BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no. :	**2856 of 2021**
Date of filing complaint:	**19.07.2021**
First date of hearing:	**19.08.2021**
Date of decision :	**06.10.2022**

	Arjun Kubba **R/o**: B-21, Near Jain Mandir, Sec 27, Noida-201301	**Complainant**
	Versus	
	M/s Orris Infrastructure Private Limited **R/o:** J-10/5, DLF Phase 2, Mehrauli Gurgaon Road, Gurugram-122002	**Respondent**

CORAM:	
Shri Vijay Kumar Goyal	**Member**
Shri. Ashok Sangwan	**Member**
Shri. Sanjeev Kumar Arora	**Member**
APPEARANCE:	
Ms. Varinda Goel (Advocate)	Complainant
Ms. Charu Rastogi (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 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 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	"Aster Court Premier" Sec 85, Gurugram
2.	Project area	29.018 acres
3.	Nature of the project	Residential project
4.	DTCP License	39 of 2009 dated 24.07.2009 and valid up to 23.07.2024 99 of 2011 dated 17.11.2011 and valid up to 16.11.2024
5.	Name of the licensee	Be Office Automation Products Pvt Ltd and 6 others M/S Radha Estate Pvt Ltd and 2 Ors.
6.	RERA Registered/ not registered	**Registered** GGM/287/2018/19 dated 13.10.2018 and valid up to 30.06.2020
7.	Promoter	M/s Orris Infrastructure Private Limited
8.	Unit no.	1002, 10th floor, Tower no. 30 [Page 13 of the complaint]
9.	Unit measuring (carpet	2120 sq. ft.

	area)	[Page 13 of the complaint]
10.	Date of allotment	30.10.2018 [Annexure A at page no. 10 of the complaint]
11.	Date of agreement for sale	30.10.2018 Page no. 12 of the complaint]
12.	Possession clause	7.1 The promoter assures to handover possession of the apartment for residential along with parking by June 2020 as per agreed terms and conditions unless there is a delay due to force majeure circumstances beyond control of the promoter, court orders, government policy /guidelines decisions affecting the regular development of the real estate project.
13.	Due date of possession	June 2020
14.	Total sale consideration	Rs.1,27,20,474/- [Page 14 of the complaint]
15.	Total amount paid by the complainants	Rs. 86,00,000/- Out of which Rs.78,50,000/- taken as loan from L&T finance [As per the facts alleged by the complainant at page no. 5 of the complaint]
16.	Payment plan	Time linked payment plan [Page 30 of the complaint]
17.	Occupation Certificate	Not obtained The DTCP has issued the occupation certificate dated 12.04.2021 for Tower 3K & N, Tower 3L & 3M, Tower 4A at page no 116 of the reply but the unit of the complainant has been situated in 3O (The facts mentioned in reply are

		contrary to the fact mentioned in OC that has been placed on record by the respondent) [Annexure R-3 at page no. 116 of the reply]
18.	Offer of possession	Not offered
19.	Tripartite agreement	29.10.2018 [Annexure B at page no. 20 of the complaint]

B. Facts of the complaint:

3. That relying on the assurances made by the respondent and lured by the rosy picture painted by the respondent the complainant applied for booking in the project of the respondent vide their application dated 18.10.2018.

4. It is submitted that prior to and as on the date of entering into apartment buyer's agreement the complainant had made the payment of rs.7,50,000/-in favour of the respondent as per the payment plan in relation to the apartment which was being booked by the complainant in the project of the respondent

5. That an apartment buyer's agreement was executed between the parties on 30.10.2018 under which the complainant was constrained to accept various arbitrary and unilateral clauses made in favour of the respondent. That there was no scope of attaining any mutuality at that time as the complainant had already paid a considerable amount towards the booking of the apartment and could not risk the allotment.

6. That as per the agreement the apartment the respondent was obliged deliver the possession of the apartment by June 2020 as per the clause 5 of the agreement.

