

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

<b>Complaint no. :</b>	<b>3771/2021</b>
<b>Date of filing complaint:</b>	<b>27.09.2021</b>
<b>First date of hearing:</b>	<b>29.10.2021</b>
<b>Date of decision :</b>	<b>18.01.2023</b>

1. Sh. Rajiv Dhingra s/o Subhash Chand 2. Smt. Ruchi Dhingra w/o Shri Rajiv Dhingra <b>R/o:</b> Utr031, Tower R, Phase 2, The Ultima, Dlf Garden City 81, Gurugram	<b>Complainants</b>
Versus	
Dlf Limited R/O Dlf Gateway Tower R Block, Dlf City Phase-III, Gurugram-122002 Haryana (India)	<b>Respondent</b>

<b>CORAM:</b>	
Shri Vijay Kumar Goyal	<b>Member</b>
Shri Ashok Sangwan	<b>Member</b>
<b>APPEARANCE:</b>	
Complainant in person	Complainants
Sh. J.K Dang (Advocate)	Respondent

**ORDER**

1. The present complaint has been filed by the complainant/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 provisions 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.No.	Heads	Information
1.	Name of the project	The Ultima, sector B1, Lakhnola, Gurugram
2.	Nature of the project	Group housing colony
3.	DTCP License no.	61 of 2011 dated 30.06.2011 Valid till 29.06.2024  114 of 2012 dated 15.11.2012 Valid till 14.11.2023
4.	Name of Licensee	Oxygen Realtors Pvt. Ltd
5.	Registered / not registered	Registered 52 of 2019 from 20.09.2019 valid upto 30.11.2020
6.	Unit no.	UTR031 on 3 <sup>rd</sup> floor, Tower-II, Phase-II (Page no. 76 of the reply)
7.	Unit area admeasuring	1257 sq. ft. (Carpet area) (Page no. 76 of the reply)
8.	Date of builder buyer agreement	13.12.2019 (Page no. 69 of the reply)
9.	Allotment Letter	26.11.2019 (Page no. 59 of the reply)
10.	Possession clause	<b>7.2. DELIVERY OF POSSESSION</b>

		The Promoter, has obtained the Occupation Certificate thereof of building Blocks Phase-II in respect of the said Group Housing Colony along with Parking Spaces and shall offer in writing the possession of the Said Apartment <b>within three months, from the date of the end of the payment plan</b> as per Schedule-C, for the completion of the formalities in terms of this Agreement and the payments as per the schedule Payment Plan and payment of other outstanding dues in a time bound manner.
11.	Due date of possession	As per offer of possession letter dated 17.01.2020, the respondent has received payment towards allotted unit. As such due date of possession comes out to be 17.04.2020.
12.	Total sale consideration	Rs. 2,09,29,061/- (As per statement of account dated 25.11.2019 on page no. 161 of reply)
13.	Amount paid by the complainants	Rs. 2,05,08,456/- (As per statement of account dated 25.11.2019 on page no. 161 of reply))
14.	Occupation certificate	05.02.2019 (On page no. of 18 of reply)
15.	Offer of possession dated	17.01.2020 (On page no. 160 of reply)
16.	Possession taken by the complainants	22.02.2020 (Alleged by the complainant on page no. 05 of complaint)

