

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

Complaint no. :	526 of 2022
Date of filing complaint:	08.02.2022
First date of hearing:	08.03.2022
Date of decision :	17.05.2022

Manju Gupta R/o: E-363, Mayur Vihar, Phase II, Delhi - 110091	<b>Complainant</b>
Versus	
M/s Orchid Infrastructure Developers Private Limited R/o: N-2, South Extension, Part - I, New Delhi - 110049 C/o: Level - II, Global Arcade, Mehrauli-Gurugram Road, Gurugram (HR) - 122002	<b>Respondent</b>

<b>CORAM:</b>	
Dr. KK Khandelwal	<b>Chairman</b>
Shri Vijay Kumar Goyal	<b>Member</b>
<b>APPEARANCE:</b>	
Sh. Shiv Lal proxy counsel for Sh. Jaswant Singh Kataria (Advocate)	Complainant
Sh. Ashwariya Hooda proxy counsel for Sh. J.K Dang (Advocate)	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 the project, the details of sale consideration, the amount paid by the complainant, date of proposed handing over the possession and delay period, if any, have been detailed in the following tabular form:

S.No.	Heads	Information
1.	Project name and location	"Orchid Island", Sector 51, Gurugram
2.	Project area	180.2 acres 123.87 acres
3.	Nature of the project	Residential colony
4.	DTCP License	53 to 60 of 1994 dated 31.12.1994 and valid up to 30.12.2013 9 to 24 of 1995 dated 20.11.1995 and valid up to 19.11.2013
5.	Name of the licensee	Sheetal International Pvt. Ltd. and 7 others Novelty Estates and 15 others
6.	RERA Registered/ not registered	<b>Unregistered</b>
7.	Unit no.	M-449, Ground floor [Annexure C8 at page no. 34 of the complaint]



8.	Unit measuring (super area)	975 sq. ft. [Annexure C8 at page no. 34 of the complaint]
9.	Date of allotment	31.08.2021 [Annexure C 2 at page 24 of the complaint]
10.	Date of execution of builder buyer agreement	31.08.2021 [Annexure C8 at page no. 31 of the complaint]
11.	Possession clause	<b>22. Possession.</b> <b>a) Time of handing over the Possession</b> That subject to terms of this clause and subject to the floor allottee(s) having complied with all the terms and conditions of this agreement and not being in default under any of the provisions of this Agreement and further subject to compliance with all provisions, formalities, registration of sale deed, documentation, payment of all amount due and payable to the developer by the floor allottee(s) under this agreement etc., as prescribed by the developer, the developer <b>proposes to hand over the possession of the floor upon full &amp; final payment.</b> <b>(emphasis supplied)</b>
12.	Due date of possession	24.12.2021 [As per receipt voucher of final payment amounting to Rs.1,21,311/-]
13.	Total sale consideration	Rs.78,82,875/- [Annexure C8 at page no. 54 of the complaint]
14.	Total amount paid by the complainant	Rs.79,47,971/- [As alleged by the complainant at

		page no. 19 of the complaint]
15.	Payment plan	Time linked payment plan [Annexure C8 at page no. 54 of the complaint]
16.	Occupation Certificate	01.02.2013 [Annexure R1 at page no. 16 of the reply]
17.	Possession	24.12.2021 [Annexure C9 at page no. 62 of the complaint]

**B. Facts of the complaint:**

3. That the respondent floated a scheme for residential housing project duly constructed and developed on the land situated at Sector 51, Gurugram, Haryana under the project name and style of "Orchid Island".
4. That the complainant was approached by the respondent in relation of booking of the residential unit believing which the complainant applied for booking/allotment of residential Unit on dated 31.08.2021 and a payment of Rs. 5,00,000/- was made in favour of the respondent against booking of residential unit. The unit in question was offered for a total sale consideration of Rs. 78,82,875/- inclusive of PLC (Preferential Location Charges) and Rs. 1,43,925/- as additional charges for IFMSD (Interest Free Maintenance Security Deposit) and Electricity and Meter Installation Charges.
5. That on dated 31.08.2021, the complainant was allotted duly constructed residential property/unit/floor bearing No. 449, ground floor, plot no. M-449, having an super area of 975 sq. ft.

along with one four-wheeler parking slot, in project "Orchid Island" of the respondent at Sector 1, Gurugram, Haryana.