7. It is submitted that to the utter disregard of the possession clause the respondent had miserably failed in completing the project even till date that is a delay of more than 1 year from its scheduled date of delivery. That aggrieved the inordinate delay in delivering the possession the complainants have been constrained to file the present complaint for refund along with interest and delay penalty charges. The complainant has come to know her personal visit to the site that the construction on the site is still undergoing

8. It is submitted that the complainant made the following payments to the respondent as and when demanded by the respondent. It is submitted that the complainant till date has made payments of Rs. 86,00,000/-. Out of which Rs. 78,50,000/-was taken as a loan from L&T Finance. It is submitted that the complainant was never intimated as to the development stage of the project or regarding the date of possession. All such requests made by the complainant were ignored by the respondent.

9. It is submitted that the delay in the delivery of the flat is solely due to the negligence of the respondent company. It is submitted that the respondent company have never informed the Complainant any force majeure circumstances which has evidently led to the halt in the construction. It is submitted that there is enough information in the public domain which suggest that the

respondent have deliberately not completed the present project and have hoodwinked the Complainant into making the payments towards the sham project with no hopes of completion. Due to the failure of the respondent in completing the project and delivering the possession of the apartment which was due in June 2020 the allottee has to make other arrangements.

C. Relief sought by the complainant:

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

    i. Direct the respondent to refund an amount of Rs.86,00,000/- alongwith interest and compensation at the prescribed rate.

D. Reply by respondent:

11. That in the present case as per clause 7 of the buyer agreement dated 30.10.2018, the respondent is supposed to hand over the possession by June 2020, however, due to the factors prevalent in the country during June 2020, the entire country was under the nation-wide lockdown and there was a complete stoppage/ ban of work and thus, the Haryana Real Estate Regulatory Authority had issued a suo moto notice of giving an extension of 6 months' period in order to complete the project.

12. In the year, 2012 on the directions of the Hon'ble Supreme Court of India, the mining activities of minor minerals (which includes sand) were regulated. The Hon'ble Supreme Court directed framing of Modern Mineral Concession Rules. Reference in this regard may be had to the judgment of *"Deepak Kumar v. State of*

Haryana, (2012) 4 SCC 629". The competent authorities took substantial time in framing the rules and in the process the availability of building materials including sand which was an important raw material for development of the said project became scarce in the NCR as well as areas around it. Further, respondent was faced with certain other force majeure events including but not limited to non-availability of raw material due to various stay orders of Hon'ble Punjab & Haryana High Court and National Green Tribunal thereby stopping/regulating the mining activities, brick kilns, regulation of the construction and development activities by the judicial authorities in NCR on account of the environmental conditions, restrictions on usage of water, etc. It is pertinent to state that the National Green Tribunal in several cases related to Punjab and Haryana had stayed mining operations including in O.A No. 171/2013, wherein vide order dated 2.11.2015 mining activities by the newly allotted mining contracts by the state of Haryana was stayed on the Yamuna river bed. These orders inter-alia continued till the year 2018. Similar orders staying the mining operations were also passed by the Hon'ble High Court and the National Green Tribunal in Punjab and Uttar Pradesh as well. The stopping of mining activity not only made procurement of material difficult but also raised the prices of sand/gravel exponentially. It was almost 2 years that the scarcity as detailed above continued, despite which all efforts were made and materials were procured at 3-4 times the rate and the construction continued without shifting any extra burden to

the customer. That the above said restrictions clearly fall within the parameter "reasons beyond the control of the respondent as described under of clause 11.1 of the buyer agreement.

13. That during that time, a Writ petition was filed in the Hon'ble High Court of Punjab and Haryana titled as "*Sunil Singh vs. Ministry of Environment & Forests Parayavaran*" which was numbered as CWP-20032-2008 wherein the Hon'ble High Court pursuant to order dated 31 July 2012 imposed a blanket ban on the use of ground water in the region of Gurgaon and adjoining areas for the purposes of construction. That on passing of the abovementioned orders by the High Court the entire construction work in the Gurgaon region came to stand still as the water is one of the essential part for construction. That in light of the order passed by the Hon'ble High Court the Respondent had to arrange and procure water from alternate sources which were far from the construction site. The arrangement of water from distant places required additional time and money which resulted in the alleged delay and further as per necessary requirements STP was required to be setup for the treatment of the procured water before the usage for construction which further resulted in the in alleged delay.