**B. Facts of the complaint:**

3. That a project in the name of "THE ULTIMA" DLF Garden City at sector 81, Lakhnola, Gurugram-122004, Haryana was being developed by the respondent. The complainants coming to know about the same, booked one unit in the project of the respondent and had paid an amount of Rs. 5,00,000 by cheque as a booking amount on 14.10.2019.
4. That the allotment of a unit was made by the respondent to the complainants on 26.11.2019 and allotted unit no. UTR031 in Tower R, Phase- II of group housing colony along with the booking receipt of Rs. 5,00,000/- and the payment plan.
5. That the total sale consideration of the unit is Rs. 2,09,29,061/- and out of which, the complainants have paid a sum of Rs. 2,05,08,456/- till date. The buyer's agreement was executed between the parties on 13.12.2019. The unit was to be delivered within three months from the date of end of the payment plan and hence, the due date comes out to be 17.04.2020.
6. The respondent on 17.12.2019 issued a demand letter for the payment of the remaining sale consideration with some rebate offer on total balance payment, on or before 31.12.2019. The complainants managed to get the loan of Rs. 1,12,00,000/- sanctioned from the bank within the asking period and had paid total consideration to the respondents on 31.12.2019.
7. That after making the full and final payment, the occupation certificate was obtained on 05.02.2019 and the possession letter was issued by the respondent on 17.01.2020. The complainants after getting the possession letter and actual physical possession

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dated 22.02.2020, chased the respondent through number of emails and asked for the sale deed/conveyance deed registration but the respondent even did not pay any heed or reply on any mail of the complainants. But then on 31.07.2020, the respondent sent an email to the complainants and sought three more months for the registration. The complainants having no other option but to wait for respondent confirmation for the registration.

8. That before the expiry of the three months period, the complainants again sent a reminder email dated 16.10.2020 to the respondent about the registration. But the respondent failed to perform his obligations. The respondent on dated 04.11.2020 sent an e-mailed to seek the consent for the registration and the complainants gave their full consent to the respondent within 10 minutes.
9. That the respondent again kept silent for next more than a month and finally one email was sent by the respondent on 16.12.2020 to the complainants and asked them to submit demand draft of Rs. 5,73,410/- towards stamp duty and a demand draft of an amount of Rs. 50,005/- towards registration fees. The complainants arranged the money and prepared the demand draft on date 22.12.2020 to the respondent.
10. That the respondent even after the demand draft in their hand again keep silent for another one week. But on 28.12.2020 , the respondent executive informed the complainants on phone about the increase in stamp duty by the Government and asked to wait until change implementation in Sub-Division/Tehsil software completes and the same was objected to by the complainants as the

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default was on the respondent part and the complainants had to bear undue financial burden. The complainants also sent an e-mail about the loss suffered due to delay in registration on the part of the respondent by almost a year. But again the respondent ignored the complainant's mail and never replied back on the e-mail.

11. That the respondent sent the revised/re-calculation of the stamp duty via email dated 09.06.2021 and the complainants somehow managed the difference amount under protest and handed over Rs. 2,86,690/- through demand draft no. 502001 to the respondent on 11.06.2021 in order to get the registration of the unit.
12. That as per the mandate of the Section 17 of RERA Act the promoter has to execute conveyance deed in favour of the allottee within three months of occupancy certificate, but the respondent failed to execute the conveyance deed in favour of the complainants within specified time limit and due to that the complainants suffered a loss of Rs. 2,86,690/-.
13. That the complainants have paid the amount of Rs. 2,86,690/- with interest, and they had to pay extra at the time registration due to the change in stamp duties leading to filing of this complaint seeking refund of the deposited amount for revised stamp duty.

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

14. The complainants have sought the following relief(s):
  - i. Direct the respondent - builder to compensate the additional amount of Rs. 2,86,690/- which was paid by the complainants in getting the flat registration / conveyance deed.

- ii. Direct the respondent - builder to pay interest of 18% on above loss from the date of registration to date until paid.
- iii. Direct the respondent - builder to pay legal consultation fee, expenses of complaint submission, mental disturbance and efforts spent for chasing DLF for conveyance deed of the flat.

