BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no. : 1121 of 2018
First date of hearing: 02.01.2019
Order pronounced on: 18.04.2023

Mani Singhal, D/o Shri Mukesh Singhal,
R/o: - 101/15, Jacobpura,
Near Hari Sweets, Opp. Dr. Grover Clinic,
Gurugram, Haryana-122001. **Complainant**

Versus

1. Perfect Facilities Management Pvt. Ltd.
Regd. Office at: - Level II, Global Arcade,
Mehrauli-Gurugram Road,
Gurugram, Haryana-122002.
2. Orchid Infrastructure Developers Pvt. Ltd.
Regd. Office at: - Level II, Global Arcade,
Mehrauli-Gurugram Road,
Gurugram, Haryana-122002.
3. Sheetal International Pvt. Ltd.
Regd. Office at: - G-81/A, 2ND Floor,
Vijay Chowk, Laxmi Nagar, Delhi-110092. **Respondents**

CORAM:
Shri Vijay Kumar Goyal **Member**
Shri Sanjeev Kumar Arora **Member**

APPEARANCE:
Sh. Abhay Jain (Advocate) Complainant
Sh. J.K Dang (Advocate) Respondents

ORDER

1. The present complaint dated 09.10.2018 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) & 17(1) 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 thereunder or to the allottees as per the agreement for sale executed *inter se*.

A. Unit and project related details

2. The particulars of unit details, sale consideration, the amount paid by the complainants, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S.N.	Particulars	Details
1.	Name and location of the project	Orchid Island in Sector 51, Gurugram, Haryana
2.	Nature of the project	Residential Project
3.	DTCP license no.	53 TO 60 dated 31.12.1994 and 9 to 24 dated 20.11.1995
4.	RERA Registered/ not registered	Not registered
5.	Unit no.	M-389, 1st floor (page no. 36 of complaint)
6.	Unit admeasuring area	1485 sq. ft. of super area [page no. 13 of complaint]
7.	Date of supplementary floor buyer agreement executed between complainant	10.07.2010 [page 54 of reply]
8.	Date of floor buyer agreement executed between original allottees	24.12.2009 [page 33 of reply]
9.	Possession clause	***28 (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 ALLOTTEE(S) under this Agreement etc., as prescribed by the DEVELOPER, ***the DEVELOPER proposes to hand over the possession of THE FLOOR within a period of thirty (30) months from the date of signing of this Floor Buyer agreement*** *. The FLAT ALLOTTEE(S) agrees and understands that the DEVELOPER shall be entitled to a grace period of 180 days , after the expiry of thirty (30) months , for applying and obtaining the Occupation Certificate in respect of the GROUP HOUSING COMPLEX . If however understood between the parties that the possession of various residential floors comprised in the complex as also the various common facilities planned therein shall be ready & complete in phases and will be handed over to the Allottee of different residential floors constructed over different plots as and when completed"* ***(emphasis supplied)***
10.	Due date of possession	24.06.2012
11.	Possession hand over letter	25.12.2014 [page 88 of reply]
12.	Total sale consideration	Rs. 63,01,129/- (as per respondent's averment, page 1 of promoter information)
13.	Total amount paid by the complainant	Rs. 63,01,129/- (as per respondent's averment, page 1 of promoter information)
14.	Occupation certificate	28.12.2012 [Page 86 of reply]

B. Facts of the complaint:

3. The complainant has made the following submissions: -

I. That the complainant nurtured hitherto an un-realized dream of leading a peaceful life in upcoming societies with all facilities and standards, situated around serene and peaceful environment for children.

II. That the complainant signed the supplementary 'floor buyer agreement on 10.07.2010 for the apartment bearing no. M-389 with super area of 1485 sq.ft. in the residential project named 'Orchid Island' in Sector-51, District Gurugram, Haryana.

