



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

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| Complaint no.: | 463 of 2022 |
| Date of filing: | 24.03.2022 |
| Date of first hearing: | 04.05.2022 |
| Date of decision: | 19.07.2023 |

1. Habitat 78 Flat Buyers Association

Through Mrs. Prem Kataria
R/O House 1242, Sector 37,
Faridabad, Haryana- 121003

COMPLAINANT NO. 1

2. Prem Kataria

W/O Brij Bhusan Kataria
R/O House 1242, Sector 37, Faridabad, Haryana- 121003
Unit No: A6-1002

COMPLAINANT NO. 2

3. Brij Bhusan Kataria

S/O Panna Lal Kataria
R/O House 1242, Sector 37,
Faridabad, Haryana 121003
Unit No: A6-1002

COMPLAINANT NO. 3

4. Mrs. Sunita

W/O Mr. Anil Kumar
R/O House. 996, 22 Feet Road,
Opposite G.H School

Parvatiya Colony Sector-22, Faridabad
Unit No.: A-1 107

COMPLAINANT NO. 4

5. Mr. Anil Kumar

S/O Mr Chander Deep R/O House, 996,
22 Feet Road, Opposite GH School
Parvatiya Colony Sector-22, Faridabad
Unit No.: A-1 107

COMPLAINANT NO. 5

6. Mrs. Anita Tripathi

W/O Sarvjeet Tripathi
R/O Plot 328, 1 Floor, Ward 4, Mehrauli
South Delhi 110030
Unit No.: B-1 905

COMPLAINANT NO. 6

7. Ganesh Chandra

S/O Sh Nathi Ram R/O House No.: 21, Block-P,
S.G.M Nagar, Faridabad-121001
Unit No: A5-902

COMPLAINANT NO. 7

8. Kumar Abhishek

S/O Baiju Prasad
R/O 1675, B3/2 (Top Floor) Govindpuri Extnsion,
Kalkaji, New Delhi-110019
Unit No. A7-602

COMPLAINANT NO. 8

9. Mahavir Prasad Jakmola

S/O Ramratan R/O House No. A-104b,
Hari Nagar Extn.
Badarpur, Delhi- 110044
Unit No: B1-1204

COMPLAINANT NO. 9

10. Archana

W/O Mahvir Prasad Jakmola
R/O House No. A-104b, Hari Nagar Extn.
Badarpur, Delhi- 110044

Katuse

Unit No: B1-1204

COMPLAINANT NO. 10

11. Mahender Singh Mushuni

S/O Late Sh Keshar Singh Mushuni

R/O 33/1074, First Floor, DDA Flats,

Dr. Ambedkar Nagar, South Delhi, Delhi-1100062

Unit No: A2-801

COMPLAINANT NO. 11

12. Priti Jha

W/O Raghwendra Jha R/O H no, DC-586,

27 Feet Road, Manav Seva Public School, Harayana 121001

Dabua Colony, Nit Faridabad

Unit No: B2-1106

COMPLAINANT NO. 12

13. Rahul Kutthi

S/O Hansa Singh Kutthi

R/O H.No. 3668, First Floor, Pocket 2,

Sector 3, Ballabgarh, Faridabad-121004

Unit No: A3- 1204

COMPLAINANT NO. 13

14. Raju Ranjan

S/O Suwansh Kumar Singh

R/O E-1393, Dabua Colony Faridabd-121001

Unit No: A1-1103

COMPLAINANT NO. 14

15. Ravinder Singh

S/O Rewat Singh Thakur

R/O Fca-2470 A, Block-B

SGM Nagar, Nit, Faridabad-121001

Unit No: A3-1108

COMPLAINANT NO. 15

16. Rupendra Kumar

S/O Banbir Prasad R/O F-66, 4th Floor,

Room No 20, Katwaria Sarai,

Hauz Khaz, South Delhi-110016

Rathore

Unit No: A2- 1402

COMPLAINANT NO. 16

17. Priya Sinha

W/O Jainandan Prasad

R/O Dakshini Mandiri, Back Of Hathua Pathshala,

Phulwari Patna, Bhiar- 800001

Unit No:A2- 1402

COMPLAINANT NO. 17

18. Swaim Prabha

W/O Kuldeep Kumar Mishra

R/O Plot 328, 1st Floor, Ward 4, Mehrauli, South Delhi-110030

Unit No: A1- 1104

COMPLAINANT NO. 18

19. Kuldeep Kumar Mishra

S/O Mr. Murlidhar Mishra

R/O Plot 328, 1st Floor, Ward 4,

Mehrauli, South Delhi-110030

Unit No: A1- 1104

COMPLAINANT NO. 19

VERSUS

Conscient Infrastructure Private Limited

(Through Its Managing Director And Other Directors)

Registered Office At: W4d, 204/5, Keshav Kunj,

Western Avenue, Sainik Farms, New Delhi-110062

.....RESPONDENT(S)

CORAM: Dr. Geeta Rathee Singh

Member

Nadim Akhtar

Member

Present: Mr. Anuj Chauhan, Id. counsel for complainant through VC.

Mr. Neeraj Goel along with Poorva, Id. counsels for respondent through VC.

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ORDER (DR. GEETA RATHEE SINGH-MEMBER)

1. Present complaint has been filed on dated 24.03.2022 collectively by the complainants/flat owners under Section 31 of The Real Estate (Regulation and Development) Act, 2016 (for short Act of 2016) read with Rule 28 of The Haryana Real Estate (Regulation & Development) Rules, 2017 for the 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 fulfil all the obligations, responsibilities and functions towards the allottee as per the terms agreed between them. The present complaint has been filed wherein the complainants are seeking/claiming for relief, directions/order and penalty from the Respondent.

