

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

Complaint no.:	1968 of 2022
Date of Decision:	16.02.2024

Anmol Rattan Bakshi R/o: - Flat no. D-073, Brisk Lumbini Apartments, Sector - 109, Gurugram	Complainant
Versus	
M/s Brisk Infrastructure and Developers Private Limited. Regd. Office at: B-1/1001, Ground Floor Vasant Kunj, New Delhi - 110070	Respondent

CORAM:	
Shri Sanjeev Kumar Arora	Member

APPEARANCE:	
Sh. Manish Chauhan Advocate	Complainant
Sh. Dhruv Rohatgi Advocate	Respondent

ORDER

1. The present complaint dated 05.05.2022 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 provision of the Act



or the Rules and regulations made thereunder 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 and location of the project	"Lumbini Terrace Homes" at sector 109, Gurgaon, Haryana
2	Nature of the project	Group housing project
3	Project area	10.793 acres
4	DTCP license no.	174 of 2008 dated 01.10.2008 valid upto 30.09.2018
5	Name of Licensee	Brisk Construction Pvt. Ltd. & Raheja Developers Pvt. Ltd.
6	RERA Registered/ not registered	Not Registered
7	Unit no.	73, 7 th floor, Tower- D (page 21 of complaint)
8	Unit area admeasuring	2022 sq. ft. (Super area) (page 24 of complaint)
9	Date of allotment	27.05.2013 (page 21 of complaint)
10	Date of builder buyer agreement	27.05.2013 (page 23 of complaint)
11	Date of building plan approval	16.03.2011 (page 79 of reply)
12	Possession Clause	9.1 "Subiect to Clause 9.4 below and subiect to timely payment by the Buyer of sale price, stamp duty and other charges due and payable according to Payment Plans applicable to him/her/it or as demanded by Clause. the Company, the Company contemplates to complete



		<p>construction of the Apartment and hand over the possession thereof to the Buyer within 36 months (Three Years) "Commitment Period" from the date of start of construction of the project. Further the Apartment Buyer agrees and understands that the company shall be additionally entitled to a period of 180 days (one hundred and eighty days) "Grace Period", after the expiry of the said commitment period to allow for unforeseen delays in obtaining the Occupation certificate or any other mandatory certificate/NOC from relevant authorities including DGTC under the act in respect of the project."</p>
13	Due date of possession	December 2014 [calculated from the start of excavation in June 2011 as admitted by respondent on page 6 of reply]
14	Basic sale consideration	Rs.68,42,520/- (page 24 of complaint)
15	Amount paid by the complainant	Rs.78,50,220/- (as per SOA on page 43 of complaint)
16	Occupation certificate	19.05.2016 (page 159 of reply)
17	Possession Certificate	15.07.2016 (page 49 of complaint)
18	Conveyance deed	28.08.2019 (page 171 of reply)

B. Facts of the complaint:

3. The complainant has made the following submissions: -

4. That complainant is owner and resident of flat No.D-073, Brisk Lumbini apartment and respondent is builder of this society who developed the group housing society vide license no. 174 of 2008.
5. That, respondent are persistently flouting the rules and regulations of dtp as well as not adhering and numerous acts of respondent amounts to contravening rules of law.
6. That as per RTI information from DTP under provisions of RTI ACT vide letter dated 11/07/2019 the following information was sought- "what is the total EDC & IDC of the society, "what is the amount of EDC& IDC deposited by the builder with Government"? And "What is the method to calculate EDC & IDC per flat".
7. That, DTP bearing address Nagar Yojana Bhavan, Plot No. 3, Block-A, Sector 18-A, Madhya Marg, Chandigarh vide its reply of abovementioned RTI, reply bearing Memo No. RTI/441 dated 23.01.2020, provided the information that the EDC & IDC is calculated and demanded as per acre not as per flat and total area of this project is 10.793 acres. So, EDC & Enhance EDC demanded from colonizer was 1239.58 Lakh & 494.93 Lakh respectively, while demand of IDC was 273.81 lakh which after totaling comes to Rs.20,08,32,000/-lakh (principle amount without interest and penalty). However, as respondent is holder of 57 percent area, and rest 43 percent area of total land belongs to RAHEJA DEVELOPER LTD , then share of respondent is of 1144.74240 lakh . However, respondent didn't pay in time and so had to pay the amount along with interest/penalty of EDC & IDC which is 2813.90 lakh.
8. That as per the calculation of area of all flats (As also declared by respondent in the deed of declaration G0B2017C2563 dated 02 March 2017) is 618108 Sqft and shop is 1380 sqft. in premises of respondent,