III. That the respondents got the Occupation Certificate from the District Town Planner, Gurugram on 28.12.2012 and after grant of the OC, offer of possession was made by the respondent no.2 on 11.11.2014. The complainant took the possession of his apartment on 06.02.2015 and started paying all maintenance and other charges, including water, electricity, security, etc. regularly as and when demanded by the respondents no.1 & 2.

IV. That all of sudden, without any justifiable reasons, the maintenance charges were increased arbitrarily in 2015. The complainant received a circular dated 08.12.2015 from the respondents, with regard to the revision of maintenance charges at Orchid Island. The maintenance charges were increased with immediate effect from Rs.1.25/- per square foot to Rs.1.90/- per square foot. Thereafter, respondent no.1 & 2 got an audit done by M/s AAGN & Associates (Charted Accountants) fraudulently, illegally and unlawfully for the financial years 2013-14, 2014-15 and 2015-16. After the completion of the audit, a letter dated 13.07.2017 which summarized the bogus

calculation of extra maintenance charges for those three past financial years was sent to the respondent no.1 and the same was received by the complainant on 12.02.2018.

V. Thereafter, the respondent no.1 vide two bogus and invalid supplementary tax invoices dated 04.08.2017 demanded a total amount of Rs.56,077/- regarding extra maintenance charges for fiscal years 2014-15 and 2015-16, but, in reality, the invoices were sent after a period of five months and were received by the complainant on 05.02.2018. The Orchid Island Residents Welfare Association sent a letter dated 09.02.2018 to the respondent no.1 & 2, appealing to revoke/cancel/withdraw/waive-off the extra maintenance charges and submitted that the same were unlawful, fraudulent and illegal.

VI. That the respondent no.2 raised an illegal, unlawful and fraud demand of Rs.1,19,570/- on 07.12.2016 on account of Value Added Tax (VAT) on the property of the complainant, as a result he was forced to pay Rs.1,31,471/- on 30.01.2018 with interest.

VII. The respondents had collected a huge amount as IFMS deposit from gullible, naïve complainant and other buyers from the years 2009 to 2014, and have used that amount for their own personal benefits. It becomes the duty of the respondents to transfer full amount of the IFMS deposit in the account of Orchid Island Residents Welfare Association after the association took charge for maintenance of Orchid Island. But the respondents have not yet transferred IFMS deposit in the account of association despite repeated appeals and requests.

VIII. The respondents have earned enough monies by duping the innocent complainant and other buyers through their unfair trade practices and deficiencies in services and have caused them enough pain, mental torture, agony, harassment, stress, anxiety and financial loss and injury.

IX. That the complainant-allottee has resigned from the membership of RWA on 02.08.2022.

C. Relief sought by the complainant:

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

I. To refund an amount of Rs.1,31,471/- on account of VAT paid along with interest.

II. To refund an amount of Rs.1,19,250/- on account of IFMS paid along with interest.

III. To refund an amount of Rs.56,077/- on account of extra maintenance charges paid for financial years 2014-15 and 2015-16 along with interest.

IV. To execute conveyance deed in favour of the complainant.

V. To pay legal expense of Rs.100,000/- incurred by the complainant.

5. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondents.

6. The respondents contested the complaint on the following grounds: -

(i) That the occupation certificate in respect of the apartment in question was issued on 28.12.2012, i.e., well before the Act and notification of the Haryana Real Estate Regulation and Development

Rules 2017. Thus, the provisions of the Act and the Rules are not applicable to the unit in question and consequently, this Hon'ble Authority does not have the jurisdiction to entertain and decide the present complaint.

(ii) That the present complainant is not maintainable against respondent no.1 as it is neither the promoter nor an allottee or a real estate agent. It is the maintenance agency that was providing maintenance services to the colony, Orchid Island, Sector 51, Gurgaon where the unit allotted to the complainant is situated.

(iii) That occupation certificate was received on 28.12.2012 and offer of possession was made on 11.11.2014 and after the payment of balance amount by the complainant, possession of the unit was taken by the complainant.