A. UNIT AND PROJECT RELATED DETAILS:

2. The particulars of the project have been detailed in the following table:

| S.NO. | PARTICULARS | DETAILS |
|-------|----------------------------------|---|
| 1. | Name of the project | HABITAT 78, under Affordable Housing Policy dated 19.08.2013. |
| 2. | Address of the project | Faridpur, Sector 78, Faridabad, Haryana-121004. |
| 3. | Name and address of the promoter | Conscient Infrastructure Pvt Ltd., 10 th floor, tower-D, Global business park, M.G Road, Gurugram-122002, Haryana. |

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| 2. | RERA registered/ not registered | Registered vide registration no. 78 of 2017 dated 22.08.2017, valid upto 19.07.2022. |
| 3. | DTCP License no. | 15 of 2016 of dated 26.09.2016 |
| 4. | Name of the promoter | Conscient Infrastructure Private Limited |
| 5. | Address of the promoter | K-1, Green Park Main, New Delhi-110016 |

B. FACTS OF THE COMPLAINT:

4. Facts of the complainants case are that the complaint has been filed collectively by the association of flat buyers and other flat owners of the project 'Habitat78', belonging to the lower income groups, feeling aggrieved by the violations of the Affordable Housing Policy 2013 (hereinafter referred to as '2013 Policy'); The Real Estate (Regulation and Development) Act, 2016 and rules and regulations made thereunder; the Haryana Development and Regulation of Urban Areas Act 1975; and other concerned laws.
5. It is stated that in 2017, the respondent i.e., **CONSCIENT INFRASTRUCTURE PVT. LTD.** in collaboration with M/s BCC EDUTECH PVT. LTD. and M/s URBAN BUILDMART PVT. LTD., promoted an affordable housing project named '**HABITAT 78**' (hereinafter

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referred to as 'the Project'), under the Affordable Housing Policy dated 19.08.2013 issued by the Government of Haryana on land admeasuring 7.394 acres situated in the revenue estate of village Faridpur, Sector 78, Faridabad, Haryana. The said project was registered by the RERA vide registration no. 78 of 2017 dated 22.08.2017.

- 6. There were two types of units offered in the project- one was 2BHK unit of 485.48 sq. ft. carpet area with 100.62 sq. ft. balcony area and the other type was 2BHK + utility of 629.75 sq. ft. carpet area with 101.08 sq. ft. balcony area. The allotment of the units was made to the allottees including the complainants through draw of lots held on different dates as per the statutory obligation of the 2013 Policy.
- 7. The respondent promoted the project with various promises and assurances like free complete maintenance for 5 years, free car parking, 24 hrs water and power backup etc. and after making the application and receiving the allotment letters, the complainants received copy of Buyers Agreement (hereinafter referred to as 'BBA') from the respondent which was to be signed and sent back within 45 days as per the directions of the respondent. It was further directed by the respondent to the complainants not to make any changes or amendment into the BBA and they were hence bound to

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either sign and execute the BBA or withdraw from the project after deduction of the earnest money and other charges.

8. Though the complainants raised objections after noticing various one-sided clause which were against the interest of the allottees and in favour of the respondent, but these objections were outrightly refused without any amendment or alteration and were forced to sign the BBA as per the directions of the respondent.
9. The date of possession of the apartments as per the BBA is within 4 years from the approval of building plans or grant of environmental clearance (19.07.2017) whichever is later, which comes out to be 19.07.2021, however the respondent failed to deliver the possession on the agreed date. Furthermore, it is alleged by the complainants that the respondent is in contravention to the BBAs and violation of 2013 Policy and has also made various illegal and unlawful demands in the final call letter dated 11.01.2022 from the allottees. Even after receiving 100% amount of the total sale consideration including the disputed amount demanded in the final call letter dated 11.01.2022, respondent has failed to deliver the possession to the allottees.
10. It is further stated that the respondent made illegal and unlawful demands vide final call letter dated 11.01.2022 from the allottees which included

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payment of user charges cum operating cost @ Rs. 3.25/- per sq. ft., interest fee operating cost security deposit (IFOCSD), 33KV electrical switch station charges, electricity connection charges, pre-paid meter charges, interest, administrative charges @ Rs. 15000/- along with 18% GST, irregular GST charges, registration charges, stamp duty charges etc.

11. The complainants approached and reached out to the respondent several times through mails raising the above-mentioned issues and also requested them to hand over possession of the respective units but to no avail. It has been alleged by the complainants that low quality of materials and products are used into the construction just to maximize the profits.

12. Further, it is also alleged by the complainants that the respondent is also pressurizing the complainants to provide an 'Indemnity-Cum-Undertaking For Taking Over The Apartment' on non-judicial stamp paper, along with all the payments of illegal demands even before any inspection of unit or reading the sale deed and the alleged user charges cum operating cost agreement.

C. RELIEF SOUGHT:

- 13. The complainants in this complaint have sought following reliefs:
 - a. To direct the respondent to withdraw all illegal and unlawful demands made in the final call letter dated 11.01.2022 or by any other medium

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or call including but not limited to payment of user charges cum operating cost @Rs. 3.25/- per sq. ft., interest free operating cost security deposit (IFOCSD) @Rs. 15,000/-, 33KV electrical switch station charges, electricity connection charges, pre-paid meter charges, interest, administrative charges @Rs. 15,000/- along with 18% GST, irregular GST charges, registration charges, stamp duty charges or by any other name, means or communication which are not as per the agreed terms of the respective Buyer's Agreement executed between the respondent and the complainants and to refund all the above said amounts along with interest to the allottees.