14. Orders passed by Hon'ble High Court of Punjab and Haryana wherein the Hon'ble Court has restricted use of groundwater in construction activity and directed use of only treated water from available sewerage treatment plants. However, there was lack of

number of sewage treatment plants which led to scarcity of water and further delayed the project. That in addition to this, labour rejected to work using the STP water over their health issues because of the pungent and foul smell coming from the STP water as the water from the S.T.P's of the State/Corporations had not undergone proper tertiory treatment as per prescribed norms.

15. That on 19.02.2013 the office of the executive engineer, HUDA Division No. II, Gurgaon vide Memo No. 3008-3181 had issued instruction to all developers to lift tertiary treated effluent for construction purpose for sewerage treatment plant Behrampur. Due to this instruction, the respondent faced the problem of water supply for a period of several months as adequate treated water was not available at Behrampur.

16. Further, no-construction notice was issued by the Hon'ble National Green Tribunal for period of several weeks resulting in a cascading effect. That in the year 2017, 2018 and 2019 there was a blanket ban on construction and allied activities during the months of October and November, which caused massive interruption in construction work. There being a shutdown of construction for at least a few months approximately each year. Thus since 2017 the respondent has suffered months of stoppage of construction work till 2019.

17. That due to the above mentioned factors stoppage of construction work done by the judicial/quasi-judicial authorities played havoc with the pace of construction as once the construction in a large

scale project is stalled it takes months after it is permitted to start for mobilizing the materials, machinery and labour. Once the construction is stopped the labour becomes free and after some time when the construction is re-started it is a tough task to mobilize labour again as by that time they either shift to other places/cities or leave for their hometown and the **labour shortage occurs**. That after the blanket ban on construction was lifted, the cold climatic conditions in the month of December to February have also been a major contributing factor in shortage of labour, consequently hindering the construction of the project. That cold weather impacts workers/labourers beyond normal conditions and results in the absenteeism of labour from work. This is entirely beyond the control of the project developers as many or most of the labourers refuse to work in extreme cold weather conditions. It is submitted that, in current scenario where innumerable projects are under construction all the developers in the NCR region including the respondent promoter suffer from the shortage of labour due to cold weather conditions. that the projects of not only the respondent developer but also of all the other developers/builders have been suffering due to such shortage of labour and has resulted in delays in the project's beyond the control of any of the developers. That in addition it is stated that all this further resulted in increasing the cost of construction to a considerable extent. Moreover due to active implementation of social schemes like National Rural Employment Guarantee and Jawaharlal Nehru National Urban Renewal Mission,

there was also more employment available for labourers at their hometown despite the fact that the NCR region was itself facing a huge demand for labour to complete the projects. That the said fact of labour shortage shall be substantiated (at the time of Agreements) by way of newspaper articles elaborating on the above mentioned issues hampering the construction projects in NCR. That this was certainly never foreseen or imagined by the respondent developer while scheduling the construction activities. It is submitted that even today, in current scenario where innumerable projects are under construction all the developers in the NCR region including the respondent promoter are suffering from the after-effects of labour shortage. That the said shortage of Labour clearly falls within the parameter reasons beyond the control of the promoter as described under of clause 11.1 of the buyer agreement.

i. That the Ministry of environment and Forest and the Ministry of mines had imposed certain restrictions as per directions passed by the Hon'ble Supreme Court/Hon'ble High Courts and Hon'ble National Green Tribunal, which resulted in a drastic reduction in the availability of bricks and availability of sand which is the most basic ingredient of construction activity. That said ministries had barred excavation of topsoil for manufacture of bricks and further directed that no more manufacturing of bricks be done within a radius of 50 km from coal and lignite-based thermal power plants without mixing 25% of ash with soil.