so total area of flats and shops is 619488 sq ft. Total demand of principle amount of EDC & IDC by DTCP was Rs 20,08,32,000/- . So, the project BRISK Lumbini being 57% of total land area owes Rs 11,44,74,240/- as respective principle EDC/IDC amount. Area wise calculation to be charged from complainant comes out to be Rs. 184.78 per sq.ft as pro-rata principle EDC/IDC. That area of complainant's flat is 2177 sq ft, so the liability of payment towards EDC & IDC as per flat area is of amount of Rs. 4,02,266.6/- but respondent had charged 6,06,600/-. The complainant is not liable to contribute to the interest/penalty charges DTCP levied on the respondent due to the fault on end of respondent. It is also pertinent to mention that the respondent cannot be allowed to make profit from the collection of statutory charges like EDC/IDC from homebuyers.

9. That however reply of RTI vide Memo No. RTI/441 Dated 23.01.2020 by DTP made it clear that respondent have extorted extra amount in the name of EDC & IDC from the flat owners.

C. Relief sought by the complainant:

10. The complainant has sought following relief(s):
- I. Direct the builder to refund the excess amount of EDC/IDC charged with interest at prescribed rate.

D. Reply by the respondent

11. That the present complaint is not maintainable in law or on facts. The provisions of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the 'Act') are not applicable to the project in question. The application for issuance of occupation certificate in respect of the said project in question was made on 29.09.2014 i.e. before the

notification of the Haryana Real Estate Regulation and Development Rules 2017 (hereinafter referred to as the 'Rules') and the occupation certificate was thereafter issued on 19.05.2016

12. That the complainant has concealed pending litigation filed by the Brisk Lumbini apartment resident welfare association as well as other flat owners/ members of the association, in the project claiming similar reliefs. These are as under :-

Consumer Complaint No 1779 of 2016 titled as Vikas Saini and Others Vs Brisk Infrastructure & Developers Pvt Ltd (Complaint No 1779 of 2016), pending before the Hon'ble NCDRC wherein some of the reliefs claimed are identical to the reliefs claimed in the present complaint. It is pertinent to mention herein that the Association before the Hon'ble NCDRC have prayed that the said complaint has been filed on behalf of all the buyers in the project and that the reliefs claimed in the said complaint be granted to all similarly situated buyers in the project. The reliefs claimed before the Hon'ble NCDRC, inter alia, are as under :

- A. Interest for delay in possession @ 18% from the due date of possession.*
- B. Delivery of possession with all amenities.*
- C. Disclosure of VAT calculation and charges*
- D. Refund of parking charges, EDC/IDC/VAT along with 18% interest.*
- E. Compensation*

13. The plaintiffs in the said suit, out of several other reliefs have also claimed a relief of mandatory injunction directing the respondent herein

for including the correct percentage of interest in common area and percentage of restricted common facilities against each flay in the deed of declaration by re-executing the deed of declaration.

14. That the instant complaint is barred by limitation. The complainant have admitted that the respondent has offered the possession of the unit in question in 2016 within the agreed time and by way of the instant complaint have sought refund of the amount paid by him to the respondent towards EDC/IDC with interest. It is submitted that cause of action, if any, for seeking interest accrued in favour of the complainant in 2016 and consequently the instant complaint is barred by limitation.
15. Thereafter, a buyer's agreement dated 27.05.2013 was executed between the parties, copy of which is already on record. It is pertinent to mention that the buyer's agreement was consciously and voluntarily executed between the parties.
16. That the construction of the project/allotted unit in question already stands completed and the respondent has already offered possession of the unit in question to the complainant and the unit has been duly handed over to the complainant. The transaction between the parties is a concluded contract and as such no right to sue survives.
17. That, without admitting or acknowledging the truth or legality of the allegations advanced by the complainant and without prejudice to the contentions of the respondent, it is respectfully submitted that the statement of no dues as against EDC, enhanced EDC and IDC dated 25.05.2014 was duly issued by the Accounts Officer, DTP, Haryana.
18. That on 19.05.2016, occupancy certificate was received in respect of the project. Subsequently, a letter dated 19.05.2016 informing the buyers about the receipt of occupancy certificate was dispatched by the

respondent in as much as the respondent was much concerned about the time taken by government departments for grant of occupancy certificate.

