BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no.	2924 of 2020
Date of filing complaint	15.10.2020
First date of hearing	13.11.2020
Date of decision	01.12.2022

Anish Jain **R/o:** BG-02, Mahindra Aura, Sector 110A, Gurugram, Haryana-122017	**Complainant**
Versus	
1. Mahindra Lifespace Developers Ltd. **Regd. Office:** Mahindra Towers, 5th floor, Road no. 13, Worli, Mumbai, Maharashtra-400018 2. Mahindra and Mahindra Ltd. **Regd. office:** Gateway Building, Apollo Bunder, Mumbai, Maharashtra-400001	**Respondents**

CORAM:	
Shri Vijay Kumar Goyal	**Member**
Shri Sanjeev Kumar Arora	**Member**
APPEARANCE:	
Sh. Harshit Batra and Ms. Tanya (Advocates)	Complainant
Sh. Saifur Rehman (Advocate)	Respondents

ORDER

1. The present complaint has been filed by the complainants/allottees under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 29 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 complainants, date of proposed handing over the possession and delay period, if any, have been detailed in the following tabular form:

S.N.	Particulars	Details
1.	Name of the project	"Aura", Sector 110A, Gurugram
2.	DTCP Licence	43 of 2008
3.	Unit no.	G02, tower B [As per page no. 49 of complaint]
4.	Unit measuring	1550 sq. ft. [As per page no. 49 of complaint]
5.	Revised area	1615 sq. ft [As per conveyance deed at page 133 of the complaint]
6.	Date of allotment	24.12.2010 [Page 57 of the complaint]
7.	Date of execution of Floor buyer's agreement	27.11.2010 [Page no. 47 of the complaint]
8.	Possession clause	**15. Time of Handing Over Possession:** Barring unforeseen circumstances and force majeure events as stipulated hereunder, the possession of the said Apartment is proposed to be delivered by the Company to

		the Allottee within 30 months (two and half years) (hereinafter referred to as "the Stipulated Date") from the date of actual start of the construction of a particular Tower/Building in which the registration for allotment is made, subject always to timely payment of all charges including the Basic Sale Price, Stamp Duty, Registration Fees and Other Charges as stipulated herein or as may be demanded by the Company from time to time in this regard.
9.	Due date of possession	Cannot be ascertained as date of start of construction is not on record
10.	Total sale consideration	Rs. 55,15,125/- [As per conveyance deed at page 130 of the complaint]
11.	Total amount paid by the complainant	Rs. 55,15,125/- [As per conveyance deed at page 133 of the complaint]
12.	Occupation certificate dated	16.10.2014 For tower B [Page 90 of complaint]
13.	Completion certificate	08.02.2018 [Page 212 of the complaint]
14.	Offer of Possession	29.06.2015 [Page 117 of complaint]
15.	Conveyance Deed	30.07.2015 [Page 130 of complaint]

B. Facts of the complaint:

3. That the complainant and his wife are owners of apartment bearing no. BG-02 in group housing society "AURA" developed by Mahindra Lifespace Developers Limited and are residing there. The complainant is aggrieved by poor quality construction, violation of terms of occupation certificate, illegal

issuance of completion certificate, violation of terms of completion certificate, besides other illegalities like violations of building plans, H-VAT calculation, sale of open parking etc.

4. That despite specific order by this Hon'ble Authority passed in "Simmi Sikka" matter (complaint no. 7 of 2018), the respondents did not get the project registered under the Act of 2016. It is pertinent to mention that the respondents had filed an application dated 09.12.2016 but the same got rejected on account of wrong information submitted before DTCP. Thereafter, an application was submitted on 19.05.2017 as already specified above. The completion certificate was finally issued to the respondent on 06.02.2018. That by non-registration of project, the respondents have violated Section 3 of the Act and thus should be penalized under Section 59 of the Act.

5. That the respondents had violated the terms of license / occupation certificate/s and had obtained the occupation certificate/s/ completion certificate on false information and without following the proper procedure as:

   i. External development works were not complete as there was no water supply or sewerage connection to the external services in the said society/apartment till the issuance of the completion certificate

   ii. Respondents did not even comply with the instructions mentioned in the license / occupation certificate/s and undertaking given by them to various authorities, in respect of the water supply and sewerage connection to the external services, for seeking approvals enabling construction and issuance of occupation certificate/s;

   iii. That till March 2019 there was no quality control on water being received through tankers for drinking

iv. Till March 2019 residents /allottees have been made to bear the heavy costs of porting the water, although the same was obligation of the developer / Respondents.