(iv) That by letter dated 11.02.2015, the complainant was informed about the formalities to be completed for registration of conveyance deed in his favour. However, the complainant has failed to come forward to have the conveyance deed registered till date.

(v) That respondent no.1 has been providing maintenance services to the complex from the year 2013, till 01.04.2018 when the complex was handed over to the Orchid Island Residents Welfare Association (the RWA, for short), upon terms and conditions formalised through the execution of a Memorandum of Understanding dated 20.06.2018.

(vi) That till such time the respondent no.1 was undertaking maintenance of the complex, maintenance charges were agreed to be paid by the complainant in accordance with the floor buyer's agreement, supplementary floor buyer's agreement and the maintenance and services agreement, executed by the complainant.

The monthly bills towards maintenance charges were being raised by respondent no.1 and duly paid by the complainant.

(vii) That it is pertinent to mention herein that as per the buyer's agreement, maintenance charges were initially agreed to be calculated at an indicative rate of Rs.2/- per sq. ft of super area per month. In the initial period, the maintenance costs were subsidised by the respondents-builder by charging for maintenance services and facilities at the rate of Rs.1.25 /- per month which was subsequently raised to Rs.1.90/- per sq. ft., which was still less than the indicative maintenance charges mentioned in the floor buyer's agreement. Furthermore, all the buyers including the complainant were fully conscious and aware that the indicative maintenance charges were subject to final reconciliation post audit and would have to be paid by the buyers.

(viii) That the monthly maintenance charges were to be computed and payable by the complainant, in the manner set out in Clauses 3 and 4 of the maintenance and services agreement. Clause 3A(vi) of the said agreement specifically provides that at the end of each financial year, respondent no.1 would get audited the annual statement of income and expenditure and statement of assets and liabilities as on the last date of the financial year related to the maintenance of the complex and the expenses incurred would form the basis of estimate for billing in the subsequent financial year. In case of any surplus/deficit arising at the end of the financial year after the audit, the same was to be adjusted in the bills raised in the subsequent financial year in a manner such that the amount shall be refunded/recovered from the subsequent bills to the complainant.

(ix) That as has been submitted hereinabove, the RWA took over maintenance of the complex on 01.04.2018 and the issue pertaining to arrears of maintenance charges was discussed in several meetings with the RWA who put forward names of 4 Chartered Accountant Firms to carry out an audit of the books of accounts of respondent no.1 for the years 2013-14, 2014-15 and 2015-16 and agreed to appoint the first name proposed by the RWA, i.e M/s AAGN & Associates, D-32, East of Kailash, near M Cinema, New Delhi -110065, to audit the accounts, in order to determine the maintenance charges payable for the years 2013-14, 2014-15 and 2015-16.

(x) That the said C.A Firm, Ms AAGN & Associates, was appointed to carry out the audit and the said firm submitted its report on 13.07.2017 whereby the maintenance charges for the year 2013-2014 were calculated to be Rs 7.08 per sq. ft., Rs 4.89 per sq. ft. for the year 2014-15 and Rs 2.99 for the year 2015-16.

(xi) That on the basis of the audit report of the independent C.A Firm duly recommended by the RWA, respondent no.1 raised invoices for payment of differential maintenance charges payable by all the residents of the complex, including the complainant. The report of the C.A. Firm was also shared with the RWA.

(xii) That the RWA had conveyed that it needed some time to discuss the matter with the other office bearers, residents etc and promised to revert shortly on the issue. However, thereafter, on one pretext or the other, the RWA delayed the issue of payment of outstanding maintenance charges.

(xiii) That eventually, after waiting for almost 6 months, the bills were dispatched to the residents in January/February 2018. Respondents

no.1 and 2 had even offered a discount of 5% on the said bills as a gesture of good will, although they were under no legal obligation to do so.