6. That as per the payment plan the complainant had to make payment of Rs. 7,88,287/- at the time of booking and Rs. 70,94,588/- on possession of the residential unit. The payments duly made in favour of the respondent are as under: -

Sr. No.	Date of Payment	Amount (Rs.)
1	31.08.2021	5,00,000/-
2	16.09.2021	10,00,000/-
3	09.10.2021	61,82,735/-
4	20.10.2021	1,43,925/-
5	24.12.2021	1,21,311/-
Total		79,47,971/-

That in this way, a total payment of Rs. 79,47,971/- has been duly made by the complainant to the respondent.

7. That the floor buyer's agreement inter-se the parties qua the Unit in question was duly executed on dated 31.08.2021. The extracts of above referred provision regarding possession is entailed as -

*"22.a. That subject to terms of this clause and subject to the Floor/Allottee (s) having complied with all the terms and conditions of this Agreement and not being in default under any of the provisions of this Agreement and further subject to compliance with all provisions, formalities, registration of sale deed, documentation payment of all amount due and payable to the developer by the floor allottees (s) under this agreement etc., as prescribed by the developer, the developer proposes to handover the possession of the FLOOR upon Full & Final Payment"*

8. That thus, as per the assurances and even as per the buyer agreement, the possession of the property/unit/floor in question i.e. property/unit/floor bearing no. 449, ground floor, plot no. M-449, having an super area of 975 sq. ft. in project "Orchid Island" was to be handed over *upon Full & Final Payment*, relying upon which the complainant entered into the booking of the property/unit/Floor in question.
9. That the complainant mad full and final pay on dated 24.12.2021 to the respondent expecting possession of the property/unit/floor in question along with all the facilities i.e. Electricity and Water etc.
10. That the complainant received the possession Letter on dated 24.12.2021. After receiving the possession letter, the complainant, visited the property/unit/floor in question to check whether all the property/unit/floor in question is fit to live in or not.
11. That the complainant was astonished that see that there were no facilities like water and electricity etc. available in the property/unit/floor in question. That the respondent on date 04.01.2022 also sent clearance certificate to the complainant.
12. That the complainant on dated 09.01.2022 requested the respondent through email to make available facilities like water and electricity but the complainant obtained no response from the respondent. The complaint again requested the respondent through email on dated 17.01.2022 to resolve the issues related to

water and electricity. That the complainant has been repeatedly and continuously expressing discontent and objecting to the malafide attitude of the respondent towards its allottee. It is submitted that the complainant has been requesting to the respondent and made numerous requests and efforts seeking redressal of their grievance.

That in spite of highly aggrieved, the complainant is still interested in retaining the unit and therefore intends to seek possession of the floor/ unit/ flat after the respondent resolves the issues related to facilities like water, electricity etc. immediately.

**C. Relief sought by the complainant:**

13. The complainant has sought following relief(s):

- i. Direct the respondent to pay Interest for every month of delay at Prevailing rate of interests applicable or directed by the Honourable Authority.
- ii. Direct the respondent not to charge maintenance charge or any other charge till physical possession.
- iii. Direct the respondent to pay litigation expenses of Rs.1,50,000/-

**D. Reply by respondent:**

14. That the complainant had approached the respondent and expressed her interest in purchasing a duly constructed independent floor admeasuring 975 sq. ft. super area, located on the ground floor of the aforesaid plot no M-449 of the project. The

complainant had approached the respondent after conducting independent and extensive investigations into all aspects of the project including the requisite sanctions/permissions from the competent authorities and after physical inspection of the said property and thereafter booked the unit in question.