- b. To direct the respondent M/s Conscient Infrastructure Pvt. Ltd. to issue possession letter and deliver the peaceful possession of units with all habitable services including but not limited to common area services and facilities, electricity, water, sanitary infrastructure, etc. to each complainant as per the terms agreed in their respective Buyer's Agreement.
- c. To direct the respondent to allot the prescribed parking to each complainant as per the Haryana Affordable Housing Policy, 2013 as agreed in the Buyer's Agreement.

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- d. To direct the constitution of an independent committee comprising of architects and members from competent authority to inspect the project and individual units of the complainants, before the final payments to ensure the units provided are complete and habitable, cost of which shall be borne by the respondent.
- e. To direct the respondent to comply with the directions and observations of the independent committee and to make corrections and changes to make the unit in compliance to the Haryana Affordable Housing Policy, 2013 and Buyer's Agreement.
- f. To direct the respondent to declare the one-sided clauses in the Buyer's agreements as void-ab-initio and direct the respondent to strictly adhere to RERA and other applicable laws.
- g. To direct the respondent to repair and complete the common staircase of the project and other common areas and services.
- h. To direct the respondent to share a copy of sale deed, conveyance deed, drafted as per applicable laws, which is required to be executed between the individual complainants and with all the complainants before the execution for review and reference.
- i. To direct the respondent to cooperate with all the allottees including the complainants to effectively make a Resident Welfare

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Association/Allottees Association by whatsoever name it is called, as per Haryana Apartment Ownership Act 1983, RERA 2016 & rules and regulations made thereunder and other applicable laws.

- j. To direct the respondent to pay the delayed interest at prescribed rate on total amount paid by the complainants for delay in possession from the date of agreed date of possession in the Buyer's Agreement till the actual date of possession including the period from the issuance of Final Call Letter dated 11.01.2022 till the date of actual possession.
- k. To direct the respondent to waive off delayed payment interest to the eligible complainants for the periods of delay in issuance of NOC and delayed construction periods.
- l. Order imposition of penalty and revocation of registration of the respondent under Section 61 read with Sections 7, 11, 12, 14 of RERA 2016 and rules made thereunder and direct the respondent to pay for the loss and inconvenience caused to the complainants.
- m. To direct the respondent to refrain from indulging in any further unfair trade practice and abuse of dominant position.
- n. To direct the respondent to indemnify the complainants for all the loss or damages suffered by the complainants as a result of non-payment,

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non-observance and non-performance of the covenants and conditions of BBA.

- o. To direct the respondent not charge any delayed payment charges for the period of COVID-19 pandemic and for the periods from issuance of Final Call Letter dated 11.01.2022 till the actual date of possession.
- p. To direct the respondent not to charge anything from the complainants and not impose any terms/conditions which is not a part of the respective Buyer's Agreements.
- q. To direct the respondent not to force the complainants to furnish any indemnity bond or undertaking which are not as per Buyer's Agreement, RERA 2016 and the rules & regulations made thereunder.
- r. To direct the respondent to revoke irregular GST imposed on the payments on complainants and refund the irregular GST recovered from the complainants.
- s. To direct the respondent to pay Rs. 15,000/- per allottee in lieu of rent and cost due to not providing of possession on agrees date as per Buyer's Agreement.
- t. To direct the respondent to pay Rs. 20,000/- to each complainant as cost of this complaint, including legal charges.

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- u. To forward the complaint to the Court of Hon'ble Adjudicating Officer for determining and awarding compensation for mental agony and physical harassment and compensatory interest in favour of each complainant.
- v. Any other relief – remedy which is deemed fit by this Hon'ble Authority in the present facts and legal proposition of the case.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT:

Learned counsel for the respondent filed detailed reply on 04.05.2022 pleading therein:

14. That, the present complaint is non-maintainable mainly on the ground that the said complaint has been collectively filed by 19 complainants for several reliefs, which are neither common nor pertains to similar interpretation. Separate agreements having different terms and conditions were made with all the complainants, and such can be only contested separately with separate replies.

15. That, the joint complaint is also not maintainable in the present form as vague allegations have been levelled against the respondent company regarding violation of 2013 Policy.

16. That, it is provided in Section 11(4)(d) of RERA 2016, that the promoter shall be responsible for providing and maintaining the essential services on



reasonable charges, till the taking over of the maintenance of the project by the association of the allottees. Further, it is also provided under Section 19(6) of the Act, 2016 that every allottee, who has entered into an agreement for sale to take an apartment, plot or building as the case may be, under Section 13, shall be responsible to make necessary payments in the manner and within the time as specified in the said agreement for sale and shall pay at proper time and place, the share of registration charges, municipal taxes, water and electricity charges, maintenance charges, ground rent and other charges, if any. It has further been provided under Section 19(7) of 2016 Act that the allottee shall be liable to pay interest, at such rate as may be prescribed, for any delay in payment towards any amount or charges to be paid under Sub-section (6).

17. Respondent in his reply denied the existence of complainant no. 1/Association as no such claim has been put forth before the respondent company and formation of such association by the buyers is not supported by any documentary proof.

18. Respondent further mentions the mandate issued under notification dated 19.08.2013 and have not promised any such facility which might be in contravention to the above policy qua which one advertisement was also circulated in newspaper on 10.09.2017. Respondent further adds and



mentions allotment rate for the apartments/units approved, as per Clause 5(i) of the said notification, whereby he mentions the maximum allotment rate @Rs. 4,000/- per sq. ft. and additional recovery against balcony of minimum 5 ft. @Rs. 500/- per sq. ft.

19. Respondent states that the 5-year free maintenance was duly promised with terms and conditions but the same does not comprise to the facilities being used by the allottees and further states that a standard format of the builder buyers agreement is required to be entered upon by the proposed buyer. Also, no complainant has ever approached the respondent seeking amendment/alteration in the BBA and it has been voluntarily signed by each of the allottee. Adding to it, the respondent states that no complainant has ever raised any objections against any offending clause, if any, at the relevant time and therefore, now such allegations have been raised for the first time.