ii. That shortage of bricks in region has been continuing ever since and the respondent developer had to wait many months after placing order with concerned manufacturer who in fact also could not deliver on time resulting in a huge delay in project. Apart from this, Brick Klins remained closed for a considerable period of time because of change in technology in firing to zig zag method etc., which again restricted the supply of Bricks.

iii. That crusher which is used as a mixture along with cement for casting pillars and beams was also not available in the adequate quantity as is required since mining department imposed serious restrictions against crusher from the stone of Aravali region. That this acute shortage of crusher not only delayed the project of the respondent developer but also shoot up the prices of crusher by more than hundred percent causing huge losses to respondent developer.

iv. That in addition the current Govt. has on 8th Nov. 2016 declared demonetization which severely impacted the operations and project execution on the site as the labourers in absence of having bank accounts were only being paid via cash by the sub-contractors of the company and on the declaration of the demonetization, there was a huge chaos which ensued. That in addition to the above, demonetization affected the buyer's in arranging/ managing funds which resulted in delayed payments/ defaults on the part of the buyers. That due to lack/ delayed payments, the project was

also affected since it was difficult for the respondent also to arrange funds during the stress in the market during the said demonetization period.

v. That in addition to above all the projects in Delhi NCR region are also affected by the blanket stay on construction every year during winters on account of AIR pollution which leads to further delay the projects. That such stay orders are passed every year either by Hon'ble Supreme Court, NGT or/and other pollution boards, competent courts, Environment Pollution (Prevention & Control) Authority established under Bhure Lal Committee, which in turn affect the project. That to name few of the orders which affected the construction activity are as follows: (i) Order dated 10.11.2016 and 09.11.2017 passed by the Hon'ble National Green Tribunal, (ii) Notification/ orders passed by the pollution control board dated14.06.2018, 29.10.2018 and (iii) Letter dated 01.11.2019 of EPCA along with orders dated 04.11.2019, 06.11.2019 and 25.11.2019 of the Hon'ble Supreme Court of India,

vi. That it is all important to bring out and highlight here that on account of non-payment of installments/dues (along with agreed amount of interest on such delayed payments) of this construction linked allotment by the respondent, it has been hard for the respondent to gather funds for the development of the project which is also one of the major reasons for delay in delivery of the project. It appears that it has become a

trend amongst the allottees nowadays to first not to pay of the installments due or considerably delay the payment of the same and later on knock the doors of the various Courts seeking refund of the amount along with compensation or delayed possession compensation, thus taking advantage of their own wrongs, whereas the developer comes under severe resource crunch leading to delays in construction or/and increase in the cost of construction thereof putting the entire project in jeopardy. The crux of the matter which emerges from the aforesaid submission is that had the complainant as well as other similarly situated persons paid of their installments in time, the respondent developer would have sufficient funds to complete the project which is not the case herein. by failing to deposit the installments on time the complainant has violated his contractual commitment and are estopped from raising any plea of delay in construction. RERA having been enacted by the legislature with the motive of balancing the rights and liabilities of the developer as well as the allottees, thus the complaint is liable to be dismissed on the this ground itself.

vii. That the completion of project requires availability of infrastructure like road, water supply, electricity supply, sewerage, etc. and after charging EDC and IDC from the Promoter, the Haryana Urban Development Authority, has failed to provide the same. The promoter has paid all dues

towards the said IDC and EDC however, till date no infrastructure has not been developed.

viii. That not only this, since 24th March 2020, the entire country was under the nation-wide lockdown as a result of which no authority, tribunal, court was allowed to function and thus, there was a complete construction ban which got lifted around October-November 2020 but due to labour shortage and COVID-19 fear, the construction could not be commenced as was planned and again in April 2021, there was a complete lockdown due to increase in the number of COVID-19 cases which got re-lifted from July 2021 and thus, the pace of the construction has not been attained till date but despite that, the project is near completion.