15. That the unit was allotted in favour of the complainant on 31.08.2021. The buyer's agreement was executed between the complainant and the respondent on the same day, i.e. 31.08.2021. It is pertinent to mention herein that the buyer's agreement was willingly and consciously executed by the complainant after duly understanding and accepting the terms and conditions thereof. The buyer's agreement is binding upon the complainant with full force and effect.
16. That in accordance with clause 22(a) of the buyer's agreement, which provides that possession of the unit shall be delivered upon receipt of complete payment by the respondent, the respondent offered possession of the unit to the complainant on 24.12.2021.
17. That clause 37 of the buyer's agreement which deals with maintenance is reproduced hereinbelow for ready reference:

*37. Maintenance*

*In order to provide the necessary maintenance service to Floor Allottee(s), Orchid Island Resident Welfare Association (OIRWA) shall provide the maintenance services in line with the memorandum of understanding executed on 20.06.2018 and on payment of Interest free maintenance security as well as maintenance & facilities charges from time to time. A separate maintenance services agreement (MSA) shall be executed*





*among OIRWA, Floor Allottee(s) and the developer i.e OIDPL, wherein OIDPL shall be confirming party.*

*Floor Allottee(s) agree(s) to pay the maintenance bill as raised by the OIRWA or its nominated agency from the date of sale on pro rata basis irrespective of whether the Floor Allottee(s) is in actual possession of the floor or not.*

*In order to secure due performance of the floor allottee(s) in payment of the maintenance bills and other charges raised by OIRWA or its nominated maintenance agency, the floor allottee(s) agrees to deposit with OIRWA through the Developer a interest free maintenance security (IFMS) @ Rs 75/- (Rupees Seventy Five Only) per sq ft of the Super Area of the floor. The IFMS shall be deposited with the Developer along with sale consideration on or before taking over the possession.*

*The OIDPL, on receipt of IFMS , shall transfer the same to OIRWA in line with the memorandum of understanding executed on 20-06-2018 and OIRWA shall issue receipts in triplicate, one of them shall be given to Floor Allottee(s) and 2nd copy to OIDPL and 3rd copy for OIRWA for its records. For any issue related to the maintenance, its charges or services, the Floor Allottee shall deal directly with the service provider and the Developer's responsibility is limited to the execution of the MSA and transfer of IFMS to OIRWA.*

18. That it is pertinent to mention herein that with effect from 01.04.2018, the operation of maintenance and facility services of the project was transferred by the respondent to the Orchid Island Residents Welfare Association (OIRWA/the Association) upon the terms and conditions set out in the Memorandum of Understanding dated 20.06.2018.
19. That, inter alia, the electricity supply system inclusive of DHBVN and DG as per annexure D to the said MOU and maintenance of all common facilities, streetlights, DG station. Distribution system, traffic management system, water storage and supply system, were handed over by the respondent to the OIRWA in terms of

clause 1.1.4 and 1.2.3 of the said MOU. Thus, with effect from 01.04.2018, the supply of electricity and water to all the units in the project, including the unit of the complainant, is under the control of OIRWA.

20. That in accordance with clause 3 of the MOU, it was agreed between the respondent and OIRWA that whenever a unit in the project was sold by the respondent after the execution of the MOU, the Interest Free Maintenance Security (IFMS) amount, once received from the customer, would be transferred by the respondent to the OIRWA and that on receipt of the said IFMS, OIRWA shall provide such customer/buyer of the unit, all maintenance and facilities services as are being provided by OIRWA as to regular and existing occupants/owners/residents of the project and maintenance dues for such flats shall be charged from the date of taking possession onwards directly by the OIRWA.
21. That, accordingly, vide email dated 26.10.2021 the respondent gave intimation to OIRWA regarding sale of the unit in favour of the complainant. The respondent further informed that IFMS amounting to Rs 73,125/- had been transferred through NEFT on 22.10.2021. The respondent transferred the IFMS amount received from the complainant to OIRWA in the bonafide belief that OIRWA shall honour its obligations under the MOU executed between the respondent and OIRWA and that the OIRWA shall provide electricity supply, water supply and other services and

facilities that are being provided by OIRWA to the other residents/ occupants of the project and execute the maintenance and services agreement with the complainant and the respondent in accordance with clause 7 of the MOU.

