

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

Complaint no. : 6501 of 2022
First date of hearing: 15.12.2022
Date of decision : 02.02.2024

Retd. Lt. Col. Nasir Parwaz
Through Special Power of Attorney
R/o: - Cantt. Civil Lines, Allahabad,
Uttar Pradesh-211001

Complainant

Versus

1. M/s Bright Buildtech Pvt. Ltd. & Ors.
Office: D-107, Panchsheel Enclave, New Delhi-
110017
2. M/s Orris Infrastructure Pvt. Ltd.
Office: J-10/5, DLF Phase-2, MG Road, Gurugram-
122002

Respondents

CORAM:

Shri Sanjeev Kumar Arora

Member

APPEARANCE:

Sh. Raees Khan
Sh. Aishwarya Jain
Smt. Charu Rustagi

Counsel for Complainant
Counsel for Respondent 1
Counsel for Respondent 2

ORDER

1. The present complaint dated 29.09.2022 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 under the provisions of the Act or the Rules and regulations made there under 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 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 | 'Woodview Residencies', sector-89-90, Gurugram |
| 2. | Nature of project | Residential plotted colony |
| 3. | RERA registered/not registered. | 34 of 2020 dated 16.10.2020. |
| 4. | DTPC License no. | 59 of 2013 dated 16.07.2013 |
| | Validity status | 15.07.2021 |
| | Name of licensee | Orris Land & Housing Pvt. Ltd. & 42 Ors. |
| | Licensed area | 100.081 Acres |
| 5. | Unit no. | B-96-FF, 1 st floor. [pg. 25 of complaint] |
| 6. | Unit measuring | 1090 sq. ft. [pg. 25 of complaint] |
| 7. | Date of allotment | 11.02.2015 (pg. 24 of complaint) |
| 8. | Date of execution of buyer's agreement | 14.08.2015 (pg. 23 of complaint) |



| | | |
|-----|---|---|
| 9. | Possession clause | <p>5. Possession of Dwelling Unit</p> <p>5.1 Subject to Clause 5.2 and subject to the Buyer making timely payments, the Company shall endeavor to complete the construction of the Building Block in which the Dwelling Unit is situated within 36 months, with a grace period of 6 (six) months from the date of issuance of Allotment Letter provided that all amounts due and payable by the Buyer has been paid to the Company in timely manner. The Company shall be entitled to a reasonable extension of time for the possession of the Dwelling Unit in the event of any default or negligence attributable to the Buyer's fulfillment of the terms & conditions of this Agreement.</p> <p>(pg. 29 of complaint)</p> |
| 10. | Due date of possession | 11.08.2018 (Grace period is allowed being unqualified) |
| 11. | Basic sale price as per BBA on page no. 26 of complaint | ₹ 92,93,037/- |
| 12. | Total amount paid by the complainant | ₹ 51,23,148/- (as per sum of payment receipts) |
| 13. | Occupation certificate | Not Received |
| 14. | Offer of possession | Not offered |

| | | |
|-----|---|-------------------------------------|
| 15. | withdrawal request made by the complainant | 09.10.2020 (pg. 77 of complaint) |
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B. Facts of the complaint

3. The complainant has made the following submissions in the complaint:

- a. That the complainant is law abiding citizen of India who had booked a dwelling unit no. B-96-FF. In the project of the respondent company, namely, **'WOODVIEW RESIDENCES'** situated in sector 89 and 90, Gurugram, was allotted to the complainant vide Allotment Letter dated 11/02/2015 and the total cost of the said unit was Rs. 9,293,037, 00/-
- b. That the complainant have regularly made the aforesaid total sale consideration of the said unit alongwith all charges and fees to the respondent from time to time, however despite the payment of installments as and when demanded by the respondent, the possession of the dwelling unit has not been delivered till date. There is a lapse of more than 4 years in the delivery of the plot but much to the dismay of the complainant the possession of the dwelling unit is not possible even in the near future. Being aggrieved, the complainant has preferred the present complaint before the Hon'ble Authority for the return of amount paid to the respondents by the complainant along with interest at the rate 18% as well as compensation.
- c. That the Respondent is a company incorporated under the Companies Act 1956 and claim to be one of the leading real estate companies in the country. The respondent Company has its registered office M/s. BRIGHT BUILDTECH Pvt Ltd & D-107, PANCHSHEEL ENCLAVE, NEW DELHI- 110017 and had launched

the project 'WOODVIEW RESIDENCES' situated in sector 89 and 90, Gurugram, Haryana.