ix. That it is pertinent to mention and noteworthy here that the respondent had already applied for fire NOC vide application dated 18.06.2021 for four towers, i.e., tower 4B, 4E, 4F and 30. Tower 30 is the tower in which the complainant has been allotted the unit in question. It is further submitted that the respondent has received occupation certificate dated 12.04.2021 for the adjoining towers which falls in phase-I. The occupation certificate was applied on 11.11.2019. According to RERA registration the date of competition of the project was 30/6/2020 which was duly extended due to COVID-19 by a period of 6 months i.e. upto 30/12/2020, vide order dated 26/5/2020 passed by HRERA. Thus, the respondent is already in receipt of the fire NOC, thus no delay

accountability can be ascertained upon the respondent for the year 2020 due to the ongoing pandemic.

18. That in addition to the grounds as mentioned above, the project was also delayed due to on-going litigation filed by one of the Collaborator/ Landowner of land in the project – BE Automation Products (P) Ltd. who was the owner of only 5.8 Acres of land in the entire project. BE indulged in frivolous litigation and put restraints in execution of the project and sale of apartments. BE filed cases against the Company in each and every forum to create nuisance. The details of which are as narrated below:

i. That the land so aggregated for the above said project was contributed by a consortium of land holders, who contributed around 19 Acres. That one BE Office Automation Products (P) Ltd ("BE" for short) had also approached the respondent with 5.8 acres of land which was contiguous with the land already aggregated by the respondent and BE requested the respondent to make the said 5.8 Acres of land owned by BE a part of the land already aggregated by the respondent, i.e. 19 acres. Accordingly, a collaboration agreement dated 22.10.2007 was executed between the respondent and be setting out the terms and conditions of the collaboration. The said collaboration agreement also provided for the area entitlement of both the parties in the area to be developed on the 25.018 acres and the same was to be calculated on basis of saleable area attributable to 5.8 acres as contributed by BE. However, the land contributor i.e. BE indulged in frivolous

litigation and put restraints in execution of the project and sale of apartments in the following manner:

ii. That as per the collaboration agreement, it was agreed between BE and the respondent that the total saleable area relatable to the said land of 5.8 acres would be shared in the ratio of 1/3: 2/3, 1/3rd going to BE and 2/3rd going to the respondent. That simultaneous to the collaboration agreement, be executed an irrevocable General Power of Attorney ("GPA" for short) dated 22.10.2007 in favour of the respondent for various purposes related to development of the said project.

iii. That in January 2011, the respondent in pursuance of its contractual obligations invited BE to identify the apartments that BE was interested to make part of its entitlement under the collaboration agreement. Accordingly, the representatives of the respondent and BE met on January 24, 2011 and in pursuance of the same BE identified 82 apartments that would form part of BE's entitlement under the collaboration agreement.

iv. That soon after the development of the said projects began, the part land contributor, BE, started indulging in frivolous litigation against the respondent. That after the aforesaid agreement with BE in 2007, the respondent had acquired 4 5 acres additional land by the virtue of which more flats could have been constructed. BE, by misrepresenting the collaboration agreement raised a claim that it was entitled to

proportionate share in the construction on the additional land acquired by the respondent. That after the aforesaid event BE moved court and filed an application under section 9 of the Arbitration and Conciliation Act, 1996 before the Ld. Additional District and Sessions Judge, Gurgaon. The matter was heard and an order dated 20.11.2014 was passed by the Ld. ADJ

v. That the Ld. ADJ granted a blanket stay in favour of BE and against the respondent, whereby the respondent was restrained from creating third party interest in respect of any apartments, villas and commercial areas till the matter could be decided finally by the arbitrator. The respondent was also restrained from receiving any money in respect of sale of apartments, villas and commercial sites etc. or club membership charges or in any other form from any person.

vi. That the abovementioned stay order caused immense hardship to the respondent as the restraint on alienation of the respondent's share of flats in the said project led to funds for the construction and development of the above projects getting held up as the respondent could not alienate its interest in the said flats nor could it collect money for flats already sold under construction linked plans and the pace of the construction slowed down considerably. That the above said order also led to a precarious cash flow position of the respondent. That selling of interest in the flats, prior to

construction, to raise capital for construction and development is standard practice in the real estate sector.

