

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

Complaint no. : 4878 of 2022  
First date of hearing: 30.09.2022  
Date of decision : 10.01.2024

Sushil Kumar  
**Address:-** A-012, Brisk Lumbini,  
Sector-199, Gurugram

**Complainant**

Versus

Brisk Infrastructure Developers Pvt Ltd  
**Address:-** B-1/1001 Ground Floor, Vasant  
Kunj, New Delhi-110070

**Respondent**

**CORAM:**  
Shri Ashok Sangwan

**Member**

**APPEARANCE:**  
Shri Sachin Yadav Proxy Counsel  
None

Advocate for the complainant  
Advocate for the respondent

**EX-PARTE ORDER**

1. The present complaint dated 27.07.2022 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) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions as provided under the

provision of the Act or the Rules and regulations made there under or to the allottee as per the agreement for sale executed *inter se*.

**A. Unit and project related details**

2. The particulars of unit details, sale consideration, the amount paid by the complainant, 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 of the project	Lumbini Terrace Homes, Sector-109
2	Area of the project	10.76 acres
3	Nature of the project	Residential Group Housing Colony
4	DTCP License No.	174 of 2008 dated 01.10.2008 valid upto 30.09.2018
5.	RERA Registered/ not registered	Not Registered
6	Allotment letter	19.05.2016 (Page 21-22 of the complaint)
7.	Unit no.	012, First Floor, Tower-A
8.	Unit area admeasuring	2022 sq. ft.
9.	Builder Agreement	Buyer's 27.05.2016 (Page 27 of the complaint)
10.	Possession clause	9.1 Subject to Clause 9.4 below and subject to timely payment by the Buyer of sale price, stamp duty and other charges due and payable according to Payment Plans applicable to him/her/it or as demanded by

		<p><i>the Company, the Company contemplates to complete construction of the Apartment and hand over the possession thereof to the Buyer within 36 months (Three Years) "Commitment Period" from the date of start of construction of the project. Further the Apartment Buyer agrees and understands that the company shall be additionally entitled to a period of 180 days (one hundred and eighty days) "Grace Period", after the expiry of the said commitment period to allow for unforeseen delays in obtaining the Occupation certificate or any other mandatory certificate/NOC from relevant authorities including DGTCP under the act in respect of the project.</i></p>
11	Date of start of construction on	N/A
12.	Due date of possession	27.05.2019 [Due date of possession is calculated from the date of builder buyers' agreement i.e., 27.05.2016]
13.	Total consideration sale	Rs. 68,05,880/- [Page 29 of the complaint]
14.	Amount paid by the complainants	Rs. 77,42,241/- [As per the SOA dated 07.01.2016]
15.	Occupation certificate /Completion certificate	19.05.2016
16.	Offer of Possession	N/A

**B. Facts of the complaint**



3. The complainant made the following submissions in the complaint:
- I. That Complainant is owner and resident of flat No.A-12, Brisk Lumbini Apartment and Respondent is builder of this society who developed the Group Housing Society Vide License No. 174 of 2008. That, Respondent are persistently flouting the rules and regulations of DTP as well as not adhering and numerous acts of Respondent amounts to contravening rules of law.
  - II. That as per RTI information from DTP under provisions of RTI ACT vide letter dated 11.07.2019 the following information was sought- "what is the total EDC & IDC of the society, "what is the amount of EDC& IDC deposited by the builder with Government"? And "What is the method to calculate EDC & IDC per flat".
  - III. That, DTP bearing address Nagar Yojana Bhavan, Plot No. 3, Block-A, Sector 18-A, Madhya Marg, Chandigarh vide its reply of abovementioned RTI, reply bearing Memo No. RTI/441 Dated 23.01.2020, provided the information that the EDC & IDC is calculated and demanded as per acre not as per flat and total area of this project is 10.793 acres. So, EDC & Enhance EDC demanded from colonizer was 12,39,58,000/- & 4,94,93,000/-respectively, while Demand of IDC was 2,73,81,000/- which after totalling comes to Rs.20,08,32,000/- (principal amount without interest and penalty). However, as Respondent is holder of 57 percent area, and rest 43 percent area of total land belongs to RAHEJA DEVELOPER LTD, then share of Respondent is of 11,44,74,240 / - .