6. That the occupation certificate dated 16.10.2014 was granted in a under law and/or guidelines issued by DTCP, without completion of services and proper inspection thereof, on the basis of an application dated 21.03.2014 as:

   a. The construction/development work was still in progress in March 2014, the date of application.

   b. The application was incomplete and was not accompanied by requisite documents like FIRE NOC, which was issued only on 12.06.2014 / 21.05.2014, while FIRE NOC is a pre-requisite for submission of application for occupation certificate.

   c. The Respondents themselves had issued a Certificate dated 22.04.2014 to the effect that super structure of Tower-B has been completed along with demand dated 25.04.2014 (mail dated 26.04.2014).

   d. Respondents issued a Certificate dated 25.08.2014 to the effect that completion of flooring in Tower-B along with demand dated 28.08.2014 (mail dated 31.08.2014).

   e. Respondents issued a Certificate dated 12.10.2014 to the effect that services have been laid in Tower-B along with demand for payment dated 17.10.2014 (at the stage of completion of services) (mail dated 20.10.2014).

7. That the water tanker charges were to be borne by the respondents till activation of regular HUDA piped water connection That as mentioned above, despite specific conditions of various approvals the Respondents

did not ensure supply of water at their cost to the project and till December 2017 charged it from allottees and thereafter left the allottees / residents at their own fate.

8. That even the car parking not provided as per approvals. That the respondents had committed 1500 car parking spaces for getting environmental clearances. But contrary to their commitments, they proposed a total of 979 car parking spaces for the Project in the Building Plans (approved on 10.06.2014) against commitment of 1500 ECS. That at site the number of parking slots is even far less than even 979 the respondents, in their greed, sold open car parking spaces which were part of the common areas and belonged to the allottees in common/RWA, which amount needs to be transferred to RWA along with interest at prescribed rate.

9. That the respondents had installed DG sets as per norms to meet the power requirements, more so as the DHBVN power connection was energized only on 04.04.2016.17. That the costing and running cost of the said DG's are a part of the consideration and the said DGs are part of common infrastructure for the project. That the respondents for enhancement/ increase of minimum 2KW power back-up had charged Rs.20,000/- (per KW) + Service Tax i.e., Rs.45,600/-.That as such the amounts charged by the respondents for enhancement of power back-up (Rs.2,28,00,000/- assuming 1000 KW sold) was illegal, hence needs to be refunded (along with interest at prescribed rate) to all the allottees of the project, who have been made to pay such amount. That rather as on date the capacity of the DG sets is not sufficient to cater to the needs of the residents.

10. That as per approved building plan and subsequently revised building plan, latest being approved on 10.06.2014, the respondents were required to provide two (2) nursery schools. But they have constructed one (1) nursery school and have numbered one building as two (2) buildings i.e. NS1 & NS2.

11. That the respondents are not fulfilling their obligations for defect liability as provided under the Act and Rules. That the structure/ workmanship of the colony/project as a whole and the apartment of the complainant is of very poor quality and has within a short span of time have started giving way falling apart endangering the lives of the residents in the project. That further there is seepage problem, flooding in rainy season, water logging problem at various places in the colony / project leadings to weakening of the plaster / structure and respondents being liable to rectify the said defects are not taking any corrective steps.

12. That due to poor quality material and workmanship coupled with deficiency of the respondents, water seeped into the apartment of the complainant due to leakage of water pipe and blocked drainage water. The same clearly points out to poor quality of material used by the respondents and poor workmanship in the project. After the leakage incident, it was found that there was consistent seepage / dampness on the walls. It was surprising that the seepage / dampness was present on walls even which had no water pipeline passing through / near it. As the respondents were not rectifying the defects and rather upon enforcement of RERA Act in 2017 threatened to exit the project. The complainant was constrained to file a suit for injunction, wherein, upon assurance of the respondents to rectify the defect, the complainant withdrew the suit. However, the problems were far from over. As the

respondents could not control the seepage/ dampness, they left the repair work midway and stopped responding to request of the complainant. The complaint vide notice dated 18.04.2019 called upon the respondents to rectify the defects as per defect liability obligations under the Act, but to no avail.

13. That as if this was not enough, the respondents in an unprofessional manner have not provided any pipeline / way for wiring of telephone / intercom / cable to the apartment of the complainant. A pipe has been inserted between apartment next door (BG-03) and the apartment of the complainant. The wiring to the apartment of Complainant can only be laid / repaired / taken off by entering into adjacent apartment. The said fact / defect came to the knowledge of the complainant in June 2020 when the intercom stopped working and the complainant had applied for a new internet connection.