- d. That the Respondent Company through various representations lured the Complainant to book a plot in their said project. That the Respondent had left no stone unturned in depicting the grandeur of the project. That the Respondent through their online site as well as their representatives, painted a rosy picture in the minds of the Complainants which inevitably led the Complainants to make a booking in the project.
- e. That lured by the representations of the Project, the complainants made the application for allotment in the project of the respondent company. That after such application for allotment, the respondent company issued Allotment Letter dated 11.02.2015 offering Allotment of independent floor residential unit no. B-96-FF in proposed Project, known as WOODVIEW RESIDENCES SITUATED AT SECTOR 89 AND 90, GURUGRAM, HARYANA. The complainant was informed that the respondent company has got all necessary requirement for the said project from concerned departments /authority. It is further claimed that the respondent company is developing a dwelling units in the plotted colony in accordance with the lay-out plan and building plan sanctioned by Director Town and Country Planning Gurgaon. The DTPC has granted licence to develop and construct the said plot colony vide licence no 59 of 2013 dated 16 July 2013.
- f. That vide Buyer Agreement dated 16 July 2015, the respondent assured that the possession of the plot will be handed over within 36 months with a grace period of 6 months from the date of

issuance of Allotment Letter. In terms of Clause-5.1 of the Buyer Agreement, it has been agreed that "if there is any delay in handing over the possession of the plot beyond 6 months from the proposed date of possession due to any reason which were within the control of respondent, the respondent will pay to the complainant delayed possession charges @ Rs.05/- per sq ft. per month for the plot area for the delayed period....".

- g. That the complainants have already made the payment of sale consideration amount and other charges to the respondent from time to time and receipts thereof has been duly issued by respondent.
- h. That the complainant has already made all the charges, fees and total sale consideration to the respondent as agreed but the respondent has failed hand over the possession and execute the registry of the said dwelling unit in favour of the complainant within the stipulated time thereby violated the terms and conditions of the allotment.
- i. That the respondent has grossly breached the terms and conditions of the said allotment letter and in continuance of their breach the respondent has failed to provide actual possession of the plot to the complainant. It is submitted that in terms of the allotment letter /Buyer Agreement, the complainant sent so message, emails and visited the office of respondents but complainant on one pretext or other avoided the same.
- j. That due to the non-performance of the terms and conditions of the allotment letter by respondent and due to the deficiency and incompetence to honour the terms and conditions of the said

allotment letter /Buyer Agreement, the respondent were not able to satisfy the complainant. That in terms of the allotment letter, the respondent was required to handover the possession of independent floor however the respondent has failed to handover the possession of unit till date.

- k. That the complainant sent email dated 19 April 2019 which was replied by the respondent vide email dated 22 April 2019 that the respondent will complete the project by the end of 2020 after that the complainant sent another email dated 9 October 2020 requesting to cancelled booking of residential unit to the respondent but to no avail.
- l. That the parliament has promulgated the RERA, Act 2016 to balance the bargaining power of the allottees who have been disadvantaged by the abuse of dominant position by the developers since several years. The abuse of their dominant position has been such that the Government was constrained to pass the above act. In the case of *Pioneer Urban Land and Infrastructure Limited versus Govindan Raghavan bearing Civil Appeal No. 12238/2018*, the Hon'ble Apex Court after going through one such one sided agreement had held as follows:
- "6.7. A term of a contract will not be final and binding if it is shown that the flat purchasers had no option but to sign on the dotted line, on a contract framed by the builder. The contractual terms of the Agreement dated 08.05.2012 are ex-facie one-sided, unfair, and unreasonable. The incorporation of such one-sided clauses in an agreement constitutes an unfair trade practice as per Section 2 (r) of the Consumer Protection Act, 1986 since it adopts unfair methods or practices for the purpose of selling the flats by the Builder."*
- m. That not only has the respondent company indulged in unfair practices by demanding the penalty of non-construction cost

whereas the respondent itself failed to deliver the possession of the unit to the complainant and further failed to execute the sub lease/registry.

- n. That the respondent failed to understand that the complainant has taken a loan on the said residential unit from and entered into a Tripartite Agreement dated 26.08.2015 and continued to pay pre-EMIs to HDFC Bank.
- o. That the complainant booked the said unit with the hope that after retirement from serving to the nation as Indian Army Officer he will spend the retired life peacefully but all the hopes has gone to dreams which never fulfil and at present he is facing extreme financial hardship.
- p. That even if a considerable time of 9 years is taken from the date of first payment i.e., 04.11.2013 as stipulated by the Hon'ble Supreme Court the Respondent has miserably failed to complete the construction of the unit and deliver the possession of the same constraining the Complainants to prefer the present application for possession at a prescribed rate of interest. The Hon'ble Supreme Court in the case of *M/s Fortune Infrastructure & Anr. Vs. Trevor D'Lima & Ors. CIVIL APPEAL NO(S). 3533-3534 OF 2017*, held that the Allottee *cannot be made to wait for an indefinite time* for getting the possession of the unit, and a reasonable period of time has to be taken, for the delivery in every case.
- q. That the complainant till date has already made the payment of the sum of Rs.70,74,774.00/- to the respondent company. But despite regular payments by the complainant, the respondent company

has failed to deliver the possession of the residential unit to the complainant and to execute the necessary documents.

