



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	3115 of 2019
Date of filing:	03.01.2020
Date of first hearing:	25.02.2020
Date of decision:	28.03.2023

Vishisht Captial Services Pvt. Ltd.,(through its Managing Director)
Regd Office: 512-514, Antirksh Bhawan,
22 K G Marg, Connaught Place,
New Delhi - 110001

....COMPLAINANT(S)

VERSUS

Parsvnath Developers Ltd. through its Managing Director
Office: Parsvnath Tower, Near Shahdara Metro Station,
Shahdara, Delhi- 110032

....RESPONDENT(S)

CORAM: **Dr. Geeta Rathee Singh** **Member**
 Nadim Akhtar **Member**

Present: - Mr. Nitendra Sharma, counsel for the complainant
 Ms. Rupali S. Verma, counsel for the respondent

ORDER (NADIM AKHTAR - MEMBER)

1. Present complaint dated 03.01.2020 has been filed by complainant under Section 31 of The Real Estate (Regulation & Development) Act, 2016 (for short Act of 2016) read with Rule 28 of The Haryana Real Estate (Regulation & Development) Rules, 2017 for violation or contravention of the provisions of the Act of 2016 or the Rules and Regulations made thereunder, wherein it is inter-alia prescribed that the promoter shall be responsible to fulfill all the obligations, responsibilities and functions towards the allottee as per the terms agreed between them.

A. UNIT AND PROJECT RELATED DETAILS

2. The particulars of the unit booked by complainant, the details of sale consideration, the amount paid by the complainant and details of project are detailed in following table:

S.No.	Particulars	Details
1.	Name of the project	Parsvnath City
2.	Name of promoter	Parsvnath Developers Ltd.
3.	Unit area	Commercial plot of 3.65 acres
4.	Total sale consideration	₹19,77,76,000/-
5.	Amount paid by complainant	₹19,77,76,000/-
6.	Date of execution of	20.01.2017



	conveyance deed	
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B. FACTS OF THE COMPLAINT

3. Present complaint has been filed by M/s Vishisht Capital Services Pvt. Ltd. through its Director, Mr. Pardeep Mehta. Complainant has submitted that he had purchased a commercial plot admeasuring 14,775 sq. meter (3.65 acres) in the project namely 'Parsvnath City', Rewari' being developed by respondent. Complainant had paid entire sale consideration of ₹19,77,76,000/- to respondent and no amount whatsoever is outstanding or payable by him. Conveyance deed was executed between the parties on 20.01.2017. Copy of said conveyance deed is annexed as Annexure C-5 with the complaint. As per terms of clause 4 conveyance deed, the sale consideration did not include the EDC and IDC and interest penal interest thereof from the date of issue of license i.e. 06.03.2007 and it was agreed that complainant alone would be responsible for payment of the same which worked out to ₹11,36,34,944/- till 30.04.2017. It has been submitted that out of said amount an amount of ₹3,95,10,760/- was paid to respondent on 28.12.2016 against the EDC and IDC and remaining amount of ₹7,41,24,184/- was to be paid through post-dated cheques dated 31.03.2017 and 30.04.2017. It has further been submitted that as per clause 4 of conveyance deed it was agreed between the parties that



complainant shall have option of depositing EDC and IDC directly in favour of Chief Administrator, Haryana Urban Development Authority, seven days before respective due dates of the cheques and in such case respondent would not deposit the cheques and will return the same to complainant.

4. Vide letter dated 31.03.2017 (copy annexed as Annexure C-6 with complaint), complainant informed the respondent that as per clause 7 of terms of conveyance deed dated 20.01.2017, respondent was to obtain extension of licence, but respondent did not supply copy of extended license beyond 03.03.2016 holding validity for 36 months and did not apprise the complainant as to whether amount of EDC and IDC has been deposited with Chief Administrator, HUDA or not and therefore respondent was requested to inform about said queries. It was also mentioned in said letter dated 31.03.2017 that in absence of extended licence, complainant would not be in a position to carry out any development on the plot. It was further mentioned in the letter that though at the time of execution of conveyance deed, a letter of handing over of possession of booked plot was executed but actually the property was not demarcated on site due to which the complainant is not in a position to utilize the plot even after executing the conveyance deed and it was assured by respondent that it would be done very soon but same was not done despite repeated requests by



