08.2026

Shilpi Saxena,
R/o: - 206/20B, Second Floor, S.D. Mandir, Sadar Bazar,
Delhi Cantt, New Delhi-110010.

Complainant

Versus

M/s Raheja Developers Limited.
Having Regd. Office at: W4D, 204/5, Keshav Kunj,
Western Avenue, Cariappa Marg, Sainik Farms,
New Delhi-110062.

Respondent

CORAM:
Arun Kumar

Chairman

APPEARANCE:
Suryansh Vashisht (Advocate)
Vaibhav (Proxy Counsel)

Complainant
Respondent

ORDER

1. This 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 under the provisions of the Act or the Rules and regulations made thereunder or to the allottee as per the agreement for sale executed *inter se*.

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. N.	Particulars	Details
1.	Name of the project	"Akshara", Sectors 11&14, Sohna Gurugram
2.	Project area	NA
3.	Nature of the project	Residential plotted colony
4.	DTCP license no. and validity status	NA
5.	Name of licensee	NA
6.	RERA Registered/ not registered	Not registered
7.	RERA registration valid up to	NA
8.	Plot no.	NA
9.	Plot area admeasuring	116.19 sq. yds. (Page no. 35 of the complaint)
10.	Acknowledgement letter	16.08.2021 (page 35 of complaint)
11.	Date of execution of agreement to sell	NA
12.	Possession clause	NA
13.	Due date of possession	16.08.2024 [Calculated as per <i>Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018 - SC); MANU/SC/0253/2018</i>]
14.	BSC	Rs. 36,58,982/- (page 35 of complaint)
15.	Amount paid by the complainant	13,19,063/- As per payment receipts
16.	Occupation certificate /Completion certificate	Not received
17.	Offer of possession	Not offered

B. Facts of the complaint

3. The complainant has made the following submissions in the complaint: -

- I. That the present complaint of the complainants drives its genesis from the payment made to the tune of **Rs. 13,19,063/-** till date to the Respondent based on false assurances and tall claims. Despite this substantial payment and the booking being made in the year 2021, the respondent has not only failed to provide allotment letter to the complainants but also failed to execute the plot buyer agreement.
- II. That the respondent is engaged in the business of engineering, construction, and the real estate sector, and is involved in the construction of several commercial and residential projects. In 2015-16, the respondent commenced advertising and booking residential plots for the project named '**Akshara**' ("**Project**") being developed under the Deen Dayal Jan Awas Yojna ("**DDJAY**") Affordable Plotted Housing scheme, which is an extension of the already licensed and developed township of Aranya situated in Sector 14, Sohna, Gurugram, Haryana.
- III. That the complainants, lured by the respondent's extensive advertisements and the overly optimistic portrayal of the project, arranged a meeting with the respondent to discuss the terms and conditions for booking a residential plot in the project. Trusting the longstanding presence and reputable name of the respondent in the real estate sector, the complainants believed the respondent's representations. Consequently, the complainants booked a residential plot on 09.08.2021. unaware of the impending issues and the reality behind the respondent's assurances, the complainants paid an initial booking amount of Rs. 4,00,000/-. Following this payment, the respondent sent an acknowledgment of the application for the plot via an email dated 16.08.2021.

- IV. That the respondent's subsequent actions and omissions have starkly contrasted with their advertised promises, causing significant distress and financial strain on the complainants. The respondent's failure to honor their commitments, including providing the necessary documentation, has severely prejudiced the complainants' rights and expectations.
- V. That it is imperative to bring to the attention of the Authority that, as per the acknowledgment email dated 16.08.2021, the total consideration amount for the plot was **Rs. 37,68,257/-**. This email also contained a detailed payment plan outlining the schedule of payments to be made by the complainants and as per this payment plan, the respondents continued to raise demands. The complainants diligently complied with each of these payment demands. The complainants ensured that all payments were made promptly and it is crucial to emphasize that the respondent unjustly collected an exorbitant amount to the tune of **Rs. 13,19,063/-** to the respondents for the booked plot even before the execution of the builder-buyer agreement starting from payment of the booking amount to the tune of Rs. 4,00,000/- followed by others.
- VI. That it is crucial to highlight that nearly three years have elapsed since, the complainants made their initial payment, yet the respondent has failed to provide even the allotment letter, despite having received nearly 35% of the total consideration amount. The booking acknowledgement letter dated 16.08.2024 clearly stipulates that the plot buyer agreement would be executed within six months of booking, but to date, no such agreement has been finalized.
- VII. That the booking acknowledgement letter also stipulated that the hand-over of the allotted plot would occur within 24 months from the date of registration of the agreement to sell. at the time of booking, the respondents assured the complainants that the plot would be handed over within 30 months of

booking, by February 2022. However, even after a six-month extension from the promised possession date, the complainants are yet to see any progress towards receiving possession of the plot in the foreseeable future. Furthermore, the prospect of possession remains distant, as the complainants are still awaiting the allotment letter and plot buyer agreement to this day.