**D. Reply by respondent:**

The answering respondent by way of written reply made the following submissions:

15. That the respondent has developed a residential group housing complex known as *The Ultima*, situated in Sector 81, DLF Garden City, Gurugram. The complainants are allottees of the above-mentioned unit for a total sale consideration of Rs. 2,09,29,061/-.
16. That the complainants submitted the application form duly executed by them on 20.10.2019, after understanding and accepting all the terms and conditions thereof. The respondent - builder allotted the unit vide allotment letter dated 26.11.2019, unit no. UTR031 on 3<sup>rd</sup> floor, Tower-II, Phase-II having super area of 1257 sq. ft..
17. That the buyer's agreement was dispatched to the complainants for execution under cover of letter dated 30.11.2019. The buyer's agreement was executed between the parties on 13.12.2019. According to Clause 7.2 of the buyer's agreement, the possession of the unit was to be handed over to the within three months from the date of end of the payment plan and as such, the due date comes out to be 17.04.2020.

18. That the complainant's had availed a housing loan from Citibank and in accordance with terms and conditions of the aforesaid loan, the complainants copy of the buyer's agreement was handed over to Citi Bank , under cover of letter dated 19.12.2019. Vide letter dated 17.12.2019 , the complainants were informed that they could clear their balance payments in a lump sum and foreclose their account by 31.12.2019 as per the details provided in the said letter.
19. That the occupation certificate in respect of the tower in question was received on 05.02.2019 and the possession of the unit was offered on 17.01.2020. The complainants executed an Indemnity cum Undertaking for taking the unit for occupation and use in terms of Clause 8 of which, inter alia, they agreed and undertook that they shall be solely responsible for the registration of the conveyance deed in respect of the said property and shall comply with all the provisions of the Indian Stamp Act, 1899 and be responsible for all the deficiencies/penalties//proceedings in respect of the same and that the respondent shall not be liable in any manner for the same. The complainants took possession of the unit on 22.02.2020.
20. That soon thereafter, on account of the prevalence of Covid 19 pandemic, a nationwide lockdown was imposed on 24.03.2020 which was extended from time to time. The devastating effect of the pandemic as well as the lock down on the real estate industry was acknowledged by the Hon'ble Haryana Real Estate Regulatory Authority as well as by the Government of India, Town and Country Planning Department. The Hon'ble Authority issued an order/direction to extend the registration and completion date or

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the revised completion date or extended completion date by 6 months & also extended the timelines concurrently for all statutory compliances vide order dated 27.03.2020. The Government of Haryana, Town and Country Planning Department, vide notification dated 28.07.2020 notified the moratorium period for all existing projects from 01.03.2020 to 30.09.2020 for the purpose of making time bound compliances and payments. In regard to the compliances to be made under the Haryana Apartment Ownership Act, 1983, the moratorium period has been treated as the zero period for compliances. If the Deed of Declaration was to be filed up to 01.04.2020, the time for compliance was extended till 01.11.2020.

21. That in the present case, the Deed of Declaration was filed before the competent authority on 02.12.2020 (1.11.2020 being an official holiday in Haryana). Thereafter the process for registration of Conveyance Deed for all the 916 units in the project was started. The Conveyance Deeds were drafted, audited and allottees were called to append their signatures and make payment of the stamp duty charges. The Complainants were called upon on 4.11.2020 to give their consent for registration of the conveyance deeds in their favour and were apprised of the registration formalities vide letter dated 16.12.2020. The complainants paid the stamp duty charges on 22.12.2020 and the demand drafts submitted by them were submitted to the State Bank of India for purchasing the stamp paper on 23.12.2020.

*A* 22. That on 24.12.2020, the Municipal Corporation of Manesar was notified by the Government of Haryana, which included the revenue estate of Nakhrola/Lakhnola, and in which the project in

question is situated. Under instructions from the Deputy Commissioner, Gurugram, vide Memo dated 26.12.2020, an additional 2% stamp duty was demanded by the office of the Sub Registrar for registering the conveyance deeds in respect of the project in question. The Respondent orally informed the Complainants as well as other allottees in the project about the said development. A letter dated 04.01.2021 from the Deputy Commissioner Gurugram to the Tehsildar, Manesar informing the complainants about the levy of additional 2% stamp duty on registrations of all documents pertaining to the 29 villages comprised in the Municipal Corporation of Manesar.