done very soon but same was not done despite repeated requests by complainant. In these circumstances, respondent was requested not to present cheques dated 31.03.2017 and 30.04.2017 till all documents mentioned in said letter dated 31.03.2017 are supplied to complainant and actual demarcation is done on the site. But respondent presented the cheques without informing complainant and in defiance of specific instructions of complainant not to present said cheques. Complaints in respect of said cheques U/s 138 N.I. Act are pending before learned M.M.

5. It has been submitted that since complainant was not getting any satisfactory response from respondent, complainant vide letter dated 11.01.2018 (copy annexed as Annexure C-7 with complaint) applied for information under RTI Act, 2005 from Public Information Officer, Chief Town Planner, Chandigarh. Vide reply dated 16.03.2018 (copy annexed as Annexure C-8 with the complaint), complainant was informed that respondent has not deposited any amount after 12.09.2008 towards EDC and IDC and it was also informed that amount of ₹3,95,10,760/- has not been deposited by respondent towards EDC and IDC. Thereafter vide letters dated 19.08.2019, 14.10.2019 complainant requested the respondent to immediately deposit amount of ₹3,95,10,760/- along with interest towards EDC and IDC with concerned department. It was mentioned that remaining



amount of EDC and IDC along with interest would be paid by complainant directly to DTCP. It was also mentioned that an entrance gate which was constructed by respondent on property was not removed despite repeated assurances for the same. Complainant also called upon the respondent to take immediate necessary steps for applying in terms of "Policy for migration of licence into other use" and "Policy for allowing change in beneficial interest viz. change in Developer; assignment of Joint Development Rights and/or Marketing Rights etc. in Licence No. 129/2017 in respect of captioned plot. That the complainant is deprived of the use and enjoyment of the demised property despite having paid huge sale consideration and also towards EDC and IDC. Hence, present complaint has been filed.

C. RELIEF SOUGHT

6. The complainant in his complaint has sought following reliefs:
- (i) To direct the respondent to pay a sum of ₹3,95,10,760/- along with interest to be calculated @24% per annum for the entire period commencing from its date of payment to the respondent by the complainant i.e. 28.12.2016 till the payment by the respondent to complainant in respect of the demised property.
 - (ii) To direct the respondent to obtain extension of license in terms of clause 7 of the registered conveyance deed dated 20.01.2017 in respect of project land including demised property.



- (iii) To direct the respondent to take immediate necessary steps for applying in terms of "Policy for migration of licence into other use" and "Policy for allowing change in beneficial interest viz. Change in Developer; assignment of Joint Development Rights and/or Marketing Rights etc. in Licence No. 129/2017 in respect of demised property so as to enable the complainant to use and enjoy the demised property in terms of and for the purposes mentioned in the conveyance deed dated 20.01.2017.
- (iv) To direct the respondent to carry out demarcation and measurement on site of the demised property.
- (v) To direct the respondent to remove entrance gate from the demised property.
- (vi) To direct the respondent to pay compensation/damages equivalent to the amount of interest on ₹19,77,76,000/- @24% per annum from the date of conveyance deed till the demised property is demarcated to the complainant, fit for use and enjoyment in terms of and for the purposes as mentioned in the conveyance deed dated 20.01.2017.
- (vii) To direct the respondent to develop the common areas, services and facilities, which are needed to be utilized by said demised commercial plot.



D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

Learned counsel for the respondent filed short reply on 30.03.2021 pleading therein:-

7. Respondent has admitted the booking of plot by complainant, the agreed sales consideration, the area and location of the plot and fact that conveyance deed has been executed between the parties. Respondent has however negated the allegations raised by the complainant.
8. The reliefs sought by complainant cannot be granted by the Authority as present complaint is a counterblast to the proceedings initiated by the respondent against complainant under Section 138 of the Negotiable Instrument Act before the Hon'ble District Court, Patiala House at New Delhi bearing Complaint No. 9210 of 2017 and Complaint No. 13626 of 2017 and the Hon'ble Court vide its order dated 06.06.2019 has considered that the prima facie case is made out against the complainant and notice framed against the accused.
9. Present complaint is not maintainable under the provisions of RERA Act, 2016 as the complainant cannot be covered under the definition of 'allottee' provided in the Act for the reason that complainant has bought the said plot for construction of a commercial property, and consequently, it cannot be covered under the definition of 'Allottee'.