22. That, however, the respondent was shocked to find that on 01.02.2022, the OIRWA has transferred back the IFMS amount of the complainant, without affording any explanation. The respondent orally enquired from the OIRWA as to the reason why the IFMS amount had been returned. The respondent also orally enquired about the supply of electricity, water and other services and facilities to the complainant in accordance with the MOU executed between the complainant and the respondent, but no explanation was provided by the OIRWA.
23. That in the meanwhile, the respondent had sold another property in the project, situated on the ground floor of Plot No M-578A having a plot area admeasuring 146 sq. yards to Mr Saurav Das, Mr. Sampad Narayan Das and Mrs Nupur Yadav. The IFMS amount received from the said allottees had also been transferred by the respondent in favour of OIRWA. However, the OIRWA refused to provide supply of electricity and water and other services to the said allottees. Being aggrieved by the illegal, high handed and arbitrary acts on the part of the OIRWA, Mr Saurav Das and others filed a civil Suit bearing No 328 of 2022 in the court of Shri Anil Kaushik, Civil Judge, Senior Division, Gurugram against the OIRWA

and the respondent herein has been impleaded as a proforma defendant in the said suit.

24. That by order dated 18.02.2022, the Hon'ble Court was pleased to allow the interim application filed by Mr Saurav Das and others and has directed the OIRWA to immediately make available temporary electricity connection till decision of the suit.
25. That it is submitted that the OIRWA has instituted frivolous litigation against the respondent in various courts/fora including the Civil Courts at Gurugram, the Hon'ble NCDRC, New Delhi as well as before this Hon'ble Authority. Not only that, the OIRWA has also instituted proxy litigation through several of its members against the respondent in order to mount pressure and cause harassment to the respondent. Denial/refusal of electricity, water and supply of their services and amenities to the complainant herein as well as Mr Saurav Das and others, are intimidatory tactics employed by the OIRWA to further harass and mount pressure on the respondent to give in to their extortionate demands. Actually, the OIRWA has no authority to deny supply of electricity, water, sewerage facilities and other facilities and amenities in the project including the use of common areas and services to any of the occupants including the complainant as long as such allottee is making payment of the applicable maintenance charges.
26. That surprisingly, the OIRWA has been raising bills for maintenance services upon the respondent in respect of the

complainant's unit thus admitting that maintenance services are to be provided to the unit in question. Maintenance Bill in respect of the complainant's unit in the name of the respondent for the month of September 2021 reflecting arrears of Rs 1,19,934.36/- However, shockingly , the respondent has reason to believe that the OIRWA has refused to accept arrears and current maintenance charges from the complainant. It is submitted that the denial of electricity and water supply and other facilities and amenities to the complainant by the OIRWA is absolutely illegal, arbitrary, malafide and mischievous.

27. That in so far as the respondent is concerned, the respondent on its part has acted in accordance with the MOU executed between the respondent and the OIRWA. The respondent has duly transferred the IFMS amount received from the complainant to the OIRWA and requested OIRWA to make available all the amenities and facilities in the project to the complainant including supply of water, electricity etc. However, the OIRWA is acting in a wholly illegal, arbitrary, high handed and malafide manner in furtherance of its ulterior motives. There is no default or lapse in so far as the respondent is concerned.
28. That it is submitted that the OIRWA and its president ought to be directed by this Hon'ble Authority to forthwith provide regular and uninterrupted supply of water and electricity , sewerage and other facilities, amenities and services including unfettered enjoyment of common areas and facilities of the project by the

complainant as well as other present and future purchasers of units in the project, subject to payment of IFMS and applicable maintenance charges.

29. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

**E. Jurisdiction of the authority:**

30. The plea of the respondent regarding rejection of complaint on ground of jurisdiction stands rejected. 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**

As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. 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**

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)(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.

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.

**F. Findings regarding relief sought by the complainants:**

**F.1 Direct the respondent to pay interest for every month of delay at prevailing rate of interest.**

31. Considering the above-mentioned facts, the authority is of the view that as per clause 22 of the buyer's agreement i.e., the developer proposes to hand over the possession of the floor upon full & final payment. The buyer's agreement was executed

between the parties on 31.08.2021 and final payment amounting to Rs.1,21,311/- has been paid by the complainant on 24.12.2021 vide receipt annexed at page no. 29 of the complaint. So, the due date of possession comes out to be 24.12.2021.

**The complainant is not entitled to delayed possession charges** as per the proviso of section 18(1) of the Real Estate (Regulation and Development) Act, 2016 at the prescribed rate of interest i.e. 9.30% p.a. as the respondent has offered the possession and the complainant had taken the possession on 24.12.2021 on page 62 of the complaint.