14. That the electrical wire to the tower-B is of very poor quality and was not upto specification for taking power load of the tower and used to give way every now and then. The same has to be repaired at costs that would not have otherwise been required, had the respondents carried out work in a professional manner.

15. That the UPVC work in tower B has been got done by the Respondents through a local vendor which is of very poor quality and did not even stand 2-3 years. In fact majority of the apartment are facing problems due to poor quality material and non-standard dimensions. All complaints the vendor of the Respondents have fallen on deaf ears.

16. That the dampness / seepage is life endangering as their consistent humidity in the apartment and further seepage will slowly seep into the foundations thereby weakening the structure, reducing the life of the

building and can be life threatening. Apart from this continuous dampness causes health problems for residents.

17. That admittedly the possession of the apartment was to be offered prior to March 2014.That admittedly the value of apartment of the Complainant is Rs.53,60,125/- (BSP+PLC), as has also been disclosed by the Respondents in the Declaration Vasika no. 23076 dated 19.12.2014. That the Respondents had represented that the HVAT liability as per the amnesty scheme is @ 1.05% of the entire aggregate amount which means revenue recognised as per the audited financial statements of the relevant financial year or valuable consideration, whichever is higher, in relation to business. That as the version of the Respondents the amnesty scheme covered whole of the consideration payable for the apartment and not in piecemeal manner. Moreover, as per the Respondents the apartment of the Complainant was ready in March 2014, as such was to be assessed completely under the amnesty scheme. That an amount of Rs.47,785/- was charged by the respondents in June 2017.

18. That the respondents have not filed the declarations as provided under the Haryana Apartment Ownership Act, 1983 & Rules, 1987 and have manipulated the form provided in the Rules. The Respondents have not given built-up area of the apartment and have neither given percentage of voting rights etc in the same and the declaration needs to be filed again according to Rules, 1987. The "Final Declaration" has not been filed till date.

C. Relief sought by the complainants:

19. The complainants have sought following relief(s):

    i. Impose penalty on the respondent for violation of section 3 of the Act.

ii. Impose maximum penalty, separately for each violation, as provided under section 61 of the Act for not complying with sections 11(4), 14(1), 14(3), 19(1) and 19(5) of the Act.

iii. Hold the occupation certificate and completion certificate as null and void

iv. Direct the DTCP to take appropriate action against the respondents.

v. Direct the respondent to rectify all defects, file "final declaration" and thereafter apply afresh for completion certificate.

vi. Direct the respondent to refund illegally charged as enumerated in the complaint along with prescribed rate of interest.

vii. Litigation expenses.

D. Reply by respondents:

The respondents by way of written reply made following submissions:

20. At the outset, the respondent denies each and every averment, contention, insinuation and allegation made by the complainants in the complaint under reply and the contents of the same are denied in its entirety, save and except what is expressly admitted hereinafter.

21. During development of the project, the original allottees i.e., Col. Vijay Kumar Kaul and Col. Dr. Neena Kaul ("**Original Allottees**") had applied to the respondent for allotment of an apartment *vide* their application dated 01.10.2010. Thereafter, the apartment buyer agreement ("**ABA**") was executed between the original allottees and the respondent on 27.12.2010 for sale consideration of INR 49,21,250 @ INR 3175 per sq. ft. Subsequently on 30.07.2012, the original allottees of the apartment

sold the apartment to the present complainant and all documentation with respect to the transfer of the apartment from the original allottees to the complainant was completed.

22. The respondent applied for the occupation certificate ("**OC**") for phase II of the project on 21.03.2014 and the same was received on 16.10.2014 (OC 1 for Phase I & II). Immediately following receipt of OC dated 16.10.2014, on 29.06.2015 the respondent issued final call letter to the complainant and initiated the process for handing over possession of the apartment. By way of the final call letter, the complainant was *inter alia* informed that though in terms of the ABA, the super area was 1550 sq. ft., the same was tentative and was subject variation (limited to 5%) and further, subject to final calculation upon completion of construction. Accordingly, the complainant was duly informed at the time of offering possession (as is the requirement under clause 5 of the ABA) that the super area of the apartment had increased from 1550 sq. ft. to 1615 sq. ft. based on final calculation of the super area. Thus, the complainant was duly notified of the increase in the total super area of the apartment in terms of clause 6 of the ABA.