10. That common facilities have already been developed which are required to be provided to the complainant and the same can be connected with the plot after the construction is completed by the complainant. So the relief sought with respect to the completion of the common facilities is pre-mature.
11. Perusal of clause 4 of the conveyance deed dated 20.01.2017 reveals that if the complainant wanted to deposit the amounts towards EDC and IDC directly to concerned authorities then the complainant may deposit the same 7 days prior to the date of cheque and inform the respondent. Further the conveyance deed does not cast any obligation upon the respondent to inform the complainant prior to deposit of the cheques. Thus, relief sought by complainant towards refund of amount paid towards EDC and IDC can't be entertained by this Hon'ble Authority and should be rejected out rightly.
12. Complainant was having the option to directly deposit the balance EDC and IDC with the Authority prior to the due date of the cheques and submit the proof of the same with the respondent but after execution of conveyance deed of plot in his favour and taking possession of the same, complainant chosen not to deposit EDC and IDC and also did not got the cheques cleared which shows his malafide intention.



13. The complainant has sought demarcation of the commercial plot whereas on perusal of the conveyance deed dated 20.01.2017, it is revealed that the commercial plot has already been demarcated and as such the possession of the said plot had already been handed over to the complainant. Respondent has contended that vide memo dated 28.03.2011. DTCP, Haryana clarified that building plans/occupation certificate for individual plot holders in the colony is not with renewal/validity of license. Therefore, relief sought by complainant with respect to migration of license does not arise. Hence, the reliefs as sought by complainant are devoid of any merits and the respondent has thus prayed for the dismissal of complaint.

E. APPLICATION FILED BY COMPLAINANT FOR APPROPRIATE DIRECTIONS TO THE RESPONDENT

14. An application dated 19.04.2022 was then filed by complainant to direct the respondent to utilize the opportunity given by the Directorate Town and Country Planning , Haryana, Chandigarh from time to time recently named as "Samadhan Se Vikas" extended second time upto 15 August 2022 and respondent shall be directed to deposit the amount of ₹3,95,10,760/- with the concerned authority and further to hold the respondent liable for misappropriating payment of ₹3,95,10,760/- collected by him from the complainant as back as on 28.12.2016 which has not been deposited till date to the concerned



department. Complainant has also sought the relief that respondent be directed to remit to it interest @24% p.a. on illegal holding of amount of ₹3,95,10,760/- from 28.12.2016 till the date of its remittance.

F. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT

15. Learned counsel for both the parties reiterated the facts as have been submitted in writing. Learned counsel for the complainant argued that although the conveyance deed has been executed between the parties but the complainant is not able to enjoy the possession of the property as no demarcation of plot has been done till date and the respondent has built a large entrance gate on the property. Moreover, the respondent has not paid the amount of EDC and IDC deposited by complainant, to the concerned department which he was obliged to do so as per conveyance deed executed between the parties. So, he requested that respondent be directed to pay said EDC and IDC to concerned department or same be paid back to complainant with interest to be paid to department.

Learned counsel for the respondent argued that complainant has failed to pay complete component of EDC and IDC and has filed present complaint with sole motive to illegally gain from respondent.

G. ISSUES FOR ADJUDICATION



G. ISSUES FOR ADJUDICATION

16. (i) Whether the complainant is entitled to relief of demolition of entrance gate from the demised property?
- (ii) Whether the complainant is entitled to payment of sum of ₹3,95,10,760/- along with interest to be calculated @24% per annum for the entire period commencing from its date of payment to the respondent by the complainant i.e. 28.12.2016 till the payment by the respondent to complainant in respect of the demised property?