- VIII. That it has been established over time and reaffirmed by various courts that it is the duty of the promoter to execute the agreement to sell, and under no circumstances can the promoter collect more than 10% of the consideration amount without executing the agreement.
- IX. That the complainants have persistently reached out to the respondent through various means: phone calls, office visits, and emails thereby, imploring for the allotment and execution of the agreement. Regrettably, these earnest appeals have fallen on deaf ears. Despite their efforts, the respondent has shown no regard for the complainants' plight, offering no response or assurance regarding the documentation and possession timeline. This dismissive behavior has left the complainants disheartened and uncertain about their future, with the hope of receiving their rightful documents and possession diminishing each day.
- X. That in light of the aforementioned undisputed facts and circumstances, it is crucial to highlight that the respondent has misled the complainants at every juncture of this transaction. Initially, the Respondent collected an exorbitant amount of Rs. 13,19,063/- from the complainants even before the execution of the agreement. Subsequently, the respondent has continuously ignored all requests made by the complainants and failed to fulfill their obligations under the transaction. For the past three years, the complainants have been tirelessly running from pillar to post in order to seek accountability of their hard-earned money. Throughout these years, the respondent has shown a

complete disregard for his plight, failing to respond to his earnest attempts to resolve the matter. The respondent's persistent neglect and refusal to address the concerns of the complainants, highlight a deliberate and calculated effort to evade accountability, thereby causing him prolonged financial and emotional distress.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s).
 - i. **Direct the respondent to refund the entire amount paid by the complainant alongwith prescribed rate of interest.**
 - ii. **Direct the respondent, to pay a sum of Rs. 5,00,000/- to the complainants towards compensation for mental agony caused by the respondent.**
5. The respondent-promoter has failed to file a reply despite several opportunities granted by the authority. It shows that the respondent is intentionally delaying the procedure of the Authority by avoiding to file the written reply. In view of the above, Hence, in view of the same, the Authority has no option but to proceed the ex-parte against the respondent.

D. Jurisdiction of the authority

6. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

D.I Territorial jurisdiction

7. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. 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.

D.II Subject-matter jurisdiction

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

Section 11

.....

(4) The promoter shall-

(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 leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.
10. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in **Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. 2021-2022 (1) RCR (Civil), 357** and reiterated in case of **M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022** wherein it has been laid down as under:

"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the

regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. If the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."

11. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the cases mentioned above, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.
- E. Findings on the relief sought by the complainant.**
- E.I Direct the respondent to refund the entire amount paid by the complainant alongwith prescribed rate of interest.**
12. The complainant filed an application dated 01.05.2026 seeking revival of the present complaint, which had been adjourned *sine die* on account of the respondent being admitted into the Corporate Insolvency Resolution Process (CIRP) and the declaration of a moratorium by the Hon'ble National Company Law Tribunal (NCLT). The Authority, vide its order dated 18.09.2025, had adjourned the present complaint *sine die*. Subsequently, vide order dated 10.04.2026, the Hon'ble NCLT revived and restored the proceedings against the respondent to their original position. In view of the aforesaid, the present application is allowed, and the complaint is restored to its original position for further proceedings.
13. That the complainants booked a residential plot in the respondent's project "Akshara" on 09.08.2021, relying upon the representations and assurances made by the respondent, and paid a total sum of **Rs. 13,19,063/-**, constituting approximately 35% of the total consideration of Rs. 37,68,257/-. Despite

receiving the aforesaid substantial amount, the respondent has failed to issue the allotment letter and execute the plot buyer agreement within the stipulated period of six months. The respondent had further assured possession within the promised timeline; however, no possession has been offered and no definite timeline has been provided. Despite repeated requests, calls, visits and emails, the Respondent has failed to address the grievances of the complainants, thereby causing them financial hardship, mental agony and prejudice. The respondent has thus acted in violation of its contractual and statutory obligations and has unjustly retained the hard-earned money of the complainants without fulfilling its corresponding obligations.

