

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

Complaint no. : 4974 of 2023
Date of complaint : 02.11.2023
Date of order : 04.12.2024

Arun Shrivastava,
R/o: - H. No. C-8/4, 1st Floor, Near Main Park,
Ardee City, Sector-52, Gurugram-122003.

Complainant

Versus

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

Respondent

CORAM:
Ashok Sangwan

Member

APPEARANCE:
Gaurav Rawat (Advocate)
Garvit Gupta (Advocate)

Complainant
Respondent

ORDER

1. The present 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 provision 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's Maheshwara", Sector 11 & 14, Sohna Master Plan Gurugram, Haryana
2.	Project area	9.23 acres
3.	Registered area	3.752 acres
4.	Nature of the project	Group housing complex
5.	DTCP license no. and validity status	25 of 2012 dated 29.03.2012 valid up to 28.03.2018
6.	Name of licensee	Ajit Kumar and 21 others
7.	RERA Registered/ not registered	Registered vide no. 20 of 2017 dated 06.07.2017
8.	RERA registration valid up to	5 Years from the date of revised Environment Clearance
9.	Unit no.	D-703, 7 th floor, Tower/block- D
10.	Unit area admeasuring	80.43 sq. mts. (carpet area) 111.32 sq. mts. (gross area) (page 43 of complaint)
11.	Date of execution of agreement to sell	25.04.2017 (page 42 of complaint)
12.	Tri-partite agreement	20.09.2018 (page 69 of complaint)
13.	Possession clause taken from similar file of same project	21. The company shall endeavour to complete the construction of the said apartment within Forty-Eight (48) months plus/minus Twelve (12) months grace period of the date of execution of the agreement or environment clearance and forest clearance, whichever is later but subject to force majeure, political disturbances, circumstances cash flow mismatch and reason beyond the control of the company. However, in case the company completes

		the construction prior to the said period of 48 months plus 12 months grace period the allottee shall not raised any objections in taking the possession after payment of Gross Consideration and other charges stipulated hereunder. The company on obtaining certificate of occupation and use for the building in which said apartment is situated, by the competent authorities shall hand over the said apartment to the allottee for his occupation and use and subject to the allottee having complied with all the terms and condition of the agreement to sell....."
14.	Grace period	Allowed being unqualified.
15.	Due date of possession	25.04.2022 (Note: - 48 months from date of agreement i.e., 25.04.2017 + 12 months grace period)
16.	Total sale consideration	Rs.51,88,790/- (as per customer ledger dated 22.09.2018 on page 37 of complaint)
17.	Amount paid by the complainant	Rs.27,98,439/- (as alleged by the complainant on page 18 of complaint)
18.	Occupation certificate /Completion certificate	Not received
19.	Offer of possession	Not offered

B. Facts of the complaint

3. The complainant has made the following submissions: -

- I. That the complainant booked a unit in the project of the respondent named "Raheja Maheshwara" at Sector 11 and 14, Sohna, Gurugram by paying an amount of Rs.4,98,103/- and was allotted a flat bearing no. A-D703, 7th Floor, having super area measuring 1198.11 sq. ft. in the said project vide allotment letter dated 25.04.2017. Thereafter, an



agreement to sell dated 25.04.2017 was executed between the parties for total sale consideration of Rs.49,32,619/-.

- II. That as per clause 21 of the agreement, the respondent proposes to hand over possession of the apartment within a period of 48 months from the date of execution of the agreement.
- III. That as per the demands raised by the respondent, based on the payment plan, the complainant timely paid a total sum of Rs.27,98,439/- (Rs.23,00,336/- paid by L&T Finance and Rs.4,98,103/- paid by the complainant) towards the said unit.
- IV. That the complainant has bought the said apartment under subvention scheme and took the loan from L& T Finance, but respondent even failed to pay the Pre-Emi's to bank, and burden has been shifted upon the complainant.
- V. That the complainant went to the office of respondent several times and requested them to allow him to visit the site, but it was never allowed saying that they do not permit any buyer to visit the site during construction period.
- VI. That the complainant contacted the respondent on several occasions and was regularly in touch with the respondent. The respondent was never able to give any satisfactory response to the complainant regarding the status of the construction and was never definite about the delivery of the possession.
- VII. That the complainant is entitled to get refund of the entire amount paid along with interest at the prescribed rate from date of payment to till the realization of money under section 18 & 19(4) of Act.
- VIII. That the complainant after losing all the hope from the respondent, having his dreams shattered of owning a flat & having basic necessary facilities in the vicinity of the project and also losing considerable

amount, is constrained to approach this Authority for redressal of his grievance.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s).
 - i. Direct the respondent to refund the paid-up amount along with prescribed rate of interest.