H. OBSERVATIONS AND FINDINGS OF THE AUTHORITY

17. After hearing both the parties, it is observed that respondent has taken a stand that present complaint is not maintainable under the provisions of RERA Act, 2016 as the complainant cannot be covered under the definition of 'allottee' provided in the Act for the reason that complainant has bought the said plot for construction of a commercial property. Before adjudicating upon said issue, Authority has gone through the definition of allottee as provided in Section 2(d) of the Act. Said provision is reproduced below for reference:-

“Section 2(d): Allottee: in relation to a real estate project, means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not



include a person to whom such plot, apartment or building, as the case may be, is given on rent.”

From bare perusal of the definition of “allottee”, it is clear that the transferee of an apartment, plot or building is an allottee. Act does not distinguish between applicants who have purchased the property for residential or personal use from those who have purchased a property for commercial use. Any person to whom plot, apartment or building has been allotted, sold is an allottee. In present case, complainant had been sold a plot measuring 3.65 acres in respondent’s project named ‘Parsvnath City, Dharuhera, Rewari’ for which conveyance deed has already been executed. So, complainant is very well within the definition of allottee and objection of respondent that complaint is not maintainable is rejected.

18. Perusal of file reveals that matter was heard on 25.08.2020, wherein after hearing the contentions of complainant following observations and directions were passed:-

“3. After hearing the contentions of the complainant, the Authority observes that as conveyance deed has been executed between the parties, the complainant is free to utilize the property in the way he wants. Payment of EDC and IDC to concerned department is the responsibility of the promoter and complainant is free to move an application for getting the building plans sanctioned before the concerned department. He may also file an application before DTCP, Rewari to check whether the demarcation of the plot has been properly done or not and remove encroachments, if any. DTCP, Rewari shall



visit the site along with complainant and respondent with prior intimation to both the parties.”

19. Thereafter, matter was heard at length on 28.01.2021 and a detailed order was passed with direction to respondent to demolish the gate built upon complainant's plot and remove encroachments and it was directed that respondent after removal of said encroachments shall make fresh offer of possession of the plot to the complainant. It was clarified by said order that the liabilities of respondent and complainant to pay outstanding dues to concerned departments will remain intact. Said order dated 28.01.2021 is reproduced below:-

“1. While initiating his arguments, learned counsel for the complainant argued that vide order dated 25.08.2020, complainant was directed to file an application before DTP, Rewari to check whether or not demarcation of the plot has been properly done and to remove encroachments, if any. As per said order, site visit was fixed for 12.10.2020 but no representative on behalf of respondent was present at site. DTP, Rewari had ordered the respondent to clearly demarcate the plot and remove the encroachments within seven days but respondent has not complied with the same till date. He further argued that EDC and IDC paid by him to the respondent has not been deposited by the respondent promoter to the concerned department. Since complainant has lost faith in the respondent, he wants to deposit the remaining EDC and IDC directly to concerned department.

2. Learned counsel for the respondent sought time to file reply.

3. Authority observes that this is the fifth hearing in the matter and respondent has not filed his reply despite availing several opportunities. Therefore, Authority has decided to proceed on merits on the basis of material already available on record.

4. Authority further observes that basic dispute in the matter is with regard to proper demarcation of commercial plot. A letter dated 27.10.2020 issued to the respondent by DTP, Rewari, has been received in the office on 02.11.2020 whereby it has been stated that site visit was fixed for 12.10.2020 but respondent was not present at site during visit. Assistant Town Planner along with field staff conducted the visit and had observed that respondent has not clearly demarcated the commercial plot admeasuring 3.65 Acres and also deviated the 15-meter-wide road at site vis- a- vis approved layout plan of the colony. It has been further observed that respondent has also encroached upon the site by constructing an entrance gate. Therefore, DTP, Rewari, directed the respondent to clearly demarcate the plot and remove encroachments within seven days but as per statements of learned counsel for the complainant, said order has not been complied with till date. In furtherance to the order of DTP, Rewari, Authority now directs the respondent to demolish the gate built upon complainant's plot and remove encroachments. Respondent after removal of said encroachments shall make fresh offer of possession of the plot to the complainant before the next date of hearing. The liabilities of respondent and complainant to pay outstanding dues to concerned departments will remain intact.