23. That several allottees in the project including the complainants made a representation to the Hon'ble Chief Minister, Haryana requesting that their conveyance deeds should be registered at the earlier rate and that the increase in stamp duty should come into effect after one year. A notification dated 05.03.2021 was issued by the Haryana Government, Urban Local Bodies Depart, under Section 87 (1) of the Haryana Municipal Corporation Act, 1994 whereby it was directed that the duty on transfer of immoveable properties situated within the limits of Municipal Corporations in the State of Haryana shall be liable to 2% additional stamp duty in addition to the stamp duty imposed under the Indian Stamp Act, 1899, in force for the time being.

24. That the complainants as well as other allottees in the project who had to get the conveyance deeds registered in their favor, were called upon to deposit the additional stamp duty amount and execute the conveyance deed. The revised stamp duty was paid by the complainants on 11.06.2021 and thereafter the conveyance

deed was registered in their favor on 21.06.2021. The original conveyance deed was handed over to the representative of Citibank on 28.06.2021 and a photocopy to the Complainants in terms of the letter dated 28.06.2021 from Citibank.

25. That the complainants are liable to pay the applicable stamp duty as on the date of registration of the conveyance deed in their favor. The complainants have confirmed and acknowledged that the respondent has completed and discharged all its obligations as detailed under the buyer's agreement and conveyance deed and that the complainants do not have any claim on any account whatsoever against the respondent under/or in respect of the apartment/buyer's agreement/conveyance deed, as per Clause 19 of the conveyance deed. There is no default or lapse in so far as the respondent is concerned.
26. From the facts and circumstances set out in the preceding paras, it is evident that the respondent has acted strictly in accordance with the terms and conditions of the buyer's agreement, voluntarily executed by the complainants. There is no default or lapse on the part of the respondent. The allegations made in the complaint quantified by the respondent are manifestly false and baseless. It is evident from the entire sequence of events, that no illegality can be attributed to the respondent. Thus, it is most respectfully submitted that the present complaint deserves to be dismissed at the very threshold.
27. All other averments made in the complaint were denied in toto.
28. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint

can be denied on the basis of these undisputed documents and submissions made by the parties.

**E. Jurisdiction of the authority:**

29. The plea of the respondent regarding rejection of complaint on ground of jurisdiction stands rejected. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

**E. I Territorial jurisdiction**

As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram district. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

**E. II Subject matter jurisdiction**

30. 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**

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**(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*

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*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.*


31. 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.
32. 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 on the relief sought by the complainants:**

**F.I Direct the respondent - builder to compensate the additional amount of Rs. 2,86,690/- which was paid by the complainants in getting the flat registration / conveyance deed.**

**F. II. Direct the respondent - builder to pay interest of 18% on above loss from the date of registration to date until paid.**

33. Since both the above-mentioned issues are interconnected, so the same are being taken together.

 34. The complainants are admittedly the allottees of respondent - builder of a residential unit on the basis of letter of allotment dated 26.11.2019 for a total sum of Rs. 2,09,29,061/- A buyer's agreement

was executed between the parties in this regard on 13.12.2019. The due date for completion of the project was fixed as 17.04.2020 So, in this way, the complainants paid a total sum of Rs. 2,05,08,456/- against the allotted unit. The occupation certificate of the project was received on 05.02.2019 and the possession was offered to the complainants on 17.01.2020 and the same was taken by them.