- r. The details of the payments made by the complainant to the respondents company are as mentioned below:

| Date | Amount (In Rs) |
|--|----------------|
| 4.11.13 to 24.3.17 payment by complainant to respondents | ₹ 18,88,085.00 |
| 30.9.15 to 24.3.17 HDFC disbursement | ₹ 32,35,063.00 |
| 2015 till Sep 2022 Pre-EMIs amount paid to HDFC Bank | ₹ 19,51,626.00 |
| Total | ₹ 70,74,774.00 |

- s. That although the possession of the unit has been due the same has not been delivered till date. This is the grievance of the complainant that despite regular payments the respondent company has failed to deliver the possession. This is not the case where there is a delay of a year or two. In the present case, the application by the original applicant was made in the year 2013 which on the assurance of the respondent company was allotted in the name of the complainant in the year 2015 but even until 2022 the development of the residential units is not completed.
- t. That a perusal of the above excerpt clearly shows that the facts of the present case are also gross as the booking had been way back in 2015 and till date no intimation for possession has been made by the Respondent Company. That a lingering silence on the part of the Respondent Company has hereby constrained the Complainants to prefer the present complaint for immediate refund along with 18% interest p.a.
- u. That as per the Section 18 of The Real Estate (Regulation and Development) Act, 2016 the allottee is entitled to the refund of the

paid amount along with compensation in case of the failure of the builder to complete the construction or development of the project within the prescribed time period. Section 18 of The Real Estate (Regulation and Development) Act, 2016 clearly lays down that if the promoter fails to complete or is unable to grant possession of an apartment, unit or building,— (a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or (b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act: provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.

- v. In the present case, only on the representations of the respondent company the complainant had made the booking. The booking was in the form of allotment which was issued on transfer of the rights of the plots by the previous owner. The complainant was assured that the project is at the stage of completion. But due to the inordinate delay in completion of the same which is now more than 6 years, the complainant is constrained to seek refund along with compensation.

w. It is further a matter of fact that the respondent company has never approached the complainant with the explanation for the delay in the development progress. It is clear that there were no force majeure circumstances involved in the matter. The delay in the development progress is solely due to the deliberate negligence on the part of the respondent company.

x. That it is only just and fair that this Hon'ble Authority may be pleased to hold that the respondent company has failed to deliver the possession of the unit within the promised time or reasonable time thereafter. That this Hon'ble Authority may further hold that the respondents company has conducted itself in any unfair and arbitrary manner. That it is only just and fair that this Hon'ble Authority may be pleased to direct the respondents to return the whole amount paid to them, loss and compensation along with interest to complainant.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s).
 - a. Direct the respondents to return the amount of the complainant made by him along with interest.
 - b. Direct the respondents to pay the amount paid by HDFC bank along with pre-EMIs.
 - c. Direct the respondent to pay a sum of Rs 100,000/- as litigation expenses to 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 respondent no. 1 (Bright Buildtech Pvt. Ltd.)

6. The respondent no. 1 has contested the complaint on the following grounds:

- a. That the complaint filed by the complainant is baseless and frivolous and the complainant herein is guilty of concealment of material facts and has approached this Hon'ble Court with unclean hands. It is the settled law that a party who approaches the court with unclean hands, disentitles itself from any relief whatsoever, as such the present complaint deserves outright dismissal.
- b. That the lay out of the complaint is very apparently in contradiction with form CRA, as prescribed under amended rules of The Haryana Real Estate (*Regulation and Development*) Rules, 2017. Thus, the compliant is liable to be dismissed being in violation of statutory provision as laid down in Rule 29 of The Haryana Real Estate (*Regulation and Development*) Rules, 2017.
- c. Respondent (Bright Buildtech Pvt. Ltd.) is developing the project namely 'Woodview Residences' (now known as "ACE Palm Floors") on its share in the project land measuring 101.081 acres situated at revenue estate of village Hayatpur, Sector-89 and 90, Gurugram (hereinafter referred to as '**Said Project**'). It is pertinent to mention that the Respondent has appointed, M/s. Ace Mega Structures Private Limited ("**Ace**") as 'Development Manager' for development, construction, sales and marketing of the Project vide 'Development Management Agreement' dated 23.05.2019 only with the objective of ensuring expeditious development of the Project and to provide professionally proficient customer-care interaction.

- d. It is pertinent to mention that the role and responsibility of ACE' is restricted to manage and supervise the construction and development of the said project and to ensure timely completion. The status of "ACE" is purely that of a service provider who shall receive a fee as consideration for providing project management and development services to the respondent. It is pertinent to mention that the complainant on his own free will and consent had approached the respondent for allotment of 'dwelling unit' in said project and initially submitted application form for booking the dwelling unit in the said project.
- e. It is pertinent to mention here that at the time of submitting the application, the complainant was allotted dwelling unit no. B-96, first floor (hereinafter referred to as '**said dwelling unit**'), at the basic sale price plus EDC, IDC charges plus club members fee plus interest free maintenance security totalling to Rs. 92,93,037/- (Rupees Ninety Two Lakhs Ninety Three Thousand And Rupees Thirty Seven Only) vide allotment letter dated 11.02.2015.
- f. Subsequently the flat buyer agreement dated 14.08.2015 was executed between the complainant and the respondent wherein it was agreed between the parties that timely payment is the essence in terms of contractual obligations of the complainant. That the complainant was required to pay the due instalments as per the payment schedule, in respect of the said dwelling unit, however, the payment schedule was never adhered to by the complainant. Pertinently, the respondent issued demand notices and reminder letters to the complainant on several occasions calling upon them to make the timely payment of the due instalments.