20. That, as per the advisory of the Ministry of Housing and Urban Affairs, the COVID-19 pandemic was declared as a 'Force Majeure' event under Section 6 of the RERA 2016 and advised the authorities to extend the registration and completion date for Real Estate Projects by 6 months and the same was further extended for next 3 months. The said advisory highlighted that the RERA envisions any natural calamity affecting the regular development of a

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real estate project as a forced majeure event and hence minor extension in completion of projects or delivery of possession on the aggrieved date is to be treated as Force Majeure. There was also 9-month relaxation from RERA (6+3). True copies of said extension notifications of RERA have been annexed as Annexure R-4 and R-5 respectively in reply file. BR III is dated 06.04.2017, further revised on 08.09.2017 and EC is dated 19.07.2017. There was no delay as 4-year time period was completed on 18.07.2021 excluding force majeure circumstances. OC was applied on 04.06.2021(annexed as Annexure A-6 in reply file) and received on 31.12.2021(annexed as Annexure A-7 in reply file). 'Final Call Letter' (hereinafter referred to as FCL) was issued on 11.01.2022.

21. That, the respondent company is strictly following the statutory obligations and has never promised for free car parking to each of the allottee, which is otherwise violative of 2013 notification. As per norms contained in Clause 4(iii) of 2013 notification, the parking space is to be provided at half equivalent car space for each dwelling unit and only for one two-wheeler parking site shall be marked for each flat, which shall be allotted only to flat owners.

22. That, no NOC is delayed and the complainants have miserably failed to report any incident wherein the issuance of NOC to any of the complainant



is deliberately delayed in order to incur delayed payment interest. Also, no documentary proof has been annexed by the complainants in support of their claim. Moreover, in clause 10 of BBA it clearly mentions that loan/mortgage shall not excuse the allottee from making the payment of the total consideration amount.

23. That, as far as the allegations regarding the alleged irregular GST being charged, it is submitted that complainants are not entitled to raise the claim on behalf of the allottees who are satisfied and chosen not to approach the Hon'ble Authority. Even, if the respondent wishes to waive off the charge of GST, then too the respondent is not allowed to do so as the same would be violation under GST Act as it is a tax levied by the Government and not by the respondent.

24. That, the allegation of making illegal and unlawful demand in the FCL dated 11.01.2022 is denied and clarificatory description is submitted and further states that the said charges are absolutely genuine in nature and are for the benefit of the allottees only.

25. That, the possession of the unit has already been offered and in some cases, it has already been taken over. And, as far as the allegation of not handing over the possession of all the amenities, common area facilities and services are concerned, the same is to be taken care by the maintenance agency.



Moreover, since the project is habitable thus there is no point of pending final works.

26. That, the respondent submits that the user-cum-operating cost is entirely different from the maintenance charges and the security deposit under the head of interest free operating cost is for the purpose of covering the payments being made to the statutory authorities, utility providers including third parties due to which it is important to ensure the timely payments to avoid any penalty interest and/or discontinuation of such facility/services. Also, since the maintenance services are being provided by a professional third-party entity therefore a separate agreement is required to ensure timely payments and services.

27. That the respondent was very cooperative with the allottees including the complainants and quick responses are generated to their queries and never threatened and used criminal force against anybody. The allottees are duty bound to take possession of their respective units within the time frame required and the respondent is readily granting possession to all the allottees. Hence, the complaint is liable to be dismissed.

E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT:



28. During oral arguments learned counsel for the complainants reiterated their arguments as were submitted in writing, in reply to which, the learned counsel for the respondent also submitted the below-stated as mentioned in the reply to the written arguments.

F. ISSUES FOR ADJUDICATION AND OBSERVATION OF THE AUTHORITY.

29. Whether the complaint is maintainable or not?

a. With regard to plea raised by the respondent that captioned complaint is not maintainable in present form as several reliefs sought by complainants are neither common nor pertains to similar interpretation, the Authority observes that complainants in this case is inclusive of resident welfare association and other individual allottees raising various allegations and deficiencies on part of respondent towards completion of project in toto and obligation of handing over of possession to the allottees-complainants within stipulated time. Perusal of reliefs prayed in complaint reveals that complainants have been claiming certain reliefs which are common for all complainants-allottees alongwith other reliefs for which facts/merits of each individual case needs to be taken into consideration. The present complaint vide order passed on 31.05.2022 and 07.07.2022 has already been held

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maintainable by this Authority. Relevant part of the orders dated 31.05.2022 and 07.07.2022 are reproduced below for reference:-

Order dated 31.05.2022 has been reproduced as follows:

During the course of hearing, Id. counsel for complainant while rebutting plea of respondent for maintainability of complaint argued that this complaint has been filed by complainant association seeking relief of handing over of possession arising out of the same cause of action i.e., even after receiving 100% amount of total sales consideration including disputed amount demanded via final call letter dated 11.02.2022, respondent has failed to handover possession to allottees. Further, he submitted that documents such as Builder-Buyers Agreements, Allotment letters, copy of final call letters, receipts of payments of each allottee have been attached with the complaint and as such no difficulty will arise to deal with present complaint.

5. Prima facie view of Authority is that the complaint is maintainable as relief sought by complainants is same and it appropriately applies to the case of each complainant.

