



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

<b>Complaint no.:</b>	<b>1434 of 2022</b>
<b>Date of filing.:</b>	<b>17.06.2022</b>
<b>First date of hearing.:</b>	<b>09.08.2022</b>
<b>Date of decision:</b>	<b>15.03.2023</b>

Rachna Goyal

....COMPLAINANT

C-172, Vivek Vihar, Delhi-110095

VERSUS

M/s Raheja Developers Pvt. Ltd.  
W-4D, 204/5, Keshav Kunj Cariappa Marg,  
Western Avenue, Sainik Farms New Delhi -110062

..... RESPONDENT

**CORAM: Dr. Geeta Rathee Singh**  
**Nadim Akhtar**

**Member**  
**Member**

**Present: -** Mr. Piyush Bansal, learned counsel for the complainant.  
Ms. Navneet, learned counsel for the respondent.

### **ORDER (DR. GEETA RATHEE SINGH - MEMBER)**

1. Present complaint has been filed by complainant under Section 31 of the Real Estate (Regulation & Development) Act, 2016 (for short Act of 2016) read

*Geeta Rathee*

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 tabular form:

S.No.	Particulars	Details
1.	Name of the project.	Krishna Housing Scheme
2.	Nature of the project.	Residential
4.	<b>RERA Registered/not registered</b>	Registration no. 21 of 2017
5.	<b>Details of unit.</b>	3007, 3 <sup>rd</sup> Floor ,Tower-E2
6.	<b>Provisional Allotment</b>	03.10.2015
7.	<b>Date of Builder buyer agreement</b>	20.10.2015
8.	<b>Due date of possession</b>	20.10.2019
9.	<b>Total sale consideration</b>	₹ 16,57,258/-
10.	<b>Amount paid by complainant</b>	₹ 10,58,826/-
11.	<b>Offer of possession.</b>	None

*Rattree*

**B. FACTS OF THE CASE AS STATED IN THE COMPLAINT FILED BY THE COMPLAINANT**

3. Complainant had booked a residential flat from the promoter vide application dated 24.12.2014 by paying amount of Rs. 1,17,800 as booking amount. Said flat was provisionally allotted vide allotment letter dated 03.10.2015. Builder Buyers Agreement was executed between the allottee and respondent-promoter on 20.10.2015 (Pg. 37 of complaint book).
4. According to clause 5.2 of the BBA, respondent committed to complete the construction and offer possession of the allotted unit within 48 months from the date of the receiving of environment clearance or sanction of building plans whichever is later. Basic sale price was Rs. 16,57,258/- out of which complainant had paid Rs. 10,58,826/- on different dates.
5. Complainant further alleged that he had visited the site in the year 2017 and was shocked to see that there was no development at the site. On asking upon the respondent, respondent company promised that possession will be handed over to him within stipulated period as per the agreement, failing which the respondent company would pay interest as per Builder Buyer agreement. Though, date of handing over of possession was 20.10.2019 but possession has not been offered till date. Therefore, complainant has prayed for relief of

*Rathore*

refund of the amount paid by complainant till date along with the prescribed rate of interest.

**C. RELIEF SOUGHT:**

6. The complainant in his complaint has sought following reliefs:

- i. To direct the respondent to refund the amount paid by complainant of Rs. 10,58,826/- along with prescribed rate of interest from date of respective deposits till its actual realisation;
- ii. To direct the respondent to pay ₹4,90,364/- to the complainant as compensation for the interest and expenditure of EMI paid;
- iii. To direct the Respondent to pay the compensation of Rs. 5,00,000/- for causing mental agony, harassment to the Complainant, and for violation of the obligations conferred by the act, as per section 18(3);
- iv. To direct the Respondent to pay the compensation of Rs. 1,00,000/- for the litigation costs;
- v. Any other relief which is deemed fit by this Hon'ble Authority.
- vi. To pass such direction, as may be deemed fit, under Section 37 & 38 of the Act, towards giving effect to any one or more of the above sought reliefs.

**D. REPLY:**

7. The respondent has filed short reply averring that the project got delayed due to delay in sanction of necessary approvals from the competent authorities and



not on the part of the respondent. It is further submitted that the respondent builder has sought funds from the DMI Finance Private Ltd. Sanction amount was Rs. 55 crores to the promoter, however, Rs. 33 crores were disbursed and the balance amount of Rs. 22 crores is till date undisbursed/unsanctioned despite claim of entire fee and charges. Out of total funds disbursed i.e., 33 crores, only Rs. 9.55 cr. Could be utilized towards the project development and rest for repayment/takeover of existing facilities.