vii. That after the above said stay order was passed, the respondent took further legal steps and filed F.A.O. No. 9901 of 2014 (O&M) whereby it was brought to the notice of the Hon'ble Punjab and Haryana High Court that the Ld. ADJ had committed an illegality and misdirected itself in not referring to the minutes of the meeting dated 24.01.2011 whereby the share and number of flats of BE had already been identified and at best the injunction should have been limited to BE's share in the said project. That the Hon'ble High Court was pleased to vacate the stay by its order dated 08.12.2014 order and limit the injunction to BE's agreed share in the project.

viii. That thereafter the respondent made serious efforts, and in order to resolve the disputes, Hon'ble Mr. Justice Chandramauli Kumar Prasad (Retd.), a former judge of the Hon'ble Supreme Court of India was appointed as sole arbitrator to adjudicate and decide the dispute between the two parties by the Hon'ble Punjab and Haryana High Court vide order dated 30.01.2015.

ix. That the Hon'ble arbitrator commenced the arbitral proceedings and the process was going on for the said arbitration at New Delhi. The arbitrator passed interim award dated 19.08.2015 whereby the respondents stand was upheld and the respondent was permitted to deal with their

own share i.e., 2/3 share in the project as relatable to the land contributed by BE.

x. That in the meanwhile, BE filed a contempt petition, C.O.C.P. No. 1851 of 2015, alleging contempt of court of the Additional District Judge, Gurgaon by the Respondent so as to delay the project and harass the Respondent's Directors/officials.

xi. That the arbitration proceedings concluded with final award dated 12.12.2016 passed by the Ld. Single Arbitrator, Mr Justice Chandramauli Kumar Prasad (Retd.), whereby contentions of the respondent were upheld and the share of be was restricted to the original 82 flats selected by it. that the above said award goes on to show that the respondent was subjected to constant and frivolous litigation by BE through the entire construction and development period which caused immense hardship to the respondent and resulted in loss of valuable time and resources which resulted in delay in completion of the said project.

xii. That even after the arbitral award was passed in the respondent favour, BE was not inclined to put an end to the frivolous litigation that it was pursuing against the respondent. BE challenged the arbitral award under Section 34 of the Arbitration and Conciliation Act, 1996 as also made a stay application before the competent court. The said stay application of be was contested by the respondent and was dismissed vide order dated 20.03.2017.

xiii. That, BE, upon the dismissal of its stay application on 20.03.2017, approached the Divisional Commissioner, Gurugram by filing an application. That the Divisional Commissioner, Gurugram passed an extra-jurisdictional order staying the alienation of property in the said project vide order dated 28.03.2017. Respondent challenged the said order before the Hon'ble Punjab and Haryana High Court in CWP No. 9075/2017 wherein vide order dated 01.05.2017, the said impugned order was stayed. From the events as mentioned above, the only inference that can be drawn is that BE tried to create multiple hurdles in the way of the respondent completing its project on time through frivolous litigation. However, the respondent triumphed every time as can be seen from the fact that various judicial forums decided in favour of the respondent. That the respondent further submits that court proceedings certainly took a substantial amount of time during which the respondent was restrained qua even receiving the sale consideration/ selling the units in the project which resulted in delay. These kinds of delays are covered by and envisioned under clauses 39 and 11.1, hence the respondent is entitled to reasonable extension of time for construction.

xiv. That in the meanwhile, the said C.O.C.P. No. 1851 of 2015 (Contempt Petition) as mentioned in paragraph (i) above was eventually dismissed by the Hon'ble High Court of Punjab and Haryana vide judgement dated 15.03.2017. However, it is

pertinent to note that the respondent was kept under the constant threat of an adverse legal ruling if the contempt petition were to succeed which further put constraints on alienation of flats in the said project thereby depriving the respondent of valuable capital which was needed to finish the ongoing development and construction of the said projects.