23. Thereafter, the respondent issued offer of possession *vide* letter dated 06.07.2015 and thereafter, the conveyance deed for the apartment was registered on 30.07.2015. Subsequently, the complainant took peaceful possession of the apartment on 07.09.2015.

24. Despite taking possession in September 2015 and having registered the conveyance deed for the apartment on 30.07.2015, after a lapse of more than 5 years, the complainant with a *malafide* intent and to further extort monies from the respondent, filed the present complaint on 24.07.2020.

25. The complainant incorrectly alleges that the respondent should get the project registered under the Act. In this regard, the respondent most humbly submits that such averment of the complainant is based on wholly erroneously interpretation and understanding of the provisions of the act and obligations of promoters of projects thereunder.

26. A bare perusal of the aforesaid provision evinces that the Act mandates that only the following projects must be registered under the Act:

    i. Projects which are ongoing on the date of commencement of the Act; ***and***

    ii. For which completion certificate has not been issued.

27. The Act further clarifies that registration of such real estate projects where the promoter has received completion certificate prior to commencement of the Act, do not require registration under section 3 of the Act. Additionally, where any work is undertaken by a promoter of a project, which does not involve any marketing, advertising, selling or new allotment of any apartment, plot or building (whichever is applicable) is not required to get the project registered under the Act.

28. The intent of the legislature is further manifest by the fact that the explanation appended to aforesaid section further clarifies that in cases where the real estate project is being developed in phases, every such phase will be treated as a separate real estate project and the promoter will be required under law to get such ongoing phase registered under the Act.

29. It is most respectfully submitted that the above referenced is inapplicable to the present case on account of the fact the project under consideration in the present complaint was not ongoing when the Act came into force in its entirety on 01.05.2017. It is significant to note that the occupation certificate for all phases of the project were obtained before Act came into force and thus, at the time of commencement of the Act, the project was not ongoing. More particularly, the respondent obtained OC for all phases of the project on the following dates:
    a. OC dated 16.10.2014 (OC 1 for Phase I & II);
    b. OC dated 12.08.2015 (OC 2 for Phase III);
    c. OC dated 10.12.2015 (OC 3 for Phase IV); and
    d. OC dated 28.09.2016 (OC 4 for Phase V).
    e. Completion Certificate for the Project was issued on 08.02.2018.

30. As stated above, the respondent obtained OC of all phases much prior to the commencement of the Act and/or Rules. Accordingly, the project is not an "*on-going Project*" within the meaning of the Act and/or rules made thereunder and therefore, does not require registration under section 3 of the Act.

31. Thus, having completed the project and offered possession of apartments to all its customers in 2016, the respondent is not required under law to retrospectively apply for registration of the project under the Act and all averments of the complainant to the contrary, are based on an erroneous interpretation and incorrect understanding of law. Given the aforesaid submissions, the respondent most respectfully submits that this hon'ble authority has no jurisdiction to entertain the present complaint.

32. The complainant further alleges that respondent has violated the terms of license/Ocs and has obtained such Ocs/completion certificate basis false information and without following the proper procedure. Such averments have been made by the complainant without substantiating or particularising any of its incorrect allegations.

33. Additionally, in response to the complainant's specific allegations with respect to external developmental works and quality control on drinking water, the respondent submits as under:

    i. _External Developmental Works:_ While the complainant alleges that external development works in the project could not be completed due to lack of water supply from HUDA to the project site, it may be significant to note that contrary to the complainant's malicious contentions, the respondent submits that when land for the project was purchased by the respondent, existing borewells were part of the land, at the project site. However subsequently, in the matter of *Sunil Singh v. Ministry of Environment and Forests (MOEF) and Ors. (CWP No. 20032 of 2008),* the Hon'ble High Court of Punjab and Haryana passed a restraining order, granting injunction on the usage of underground water for constructions activity at the site in or around 31.07.2012. Accordingly, *vide* notice dated 01.09.2012, the Deputy Commissioner had directed various builders, including the respondent to dismantle any borewell on the construction site and stop usage of groundwater for construction purposes. The respondent had duly complied with the said direction and dismantled three borewells at the project site. Thereafter, the respondent completed constructions activities on site using

recycled water. The respondent re-deployed resources and equipment to use alternate sources of water for construction. Respondent installed a water treatment plant to ensure usability of STP water for construction. However, since there was no water supply from HUDA in the project, the residents were forced to meet their water requirements through water tankers, causing grave inconvenience and additional costs. Accordingly, *vide* letter dated 11.05.2016, respondent requested the Deputy Commissioner to permit re-installation of borewells at the Project site. The same was followed by a reminder issued on 06.02.2017. However, *vide* letter dated 14.02.2017, the Ground Water cell informed the Respondent that in accordance with orders passed by the Hon'ble Punjab and Haryana High Court in CWP 20032/2008, permission for a tubewell could not be granted. Thus, in light of the foregoing it is submitted that the Respondent made all possible alternate arrangement to make water available for construction as well as completion of external developmental works at the project site. Thus, in light of the foregoing it is submitted that the respondent made all possible alternate arrangement to make water available for construction as well as completion of external developmental works at the project site and therefore, all allegations to the contrary are entirely false and inaccurate.