Orders dated 07.07.2022 has been reproduced as follows:

After hearing both the parties on preliminary issue of maintainability, Authority observes that provisions of Section 2(d) read with Section 31 of RERA Act allows individuals or group of allottees to file complaint before Authority. Furthermore, since facts of each case along with relevant documents such as Builder-Buyers Agreements, Allotment letters, copy of final call letters, receipts of payments of each allottee have been mentioned in the complaint; Authority considers it to be maintainable. No difficulty is likely to arise in dealing



with their matter together. Accordingly, Authority will hear this matter on its merit.

After hearing the case on merits it is found that with respect to the reliefs for which facts of each individual case need to be taken, even if these reliefs have to be allowed or rejected then the equation of each individual pertaining its own individual facts with respect to dates, circumstances, paid amounts etc. have to be taken into consideration for adjudication of issues involved between the parties i.e., individual allottee and respondent. So, the reliefs which are specifically sought for each individual-allottee pertaining to agreement, interest, quashing of illegal demands etc. cannot be dealt together in this bunch of complainants as every case is fact dependent. The situation would have been different if any common legal question was involved in this case but herein facts of each allottee is relevant to adjudicate the claim of allottee vis-à-vis the obligations/fulfilment of duties cast upon respondent builder. Therefore, the complaint is being decided only qua the common reliefs sought by complainant-Resident Welfare Association(complainant no.1) which does not require evaluation of facts of each individual-complainant allottee. For the individual reliefs, the aggrieved allottee- complainants are at liberty to file separate complaint for the adjudication of issues involved with the respondent-promoter. In

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furtherance of it, the reliefs are bifurcated on the basis of common and individual nature. Reliefs are being dealt as follows:-

- a. *To direct the respondent to withdraw all illegal and unlawful demands made in the Final Call Letter dated 11.01.2022 or by any other medium or call including but not limited to payment of user charges cum operating cost @Rs. 3.25/- per sq. ft., interest free operating cost security deposit (IFOCSD) @Rs. 15,000/-, 33KV electrical switch station charges, electricity connection charges, pre-paid meter charges, interest, administrative charges @Rs. 15,000/- along with 18% GST, irregular GST charges, registration charges, stamp duty charges or by any other name, means or communication which are not as per the agreed terms of the respective Buyer's Agreement executed between the respondent and the complainants and to refund all the above said amounts along with interest to the allottees.*

In respect of this relief, it is observed that the final call letter dated 11.01.2022 was issued to complainants -allottees for making payment of outstanding dues/amount and to take possession thereafter. As per pleadings in complaint, some of the complainants have made payments towards final call notice to respondent. Now at this stage, receivables and payables of each complainants-allottee cannot be taken into account together for resolving the issues of illegal and unlawful demands. Moreover, said demands are to be looked into in consonance with terms of builder buyer agreement so each complainant's case has to be contested individually.

- b. *To direct the respondent M/s Conscient Infrastructure Pvt. Ltd. to issue possession letter and deliver the peaceful possession of units with all habitable services including but not limited to common area services and facilities, electricity, water, sanitary infrastructure, etc. to each complainant as per the terms agreed in their respective Buyer's Agreement.*

It is observed that respondent after completing the construction of the project had applied for occupation certificate on 04.06.2021 which stands received on 31.12.2021, so the next logical step by the respondent has to be possession along with interest on delayed possession, if any, receivables and payables in terms of RERA Act, 2016 and HRERA, Rules, 2017 be offered to each complainants-allottees. As per RERA, Act is it the responsibility of the promoter to offer possession of the plot, apartment or building, as the case may be and thereafter to execute a conveyance deed. Since, occupation certificate has been received on 31.12.2021; respondent shall offer possession of the unit in consonance with the provisions of the RERA, Act within 30 days of uploading of this order. Further, the complainant-allottee shall also be obligated as per section-19(10), to accept the physical possession of the plot, apartment or building, as the case may be, within 60 days of uploading of this order. Further, as per written statement of respondent some of the complainants-allottees have already possession of the units, so those allottees who are already



enjoying possession of their respective units are at liberty to file separate complaint if any grievances pertaining to settlement of receivables and payables still remains.

- c. To direct the respondent to allot the prescribed parking to each complainant as per the Haryana Affordable Housing Policy, 2013 as agreed in the Buyer's Agreement.

It is observed that the respondent in its reply has stated that as per clause 4(iii) of 2013 notification, the parking space is to be provided at half equivalent car space for each dwelling unit and only for two wheeler parking site shall be marked for each flat, which shall be allotted only to flat owners.

Provisions pertaining to parking has been detailed out in clause 3.1 of BBA and clause 4 (iii) of Haryana Affordable Housing Policy,2013.

Said provisions are reproduced below for reference:-

Clause 3.1 of BBA

As per policy, each allottee shall be allotted one two-wheeler parking in the said project. This is equal to half equivalent car space for each apartment. No car parking shall be allotted to any allottee in the said project.

Clause 4(iii) of Haryana Affordable Housing Policy,2013

Pg 8 of written arguments add.

Perusal of relevant provisions pertaining to parking and submissions of respondent, the authority observes that respondent is duty bound to provide two-wheeler parking only to flat owners. As such respondent

in its reply admits its obligation of providing said parking so the respondent is directed to comply with the provisions and provide two-wheeler parking to each flat owner.

- d. *To direct the constitution of an independent committee comprising of Architects and members from competent authority to inspect the project and individual units of the complainants, before the final payments to ensure the units provided are complete and habitable, cost of which shall be borne by the respondent.*
- e. *To direct the respondent to comply with the directions and observations of the independent committee and to make corrections and changes to make the unit in compliance to the Haryana Affordable Housing Policy, 2013 and Buyer's Agreement.*

In respect of aforesaid two reliefs, it is observed that independent inspection of each unit involves detailed procedure which will bring out the various outcomes like some of the units will be ready for handover but some other unit may have number of deficiencies in it, so the task of inspecting units cannot be taken at a common level. Therefore, each individual allottee who is having deficiencies in its unit can press upon this relief of inspection of their respective units highlighting specific deficiencies by way of filing separate complaint. Nonetheless, the respondent is directed to hand over possession of the unit/flat completed strictly in accordance with the terms of BBA.