19. That from the facts as narrated above it becomes quite evident that the BE Automation Products Pvt Limited is also responsible for the delay in the construction of the project on account of various frivolous litigation initiated by the same. That it is also pertinent to mention here that BE Automation Products Pvt Limited falls under the definition of promoter being one of the landowners and is equally responsible for any delay. That the respondent would also like to point out that this Hon'ble Authority has already taken a consistent view that Landowners falls within the definition of the Promoter and are held to be the persons who causes to construct such project as defined under Section 2 (zk) of the Act and the same view has to be followed by the Doctrine of Precedents"

20. 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:

21. 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 completed 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 to objection raised by the respondent

F.I. Objection regarding force majeure

22. The respondents-promoter has raised the contention that the construction of the tower in which the unit of the complainants is situated, has been delayed due to force majeure circumstances such as National Green Tribunal to stop construction during 2015-2016-2017-2018, non-availability of raw materials, dispute with collaborator among others. The plea of the respondent regarding stoppage of construction due to various orders of executive and the judiciary are devoid of merit. The orders banning construction in the NCR region were for a very short period of time and thus, cannot be said to impact the respondent-builder leading to such a delay in the completion. The non-availability of raw materials is also devoid of merit. Further, any contract and dispute between the collaborators cannot be considered as a ground for delayed completion of project as the allottees were not a party to any such contract and hence, they cannot be made to suffer because of the same. Thus, the promoter respondent cannot be given any

leniency on based of aforesaid reasons and it is well settled principle that a person cannot take benefit of his own wrong.

G. Entitlement of the complainant for refund:

G.1 Direct the respondent to refund an amount of Rs.86,00,000/- alongwith interest and compensation at the prescribed rates.

23. The complainants were allotted the subject unit by the respondent for a total sale consideration of Rs. 1,27,20,474/-. A buyer's agreement dated 30.10.2018 was executed between the parties. On consideration of the documents available on record and submissions made by both 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 7.1 of the buyer's agreement, The promoter assures to handover possession of the apartment for residential along with parking by June 2020 as per agreed terms and conditions unless there is a delay due to force majeure circumstances beyond control of the promoter, court orders, government policy /guidelines decisions affecting the regular development of the real estate project. So, the possession of the booked unit was to be delivered on or before June 2020. The authority is of the considered view that there is delay on the part of the respondent to offer physical possession of the allotted unit to the complainant as per the terms and conditions of the buyer's agreement dated 30.10.2018 executed between the parties.

24. Keeping in view the fact that the allottee complainant wishes to withdraw from the project and 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.

25. The due date of possession as per agreement for sale as mentioned in the table above is **June 2020** and there is delay of more than 1 year on the date of filing of the complaint.

26. 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....."*

27. Further in 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.*

28. 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 allottee as per agreement for sale under section 11(4)(a). The promoter has failed to complete or 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 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 the unit with interest at such rate as may be prescribed.

29. This is without prejudice to any other remedy available to the allottee including compensation for which allottee may file an application for adjudging compensation with the adjudicating

officer under sections 71 & 72 read with section 31(1) of the Act of 2016.

30. The authority hereby directs the promoter to return the amount received by him i.e., **Rs. 86,00,000/-** with interest at the rate of 10% (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. 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.

G.2 Compensation:

31. The complainant is claiming compensation under 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(s) can claim. For claiming compensation under sections 12,14,18 and Section 19 of the Act, the complainants may file a separate complaint before the adjudicating officer under Section 31 read with Section 71 of the Act and rule 29 of the rules.

H. Directions of the Authority:

32. Hence, the Authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the functions entrusted to the Authority under section 34(f) of the Act of 2016:

    i) The respondents /promoter is directed to refund the amount received by them i.e. Rs.86,00,000/- from the complainant along with interest at the rate of 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 actual date of refund of the deposited amount.

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

33. Complaint stands disposed of.

34. File be consigned to the Registry.

(Sanjeev Kumar Arora) Member | **(Ashok Sangwan)** Member | **(Vijay Kumar Goyal)** Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 06.10.2022