- IV. However, respondent didn't pay in time and so had to pay the amount along with interest/penalty of EDC & IDC which is Rs.28,13,900/-. Any delay penalty levied by DTCP Authority onto the respondent is not the responsibility of the homebuyer/complainant. That as per the calculation of area of all flats as also declared by Respondent in the Deed of Declaration GOB2017 C2563 dated 02 March 2017) is 618108 Sqft and shop is 1380 sq. ft. in premises of Respondent, so total area of flats and shops is 619488 sq. ft. Total demand of principle amount of EDC & IDC by DTCP was Rs. 20,08,32,000/-.
- V. So, the project BRISK Lumbini being 57% of total land area owes Rs. 11,44,74,240/- as respective principal EDC/IDC amount. Area wise calculation to be charged from Complainant comes out to be Rs. 184.78 per sq. ft. as pro-rata principal EDC/IDC. That area of complainant's flat is 2165 sq. ft, so the liability of payment towards EDC & IDC as per flat area is of amount of Rs.4,00,048.7/- (INR Four Lakh Forty-Eight Rupees and Seven paise only but Respondent had charged 6,06,600/- (Six lakh six thousand and six hundred only).
- VI. The Complainant is not liable to contribute to the interest/penalty charges DTCP levied on the respondent due to the fault on end of respondent. It is also pertinent to mention that the Respondent cannot be allowed to make profit from the collection of statutory charges like EDC/IDC from homebuyers. That however reply of RTI vide Memo No. RTI/441 Dated 23.01.2020 by DTP made it clear

that Respondent have extorted extra amount in the name of EDC & IDC from the flat owners.

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

4. The complainant has sought following relief:
  - i. Direct the respondent to refund the excess amount charged as EDC and IDC along with interest at the prescribed rate.
5. The authority issued a notice dated 28.09.2022 of the complaint to the respondent through an email address at info@brisk.in. The delivery report has been placed in the file. Despite proper service of notice, the respondent has preferred neither to put in appearance in the hearing dated 30.09.2022, 24.01.2023, 19.07.2023 nor filed the reply to the complaint within the stipulated period. Accordingly, the authority is left with no other option and vide order dated 19.07.2023, the defence of the respondent was struck off.
6. 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 based on these undisputed documents and submission made by the complainant.

**D. Jurisdiction of the authority**

7. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

**D. 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.

#### **D. 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)(a)**

*Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;*

##### **Section 34-Functions of the Authority:**

*34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.*

So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

#### **E. Findings on the relief sought by the complainant**

- i. Direct the respondent to refund the excess amount charged as EDC and IDC along with interest at the prescribed rate.

10. It is contented by the complainant that the complainant is not liable to contribute to the interest/penalty charges DTCP levied on the respondent due to the fault on end of respondent. It is also pertinent to mention that the respondent cannot be allowed to make profit from the collection of statutory charges like EDC/IDC from homebuyers. The authority is of view that the promoter would be entitled to recover the actual charges paid to the concerned department from the complainant/allottee on pro-rata basis i.e., depending upon the area of the unit allotted to him vis-à-vis the area of all the units in the project. The complainant would also be entitled to proof of such payments to the concerned departments along with a computation proportionate to the allotted unit before making payments under the aforesaid heads. The authority further observes that the complainant is not liable to pay interest on EDC/IDC to the respondent due to its fault where it was sole responsibility of the respondent to pay the EDC/IDC on time. As per the settled law one cannot be allowed to take advantage of his own wrong. Hence, the same should be refunded to the allottee along with interest at the prescribed rate @ 10.85% w.e.f. the date of payment made by the allottee till the amount is repaid/adjusted.

**H. Directions of the Authority:**


11. 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



functions entrusted to the Authority under Section 34(f) of the Act of 2016:

- i. The respondent is entitled to recover the actual charges paid to the concerned departments from the complainant/allottee on pro-rata basis on that account depending upon the area of the unit allotted to him vis-à-vis the area of all the units in the project. The complainant would also be entitled to proof of such payments to the concerned departments along with a computation proportionate to the allotted unit before making payments under the aforesaid heads. The respondent is directed to provide specific details with regard to these charges.
- ii. Further the complainant is not liable to pay interest on EDC/IDC to the respondent due to its fault where it was sole responsibility of the respondent to pay the EDC/IDC on time. The same should be refunded to the allottee along with interest at the prescribed rate @ 10.85% w.e.f. the date of payment made by the allottee till the amount is repaid/adjusted.

Dated: 10.01.2024

  
**(Ashok Sangwan)**  
Member  
Haryana Real Estate  
Regulatory Authority,  
Gurugram