(xiv) That the complainant as well as other residents of the complex are conscious and aware that the arrears of maintenance charges are due and payable by them as per the agreements executed by them and that there is no justification for their refusal to do so. The present complaint is also aimed at causing harassment and nuisance to the respondents with the view to evade legal and binding contractual obligations. Thus, the present application deserves to be dismissed at the very threshold.

(xv) That the RWA had approached the civil courts at Gurugram by filing suit for declaration with consequential relief of permanent injunction bearing case no. CS/3170/2015 titled as "Orchid Island Residents Welfare Association Vs. Orchid Infrastructure Developers Private Limited and Anr." challenging the demand for maintenance charges and electricity charges by respondent no.1. All the respondents to the present litigation were impleaded as defendants in the abovesaid civil suit. The said suit was dismissed by Hon'ble Civil Judge (Jr.Div.), Gurugram, vide judgement and decree dated 15.10.2019 after taking into consideration the report of the independent auditor and held that the maintenance agency i.e. respondent no.1 herein had been properly maintaining its books of account and auditing its expenditure. That order was passed much prior to alleged resignation of complainant from the membership of the association.

(xvi) That RWA has preferred an appeal against the said judgement and decree dated 15.10.2019 and the matter is sub-judice in appeal pending before the Hon'ble Additional District Judge, Gurugram.

(xvii) That vide order dated 26.03.2019 in complaint bearing no. 2298/2018, this Authority has held that with regard to the enhancement in maintenance charges, the audit report for the financial years 2013-14, 2014-15, 2015-16 cannot be challenged before it and the matter is already sub-judice before the Civil Court in civil suit filed by the Orchid island Residents Welfare Association. That order was also passed much prior to alleged resignation of the complainant from the membership of the association.

(xviii) That moreover, the complainant has deliberately failed to disclose to the Authority that RWA has already approached National Consumer Dispute Redressal Commission (NCDRC) for the similar relief and the mater being sub-judice before that forum, the complaint is not maintainable before the authority.

(xix) All other averments made in the complaint were denied in toto.

7. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of those undisputed documents and submissions written as well as oral made by the parties.

E. Jurisdiction of the authority

The respondents have raised a preliminary submission/objection that the authority has no jurisdiction to entertain the present complaint. The objection 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

8. 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

9. 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) The promoter shall-*
> *(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;*
> ***Section 34-Functions of the Authority:***
> *34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.*

10. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of subsisting obligations by the promoter as per Section 11(4)(a), 11(4)(f) and 17(1) of the Act of 2016 leaving aside

compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage. Moreover, vide orders dated 27.09.2022, the authority directed the respondent-builder within 10 days to get execute the conveyance deed of the allotted unit in favour of the complainant on his depositing requisite registration charges. But instead of complying with that order the builder filed an appeal before the appellate tribunal bearing no. 826/2022 and which is pending for adjudication for 10.05.2023. So, in view of that, the complaint cannot be thrown away being barred by jurisdiction.

F. Findings on the objections raised by the respondent.

F.I Objection regarding jurisdiction of authority w.r.t. booking application form executed prior to coming into force of the Act.

11. Another contention of the respondent is that authority is deprived of the jurisdiction to go into the interpretation of, or rights of the parties inter-se in accordance with the booking application form executed between the parties and no agreement for sale as referred to under the provisions of the Act or the said rules has been executed inter se parties. The authority is of the view that the Act nowhere provides, nor can be so construed, that all previous agreements will be re-written after coming into force of the Act. Therefore, the provisions of the Act, rules and agreement have to be read and interpreted harmoniously. However, if the Act has provided for dealing with certain specific provisions/situation in a specific/particular manner, then that situation will be dealt with in accordance with the Act and the rules after the date of coming into force of the Act and the rules. Numerous provisions of the Act save the provisions of the agreements made between the buyers and sellers. The said contention has been upheld in the landmark

judgment of ***Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and others. (W.P 2737 of 2017)*** decided on 06.12.2017 which provides as under:

> *"119. Under the provisions of Section 18, the delay in handing over the possession would be counted from the date mentioned in the agreement for sale entered into by the promoter and the allottee prior to its registration under RERA. Under the provisions of RERA, the promoter is given a facility to revise the date of completion of project and declare the same under Section 4. The RERA does not contemplate rewriting of contract between the flat purchaser and the promoter....*
>
> *122. We have already discussed that above stated provisions of the RERA are not retrospective in nature. They may to some extent be having a retroactive or quasi retroactive effect but then on that ground the validity of the provisions of RERA cannot be challenged. The Parliament is competent enough to legislate law having retrospective or retroactive effect. A law can be even framed to affect subsisting / existing contractual rights between the parties in the larger public interest. We do not have any doubt in our mind that the RERA has been framed in the larger public interest after a thorough study and discussion made at the highest level by the Standing Committee and Select Committee, which submitted its detailed reports."*

12. Also, in appeal no. 173 of 2019 titled as ***Magic Eye Developer Pvt. Ltd. Vs. Ishwer Singh Dahiya***, in order dated 17.12.2019 the Haryana Real Estate Appellate Tribunal has observed-

> *"34. Thus, keeping in view our aforesaid discussion, we are of the considered opinion that the provisions of the Act are quasi retroactive to some extent in operation and <u>will be applicable to the agreements for sale entered into even prior to coming into operation of the Act where the transaction are still in the process of completion</u>. Hence in case of delay in the offer/delivery of possession as per the terms and conditions of the agreement for sale the allottee shall be entitled to the interest/delayed possession charges on the reasonable rate of interest as provided in Rule 15 of the rules and one sided, unfair and unreasonable rate of compensation mentioned in the agreement for sale is liable to be ignored."*

13. The agreements are sacrosanct save and except for the provisions which have been abrogated by the Act itself. Further, it is noted that the builder-buyer agreements have been executed in the manner that there is no scope left to the allottee to negotiate any of the clauses contained therein. Therefore, the authority is of the view that the charges payable under various heads shall be payable as per the agreed terms and conditions of the agreement subject to the condition that the same are in accordance with the plans/permissions approved by the respective departments/competent authorities and are not in contravention of any other Act, rules, statutes, instructions, directions issued thereunder and are not unreasonable or exorbitant in nature.

F.II Objection regarding maintainability of complaint against respondent no.1.

14. Further, the respondents raised another objection that the present complaint is not maintainable against respondent no.1 as, it is the maintenance agency that was providing maintenance services to the said colony from the year 2013, till 01.04.2018 when the complex was handed over to the Orchid Island Residents Welfare Association. However, as per Section 31 of the Act of 2016, any aggrieved person may file a complaint against any promoter, allottee or real estate agent. Though the respondent no.1 does not fall within the definition of promoter, allottee or a real estate agent as per sec 2(zk), 2(zm), 2(d) of the Act of 2016 but respondent no.2 was acting and managing the affairs of the colony through that respondent. So, in view of the above, the complaint is maintainable. If any maintenance charges against the subject unit are payable by the claimant to the maintenance agency i.e., respondent no.1, then that cannot be a ground or reason to defer the

execution of conveyance deed for which as per buyer's agreement, only the respondent-builder is obligated to execute the same on payment of its dues in favour of the allottee.

Maintainability of Complaint against the respondent-builder in view of pendency of earlier litigation between the parties.