- f. *To direct the respondent to declare the one-sided clauses in the Buyer's agreements as void-ab-initio and direct the respondent to strictly adhere to RERA and other applicable laws.*

Complainants-allotees are praying for declaring one-sided clauses of the BBA as void ab initio, however which all clauses of the BBA are referred to as one-sided clause for each of complainants-allottee has not been specified. Further, the complainants have not specified whether 'all the one-sided clauses' are common in all the builder buyer agreements. Merely stating that one-sided clauses forming part of builder buyer agreement be struck down is not acceptable. Moreover, the circumstances under which the BBA got executed and payments were made to respondent for purchasing a unit is different in case of each allottee so it cannot be dealt together for all complainants. However, individual allottees are at liberty to raise grievances pertaining to arbitrary, unjustified and illegal clauses of builder buyer agreement specifying therein as to how these clauses are illegal/unjustified by way of filing separate complaint.

g. To direct the respondent to repair and complete the common staircase of the project and other common areas and services.

In this regard, it is observed that respondent under section 11 (4) (a) of RERA Act,2016 is responsible to complete and maintain the common areas of the project which is inclusive of stair case and common

services as evident from definition of common area provided in section 2 (n) of RERA Act,2016 and clause 3.4 of the BBA. Further, by virtue of section 14(3) of RERA Act, 2016 the respondent is responsible/obligated to rectify structural defects or defect in services brought into his notice by allottee within 5 years of handing over of possession within a period of 30 days. In case respondent fails to do so then the aggrieved allottees are entitled to claim compensation in the manner provided under the Act. Fact remains that respondent is in receipt of occupation certificate so it cannot be the case that common areas and services of the building are not in working condition but still if any repair works or construction work is required the respondent is directed to repair/complete the remaining common infrastructure within 30 days of uploading of this order. In case, respondent does not comply with this direction, then the aggrieved allottee may file his claim for compensation.

h. To direct the respondent to share a copy of sale deed, conveyance deed, drafted as per applicable laws, which is required to be executed between the individual complainants and with all the complainants before the execution for review and reference.

This relief is common in nature as the respondent-builder has to get the sale deed of allotted units executed with the owner of the units. Execution of sale deed is the next logical step after taking possession



to perfect the title/ownership of unit. Further, it is observed that the intent of the RERA Act, 2016 is to ensure efficiency and transparency in sale of real estate project. So, Authority is of view that in order to maintain transparency in real estate transactions the respondent be directed to share copy of drafted sale deed with the complainants. One copy of sale deed which is usually available with respondent for execution be shared with complainants-allottees alongwith offer of possession. This shall enable the allottees to take an informed decision.

- i. *To direct the respondent to cooperate with all the allottees including the complainants to effectively make a Resident Welfare Association/Allottees Association by whatsoever name it is called, as per Haryana Apartment Ownership Act 1983, RERA 2016 & rules and regulations made thereunder and other applicable laws.*

As per section 11 (4)(c) of the RERA Act,2016 , the promoter is responsible to enable the formation of an association within 3 months of the majority of the allottees having booked their units. Section 11

(4) (e) of the Act is reproduced below for reference:-

(e) enable the formation of an association or society or co-operative society, as the case may be, of the allottees, or a federation of the same, under the laws applicable



Provided that in the absence of local laws, the association of allottees, by whatever name called, shall be formed within a period of three months of the majority of allottees having booked their plot or apartment or building, as the case may be in project.

In view of the aforesaid provision of RERA, Act 2016, the respondent is directed to fulfill this obligation by enabling formation of an association of allottees as per relevant laws. Respondent shall get publish a notice in atleast 2 popular local newspaper (English, Hindi) circulated in the area and invite the allottees to form an association of allottee. Respondent shall also communicate to the allottees by way of letter & emails to come forward and form an association of allottees. In case of multiple associations of allottees, respondent shall endeavour to form federation of association of allottees to enable handling over of common areas of the Project.

- j. To direct the respondent to pay the delayed interest at prescribed rate on total amount paid by the complainants for delay in possession from the date of agreed date of possession in the Buyer's Agreement till the actual date of possession including the period from the issuance of Final Call Letter dated 11.01.2022 till the date of actual possession.*
- k. To direct the respondent to waive off delayed payment interest to the eligible complainants for the periods of delay in issuance of NOC and delayed construction periods.*

Under section 18 of the RERA Act,2016 ,the respondent is liable to pay to the allottee interest for every month for the delay caused in delivery of possession of unit. For awarding said interest, facts of



individual allottee in respect of the stipulated time of delivery of possession of unit as provided in the Builder buyer agreement has to be taken into consideration. Similarly, the waiver of delayed payment interest has to be looked into separately considering the issuance of demand letters and period of delay in making payment by each individual allottee. Perusal of relevant documents like demand letters, payment schedule, payments made in response to demand letters of each allottee is required for adjudication of these reliefs. So, both these reliefs if awarded, has to be awarded to in respect of each allottee separately depending upon fact of each case. Paid amount by complainants-allottees and delay if any caused in handing over of possession has to be evaluated separately in each individual case. Adequate details required for adjudication of each individual allottee are not available. So, these reliefs cannot be taken into account together for all complainants-allottees.