8. It is pertinent to mention that DMI Finance Private Ltd. had already withdrawn a sum of Rs. 33.82 cr. Of homebuyers money from the project cash flow, which was under escrow control of DMI, for self-servicing their own interest and other facility (9.29 cr.) availed by group company of respondent before the scheduled repayment, which is not as per terms of sanction and in complete violation of RERA. That customers money under DMI escrow control that actually were into construction was just 18 Crore and the balance was withdrawn/self-serviced by lender illegally and in blatant violation of the provisions of the RE(R&D) Act, 2016. It is also submitted that the Company/respondent had requested DMI to release customer's money of Rs. 7.82 crore and Rs. 1.11 crores lying in Yes Bank and Punjab national Bank as Escrow Account was under their control and they shall be responsible for the delay in construction of the gap said project, since the promoter was in urgent need of funds for the completion of the said project. It is relevant to mention here that on various occasions, the respondent company has communicated

A handwritten signature in blue ink, appearing to read 'Rathee', with a horizontal line underneath it.

number of banks including the DMI Finance Pvt. Ltd to remove such lien created over the Bank accounts. However, if DMI Finance Pvt. Ltd. had followed the sanctioned repayment schedule of NCDs, not misappropriated, and also disbursed Rs 22 Crores ( un-disbursed facility) and not diverted the funds from this project cash flows, the promoter would have completed the project.

**E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT:**

9. During oral arguments learned counsel for the complainant submitted that there is no progress at the site and project cannot be completed in near future. Therefore, he requested to dispose of the matter in same terms of the Complaint no. 183 of 2021 titled as “Shrishti Wadhwa and Jolly Wadhwa Vs Raheja Developers Pvt Ltd.”

**F. ISSUES FOR ADJUDICATION:**

10. Whether the complainant is entitled to refund of amount deposited by them along with interest in terms of Section 18 of Act of 2016?

**G. OBSERVATIONS OF THE AUTHORITY:**

11. From perusal of the record and also on the basis of arguments advanced by learned counsel for complainant, the Authority observed that the complainant has made payment of Rs. 10,58,826/- to the respondent and construction at the site of the project is not likely to be completed in near future. Therefore, the

present complaint is covered by the decision rendered by the Authority on 06.05.2022 in complaint no. 183 of 2021 titled as Shrishti Wadhwa and Jolly Wadhwa Vs Raheja Developers Pvt Ltd. Thus, the Authority decided to dispose of the matter in terms of the above said complaint, relevant part of which has been reproduced below for reference:

*“iii) Next argument of respondents is that the project could not be completed on account of diversion of funds from RERA account by the financier M/s DMI Finance Pvt. Ltd. Here again respondents are severely contradicting themselves. On one hand they are stating that project is not registered, but in the same breath they are saying that M/s DMI Finance Pvt. Ltd. is taking away money from RERA Account of the project. Again respondents have failed to even check facts of the matter.*

*iv) Regardless of above position, respondent-company has got loan of Rs.55 crores sanctioned, out of which admittedly Rs.33 crores have been disbursed. Nothing at all has been stated where this amount of Rs. 33 crores has been invested, and whether it has been invested in the project or invested somewhere else. They have not even stated what properties have been hypothecated against the loan. Respondents have failed to submit quarterly progress and have not even submitted any certificate of Chartered Accountant that said loan which has been got sanctioned for the project has been invested on the project itself. On the other hand admittedly however, money collected from complainants has not been invested on the project. Nothing at all has been stated as to how much money was collected from complainants and how much money has been invested. RERA Act mandates that at least 70% money collected from allottees is to be invested on development of the project.*

*v) As per provisions of RERA Act and Rules no lien could have been created on the RERA account. 70% of the money received from the allottees has to be invested on the project. The respondent promoters appears to have severely defaulted in respect of legal obligations cast upon them under RERA Act. They have got the project registered and have operated RERA account as per law, but respondents have created lien in favour of of M/s DMI Finance Pvt. Ltd. without even*

*Rathee*

*informing the Authority about it. It is a blatant illegality committed by the respondents which in fact amounts to breach of law and trust. The allottees had entrusted their money with the promoter with an expectation that the same will be invested in the project and their booked apartment will be delivered in time. The promoter on the other hand, dealt with the money so deposited by the allottee-complainants like its private money and allowed a lien to be created in favour of 3<sup>rd</sup> party.*