ii. *Quality control on water being received through tankers for drinking:* In terms of clause 5 of the OC dated 16.10.2014 the respondent is fully responsible to supply water as per norms till such time the colony is handed over after final completion. However, since there was no water connection at the time of grant

of OC, *vide* applications dated 13.04.2015 and 25.05.2015, the respondent applied for permission to supply drinking water through tankers. While the respondent continued to actively follow up on water connection from HUDA to the project site, the same was only granted in September 2017 *vide* Memo no. 13916 dated 13.09.2017. Despite sanction of water supply in September 2017, there was no available government infrastructure until first week of December 2018. Accordingly, the respondent filed an application for connection of water supply, on 17.12.18 and same was connected and meter testing done in March 2019.

34. The complainant further alleges that OC dated 16.10.2014 was granted in a clandestine manner without following due process prescribed under law and/or guidelines issued by DTCP and/or without proper documentation and/or completion of services and proper inspection. In this regard, the respondent submits that on 21.03.2014, the respondent applied for obtaining OC for Phase – I (Tower C, D & E) and Phase-II (Tower A & B) and pursuant to the authorities finding that the developer had complied with all pre-requisites for the project, granted OC on 16.10.2014. Therefore, all allegations of the complainant to the contrary are unfounded and without any basis in fact.

35. Out of the total licensed area of 17.1687 acres, Deed of Declaration for Towers A to E and EWS building block (Phase I & II) was duly registered by the respondent and filed in terms of Section 2 r/w Section 11 of the Haryana Apartment Ownership Act, 1983 on 19.12.2014, bearing registration no. 23076 in Book No.1. Similarly, Deed of Declaration for towers F&G (Phase III) and subsequently, on 19.10.2015 the Deed of

Declaration was registered for Towers A to E, bearing registration no. 17573 in book no.1. Thereafter, Deed of Declaration for towers H&I was registered on 02.02.2016 (Phase IV) bearing registration no. 27309 in book no.1 and for towers J&K was registered on 27.12.2016 (Phase V). Therefore, it was most respectfully submitted that immediately upon receipt of OC for every phase, the Deed of Declaration was filed by the respondent and any allegation of the complainant to the contrary, is baseless and unfounded in law and fact.

36. In relation to the issue of car parking, the respondent submit that *vide* correspondence dated 17.01.2017, it intimated all its customers regarding the availability of additional car parking space in the project. Given the various requests received from our customers for additional car parking slots in the project, the respondent informed its customers that the company would proceed and process such requests as per the processes laid down by DTCP as part of the license and site plan approval. The customers were further informed that 59 car park spaces (33 surface & 26 covered) were available for allotment on first come-first-serve basis. The customers were invited to give their preference for additional car park space (surface or basement). The applicable charges towards the exclusive right to use the additional car park spaces were as follows-

    i. Open (Surface) Car Park Slot – INR 2,75,000/- + applicable taxes @ 15% (Rs 41,250/-) = Total Rs 3,16,250/-
    ii. Covered (Basement) Car Park Slot (Independent) – INR 4,00,000/- + applicable taxes @ 15% (Rs 60,000/-) = Total Rs 4,60,000/-
    iii. Covered (Basement) Car Park Slot (Dependent X3) – INR 8,00,000 + applicable taxes @ 15% (Rs 1,20,000/-)= Total Rs 9,20,000/-

37. *Vide* the aforesaid letter, the customers were further informed that the respondent had applied for approval of revised building plan with additional car park spaces. Further, in case the requests for additional car park spaces were more than the available slots, the Respondent would offer additional car parking only upon receipt of approved revised plan.

38. It was submitted that pursuant to obtaining all environmental clearances, the respondent allotted a total number of 979 car parking spaces in the project in compliance within the approved building plans. In terms of the approved building plan dated 06.05.2013 [*order no 38691*], the total number of car parking is 979 and all provisions of car parking have been provided as per the approved building plans.