**F.2 Direct the respondent not to charge maintenance charge or any other charge till physical possession.**

32. The clause 37 of the BBA executed on 31.08.2021 is reproduced below:

*37. Maintenance:*

*In order to provide necessary maintenance services to Floor Allottee(s), Orchid Island Resident Welfare Association (OIRWA) shall provide the maintenance services in line with the memorandum of understanding executed on 20-06-2018 and on payment of Interest free maintenance security as well as maintenance & facilities charges from time to time. A separate maintenance services agreement (MSA) shall be executed among OIRWA, Floor Allottee(s) and the developer i.e. OIDPL, wherein OIDPL shall be confirming party.*

*Floor allottee(s) agree(s) to pay the maintenance bill as raised by the OIRWA or it's nominated agency from the date of sale on pro-rata basis irrespective of whether the Floor Allottee(s) is in actual possession of the floor or not.*

*In order to secure due performance of the floor allottee(s) in payment of the maintenance bills and other charges raised by*





*OIRWA or it's nominated maintenance agency, the floor allottee(s) agrees to deposit with OIRWA through the Developer a interest free maintenance security (FMS) @Rs. 75/ per Sq. ft of the Super Area of the floor The IFMS shall be deposited with the Developer along with sale consideration on or before taking over the possession*

*The OIDPL, on receipt of IFMS, shall transfer the same to OIRWA in line with the memorandum of understanding executed on 20-06-2018 and OIRWA shall issue receipts in triplicate, one of them shall be given to Floor Allottee(s) and 2nd copy to OIDPL and 3rd copy for OIRWA for its records. For any issue related to the maintenance, its charges or services, the Floor Allottee shall deal directly with the service provider and the Developer's responsibility is limited to the execution of MSA and transfer of IFMS to OIRWA.*

The respondent has already delivered possession of the allotted unit to the complainant by virtue of clause 37 of BBA dated 31.08.2021. Even the possession certificate signed by both the parties is a testimony to that fact. However, as per clause 37 of BBA reproduced above, orchid Island resident welfare association is to provide maintenance service in line with MOU executed on 20.06.2018 between Orchid Island Resident Welfare Association and the respondent. So, after taking possession, it is the Orchid Island Resident Welfare Association who is to maintain the project. The issue with regard to providing some services also arose between some of the allottees and the respondent and the resident Welfare Association has approached the civil court (CS 328 of 2022) in which an interim direction has been given in favour of the allottees by the civil court on 18.02.2022. So when maintenance of the project is being done by the resident welfare

association as evident from invoice dated 01.09.2021 [page 107 of the reply] and IFMS has already been transferred to the resident welfare Association by the respondent on 26.10.2021 [Page 58 of the reply], then no direction with regard to charge of any maintenance amount to the developer can be issued.

**Cost of Litigation:**

The complainant is claiming compensation in the present relief. The authority is of the view that it is important to understand that the Act has clearly provided interest and compensation as separate entitlement/rights which the allottee can claim. For claiming compensation under sections 12, 14, 18 and section 19 of the Act, the complainant may file a separate complaint before Adjudicating Officer under section 31 read with section 71 of the Act and rule 29 of the rules.

**G. Directions of the authority:**

33. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act of 2016 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. The complainant is not entitled to any delay possession charges in view of findings of the authority recorded in para 31 of the order.
- ii. The possession of the allotted unit has already been taken over by the complainant on 24.12.2021. A resident welfare



association by the name of Orchid Island Resident Welfare Association is maintain the project and the amount of IFMS has already been transferred to that body , so no direction as sought by the complainant to the respondent to charge maintenance from her qua the allotted unit can be issued.

- iii. The respondent shall not charge holding charges from the complainant at any point of time even after being part of agreement as per law settled by Hon'ble Supreme Court in civil appeal no. 3864-3889/2020. Moreover, the respondent shall not charge anything which is not part of buyer's agreement.

34. Complaint stands disposed of.

35. File be consigned to registry.

V.I-3  
(Vijay Kumar Goyal)  
Member

(Dr. KK Khandelwal)  
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

**Dated: 17.05.2022**