1. *Order imposition of penalty and revocation of registration of the respondent under Section 61 read with Sections 7, 11, 12, 14 of RERA 2016 and rules made thereunder and direct the respondent to pay for the loss and inconvenience caused to the complainants.*

This relief is pertaining to imposition of penalty upon respondent and revocation of registration of respondent and payment for loss and

inconvenience caused to complainants-allottee under Section 61, 7,11,12 and 14 of the RERA Act,2016. It is observed that complainants are merely seeking this relief without pleading any violation by respondent under the aforesaid sections. Moreover, no document has been placed on record to substantiate the fact that respondent has violated obligations case upon it under aforesaid sections. Further, this relief is not even pressed during the course of arguments. Thus, no relief is awarded to complainants under this head.

m. To direct the respondent to refrain from indulging in any further unfair trade practice and abuse of dominant position.

As alleged by complainants, respondent had indulged into unfair trade practices since beginning, like respondent has published advertisement in newspapers showing the car parking spaces into the project with an intention to promote sale. Thus, allegedly this misleading act of respondent has caused grave loss to allottee. Further, it has been alleged that the respondent has incorporated unfair clauses in builder buyer agreement and is also pressuring the complainants-allottees to sign on dotted line of indemnity bonds/affidavits. Argument of the respondent is that the respondent is duly following the obligations/duties specified in builder buyer agreement and



Haryana Affordable Housing Policy, 2013. Further, it has been stated that there was no incident of raising any objection to clause of BBA or any indemnity bond by any of the complainants-allotees and not even by non-complainants-allotees. Some of the allottees of the project are peacefully enjoying the possession of their units. He refused the allegation of unfair trade practice and abuse of dominant position upon respondent. In this regard, it has been observed that the copy of advertisement has been annexed as Annexure R-5 to reply. Said copy is not legible and no other relevant document has been filed by complainant to substantiate claim of false advertisement. Therefore, no direction is passed w.r.t. issue of false advertisement. However, complainants are at liberty to file proper documentary evidence for proving loss being caused due to false advertisement, if any, in case been issued by respondent by way of filing separate complaint for compensation.

Regarding issue of abuse of dominant position, it is observed that promoters/builders as a matter of practice/trend in real estate transactions tend to use their dominant position to compel the complainants-allotees to sign on indemnity bond or affidavits for taking possession and the innocent allottees who have already paid



almost the complete sale consideration does not have any option but to sign those documents, however, statutory rights accrued in favour of the allottees as per provisions of RERA Act,2016 cannot be waived off by merely signing an indemnity bond or an affidavit. Accordingly, respondent must refrain from forcing the complainant-allottees to sign any document which results into waiver to any statutory right.

- n. To direct the respondent to indemnify the complainants for all the loss or damages suffered by the complainants as a result of non-payment, non-observance and non-performance of the covenants and conditions of BBA.

In view of the aforesaid relief, it is observed that loss, damages, if any, suffered by the allottees due to acts of respondent have to be proved with supporting documents and can be adjudicated only by learned Adjudicating Officer of this Authority. So, aggrieved complainants-allottee are at liberty to file separate complaint before Adjudicating Officer for claiming compensation for the loss and damages suffered.

- o. To direct the respondent not charge any delayed payment charges for the period of COVID-19 pandemic and for the periods from issuance of Final Call Letter dated 11.01.2022 till the actual date of possession.

[Handwritten signature]
Ratna

In this respect, it is observed that accounts of receivables and payables of all the complainants-allottees cannot be taken into account together as facts of each allottee has to be dealt independently for deciding its claim against the respondent. As such, the payments made by complainants during the COVID-19 period are different in figures and dates so that quantum of any charges has to be looked into separately. Further, it is observed that Authority cannot modify/alter/amend the terms already agreed between the parties, therefore, the provisions which details out the penalty/interest to be paid by the respondent for causing delay has to be followed. Similarly, in case is allottee is at fault and provision is specified for fault of allottee then that provision will be given effect without any alteration. Moreover, this aspect is to be looked into account from the perspective that as to which party is at fault i.e. equity needs to be followed. Thus, principle of natural justice and equity demands that party at fault whether allottee or promoter, will be liable to pay interest to the opposite party for unjustified delay in terms of RERA Act, 2016 and Rules. It is pertinent to mention here that allottee could have delayed in making payments during COVID-19 only when the respondent had raised demand during said period. Demand could be raised only if



construction work was going on at site at that point of time. So, the line of events and circumstances of each case has to be determined for deciding this relief on equity basis. Aggrieved allottee can file separate complaint stating therein the details of delayed payment charges imposed by respondent and the relevant stage of construction to effectively adjudicate this issue.

- p. *To direct the respondent not to charge anything from the complainants and not impose any terms/conditions which is not a part of the respective Buyer's Agreements.*

Herein the Authority is of view that terms and conditions of builder buyer agreement cannot be modified or altered by the Authority except the ones which are not in consonance with the applicable rules/prevaling laws. Generally, respondent cannot ask for anything beyond the terms of agreement but still in case any complainants-allottee has any issue with any specific charges regarding imposition of any condition that was not part of the BBA then he is at liberty to approach this Authority by way of filing separate complaint revealing therein the acts of respondent in charging the amounts or imposing conditions beyond the agreement.

- q. *To direct the respondent not to force the complainants to furnish any indemnity bond or undertaking which are not as per Buyer's Agreement, RERA 2016 and the rules & regulations made thereunder.*

[Handwritten signature]

This relief has already dealt with relief 'm' of this order at page no. 32.

- r. *To direct the respondent to revoke irregular GST imposed on the payments on complainants and refund the irregular GST recovered from the complainants.*

Herein the builder buyer agreements annexed with the complaint are of year 2017, 2018 and 2019 and fact remains that GST has come into picture w.e.f 01, July,2017 so the taxes applicable during the time stipulated for construction of project has to be borne by the complainants-allotees. Payment of applicable taxes have also been agreed by the complainants-allotees in clause 6.5 of the Builder buyer agreement. So, the complainants-allotees cannot escape the liability of paying GST amount to respondent w.e.f 01.07.2017.

