BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complainant:	**2565 of 2024**
First date of hearing:	**20.09.2024**
Date of decision:	**14.08.2026**

1. Rohit Singh
2. Garima Sachan

Both R/O: - Emaar Palm Hills Tower No 38 Flat No. 101 Sector 77 Gurugram — **Complainants**

Versus

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

CORAM:
Shri Arun Kumar — **Chairman**

APPEARANCE:
Sh. Aman Kaushik (Advocate) — Complainant
Sh. Vaibhav (Advocate) — Respondent

ORDER

1. The present complaint dated 31.05.2024 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 there under 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	"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.	Date of environment clearance	17.10.2014
9.	Shop/commercial space no.	134, 1st floor (Page no. 61 of the complaint)
10.	Unit area admeasuring	578.99 sq. ft. (carpet area) (Page no. 61 of the complaint)
11.	Date of execution of agreement to sell	15.01.2019 (Page no. 72 of the complaint)
12.	Provisional Allotment letter	22.12.2017 (Page no. 61 of the complaint)
13.	Possession clause	**7.1. Possession clause** *The Promoter agrees and understands that timely delivery of possession of the said Shop/Commercial Space for commercial*

		usage to the Allottee and the common areas to the association of allottees or the competent authority, as the case may be, is the essence of the Agreement. ***The Promoter shall sincerely endeavor to hand over possession of the said Shop/Commercial Space for commercial usage in a period of 48 Months with further 12 Months grace period (Commitment Period") from the date of execution of this Agreement for sale as per agreed terms and conditions subject to receipt of timely*** *payment of installments by the Allottee, unless there is delay due toforce majeure, courts orders, govt policy........"* (Page no. 89 of the complaint)
14.	Due date of possession	15.01.2024 (grace period is allowed being unqualified)
15.	Total sale consideration	Rs.52,98,173/- (As per page no. 113 of complaint)
16.	Amount paid by the complainant	Rs.50,49,890/- (as per the payment receipts page 131-133 of complaint)
17.	Occupation certificate /Completion certificate	Not received
18.	Offer of possession	Not offered
19.	Payment plan	On application of booking: 10% of BSP Within 60 days of booking:85% of BSP On receipt of OC: 5% of BSP (page 113 of complaint)

B. Facts of the complaint

3. The complainant has made the following submissions: -

   I. That the complainants are the "aggrieved person" and invoking the original jurisdiction of this authority by way of filing the present complaint.

II. That the respondent is private limited company incorporated under the provisions of the Indian Companies Act, 1956 and are engaged in the business of construction and real estate development by providing services in the field of residence and commercial sectors.

III. That in year 2013-14 opposite party had purportedly launched a project under the name "RAHEJA'S TRINITY" at Sector-84, GURUGRAM, HARYANA and Opposite Party were publicizing the said commercial project with much pomp & show in and around Gurugram /NCR. Which the complainants became aware of in the year 2016-17.

IV. That in year 2017, some sales/ marketing executives of opposite party through some acquaintance of complainants, approached to complainants and insisted them to book a unit with said project for commercial purpose as complainants were in search of suitable place for investments in such a project so as to incur income from it in future and for the betterment of their livelihood. Initially complainants were not interested in opposite party project but the executive of opposite party repeatedly requested and persuaded the complainants by talking highly about their project and claiming that investment in their project will give the best returns to complainants for their hard-earned money that they will invest in their project. The executive praised the said project to the sky and portrayed an extremely rosy picture of the same and again and again requested the complainants to book a unit in the said project also emphatically stated and gave assurances that project will be developed at a fast pace and even the possession shall be handed over to the respective allottees within committed period of 48 months as mentioned in the agreement in clause

V. That complainants somehow became ready to book a commercial unit in opposite party's said project admeasuring 578.99 Sq. Ft. gross saleable area built up area on the first floor vide application dated 01-09-2017.

VI. That, accordingly, opposite party allotted shop bearing no. 134 on 1stfloor admeasuring tentative super built up area admeasuring 578.99Sqft. at basic sale consideration of Rs. 44,33,593/- towards complainants booking of a unit in project "Raheja's Trinity".

VII. That after a long delay and continue follow-ups through mail communication, the builder buyer agreement was executed on 15-01-2019 between complainants jointly and developer/opposite party.

VIII. That the complainants after the promised time by the respondent visited the project site to which the complainants found that there was nothing on the ground i.e. the builder has not even completed the first phase of construction and also it was of utter shock and dismay to the complainants that the construction was at halt and no one was present on the site.

IX. That the complainants many a times tried to contact the builder and his officials but no suitable response has ever been received from the opposite parties. The limit of the period to give the possession was 48 months from the execution date of the builder buyer agreement, the time slot for which had already been passed and the builder and their executive keep on maneuver their own promises with their own convenience without paying any heed to the distress caused to the complainants and also the opposite party is sleeping over the hard-earned money of the complainants without delivering their promises to the complainants.

X. That the complainants has paid Rs. 50,49,890/- amount up till now. The total sale consideration as per the agreement and agreed payment plan was Rs. 53,55,826/- which is exclusive of two other charges as per the agreement. Moreover, the respondent has shared the wrong statement to the complainants and demanded the interest, which was duly objected by the complainants but the same was never corrected and shared by the respondent.

XI. That the complainants has invested his hard-earned money in order to get this unit as the future livelihood and source of income as the complainants are dependent on it but due to the failure on the part of the respondent the complainants are facing a lot of problems in their life.