- g. It is pertinent to mention here that it is the complainant besides other customers who are at fault in making timely payment of due instalments which has contributed to delay the construction of the said project besides other factors. Non-payment of the instalments by the allottees is a 'force majeure' circumstance. Furthermore, the other reasons for delay in project are stoppage of construction activities in NCR region by the orders of court, non-availability of construction material and labour, implementation of nationwide 'lockdown' to contain the spread of 'Covid-19', etc. Moreover, all these situations and adverse conditions is 'force majeure' circumstance which is beyond the control of the respondent.
- h. It is further submitted that the complainant is well aware of the fact that the respondent has appointed 'ACE' as the development manager for construction and completion of the said project. The respondent informed the complainant about the appointment of the "development manager" who is responsible for all activities including the construction and sales of the project as per the development management agreement (DMA) dated 23.05.2019.
- i. Furthermore, it is pertinent to state that the said project of the respondent is reasonably delayed because of 'force majeure' situation which is beyond the control of the respondent. However, despite all odds, still, the respondent along with development manager 'Ace' is making all efforts to complete the construction work at project site at full pace and is expecting to handover the possession very soon.
- j. Due to the exponential increase in the cases of 'Covid-19', the Central Govt. had imposed nationwide 'lockdown' w.e.f.

25.03.2020 which has been extended till 30.06.2020, resultantly, the same has caused serious impact on the economy posing difficult challenges for everyone. It is pertinent to mention that prior, to this unprecedented situation of pandemic 'Covid-19', the respondent along with the development manager had been carrying out the construction of the project at full pace and was expecting to deliver the units to the buyers by the end of year 2020, however, due to the sudden outbreak of the pandemic and closure of economic activities, the respondent had to stop the construction work during the 'lockdown', as such, amid this difficult situation of 'force majeure' the respondent is not in a position to adhere to the arbitrary demands of the complainant for cancellation of the allotment and refund of the monies along with interest due the reasons mentioned hereinabove.

- k. In the present situation the real estate sector is severely affected due to the implementation of nationwide 'lock-down' since 22.03.2020 and amid this situation of the pandemic the slowing economy is also posing difficult challenges for the respondent. Although, considering the seriousness of the situation and prevailing circumstances caused due to implementation of nationwide 'lockdown' to contain the spread of 'Covid-19', the Govt. of India has already extended the project completion deadlines by six (6) months.
- l. The natural life cycle was about to come back on track, which was derailed in March 2020, however the sudden outbreak of second wave of pandemic of COVID in April 2021 in the nation made the situation worst from worse and the country once again was under

the grip of COVID and subsequently lockdown was imposed in the country all over once again. It is further submitted that the second wave caused severe damage to the economy and the real estate sector being no exception was hit the worst. Other than the above reasons, the delay in handing over the possession of the dwelling unit/ apartment has been caused due to various reasons which were beyond the control of the respondent. Following important aspects are relevant which are submitted for the kind consideration of this Hon'ble Court:

- i. **Non-booking of all apartments seriously affected the construction:** It is submitted that the global recession badly hit the economy and particularly the real estate sector. The construction of Project of the Respondent is dependent on the amount of monies received from the bookings made and monies received henceforth, in form of instalments paid by the Allottees. However, it is submitted that during the prolonged effect of the global recession, the number of bookings made by the prospective purchasers reduced drastically in comparison to the expected bookings anticipated by the Respondent at the time of launch of the Project. The reduced number of bookings along with the fact that several Allottees of the project either defaulted in making payment of the instalment or cancelled booking in the Project, resulted in less cash flow to the Respondent, henceforth, causing delay in the construction work of the Project.
- ii. **Other various challenges being faced by the Respondent:** The following various problems which are beyond the control

of the Respondent seriously affected the construction i.e. Lack of adequate sources of finance; Shortage of labour; Rising manpower and material costs; Approvals and procedural difficulties. In addition to the aforesaid challenges the following factors also played major role in delaying the offer of possession.