*vi) There appears to be a clear mismanagement of funds by the respondent. The project ought to have been completed with the help of Rs.33 crores raised by way of loan and the money contributed by complainant-allottees. Only a detailed forensic audit would reveal whether the money collected by way of loan and instalments paid by the complainants have been invested in the project or the said money has been diverted towards other purposes.*

*Authority decides to send a copy of this order to the Project Section to initiate inquiry in the matter.*

*8) Respondents-promoters have not submitted any time-line as to when project is likely to be completed. They are only hiding behind bald technicalities like jurisdiction of the Authority to justify their utter failure in completing the project. Photographs of the projects presented by complainants clearly show that the project is at very preliminary stages. It is not possible to be completed in foreseeable future. Since nothing substantial is happening on the ground, the promoters are going to find it difficult to arrange more money either from the allottees or from financiers. In any case, respondent is in serious disputes with both of them.*

*9) In such circumstances, when there is no hope of completion of project in foreseeable future, Authority is duty bound to allow relief of refund as prayed by complainants. Accordingly, Authority orders refund of entire amount paid by complainants along with interest."*

12. As per Section 18 of Act, interest shall be awarded at such rate as may be prescribed. The definition of term 'interest' is defined under Section 2(za) of the Act which is as under:

*J. Rattree*

may be prescribed. 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;

13. Rule 15 of HRERA Rules, 2017 provides for prescribed rate of interest which is as under:

**“Rule 15:** Interest payable by promoter and Allottee. [Section 19] - An allottee shall be compensated by the promoter for loss or damage sustained due to incorrect or false statement in the notice, advertisement, prospectus or brochure in the terms of section 12. In case, allottee wishes to withdraw from the project due to discontinuance of promoter's business as developers on account of suspension or revocation of the registration or any other reason(s) in terms of clause (b) sub-section (I) of Section 18 or the promoter fails to give possession of the apartment/ plot in accordance with terms and conditions of agreement for sale in terms of sub-section (4) of section 19. The promoter shall return the entire amount with interest as well as the compensation payable. The rate of interest payable by the promoter to the allottee or by the allottee to the promoter, as the case may be, shall be the State Bank of India highest marginal cost of lending rate plus two percent. In case, the allottee fails to pay to the promoter as per agreed terms and conditions, then in such case, the allottee shall also be liable to pay in terms of sub-section (7) of section 19:

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."

14. 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. 15.03.2023 is 8.70%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e. 10.70% and respondent shall liable to pay the complainant, interest from the date amounts were paid by her till actual realization of the amounts.
15. Authority has got calculated the total amount to be refunded along with interest calculated at the rate of 10.70% till the date of this order. Accordingly, the details of total amount to be refunded is given in the table below –

Sr. No.	Date of Amount Paid	Principal Amount (in Rs.)	Interest @10.70% till 15.03.2023 (in Rs.)
1.	03.01.2015	₹ 1,17,800 /-	₹ 1,03,392/-
2.	03.01.2015	₹ 3,640/-	₹ 3,195/-
3.	04.11.2015	₹ 3,06,893/-	₹ 2,41,918/-
4.	18.01.2016	₹ 2,07,157/-	₹ 1,58,744/-
5.	18.01.2016	₹ 7,509/-	₹ 5,754/-
6.	25.07.2016	₹ 2,07,157/-	₹ 1,47,266/-
7.	01.03.2017	₹ 2,07,157/-	₹ 1,33,966/-
8.	07.04.2017	₹ 1,513/-	₹ 962/-

Total	₹ 10,58,826/-	₹ 7,95,197/-
Amount to be paid - ₹10,58,826/- + ₹ 7,95,197/- = ₹ 18,54,023/-		

16. The complainant is also seeking compensation on account of mental harassment caused for delay in possession, compensation under Section 12 of RERA Act, 2016 and litigation costs. 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 complainant is advised to approach the Adjudicating Officer for seeking the relief of litigation expenses.

#### H. DIRECTIONS OF THE AUTHORITY

17. 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 the entire amounts of ₹ 18,54,023/- to the complainant.
- (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.
21. These complaint is, accordingly, **disposed of**. Files be consigned to the record room after uploading orders on the website of the Authority.

  
.....  
NADIM AKHTAR  
[MEMBER]

  
.....  
DR. GEETA RATHEE SINGH  
[MEMBER]