XII. At the very outset it is stated that respondent is still not showing any respect to the settled law of the land, and are still by its mischievous act and conduct is hell bent upon to abuse the process of law. As such, the opposite party is guilty of committing unfair trade practice, fraud and forgery acting under common intention to grab the money of the complainants.

XIII. The respondent allured the complainants by showing rosy picture about the project, hence complainants entrusted their amount by booking the unit in the said project but the respondent continued with unfair practices thereby deceiving the complainants since beginning and was moderately engaged in extorting the money; hence, the project which is totally based on false promises and assurances and the act of respondent being unethical is against the public policy, principle of natural justice, enquiry and fair-play. Hence complainants seek the indulgence of this Authority by filing the present complaint.

XIV. That by using this illegal trade practice and illegal act respondent has provided mental harassment and pain to the complainants by neither giving any possession nor initiating any refund.

C. Relief sought by the complainant.

4. The complainant has sought following relief(s).
   a) Direct the respondent to pay/refund the amount of Rs. 50,49,890/- with interest @24% per annum till the final realization of the amount.
   b) Direct the respondent to pay the cost of litigation i.e Rs. 1,55,000.
   c) Direct the respondent to pay the sum of Rs 25,00,000/- for deficiency in service and mental harassment.

5. The respondent/promoter put in appearance through its counsel and marked attendance on 20.09.2024, 07.02.2025, 09.05.2024, 11.07.2025, 12.09.2025, and 14.08.2026. Despite giving specific directions to file a reply, it has failed to comply with the orders of the authority. It shows that the respondent is intentionally avoiding filing of the written reply. Therefore, the defence of the respondent is hereby struck off .

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 submissions made by the parties.

D. Jurisdiction of the authority

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

D.I Territorial jurisdiction

8. 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

9. 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.*

10. 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.

E. Findings on the relief sought by the complainant.

E.I Direct the respondent to pay/refund the amount of Rs. 50,49,890/- with interest @24% per annum till the final realization of the amount.

11. In the present complaint, the complainant was allotted a commercial unit bearing No. 134, admeasuring 578.99 sq. ft., situated on the first floor, in the project titled "Raheja Trinity", Sector-84, Gurugram. A builder buyer agreement was executed between the parties on 15.09.2019 for a total sale

consideration of Rs.52,98,173/-. It is not in dispute that the complainant has paid an amount of Rs.50,49,890/- towards the said unit.

12. In the present complaint, the complainants intend to withdraw from the project and are seeking return of the amount paid by them 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)*

13. **Due date of handing over possession**: As per Clause 7.1 of the agreement to sell dated 15.01.2019, the respondent was obligated to hand over possession of the allotted unit within four years from the date of execution of the agreement along with a grace period of twelve month. Accordingly, the due date of possession comes out to be 15.01.2024.

14. **Admissibility of refund along with prescribed rate of interest**: The allottees intend to withdraw from the project and are seeking refund of the amount paid by them in respect of the subject unit 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 rote +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.

15. 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.

16. 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., 14.08.2026 is 8.80%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.80%.**

17. On consideration of documents available on record as well as submissions made by the parties, the Authority is satisfied that in terms of the buyer's agreement executed between the parties on 15.01.2019, the possession of the subject flat was to be delivered within a period of 48 months from the date of execution of buyer's agreement plus grace periods of 12 months. Therefore, the due date of handing over of possession was 15.01.2024. Now the complainant after lapse of due date of possession has filed the present complaint seeking refund of the paid-up amount along with interest.

18. It is a matter of record that the respondent did not complete the project and did not obtain the Occupation Certificate by the committed due date.

19. The due date of possession as per agreement was 15.01.2024. The Occupation Certificate has not been obtained by the respondent yet. Thus, there is a delay beyond the committed period. The promoter having failed

to hand over possession by the committed due date is liable to refund the amount received along with interest at the prescribed rate.

20. Further, 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. observed as under:

> *"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 falls 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."*

21. 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 allottees as per agreement for sale under Section 11(4)(a). The promoter has failed to complete or is unable to give possession of the unit 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 he wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of the unit along with interest at such rate as may be prescribed.

22. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with Section 18(1)(b) 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 him 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 the cost of litigation i.e. Rs.1,55,000/-.
E.III Direct the respondent to pay the sum of Rs.25,00,000/- for deficiency in service and mental harassment.

23. The complainant in the aforesaid reliefs bearing no. F.II and F.III are also seeking relief w.r.t compensation and litigation expenses. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as ***M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & 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 adjudicating officer as per section 71 of the Act and the quantum of compensation & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72 of the Act. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses.

F. Directions of the authority

24. Hence, the Authority hereby passes this order and issue the following directions under Section 37 of the Act to ensure compliance of obligations casted upon the promoter as per the functions entrusted to the authority under Section 34(f) of the Act:

    i. The respondent is directed to refund the paid-up amount of Rs. 50,49,890/- received by it from the complainant against the subject unit along with prescribed rate of interest @10.80% p.a. as prescribed under Rule 15 of the Rules from the date of each payment till the date of realization.

ii. A period of 90 days is given to the respondent to comply with the direction given in this order and failing which legal consequences would follow.

25. Complaint as well as applications, if any, stand disposed off accordingly.

26. Files be consigned to registry.

Arun Kumar
(Chairman)
Haryana Real Estate Regulatory Authority, Gurugram
Dated: 14.08.2026