- iii. There was extreme shortage of water in the region which affected the construction works; There was shortage of bricks due to restrictions imposed by Ministry of Environment and Forest on bricks kiln; Unexpected sudden declaration of demonetization policy by the Central Government, affected the construction works of the Respondent in a serious way for many months. Non-availability of cash-in-hand affected the availability of labours; Recession in economy also resulted in availability of labour and raw materials becoming scarce; There was shortage of labour due to implementation of social schemes like National Rural Employment Guarantee Act (NREGA) and Jawaharlal Nehru Urban Renewal Mission (JNNURM); Direction by the Hon'ble National Green Tribunal & Environmental authorities to stop the construction activities for some time on regular intervals to reduce air pollution in NCR region.
- iv. Apart from the above, it is relevant to mention here that due to the increase in pollution in National Capital Region, the Hon'ble Supreme Court of India vide Order dated 04.11.2019 passed in *Writ Petition (Civil) No. 13029 of 1985 titled as "M.C. Mehta-Versus-Union of India & Ors"* ("**Writ Petition**") had put

a blanket ban on the construction activities in the National Capital Region. Subsequently vide Order dated 09.12.2019, the Hon'ble Supreme Court of India lifted the ban partially i.e., construction activities were only allowed between 6:00 AM to 6:00 PM. It is pertinent to mention that due to the aforesaid restraintment orders passed by the Hon'ble Supreme Court of India all the construction activities in the National Capital Region came to a standstill, resultantly the project got delayed. The said ban is completely lifted by the Hon'ble Supreme Court only on 14.02.2020.

- v. All the above stated problems are beyond the control of the developer i.e., the Respondent. It may be noted that the Respondent had at many occasions orally communicated to the Complainant that the construction activity at the said Project site had to be halted for some time due to certain unforeseen circumstances which are completely beyond the control of the developer.
- m. That in view of the above facts and circumstances the demands of the Complainant for refund of the amount along with exorbitant compensation is baseless and the same cannot be allowed under any situation as it will jeopardise the situation of the whole project. It is respectfully submitted that if such prayers are allowed, the same will materially affect the construction works at site, which will affect the interests of all the other allottees who have booked flats in the said Project. It is relevant to point out herein that at present the Respondent is focusing on the completion and delivery of the said Project. The monies received from the allottees have

been utilized in the construction activity and thus there is no justification in the demand for refund.

- n. It is reiterated that the construction at site was never stopped and hence, there is no basis of such allegations, as made in the Complaint. It is submitted that whenever the construction activity has stopped at the project site, it is due to the above-said reasons of 'force-majeure' which are beyond the control of the Respondent, therefore, the unfair and unreasonable demands of the Complainant shall not be entertained. It is submitted herein that the Respondent is attempting to make its best efforts to complete the construction works and to give possession of the 'Dwelling Unit' to the allottees as soon as possible.
- o. The demand of the Complainant to demand exorbitant amount in the form of compensation is baseless and jeopardise the whole project. It is submitted that if there is any delay in handing over the possession, the delay compensation shall be given to the Complainant in the manner provided in the Buyer Agreement under Clause 5.10 of the Buyer Agreement. It is reiterated herein that there is no *intentional* delay at present and hence, the concern of the Complainant is unwarranted and premature in nature. It is noteworthy to mention that the project of the Respondent is at advance stage of construction and is completed to the extent of 85%. It is submitted that this fact is evident in the light of the photographs of the Project site which are annexed along with the accompanying reply, therefore, in view of the same, the Complainant shall not raise unreasonable demands which can materially affect the entire project of the Respondent. It is

submitted that Respondent/ Bright has launched 420 numbers of independent floors to be constructed on 140 plots. Out of the 258 floors / units were sold by the Company till date.

- p. M/s. Orris Infrastructure Private Limited ("**Orris**") in collaboration with Respondent and other landowners had filed an application with the Director, Town and Country Planning Haryana ("**DTCP**") for issuance of a license in favour of Orris for development of a township of 101.081 Acres in Sector-89-90, Gurugram. The DTCP vide letter bearing no. LC-2638-JE(VA)-2013/34780 dated 26.03.2013 called upon Orris to fulfill certain requirements laid down in Rule 11 of Haryana Development and Regulation of Urban Areas Rules, 1976 within a period of 60 days from the said letter. M/s. Orris and Bright Buildtech Pvt. Ltd. entered into an Agreement dated 18th May 2013 whereby Orris has transferred development rights of 50% in the subject land to Bright. Orris and Bright have also entered into two supplementary agreements both dated 1st day of May 2019 in furtherance to the aforementioned agreement dated 18th May 2013.
- q. That upon fulfilment of the terms and conditions of the letter dated 26.03.2013 issued by DTCP, the DTCP has issued a license bearing no. 59 of 2013 dated 16th July 2013 in favour of Orris for development of a township of 101.081 Acres in Sector-89-90, Gurugram. In terms of the license and the agreement dated 18.05.2013 Bright launched a project in 2014 in the name of "Woodview Residences" on its share in the said land parcel. Bright is in the process of currently developing independent floors after obtaining various approvals from the authorities as required.