5. Case is adjourned to 31.03.2021."

20. The matter was again heard on 22.12.2022 wherein the application dated 07.12.2021 filed in the Authority on 20.12.2021 on behalf of RWA, Parsvnath, Dharuhera was disposed of by the Authority after going through the record and following order was passed:-

- “1. This order shall dispose of application dated 07.12.2021 filed in the Authority on 20.12.2021 on behalf of RWA, Parsvnath, Dharuhera through its Secretary under the provisions of Order 1 Rule 10 of the Civil Procedure Code, 1908 for impleading the applicant in the array of parties being proper and necessary party for proper adjudication of the present complaint.
2. In said application, the Association has submitted that the Authority vide orders dated 28.01.2021 has directed DTP, Rewari to demolish the main entrance gate whereas it is

the only one gate for passage of the residents living therein and demolition of said gate is in contravention of the rights of the residents. The applicant further submitted that complainant is not the original allottee and has purchased the land from the developer/respondent. Furthermore, the sale of the commercial plot is illegal as the license had already expired at the time of sale and the plots sold to the complainant by the respondent are not according to the plan approved by the DTCP. Thus, it has been prayed that present application may be allowed in interest of justice.

3. On the other hand, learned counsel for the complainant has filed reply to above said application dated 07.12.2021 in Court today, pleading therein:

(i) That, 'RWA, Parsvnath, Dharuhera' is not a legal entity and the application is not signed by anyone on behalf of alleged society.

(ii) That, the application is accompanied by an affidavit of one Mr. Yogesh Yadav who has claimed in the affidavit that he is the applicant in the said application whereas the impleadment is sought of 'RWA, Parsvnath, Dharuhera'. Further, Mr. Yogesh Yadav has not mentioned as to how he is the applicant or how he is authorised to sign and file the said application not any document has been placed on record to show that he is authorised on behalf of 'RWA, Parsvnath, Dharuhera'.

(iii) A copy of proceeding of 28.11.2011 has been annexed as Annexure A-2 with said application. In the index, said proceeding has been mentioned as Resolution whereas alleged document is not a resolution by the General Body or the Managing Committee of any society named as 'RWA, Parsvnath, Dharuhera'. Even in said proceeding, Mr. Yogesh Yadav has not been authorised for any purpose.

(iv) A memorandum of Association of a society is annexed as Annexure A-1 in which name of the society is mentioned as 'RWA, Parsvnath City Sec-1, Dharuhera' whereas impleadment is being sought of 'RWA, Parsvnath, Dharuhera'.

(v) That, rights claimed by complainant are based on the layout plan sanctioned by the competent authority i.e. DTCP, Chandigarh, Haryana and neither the respondent nor any society of residents of Parsvnath City have any

right to change or amend the said approved layout plan qua the location of the commercial plot of the complainant in respect of which conveyance deed dated 20.01.2017 has been executed and registered by respondent.

(vi) That, DTP Rewari had also observed that respondent has not clearly demarcated the commercial plot of complainant and has encroached upon the area of complainant and therefore respondent was directed to clearly demarcate the commercial plot and remove encroachment within seven days.

(vii) Complainant has annexed copy of approved layout plan with its reply and it is apparently visible in said approved layout plan of the colony that there is one road which is connecting the main highway to the colony and it is a straight 15 meters road. Complainant had nowhere in his complaint demanded removal or obstruction of said 15 meter road but if any arch or structure in any form is existing or constructed by respondent on the plot of complainant, he is legally entitled to get such arch or structure in any form removed by the competent authorities and no resident or society of residents or anyone else has any right to cause any obstruction in the legal rights of the complainant.