35. It is contented on behalf of the complainants that after taking over the possession, the respondent was required to execute conveyance deed within three months as per provisions of section 11 (4)(f) of Act 2016. However, the same was delayed on account of delay in filing deed of declaration. In the meanwhile, the colony came within the limits of municipal boundaries of Manesar, causing an additional burden of stamp duty of Rs. 2,86,690 on the complainants which be get refunded to them as there was no delay on their part.
36. However the respondent took a plea that after obtaining occupation certificate of the project and handing over of possession of the allotted unit, the covid restrictions came and the department of Town and Country Planning department extended the period for statutory compliances upto 30.09.2020 and thereafter, the deed of declaration was filed on 02.11.2020 and the demand for the requisite stamp duty was raised to be paid by the complainants.
37. Though the amount of stamp duty by way of demand draft was paid on 22.12.2020 but immediately thereafter i.e on 24.12.2020, the Govt. of Haryana included the housing colony in MC limits of Manesar leading to levy of an additional 2% stamp duty and was thus required to be paid by the complainants as

prevalent on that date to perfect their title of the allotted unit as per the provisions contained under section 11(4)(f) and proviso to section 17(1) of the Act of 2016 and as such, there is no delay on the part of the respondent. Though the case of the complainants is that the specific amount of registration was conveyed to them only on 16.12.2020 and not earlier so as to enable them to deposit the amount in this regard but the plea advanced in this regard is devoid of merit. The complainants were required to pay statutory charges in the shape of stamp duty and registration charges qua the conveyance deed of the allotted unit as prevalent at that time. There is no delay in this regard in view of the facts detailed above on behalf of the respondent as it is the duty of the allottees to perfect their title of the unit by getting the Conveyance Deed registered after paying registration and stamp duty charges prevalent at that time. Hence, the plea of the complainants with regard to increase of stamp duty charges and their refund cannot be entertained and is not sustainable in the eyes of law.

38. Although the complainant - allottee had alleged that the above increase in stamp charges has happened due to delay in filing of deed of declaration on the part of the respondent as they filed the deed of declaration late and due to the same they had to pay 2% extra stamp duty charges. The Government of Haryana, Town and Country Planning Department, vide notification dated 28.07.2020 notified the moratorium period for all existing projects from 01.03.2020 to 30.09.2020 for the purpose of making time bound compliances and payments. The compliances is to be made under the Haryana Apartment Ownership Act, 1983, the moratorium period has been treated as the zero period for compliances. The

Deed of Declaration was to be filed up to 01.04.2020, the time for compliance was extended till 01.11.2020 and the same was filed before the competent authority on 02.11.2020 (1.11.2020 being an official holiday in Haryana). That for any other grievance relating to filing of deed of declaration, can be approached the competent authority under the Haryana Apartment Ownership Act, 1983.

**G.III Direct the respondent - builder to pay legal consultation fee, expenses of complaint submission, mental disturbance and efforts spent for chasing DLF for conveyance deed of the flat.**

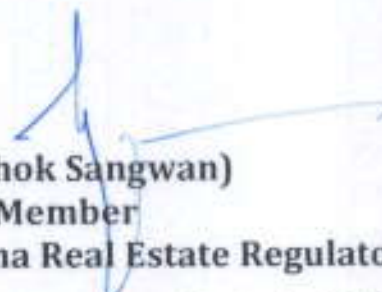
39. The complainants are seeking above mentioned relief with regard to compensation. Hon'ble Supreme Court of India in civil appeal titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors (Supra)* has held that an allottee is entitled to claim compensation & litigation charges under sections 12,14,18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation & litigation expense 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 & legal expenses. Therefore, the complainants are advised to approach the adjudicating officer for seeking the relief of litigation expenses.

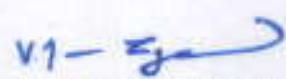
**G. Directions issued the Authority:**

40. Hence, in view of the finding of the authority on issues no. 1 and 2 and discussion above, no directions can be issued with regard to refund of additional amount of Rs. 286690 /- along with interest as claimed by the complainants.



41. Complaint stands disposed of.
42. File be consigned to the Registry.

  
(Ashok Sangwan)  
Member

  
(Vijay Kumar Goyal)  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 18.01.2023



**HARERA**  
**GURUGRAM**