15. Some of the admitted facts of the case are that a residential project by the name of Orchid Island, Sector-51, Gurugram was developed by the respondent-builder. The complainant applied for a unit and got the subject flat leading to floor buyer/supplementary agreement dated 24.12.2009 and 10.07.2010 respectively for total sale consideration of Rs.63,01,129/-. The due date for completion of the project and offer for possession was fixed as 24.06.2012. After receipt of OC, the possession of the allotted unit was offered to the complainant vide letter of possession dated 25.12.2014. He took possession of the same on 06.12.2015. The other allottees of the project also took possession of their respective units from time to time. The project was being maintained by respondent no.1 and who issued circulars from time to time. A dispute arose between the allottees and the respondents with regard to issues of maintenance, power charges, tax invoices, VAT and IFMS amount and which led to filing of a civil suit titled as Orchid Island Resident Welfare Association. Vs. Orchid Infrastructure Pvt. Ltd. & Anr. The issues involved in that case were with regard to maintenance charges and electric charges etc. being charged from the residents of the colony. The suit filed in this regard was dismissed on 15.10.2019 by Sh. Anterpreet Singh, the then Civil Judge, Gurugram. While disposing of that suit, the court took into consideration the report of independent auditor besides observing the maintenance of the books of accounts and

auditing its expenditure by respondent no1. It was also observed that respondent no.2 did not impose any enhanced costs on the residents of the colony. The order passed in this regard by the court is under challenged in civil appeal pending before Sh. Tarun Singhal, Additional District Judge, Gurugram and the same was fixed for 14.02.2023.

16. The second round of litigation between the parties commenced in the shape of complaint bearing no. 2298/2018 titled as "Orchid Island Residents Welfare Association vs Orchid Infrastructure Developers Pvt. Ltd. and in which vide order dated 26.03.2019, the Authority has held that with regard to the enhancement in maintenance charges, the audit report for the financial years 2013-14, 2014-15, 2015-16 cannot be challenged before it as the matter is already sub-judice before the civil court in civil suit filed by the Orchid island Residents Welfare Association. Neither the complainant nor the association representing him challenged that order by way of appeal, barring the institution of second complaint for the same cause of action.

17. The third round of litigation commenced between the parties when the Resident Welfare Association filed complaint bearing no. 110/2020 before National Consumer Redressal Commission on the same cause of action being agitated in the present complaint and the same is pending for consideration before that authority. Now this is the fourth round of litigation between the parties for the same cause of action but through someone else and which is not maintainable being barred by the provisions of Section 10 and 11 of Code of civil procedure 1908. Though it is contended on behalf of the complainant that he resigned from the membership of the resident welfare association and the resignation having been accepted by its president. But section 19(9) of the Act of

2016 mandates an allottee to participate towards the formation of an association or society or co-operative society of the allottees or a federation of the same. It is not the choice of an allottee not to become a member of the Resident Welfare Association of a colony and rather it is an obligation upon him to be member of an RWA. So, the plea with regard to resignation of the complaint from the Resident Welfare Association and filing the complaint in his individual capacity seeking the relief already agitated cannot be set to maintainable before this forum.

G. Findings on the relief sought by the complainant.

G.I To refund an amount of Rs.1,31,471/- on account of VAT paid along with interest.

G.II To transfer the IFMS amount of Rs.1,19,250/- deposited with the respondents in the account of RWA.

G.III To refund an amount of Rs.56,077/- on account of extra maintenance charges paid for financial years 2014-15 and 2015-16 along with interest.

18. In view of, findings recorded by the Authority with regard to the maintainability of the complaint, in the face of earlier decision of the competent forum of jurisdiction, no findings are being returned on these issues.

G.IV To execute conveyance deed in favour of the complainant.

19. In the present complaint, the complainant is seeking relief under the section 17(1) of the Act. Sec. 17(1) & proviso reads as under.

> *"Section 17: - Transfer of Title*
> *17(1). The promoter shall execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of the allottee or the competent authority, as the case may be, and hand over the physical possession of the plot, apartment of building, as the case may be, to the allottee and the common areas to the association of the allottee or the competent authority, as the case may be, in a real estate project, and the other title documents pertaining thereto within specified period as per sanctioned plans as provided under*

the local laws: Provided that, in the absence of any local law, conveyance deed in favour of the allottee or the association of the allottee or the competent authority, as the case may be, under this section shall be carried out by the promoter within three months from date of issue of occupancy certificate.