4. Authority has gone through the submissions made by the complainant and the Association and has perused the copies of layout plans annexed by the complainant in his reply to application dated 07.12.2021. After careful examination of the facts of the case, it is observed that admittedly respondent has built a gate on plot of complainant and for said reason complainant is not able to completely enjoy the possession of his property. Authority vide its order dated 25.08.2020 had directed the DTP Rewari to visit the site and check whether the demarcation of the plot has been properly done or not and remove encroachments, if any. In response to this, a letter dated 27.10.2020 issued to the respondent by DTP, Rewari, has been received in the office on 02.11.2020 whereby it has been stated that site visit was fixed for 12.10.2020 but respondent was not present at site during visit. Assistant Town Planner along with field staff conducted the visit and had observed that respondent has not clearly demarcated the commercial plot admeasuring



3.65 Acres and also deviated the 15-meter-wide road at site vis- a- vis approved layout plan of the colony. It has been further observed that respondent has also encroached upon the site by constructing an entrance gate. Therefore, DTP, Rewari, directed the respondent to clearly demarcate the plot and remove encroachments within seven days. Letter of DTP, Rewari clearly indicates that respondent had encroached the land of the complainant and has deviated the 15 meter wide road. Hence, it is observed that removal of said gate will not affect the rights of the Association in any way for the reason that as per approved layout plan annexed by complainant, association has a proper way to commute. Authority does not find any merit in this application and observes that impleading the Association for proper adjudication of the case is not necessary.

Further, the technical objections raised by complainant that the Association is not a legal entity, Mr. Yogesh Yadav is not authorised by any resolution to file present application, application is not signed etc does not need to be dealt with as application itself does not hold any merit so there is no point to get those technical deficiencies rectified. Accordingly, application dated 07.12.2021 filed by the RWA, Parsvnath, Dharuhera for impleading it in the array of parties as proper and necessary party is rejected for the reasons already stated above with liberty to Association to file fresh complaint, if any, grievance survives.

5. Further, vide order dated 22.07.2022, both the parties were directed to submit information with regard to following issues:

(i) Whether plot in question has been properly demarcated and measurement at the site had been done or not?

(ii) Whether complainant has taken over actual physical possession of the plot or not?

(iii) Complainant has paid a sum of ₹3,95,10,760/- towards EDC and IDC and a further sum of ₹₹7,41,24,184/- was to be paid by complainant along with interest, if any. Whether complainant is willing to pay remaining amount in absence of respondent having not obtained the extension of existing licence for the land in question?



- (iv) Whether or not the plot allotted to the complainant is as per approved layout plans?
6. In compliance to the above directions, today, both the counsel for the parties have stated that as far as issue no. (i) and (ii) are concerned, the plot in question has been properly demarcated, possession has been taken over by the complainant and conveyance deed has been executed between the parties. With regard to issue no. (iii), learned counsel for the complainant stated that complainant is ready and willing to pay the remaining EDC and IDC amount directly to the concerned authorities in absence of respondent having not obtained the extension of license for land in question and learned counsel for the respondent stated that respondent does not have any objection to the same. With regard to issue no. (iv), both the counsel for the parties submitted that the plot allotted to the complainant is as per the approved layout plan.
7. Also, arguments of both the parties have been heard. Learned counsel for the complainant wishes to file written submissions in the matter. He is directed to file the same within fifteen days and supply its copy to respondent who may file his written submissions, if any, and supply its copy to complainant.
8. Case is adjourned to **28.03.2023** for arguments, if any and pronouncement of order. Respondent is also directed to pay the Authority earlier imposed costs of ₹10,000/- within 15 days of uploading of this order.”
21. Learned counsel for the complainant stated that he does not wish to file any written submissions and matter may be decided on the basis of material already available on record. Authority has heard the contentions of both parties and gone through documents on record, and observes that major issues and controversies involved the matter had already been decided by the Authority and vide order dated 28.01.2021 and subsequent orders thereupon, respondent was directed



again and again to demolish the gate built upon complainant's plot and remove encroachments. But respondent has failed to comply with said order till date. Even more DTP, Rewari, had directed the respondent to clearly demarcate the plot and remove encroachments within seven days, but respondent failed to comply with that order as well. Accordingly, Authority decides to confirm its order dated 28.01.2021, with direction to the respondent to demolish the gate built upon complainant's plot and remove encroachments.