- r. The respondent has submitted an application with DTCP on 07.08.2019 for allowing change in beneficial interest, change in developer & assignment of joint development rights in terms of policy dated 18.02.2015 in License No. 59 of 2013 dated 16-07-2013 granted to develop plotted colony in Sector 89-90, Gurgaon. That the respondent has also applied for registration of the project under RERA on 28.11.2019 which is pending for approval. The State Environment Impact Assessment Authority, Haryana has issued Environment Clearance for the residential plotted colony at Sector 89-90, Village Hayatpur & Badha, Tehsil & Dist. Gurgaon, Haryana and separately a forest NoC has been issued by Dy. Conservator of Forests, Gurgaon, Haryana.
- s. That respondent has further appointed M/s Ace Mega Structures Private Limited ("**Ace**") as development manager (**DM**) for development, construction, sales and marketing of the project vide development management agreement dated 23.05.2019 only with the objective of ensuring expeditious development of the project and provide professionally proficient customer-care interaction. The role and responsibility of "Ace" is restricted to manage and supervise the construction and development of the project and to ensure timely completion. The status of Ace is purely that of a service provider who shall receive a fee as consideration for providing project management and development services to Bright.
- t. That the respondent has sent a letter to all the customers on 03.10.2019 regarding appointment of "ACE" as the development manager of the project. Respondent has launched 420 numbers of

independent floors to be constructed on 140 plots. Out of the 258 floors / units were sold by the company till date. The company is expecting to handover the possession of sold units on or before June, 2022. It is pertinent to mention that as on date the complainant is in default of payment of instalments and the delayed penalty and overdue interest which is evident from the latest applicant ledger of the complainant account maintained by the respondent.

- u. It is submitted that the complainant had applied for the allotment of the 'dwelling unit' as investment and not for personal use, which fact is abundantly clear and evident from the conduct of the complainant. It is submitted that the complainant has invested in the unit with intent to have monetary gains by way of reselling the unit to a higher bidder at an appreciated value. Thus, in view of the constant precedents upheld by various Real Estate Regulatory Authorities across the country, the present complaint is not maintainable wherein, it is held unanimously that the Investors of real estate projects are not entitled to relief from Real Estate Regulatory Authority. It is submitted that the instant complaint is not maintainable keeping in view the facts, circumstances and law relating thereto. It is further submitted that the complainant has failed to produce any evidence or specific averments worth its salt to prove its claims. Moreover, there is no quantification of claims as sought for by the complainant under prayer clause, therefore, the instant complaint is liable to be dismissed at the threshold.
- v. It is further submitted that the complainant has filed the captioned frivolous complaint with false averments, only with a malafide

intention to make illegal enrichment at the cost of the respondent. Since the captioned complaint is filed without any cause of action, the same is liable to be dismissed at the outset.

E. Reply by the respondent no. 2 (Orris Infrastructure Pvt. Ltd.)

7. The respondent no. 2 has contested the complaint on the following grounds:

- a. That the complainant has approached this Hon'ble Authority with unclean hands and have tried to mislead this Hon'ble Authority by making incorrect and false averments and stating untrue and/or incomplete facts and, as such, is guilty of *suppressio very suggestio falsi*. The complainant has suppressed and/or mis-stated the facts and, as such, the complaint apart from being wholly misconceived is rather the abuse of the process of law. On this short ground alone, the complaint is liable to be dismissed.
- b. That it is reiterated that the issue so raised in this complaint are not only baseless but also demonstrates an attempt to arm twist the answering respondent into succumbing to the pressure so created by the complainant in filing this complaint before this forum and seeking the reliefs which the complainant is not entitled to as against the answering respondent.
- c. In the present case, the complainant is seeking refund of the apartment along with interest, compensation, and other reliefs. That the complainant has filed the present complaint under Rule-29 of the said Rules in form CAO addressed to the Hon'ble Adjudicating Officer. It is submitted that the complaint, if any, is required to be filed before the Hon'ble Authority under Rule-28 of the said Rules and not before the Hon'ble Adjudicating Officer

under Rule-29 as this Hon'ble Hon'ble Adjudicating Officer has no jurisdiction whatsoever to entertain such complaint seeking refund of money and as such the complaint is liable to be rejected on this ground alone.

- d. That it is further submitted that the complainant is attempting to raise issues now, at a belated stage, attempting to seek a modification of the agreement entered into between the complainant and the respondent no. 1 in order to acquire benefits for which the complainant is not entitled in the least from the answering respondent.
- e. That the complainant had willfully agreed to the terms and conditions of the agreement and are now at a belated stage attempting to wriggle out of their obligations by filing the instant complaint before this Hon'ble Authority. The compensation for alleged delay and other relief, if any cannot be awarded by this Hon'ble Authority, as this Authority does not have the Jurisdiction to award any reliefs qua compensation as provided under Section 18 of the Act and in accordance with the rules, framed there under.
- f. That there arises no cause of action against the answering respondent, i.e., M/s Orris Infrastructure Pvt Ltd, because of the following grounds:
 - i. That at the outset, the complainant has not filed the present complaint against the respondent no. 2 as the entire complaint bears no mentioning of the name of the respondent no. 2;
 - ii. That it is further submitted that the complainant has failed to establish any relationship between the complainant and respondent no. 2;