14. In the present complaint, the complainant intends to withdraw from the project and is seeking return of the amount paid by her in respect of subject unit 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)

15. **Due date of possession:** As per the documents available on record, no BBA has been executed between the parties and the due date of possession cannot be ascertained. A considerate view has already been taken by the Hon'ble

Supreme Court in the cases where due date of possession cannot be ascertained then a reasonable time period of 3 years has to be taken into consideration. It was held in matter **Fortune Infrastructure v. Trevor d' lima (2018) 5 SCC 442 : (2018) 3 SCC (civ) 1** and then was reiterated in **Pioneer Urban land & Infrastructure Ltd. V. Govindan Raghavan (2019) SC 725 -:**

"Moreover, 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 i.e., the possession was required to be given by last quarter of 2014. Further there is no dispute as to the fact that until now there is no redevelopment of the property. Hence, in view of the above discussion, which draw us to an irresistible conclusion that there is deficiency of service on the part of the appellants and accordingly the issue is answered."

16. Accordingly, the due date of possession is calculated as 3 years from the date of booking i.e., 16.08.2021. Therefore, the due date of handing over of the possession for the unit/plot comes out to be 16.08.2024.
17. **Admissibility of refund along with prescribed rate of interest:** The complainant intends to withdraw from the project and is seeking refund of the amount paid by them in respect of the subject plot with interest at prescribed rate 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.

18. 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.

19. 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., 25.08.2026 is **8.80%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.80%**.

20. On consideration of the circumstances, the documents, submissions and based on the findings of the authority regarding contraventions as per provisions of rule **28(1)**, the authority is satisfied that the respondent is in contravention of the provisions of the Act. The possession of the plot was to be offered to the allottee by 16.08.2024, however the same has not been offered till date. Further, the authority observes that there is no document placed on record from which it can be ascertained that whether the respondent has applied for completion certificate/part completion certificate or what is the status of construction of the project. In view of the above-mentioned fact, the allottee intend to withdraw from the project and is well within her right to do the same in view of section 18(1) of the Act, 2016.

21. The completion certificate/part completion certificate of the project where the plot is situated has still not been obtained by the respondent/promoter. The authority is of the view that the allottee cannot be expected to wait endlessly for taking possession of the allotted unit and for which they have paid a considerable amount towards the sale consideration and 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....."

22. Further in the judgement of the Hon'ble Supreme Court of India in the cases of ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors.*** (supra) reiterated in case of ***M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020*** decided on 12.05.2022. it was observed

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."*

23. 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 is unable to give possession of the plot in accordance with the terms of agreement for sale 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 unit with interest at such rate as may be prescribed.

24. 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., @10.80% 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 Haryana Rules 2017 *ibid*.

E.II Direct the respondent, to pay a sum of Rs. 5,00,000/- to the complainants towards compensation for mental agony caused by the respondent.

25. The complainant is seeking the above-mentioned relief w.r.t. compensation. The Hon'ble Supreme Court of India in *Civil Appeal nos. 6745-6749 of 2021* titled as *M/s Newtech Promoters and Developers Ltd. V/s State of UP & Ors.(supra)*, has held that an allottee is entitled to claim compensation and litigation charges under Sections 12, 14, 18 and section 19 which is to be decided by the adjudicating officer as per Section 71 and the quantum of compensation and litigation expense shall be adjudged by the adjudicating officer having due regards to the factors mentioned in Section 72. The Adjudicating Officer has exclusive jurisdiction to deal with the complaints in respect of compensation and legal expenses.

H. 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 entire amount received by it from the complainant along with interest at the rate of 10.85% 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.
- iii. The respondent is further directed not to create any third-party rights against the subject plot before full realization of the paid-up amount along with interest thereon to the complainant. Even if, any transfer is initiated with respect to subject unit, the receivables shall be first utilized for clearing dues of allottee/complainant.

27. Complaint stands disposed of.

28. File be consigned to registry.

Dated: 25.08.2026



(Arun Kumar)
Chairman
Haryana Real Estate
Regulatory Authority,
Gurugram

HARERA
GURUGRAM