22. Complainant has sought the relief that respondent be directed to pay a sum of ₹3,95,10,760/- along with interest to be calculated @24% per annum for the entire period commencing from its date of payment to the respondent i.e. 28.12.2016 till the payment by respondent . In this regard it is observed that it is the responsibility of complainant to pay EDC and IDC to respondent and respondent is under an obligation to pay the same to the concerned department. However, if respondent fails to perform his responsibility, the burden of paying any interest, if charged, or any penalty, if imposed, by department will be upon respondent. Therefore, complainant's relief to award interest on said amount cannot be granted. However, respondent is directed to deposit the amount of EDC and IDC received from the complainant to the concerned department along with interest/penalty/charges, if imposed by the department.



Further, since the complainant has lost faith in the respondent and wants to deposit the remaining EDC and IDC directly to concerned department, he is at liberty to do so under relevant provisions of law by filing requisite application with the concerned department for the same. It is clarified that non payment of amount of EDC and IDC on part of respondent will not affect the rights of the complainant to utilize and enjoy its property and complainant is at liberty to move application for getting the building plans sanctioned from the concerned department for enabling him to utilize the property.

23. Complainant has also sought relief that respondent be directed to obtain extension of license in terms of clause 7 of registered conveyance deed in respect of project land. In regard to this, it is observed that whether the respondent has got extension of license or not is an issue between the promoter and the competent authority and it will in no way affect the rights of the complainant as an allottee. Since, complainant has been handed over the possession of the plot booked by him after proper demarcation as per approved layout plan, he may utilize the property the way he wants and non extension of license will not have any affect on its rights to enjoy the property. So said relief sought by the complainant cannot be allowed.



24. Another relief sought by the complainant is that respondent be directed to carry out the demarcation and measurement on site land. In this regard it is observed that complainant on hearing dated 22.12.2022 has confirmed that the plot in question has been properly demarcated, possession has been taken over by the complainant and conveyance deed has been executed between the parties. So, said relief sought by the complainant stands settled.
25. Complainant has prayed that respondent be directed to take immediate necessary steps for applying in terms of "Policy for migration of licence into other use" and "Policy for allowing change in beneficial interest viz. Change in Developer; assignment of Joint Development Rights and/or Marketing Rights etc. in Licence No. 129/2017 in respect of demised property so as to enable the complainant to use and enjoy the demised property in terms of and for the purposes mentioned in the conveyance deed dated 20.01.2017. In this regard it is observed that after execution of conveyance deed, complainant is at liberty to use the demised property for all purposes mentioned in conveyance deed and his rights will not be affected in any manner. So, said relief sought by the complainant is also rejected.
26. Lastly, complainant has prayed that respondent be directed to develop the common areas, services and facilities, which are needed to be utilized by said commercial plot. In this regard it is observed that



respondent in his reply has submitted that common facilities have already been developed which are required to be provided to the complainant and the same can be connected with the plot after the construction is completed by the complainant. Complainant has not placed on record any evidence which depicts that said facilities are not available at site. So, said relief also cannot be granted. However, complainant will be at liberty to file fresh complaint in regard to this issue, if any grievance survives.

I. DIRECTIONS OF THE AUTHORITY

27. Hence, the Authority hereby passes this order and issues following directions under Section 37 of the Act:-

- (i) Respondent is directed to demolish the gate built upon complainant's plot and remove encroachments.
- (ii) Respondent is directed to deposit the amount of EDC and IDC received from the complainant to the concerned department along with interest/penalty/charges, if imposed by the department.
- (iii) Respondent is also directed to pay the Authority earlier imposed costs of ₹10,000/-.
- (iv) A period of 90 days is given to the respondent to comply with the directions given in this order as provided in Rule 16 of



Haryana Real Estate (Regulation & Development) Rules, 2017
failing which legal consequences would follow.

28. **Disposed of.** File be consigned to record room after uploading of order on the website of the Authority.


.....
NADIM AKHTAR
[MEMBER]


.....
Dr. GEETA RATHEE SINGH
[MEMBER]