- iii. That as per the records in the complaint, the complainants were issued a letter of allotment dated 11.02.2015 for the unit no. B-96-FF, for a consideration of ₹ 92,93,037/- (herein referred to as the 'unit') for the project '**Ace Palm Floors**' (herein referred to as the '**Project**') which was erstwhile known as 'Woodview Residencies'.
- iv. It is pertinent to note that the said allotment was issued by the respondent no. 1 and M/s Lotus Green Developers Pvt. Ltd under the signatory of respondent no. 1 and admitted fact by the complainant.
- v. That thereafter, as per the records provided by the complainant in the complaint, the buyer's agreement was executed between the respondent no. 1 and the complainants dated 14.08.2015 wherein the signatories to the said agreement are also the respondent no. 1 and the complainants.
- vi. That thereafter, the complainants have annexed a tripartite agreement which has been signed by the complainants, respondent no. 1 and the financier. It is submitted that even the tripartite agreement does not bears the signatures of the respondent no. 2. That the complainants have annexed few payment receipts which have been issued by the Lotus Green Developers Pvt. Ltd.
- g. That it is submitted that at the inception when the project '**Woodview Residencies**' was launched, the respondent no. 2 in collaboration with the respondent no. 1 wherein both the respondent no. 1 and 2 had equal developmental rights equivalent

to 50%. It is noteworthy that after the inception of RERA, when the RERA registration became mandatory, the respondent no. 1 got its project area registered under the name and style of '**Ace Palm Floors**', i.e., the project in question, bearing RERA registration no. RERA-GRG-PROJ-388-2019. It is further submitted that the said fact can be verified from the demand letters and the RERA registration certificate which bears the same account details of the respondent no. 1. That further, the respondent no. 2 got its project registered with RERA in the name and style of 'Woodview Residencies' and also obtained RERA registration certificate for the same bearing no. RERA-GRG-PROJ-640-2020.

- h. Thus, it is clear from the above that the complainant is neither the customer of the answering respondent, i.e., respondent no. 2 nor the complainant has made any payment to the respondent no. 2 nor any communication, agreement has been exchanged between the complainant and the respondent no. 2 which could imply that the respondent no. 2 holds any liability or accountability towards the complainant.
- i. That from the facts as narrated above, the present complaint is liable to be dismissed on the account of mis-joinder of parties wherein the respondent no. 2 has been wrongly impleaded as the party to the present complaint and the complainant is not entitled to any reliefs as claimed herein by this Hon'ble Authority.
- j. That at this stage, it is noteworthy to see that the complainant itself has filed a false and fabricated complaint against the respondent no. 2 because the title of the complaint nowhere mentions the name of the respondent no. 2 however, the body mentions the

name of the respondent no. 2. Such act of the complainant draws complete malafide intent behind filing of the present complaint.

k. That no cause of action arises against M/s Orris Infrastructure Pvt. Ltd. as the complainant is booked under the project of ace palm floors which is the project of the respondent no. 1.

8. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

F. Jurisdiction of the authority

9. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

F.I Territorial jurisdiction

10. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. 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.

F.II Subject-matter jurisdiction

11. 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.

12. 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.
13. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. 2021-2022 (1) RCR (Civil), 357*** and reiterated in case of ***M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022***, wherein it has been laid down as under:

"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. if the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our

view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."

14. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme court in the case mentioned above, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

G. Findings on the objections raised by the respondent no. 2.

G.I Objection regarding collaborator to be treated as promoter

15. The respondent no. 2 alleged that at the inception when the project '**Woodview Residencies**' was launched, the respondent no. 2 in collaboration with the respondent no. 1 wherein both the respondent no. 1 and 2 had equal developmental rights equivalent to 50%. It is noteworthy that after the inception of RERA, when the RERA registration became mandatory, the respondent no. 1 got its project area registered under the name and style of '**Ace Palm Floors**', i.e., the project in question, bearing RERA registration no. RERA-GRG-PROJ-388-2019. And the respondent no. 2 got its project registered with RERA in the name and style of '**Woodview Residencies**' and also obtained RERA registration certificate for the same bearing no. RERA-GRG-PROJ-640-2020.
16. It is pertinent to note that the said allotment was issued by the respondent no. 1 and M/s Lotus Green Developers Pvt. Ltd under the signatory of respondent no. 1 and admitted fact by the complainant. That thereafter, as per the records provided by the complainant in the complaint, the buyer's agreement was executed between the respondent no. 1 and the complainants dated 14.08.2015 wherein the signatories to the said agreement are also the respondent no. 1 and the

complainants. Since, the complainant is neither the customer of the answering respondent, i.e., respondent no. 2 nor the complainant has made any payment to the respondent no. 2 nor any communication, agreement has been exchanged between the complainant and the respondent no. 2 which could imply that the respondent no. 2 holds any liability or accountability towards the complainant.

17. In consideration of the above mentioned facts the authority is of the view that the since no relationship is being established through any document placed on record between the complainant and respondent no. 2 by way of any agreement or payment receipts therefore, the respondent no. 2 cannot be held liable for any obligation under the Act, 2016.