39. It is further submitted that the respondent has granted exclusive '*right to use*' open car parking spaces. In terms of the environmental clearance issued for the project, the maximum permissible car parking slots are 1500, however this is subject to the final approval granted by DTCP and thus, all car parking slots provided by the respondent in the project, are strictly in terms of the approved building plans issued by DTCP.

40. It is submitted that in terms of clause 3 of the ABA, the allottee agrees to pay electricity connection charges as per actuals. Even by way of the offer of possession letter dated 29.06.2015, the respondent duly informed the complainant that electricity charges are applicable as per Haryana Electricity Authority. By way of the said letter, the complainant was also informed that while as per the ABA, power back-up of 1KVA had been allotted to the customer, in the event the customer wished to enhance

the power back up, to 3KVA, the charges for the same would be INR 20,000 per KVA (plus service tax).

41. Furthermore, demand load on DG for complete Aura project is 5628 which is without any consideration of overall project diversity. With diversity of (0.45 of tower's flat load & 0.85 of common area load) , CD load requirement comes out to be 2250 KW or 2812 KVA & DG design rating requirement at 90% loading of CD comes out to be 3125 KVA which is very much within serving limit of installed DG Sets. Thus, for requirement of 3125 KVA, installed DG capacity is 4000 KVA, which is sufficient to sustain residents' requirement in the Aura project.

42. In compliance with the terms of the approved building plans, the respondent has constructed two schools in the project namely, NS-l & NS-2, as is also evident in the OC dated 29.08.2016 of phase-V of the project. Therefore, the complainant's allegation that the respondent has failed to construct two nursery schools is factually incorrect and misleading.

43. It may be relevant to point out that when possession was handed over to the complainant in 2015, the complainant made significant changes/customization to the interiors of the apartment. During fit out work of the apartment, washroom walls & floor tiles were removed & re-fixed by the complainant. Such dismantling of walls/floor tiles by the complainant (after handing over possession of the apartment) could have resulted in internal pipes breakage.

44. At the time of re- fixing of new wall/tiles outside the washroom, the complainant undertook interior work which could have possibly resulted in creation of moisture in wall surface between plaster/ finished

external areas. Furthermore, in November 2017 after taking special approval from facilities' management, the respondent's concerned official attended to all damages that happened during the flooding of the unit/replacement of wooden flooring & wall surface rectification including re- painting & some extra works, which was also done. During this period, the respondent's concerned official also investigated any leakages from outside and found none. Additionally, some internal shaft repair work was also undertaken.

45. Delay compensation has been calculated from January 2014, towards delay in obtaining occupation certificate and compensation was paid for delay of 15 months (calculated by excluding grace period of 60 days and 3 months of force majeure (as defined in clause 19 of the ABA) on ground of non-availability of ground water for constructing). Having received such compensation and further having waived his right to exit the project upon delay in possession in accordance with clause 16 of the ABA, the complainant cannot now be permitted to raise erroneous demands in this regard.

46. *Vide* letter dated 29.06.2015, the respondent requested the complainant to create a fixed deposit of INR *311060/-* for securing the HVAT liability. Subsequently, the HVAT liability upto 31.03.2014 was determined @1.05% under amnesty scheme, to be Rs. 47,785/-. This amount was directly paid by the complainant to the respondent. Vide emails dated 25 June 2019 and 18 September 2019 the respondent had also provided detailed explanation on the calculations respondent shared the following information with the complainant:

a. The amnesty scheme was only applicable for VAT payable up to 31.03.2014. Under the amnesty scheme tax was payable @ 1.05% (i.e. 1% plus surcharge @ 5% thereon) on higher of these two amounts (a) revenue recognized in the books of accounts; or (b) valuable consideration for an apartment.

b. The VAT assessments for FY 2014-15 had concluded and the final assessment order had been received from the Haryana Excise & Taxation department.

c. The respondent had discharged HVAT liability and interest as per the amnesty scheme and assessment order for FY 2014-15.

47. Accordingly, in the case of Aura, HVAT liability for the project for the period up to 31.03.2014 had been determined under amnesty scheme @ 1.05% of total revenue recognized & for FY 2014-15, the VAT liability had been determined as per applicable HVAT Act & Rules - @ 2.51% of the total revenue recognized (as per the assessment for FY 2014-15).