20. Since the occupation certificate of the project has already been obtained on 28.12.2012, so on receipt of dues of that unit as per buyer's agreement executed against consideration money, physical possession has already been handed over to the complainant on 25.12.2014. Hence, it is obligatory on the part of promoter to get execute the conveyance deed of the unit in favour of the complainant-allottee within three months as per the mandate contained in section 17 of the Act of 2016 including handing over of the common areas to either association of allottees or to the local authority. But the promoter-respondent has failed to execute conveyance deed in favour of the complainant-allottee or hand over common areas and its-or local authority, and common areas continued to be get managed through its agency namely Perfect facilities management Pt Ltd i.e., respondent no. 1. Hence, any charges on account of maintenance of colony respondent no. 1 cannot be ground or reason to put on hold the execution of the conveyance deed in favour of the allottees as the concerned maintenance agency i.e., respondent no. 1 is free to recover its dues and charges as per law but transfer of title to a lawful allottee cannot be withheld. The title of the land gets perfect only on its transfer by way of execution of conveyance deed on payment of stamp duty by complainant-allottee. Moreover, the ~~l~~ issues qua charges of maintenance and VAT, etc. are already under litigation before the civil court as well as the Hon'ble NCDRC. Hence, findings or directions shall apply on both the parties and the allottees shall be

bound to pay the dues if so directed by the Civil court or NCDRC in the pending matters.

21. The authority vide proceedings dated 03.08.2022 decided that if consideration as per buyer's agreement has been made, then conveyance deed be get executed after conveying dues if any to the complainant. In compliance of order dated 03.08.2022, the respondents sent a letter dated 18.08.2022 to the complainant to deposit the requisite stamp duty charges, bank guarantee and outstanding maintenance charges of Rs.2,79,676/- for registration of conveyance deed. Moreover, vide orders dated 27.09.2022, the authority directed the respondent-builder to get execute the conveyance deed of the allotted unit in favour of the complainant within a period of 10 days on his depositing requisite registration charges. Feeling aggrieved with the same, the respondents challenged that order by way of appeal before the Appellate Tribunal, Chandigarh and where the matter is pending for consideration and is now fixed for 10.05.2023. Both the counsels confirmed during the proceedings that there is no stay with regard execution of conveyance deed of the subject unit in favour of the complainants by the respondent-builder. Hence, in view of the above statutory provisions under section 17 of the Act, the respondent/builder is directed to get the conveyance deed of the subject unit registered in favour of the complainant within three months from the date of this order on payment of requisite stamp duty and registration fees/charges as applicable. Further, only administrative charges of upto Rs.15000/- can be charged by the promoter–developer for any such expenses which it may have incurred

for facilitating the said transfer as has been fixed by the DTP office in this regard vide circular dated 02.04.2018.

G.V To pay legal expense of Rs.100,000/- incurred by the complainant.

22. The complainant in the aforesaid head is seeking relief w.r.t compensation. Hon'ble Supreme Court of India, in case titled as ***M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP &Ors.*** (Civil appeal nos. 6745-6749 of 2021, 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. Therefore, the complainant is advised to approach the adjudicating officer for seeking the relief of compensation.

H. Directions of the authority

23. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

i. The respondent-builder is directed to get the conveyance deed of the allotted unit executed in the favour of complainant within a period of three months from the date of this order on payment of stamp duty and registration charges as applicable.

ii. Keeping in view the observations of the authority with regard to maintainability of the complaint, no findings on other issues such as refund of VAT amount, payment of extra maintenance charges and transfer of IFMS amount are being recorded. The direction of the civil court and NCDRC with regard to the levy of VAT amount,

maintenance charges and transfer of IFMS amount etc. shall be binding on both the parties.

24. Complaint stands disposed of.

25. File be consigned to the registry.

(Sanjeev Kumar Arora)
Member

(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 18.04.2023