H. Findings on the relief sought by the complainants.

H. I Direct the respondents to return the amount of the complainant made by him along with interest.

H. II. Direct the respondents to pay the amount paid by HDFC bank along with pre-EMIs.

18. In the present complaint, the complainant intends to withdraw from the project and is seeking return of the amount paid by them in respect of subject unit along with interest. Sec. 18(1) of the Act is reproduced below for ready reference:

"Section 18: - Return of amount and compensation.

18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building. - in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with



interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."

(Emphasis supplied)

19. Clause 5.1 of the apartment buyer agreement (in short, agreement) provides for handing over of possession and is reproduced below.

"Subject to clause 5.2 and subject to the buyer making timely payments, the company shall endeavor to complete the construction of the building block in which the dwelling unit is situated within 36 months, with a grace period of 6 (six) months from the date of issuance of allotment letter provided that all amounts due and payable by the buyer has been paid to the company in timely manner. The company shall be entitled to a reasonable extension of time for the possession of the dwelling unit in the event of any default or negligence attributable to the buyer's fulfilment of the terms & conditions of this agreement."

20. The occupation certificate/completion certificate of the project where the unit is situated has still not been obtained by the respondent-promoter. The authority is of the view that the allottee cannot be expected to wait endlessly for taking possession of the allotted unit and for which he has paid a considerable amount towards the sale consideration and as observed by Hon'ble Supreme Court of India in ***Ireo Grace Realtech Pvt. Ltd. Vs. Abhishek Khanna & Ors., civil appeal no. 5785 of 2019***, decided on 11.01.2021. The relevant para is reproduced as under:

".....The occupation certificate is not available even as on date, which clearly amounts to deficiency of service. The allottees cannot be made to wait indefinitely for possession of the apartments allotted to them, nor can they be bound to take the apartments in Phase 1 of the project....."

21. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottee as per agreement for sale under section 11(4)(a) of the Act. The promoter has failed to complete

or is unable to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. Accordingly, the promoter is liable to the allottee, as the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of the unit with interest at such rate as may be prescribed.

22. This is without prejudice to any other remedy available to the allottee including compensation for which allottee may file an application for adjudging compensation with the adjudicating officer under sections 71 and 72 read with section 31(1) of the Act of 2016.
23. **Admissibility of refund along with prescribed rate of interest:** The complainant is seeking refund the amount paid by them along with interest. However, the allottee intend to withdraw from the project and is seeking refund of the amount paid by him in respect of the subject unit with interest. Rule 15 has been reproduced as under:

*"Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]
For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.:
Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public."*

24. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.

25. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 02.02.2024 is 8.85%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85%.
26. As far as the pre-EMIs is concerned, the authority observed clause 3 of the tripartite agreement dated 26.08.2015 which clearly states that till the commencement of EMI the borrower shall pay the Pre-EMI. The relevant clause is produced herein below for the ready reference:

"The Loan advanced to the Borrower by HDFC shall be repayable by the Borrower by way of Equated Monthly Installments (EMI). The date of commencement of EMI shall be the first day of the month following the month in which the disbursement of the Loan will have been completed and consequently the due date of payment of first EMI shall in such a case be the last day of the said following month. Till the commencement of EMI the Borrower shall pay Pre-EMI, which is the simple interest on the Loan amount disbursed calculated at the rate of interest as mentioned in the respective Loan Agreement of the Borrower"

27. In lieu of the above mentioned clause the authority is of the view that it is the complainant who was liable to pay the Pre-EMIs therefore the respondent cannot be made liable to refund the Pre-EMIs paid by the complainant to the bank.
28. The authority hereby directs the respondent no. 1 to return the amount received by him i.e., ₹ 51,23,148/- with interest at the rate of 10.85% (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the amount within the timelines provided in rule 16 of the Rules ibid. Out of total amount so assessed, the amount paid by the bank/payee be refunded first in the



account of bank and the balance amount along with interest if any will be refunded to the complainant.

H. III Direct the respondent to pay a sum of Rs 100,000/- as litigation expenses to the complainant.

29. The complainant is also seeking relief w.r.t litigation expenses. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 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 complainant may approach the adjudicating officer for seeking the relief of litigation expenses.

I. Directions of the authority

30. 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):
- a. The respondent no. 1 is directed to refund the deposited amount i.e. ₹ 51,23,148/- with interest at the rate of 10.85% (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the amount within the timelines provided in rule 16 of the Rules ibid.



Out of total amount so assessed, the amount paid by the bank/payee be refunded first in the account of bank and the balance amount along with interest if any will be refunded to the complainant.

- b. A period of 90 days is given to the respondent no. 1 to comply with the directions given in this order and failing which legal consequences would follow.
 - c. The respondent is further directed not to create any third-party rights against the subject unit before full realization of paid-up amount along with interest thereon to the complainants, and even if, any transfer is initiated with respect to subject unit, the receivable shall be first utilized for clearing dues of allottee-complainants.
31. Complaint stands disposed of.
 32. File be consigned to registry.

HARERA
GURUGRAM


(Sanjeev Kumar Arora)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 02.02.2024