Period	VAT @
FY 2013-14	1.05%
FY 2014-15	2.51%

48. The details of the VAT liability for the complainant's apartment was:

Basic Cost New	5,127,625
PLC	232,500
Revised EDC	468,641
Revised IDC	50,646

ECC	45,470
Power Backup	40,000
Additional ECC	62,040
IBMS	77,500
Total	**6,104,422**

Particulars	Revenue	%	Amount
Revenue assessed in FY 2014-15	4,550,942	1.05%	47,785
Revenue assessed in FY 2015-16	1,553,480	2.51%	38,992
Total			**86,777**

49. On 29.06.2015, the respondent issued a letter towards EDC/IDC refund based on final super area of the apartment. By way of this letter, the complainant was duly informed that basis revised building plan approvals received from DTCP for the changes carried out in the project, including additional units, the final super area for the entire project had been arrived at.

50. According to the ABA, EDC/IDC is charged from the allottee on a pro-rata basis (i.e. the ratio of the super area of the apartment to the total super area of all apartments in the complex) and is paid to the authorities on a per acre basis at the time of commencement of the project or a phase. Pursuant to building plan revisions, the final super area of the project resulted in a reduced per square foot rate for EDC/IDC.

51. During the course of construction of the project, EDC/IDC rates were further reduced by the Haryana Urban Development Authority ("**HUDA**"). Accordingly, the complainant's liability towards EDC/IDC stood @ INR 322 per square foot versus INR 374 per square foot provided at the time of booking of the apartment.
52. All other averments were denied in toto.
53. 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:

54. 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 complainants at a later stage.

F. Findings on relief sought by the complainant:

F.I Impose penalty on the respondent for violation of section 3 of the Act.

55. The complainant, in the instant case, has pleaded that the respondent has violated section 3 of the Act by non-registering its project. The complainant has contended that since the respondents' project was an ongoing one when the Act and rules framed thereunder came into force hence, registration of the same is necessary. The respondent, on the other hand, have submitted that having completed the project and

offered possession of apartments to all its customers in 2016 and thus, the project need not be registered.

56. It is pertinent to firstly highlight section 3 of the Act and the same has been reproduced as under:

> 3. ***Prior registration of real estate project with Real Estate Regulatory Authority.—***
>
> *(1) No promoter shall advertise, market, book, sell or offer for sale, or invite persons to purchase in any manner any plot, apartment or building, as the case may be, in any real estate project or part of it, in any planning area, without registering the real estate project with the Real Estate Regulatory Authority established under this Act: Provided that projects that are ongoing on the date of commencement of this Act and for which the completion certificate has not been issued, the promoter shall make an application to the Authority for registration of the said project within a period of three months from the date of commencement of this Act: Provided further that if the Authority thinks necessary, in the interest of allottees, for projects which are developed beyond the planning area but with the requisite permission of the local authority, it may, by order, direct the promoter of such project to register with the Authority, and the provisions of this Act or the rules and regulations made thereunder, shall apply to such projects from that stage of registration.*
>
> *(2) Notwithstanding anything contained in sub-section (1), no registration of the real estate project shall be required—*
>
> *(a) where the area of land proposed to be developed does not exceed five hundred square meters or the number of apartments proposed to be developed does not exceed eight inclusive of all phases: Provided that, if the appropriate Government considers it necessary, it may, reduce the threshold below five hundred square meters or eight apartments, as the case may be, inclusive of all phases, for exemption from registration under this Act;*
>
> *(b) where the promoter has received completion certificate for a real estate project prior to commencement of this Act;*
>
> *I for the purpose of renovation or repair or re-development which does not involve marketing, advertising selling or new allotment of any apartment, plot or building, as the case may be, under the real estate project.*
>
> *Explanation.—For the purpose of this section, where the real estate project is to be developed in phases, every such phase shall be considered a stand alone real estate project, and the promoter shall obtain registration under this Act for each phase separately.*

57. The term on-going project has been explained through section 2(o) of the Haryana Real Estate (Regulation and Development) Rules, 2017. Accordingly, ***"on-going project"*** *means a project for which a license was*

issued for the development under the Haryana Development and Regulation of Urban Area Act, 1975 on or before the 1st May, 2017 and where development works were yet to be completed on the said date, but does not include:

(i) any project for which after completion of development works, an application under Rule 16 of the Haryana Development and Regulation of Urban Area Rules, 1976 or under sub code 4.10 of the Haryana Building Code 2017, as the case may be, is made to the Competent Authority on or before publication of these rules and

(ii) that part of any project for which part completion/completion, occupation certificate or part thereof has been granted on or before publication of these rules.