D. Reply by respondent:

5. The respondent/promoter put in appearance through Advocate and marked attendance on 15.02.2024, 10.04.2024, 22.05.2024, 17.07.2024 and 09.10.2024. Despite specific directions for filing of reply, it failed to comply with the orders of the Authority. It shows that the respondent was intentionally delaying the procedure of the court by avoiding filing of written reply. Therefore, in view of above, vide proceedings dated 09.10.2024, the defence of the respondent was struck off. However, in the interest of justice, the respondent was given a liberty to file written submissions within a period of two weeks, but the same has not been submitted by it till date.
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 complainant.

E. Jurisdiction of the authority

7. The Authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.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.

E.II Subject-matter jurisdiction

9. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottees 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.

F. Findings on the relief sought by the complainant.

F. I Direct the respondent to refund the paid-up amount along with prescribed rate of interest.

13. In the present complaint, the complainant intends to withdraw from the project and is seeking return of the amount paid by him 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)

14. Clause 21 of the buyer's agreement dated 25.04.2017 provides for handing over of possession and is reproduced below:

21. The company shall endeavour to complete the construction of the said apartment within **Forty-Eight (48) months plus/minus Twelve (12) months grace period of the date of execution of the agreement or environment clearance and forest clearance, whichever is later but subject to force majeure, political disturbances, circumstances cash flow mismatch and reason beyond the control of the company.** However, in case the company completes the construction prior to the said period of 48 months plus 12 months grace period the allottee shall not raised any objections in taking the possession after payment of Gross Consideration and other charges stipulated hereunder. The company on obtaining certificate of occupation and use for the building in which said apartment is situated, by the competent authorities shall hand over the said apartment to the allottee for his occupation and use and subject to the allottee having complied with all the terms and condition of the agreement to sell....."

15. At the outset, it is relevant to comment on the preset possession clause of the agreement wherein the possession has been subjected to providing necessary infrastructure specially road, sewer & water in the sector by the government, but subject to force majeure conditions or any government/regulatory authority's action, inaction or omission and reason beyond the control of the seller. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottees that even a single default by the allottees in making payment as per the plan may make the possession clause irrelevant for the purpose of allottees and the commitment date for handing over possession loses its meaning.



The incorporation of such a clause in the agreement to sell by the promoter is just to evade the liability towards the timely delivery of subject unit and to deprive the allottees of their right accruing after delay in possession. This is just to comment as to how the builder has misused his dominant position and drafted such a mischievous clause in the agreement and the allottees are left with no option but to sign on the dotted lines.

16. Due date of handing over possession and admissibility of grace

period: As per clause 21 of the agreement, the possession of the allotted flat/unit was supposed to be offered within a stipulated timeframe of 48 months plus/minus 12 months grace period of the date of execution of the agreement or environment clearance and forest clearance, whichever is later. The buyer's agreement was executed between the parties on 25.04.2017. However, no document with regard to EC, FC has been placed on record. Therefore, the Authority is taking these 48 months from date of execution of the buyer's agreement. Since in the present matter the BBA incorporates unqualified reason for grace period/extended period in the possession clause. Accordingly, the authority allows this grace period of 12 months to the promoter at this stage. Thus, the due date for handing over of possession comes out to be 25.04.2022.

17. Admissibility of refund along with prescribed rate of interest: The complainant is seeking refund the amount paid by him 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 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., 04.12.2024 is **9.10%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **11.10%**.
20. On consideration of the documents available on record as well as submissions made by the parties, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 21 of the agreement to sell, the due date of possession comes out to be 25.04.2022 for the reasons quoted above.
21. Keeping in view the fact that the complainant/allottee wishes to withdraw from the project and is demanding return of the amount received by the promoter in respect of the unit with interest on failure of the promoter to complete or inability to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. The matter is covered under section 18(1) of the Act of 2016.
22. The due date of possession as per agreement for sale as mentioned in the table above is 25.04.2022 and even after a passage of more than 2.7 years till date neither the construction is complete nor the offer of possession of the allotted unit/flat has been made to the allottee by the respondent/promoter. The authority is of the view that the allottee



cannot be expected to wait endlessly for taking possession of the unit for which he has paid a considerable amount towards the sale consideration. Further, the authority observes that there is no document place on record from which it can be ascertained that whether the respondent has applied for occupation certificate/part occupation 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 the right to do the same in view of section 18(1) of the Act, 2016.

23. Moreover, the occupation certificate/completion certificate of the project where the unit 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 he has 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.....".

24. 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."

25. 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 it in respect of the unit with interest at such rate as may be prescribed.
26. 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 him at the prescribed rate of interest i.e., @11.10% 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*.

G. Directions of the authority

27. 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):
- The respondent/promoter is directed to refund the entire amount received by it from the complainant along with interest at the

rate of 11.10% 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. Out of total amount so assessed, the amount paid by the bank/payee, be refunded in the account of bank and the balance amount along with interest will be refunded to the complainant.
 - iii. 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.
 - iv. The respondent is further directed not to create any third-party rights against the subject unit 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 complainant/allottee.
28. Complaint stands disposed of.
29. File be consigned to registry.

HARERA
GURUGRAM

(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 04.12.2024