- s. *To direct the respondent to pay Rs. 15,000/- per allottee in lieu of rent and cost due to not providing of possession on agrees date as per Buyer's Agreement.*
- t. *To direct the respondent to pay Rs. 20,000/- to each complainant as cost of this complaint, including legal charges.*

The complainants is seeking compensation in lieu of rent and cost burdened upon allottee for not being given possession by respondent on agreed date. It is observed that Hon'ble Supreme Court of India in Civil Appeal Nos. 6745-6749 of 2027 titled as "M/s Newtech Promoters and Developers Pvt Ltd. V/s State of U.P. & 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 learned Adjudicating Officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the learned 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 complainantss are advised to approach the Adjudicating Officer for seeking the relief of litigation expenses.

- u. To forward the complaint to the Court of Hon'ble Adjudicating Officer for determining and awarding compensation for mental agony and physical harassment and compensatory interest in favour of each complainant.*

In regard to this prayer of the complainants reference is made to sub rule (c) of Rule 28 of RERA Rules, 2019. The sub rule provides that if in a complaint compensation has been sought, the complaint for adjudging quantum of compensation as contained in Section 12, 14, 18 and 19, shall be referred to Adjudicating Officer by Authority and Adjudging Officer shall conduct an inquiry to adjudge quantum of compensation as per provisions of Sub Section 3 of Section 71 by taking into consideration the factors mentioned in Section 72 of RERA Act 2016. Authority observes that to enable the Adjudicating



Officer to adjudge quantum of compensation, details of the claim duly supported with evidence will have to be placed by the claimant before the Adjudicating Officer. For this purpose Form-CAO has been prescribed in the HRERA Rules, 2017. The information as is required to be submitted in form-CAO is not before this Authority, therefore, for addressing the issue of claim compensation, complainants/claimants have to submit an application before learned Adjudicating Officer alongwith information in proforma-CAO. Other information of relevant evidence in support of the claim also has to be submitted by claimantss-complainant before learned Adjudicating Officer. Complainants herein may follow the procedure prescribed for claiming compensation by filing an application on proforma-CAO. For the purpose of 'reference' to be made in accordance with sub rule (c) of Rule 28, Authority will send a copy of this order to learned Adjudicating Officer to take into consideration findings of the Authority, while taking decision on the application for compensation filed by the complainant.

30. Another set of argument raised by complainants-allotee pertains to illegal/unjustified maintenance charges by respondent. It has been claimed that as per clause 4 (v) of Haryana Affordable Housing Policy, 2013 the complete project



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must be maintained by the respondent for 5 years from the date of grant of occupation certificate so complainants are not liable to pay any charges. But respondent acted in violation of aforesaid policy by raising maintenance charges under the name of 'user charges cum operating cost'. Said charges are otherwise also illegal as not being supported by any clause of the builder buyer agreement. In reply, respondent has submitted that these charges are covered in clause 7.3 and 12.4 of the builder buyer agreement. Further by virtue of section 11(4)(d) of RERA Act, 2016 the respondent is under obligation for maintaining the essential services on reasonable charges. So, the respondent is not charging any profit for maintaining and operating the common areas and services/facilities, only the actual expenditure incurred upon is charged on pro-rata basis from complainants-allottees. After hearing submissions of both parties and perusing relevant provisions, the Authority is of view that in clause 4 (v) of Policy, 2013 the aspects covered for maintenance are roads, open spaces, public parks and public health services but common facilities like sewage, electric systems, machinery items-lifts, water tanks are not included in it. So, said clause cannot be relied upon for comprehensive terms of maintenance as respondent must have been incurring some cost to operate each and every facility provided to complainants-allottees in project. Moreover, clarification regarding maintenance charges to be levied in Affordable group housing projects vide public notice: PF-27A/2023/5300 dated 22.02.2023 has been



issued by the Directorate of Town and Country Planning, Haryana wherein suggestions have been sought from general public and other stakeholders. Said clarification is still pending from DTCP and till then the respondent cannot be compelled to not to raise demand for user charges and operating cost and any security deposit for free maintenance charges. It will be only after finalization of said clarification from DTCP, this issue can be adjudicated properly.

I. DIRECTIONS OF THE AUTHORITY

31. Hence, the Authority hereby passes this order and issues following directions under Section 37 of the Act to ensure compliance of obligation cast upon the promoter as per the function entrusted to the Authority under Section 34(f) of the Act of 2016:

(i) Respondent is directed to offer possession to complainants-allotees alongwith receivables and payables incorporating therein delay interest, if any, in terms of RERA Act,2016 and HRERA,Rules,2017 which primarily provides for rate of interest i.e. SBI highest MCLR+2% which works out to 8.75+2%=10.75% within 30 days of uploading of this order.

(ii) Complainants-allotees will remain liable to pay balance consideration amount to the respondent at the time of taking actual possession.

S. Rathee

(iii) The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e, 10.75% by the respondent/ Promoter which is the same rate of interest which the promoter shall be liable to pay to the allottees.

(iv) Respondent shall provide two wheeler parking space to the complainants-allotees alongwith offer of possession.

(v) Respondent is directed to maintain and complete the common areas and services and to take charges for said maintenance on the basis of actual cost incurred within 30 days of uploading of this order.

(vi) Respondent is directed to share the copy of sale deed alongwith offer of possession to the complainants-allotees.

32. Disposed of. File be consigned to record room after uploading on the website of the Authority.


.....
NADIM AKHTAR
[MEMBER]


.....
DR. GEETA RATHEE SINGH
[MEMBER]