58. In the instant case, the occupation certificate for all phases of the project was obtained by 2016 i.e., before the publication of Rules, 2017. The matter pertaining to registration of on-going project is being separately looked into by the registration branch.

F.II. Impose maximum penalty, separately for each violation, as provided under section 61 of the Act for not complying with sections 11(4), 14(1), 14(3), 19(1) and 19(5) of the Act.

59. It is a settled principle of law that for violations of prior to coming into force of Act, 2016, no penal proceedings can be taken. However, section 14(3) of the Act specifies that:

"In case any structural defect or any other defect in workmanship, quality or provision of services or any other obligations of the promoter as per the agreement for sale relating to such development is brought to the notice of the promoter within a period of five years by the allottee from the date of handing over possession, it shall be the duty of the promoter to rectify such defects without further charge, within thirty days, and in the event of promoter's failure to rectify such defects within such time, the

aggrieved allottees shall be entitled to receive appropriate compensation in the manner as provided under this Act".

60. From perusal of the abovementioned clause, it becomes clear that in case of structural defect, the duty of the promoter continues even after handing over possession of the unit. In lieu of the relief sought by the complainant-allottee, the Authority vide order dated 20.04.2022, a local commissioner was appointed to visit the site. The Local Commissioner visited the site on 02.11.2022 and submitted his report on 28.11.2022 wherein the following observations were made:

"7. Conclusion

The complainant unit in the project namely "Aura" in sector-110A, Gurugram developed by Mahindra Life Space Developers Limited has been inspected on 02.11.2022 and it is submitted that:

1. *The project has been completed and the promoter had obtained the occupation certificates vide no. ZP-378/SD(BS)/2014/24226 dated 16.10.2014, ZP-378/SD (BS)/2015/14932 dated 12.08.2015, ZP- 378/SD(BS)/2015/24480 dated 10.12.2015 and ZP- 378/SD(BS)/2016/20638 dated 28.09.2016 for the complete project. Further, the promoter had obtained the completion certificate vide no. LC-1193(111)/PA(SN)/2018/5246 dated 08.02.2018 for the project.*
2. *There is slight dampness in the walls of the complainant unit. However, the plaster and paint of the apartment are not damaged as the apartment has been repainted recently. Further the complainant has changed the floor tiles and wall tiles of the whole apartment and no other structural changes have been made by the complainant.*
3. *The promoter has obtained the water, storm and electricity connection for the project and applied for sewerage connection which is still not granted by the concerned department.*
4. *The promoter had developed one nursery school after clubbing the area of two nursery schools approved and OC granted by the competent authority.*
5. *The documents provided by the promoter are attached with the report i.e., site plan, parking plan, nursery schools plan, water connection, storm connection, electrical connection, DOD etc. along with the site photographs as annex-B".*

61. It becomes clear from the report submitted by the local commissioner that there is no structural defect in the building. It is undoubted that there is slight dampness in the walls of the complainant but the same cannot be considered as violation of section 14(3) of the Act. Hence, no penalty can be imposed on the respondent per se.

F.III. Hold the occupation certificate and completion certificate as null and void

F.IV. Direct the DTCP to take appropriate action against the respondents.

62. Both the issues being interconnected are being taken up together. The occupation certificate and completion certificate both have been obtained from DTCP being the competent authority, after taking into consideration all the factors necessary for grant of the same under statutory provisions. The Authority cannot hold OC and CC granted by the appropriate Authority as null and void. Hence, no direction to this effect.

F.V. Direct the respondent to rectify all defects, file "final declaration" and thereafter apply afresh for completion certificate.

63. In view of finding in F.II, wherein it was concluded that no violation of section 14(3) has occurred, the present relief becomes redundant.

F.VI. Direct the respondent to refund illegally charged as enumerated in the complaint along with prescribed rate of interest.

64. The complainant has not specified as to the illegal charges levied/recovered by the respondent; hence, no direction can be given in this regard.

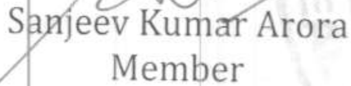
F.VII. Litigation expenses.

65. The complainant in the aforesaid relief is seeking relief w.r.t compensation. 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***. (decided on 11.11.2021), has held that an

allottee is entitled to claim compensation 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 shall be adjudged by the 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. Therefore, the complainant is advised to approach the adjudicating officer for seeking the relief of compensation, if any.

66. Complaint stands disposed off.

67. File be consigned to the registry.



Sanjeev Kumar Arora
Member

Vijay Kumar Goyal
Member

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 01.12.2022