19. That the complainant was offered possession of the unit in question through letter of offer of possession dated 15.07.2016. The complainant was called upon to remit balance payment including delayed payment charges and to complete the necessary formalities/documentation necessary for handover of the unit in question to the complainant.
20. That the present complaint is grossly barred by limitation as the same has been filed after more than 3 years of execution of the conveyance deed, which marks the conclusion of the contract between the parties. without admitting any allegations and claims of the complainant, the complainant cannot be allowed to wake up with its grievances after a lapse of more than 5 years of the execution of the conveyance deed. The present complaint deserves an outright dismissal on this ground alone.
21. That the buyers/allottees have raised frivolous objections concerning the refund of amount charged for EDC/ IDC.
22. Objection qua enhanced EDC/ IDC charges- As regards the EDC/ IDC charges, it is submitted that the amount has been demanded under clause no. 1.4.3 read with clause no. 2.7 of the builder buyer agreement. EDC/ IDC rates @ 300/ sq. ft of saleable area were declared in advance, based upon which all the buyer's had booked their flats. There is a clause in BBA (Clause 2.7) that if EDC/ IDC rates are increased/ reduced in future by Haryana Government, then the same shall be solely to the buyer's account. It is submitted that whatever EDC/ IDC rates have been collected from the buyers, have been fully deposited to the Government Account. Interest charged by the Government of Haryana on EDC/ IDC is

also to be borne by the buyer as they paid EDC/ IDC, after booking their flats, in this project in 2011, whereas the EDC/ IDC was payable much earlier as per Government Approved norms/ schedule. Moreover, these issues are pending consideration before the Hon'ble NCDRC, which is a class action proceeding and the interest of all flat buyers are already taken care of in the said proceedings.

23. That it is submitted that the amount in regard to the EDC, enhanced EDC, IDC has been demanded under clause no. 1.4.3 read with clause no. 2.7 of the builder buyer agreement. That the buyer's agreement executed between the parties is a commercial contract wherein the respondent has offered to sell the flat/unit for due price to the buyers/allottees. The complainant is the buyer who have entered into an agreement with open eyes and have agreed to pay all the cost, dues and charges as leviable for the unit/flat. The respondent has duly complied with its obligations under the agreement and the housing complex is ready and livable. That the possession of the respective unit was offered within agreed time in accordance with the provisions of the buyer's agreement. The present complaint has been filed much later in time after receipt of the occupancy certificate, offer of possession which clearly shows the malafide intention of the complainant. It is submitted that the complainant has consciously misconstrued and misinterpreted the terms and conditions incorporated in the buyer's agreement. It is submitted that selective clauses of the buyer's agreement cannot be read and interpreted in isolation.

24. That the buyer's agreement executed between the parties is a commercial contract wherein the respondent has offered to sell the flat/unit for due price to the buyers/allottees. The complainant is a buyers who has entered into an agreement with open eyes and has

agreed to pay all the cost, dues and charges as leviable for the unit/flat. The respondent No. 1 has duly complied with its obligations under the agreement and the housing complex is ready and liveable. That the possession of the flat in question was offered within agreed time in accordance with the provisions of the buyer's agreement. The present complaint has been filed much later in time after receipt of the occupancy certificate, offer of possession and the execution of the conveyance deed, which clearly shows the malafide intention of the complainant.

25. That it is not out of place to state here that the project of the respondent is the one of the project which was completed well within time and has received the occupancy certificate as per the agreed time and all the other projects have been delayed by 3 to 9 years and are nowhere near completion.

E. Jurisdiction of the Authority:

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

E. I Territorial jurisdiction

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

E. II Subject matter jurisdiction

Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottees as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

Section 11(4)(a)

Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottee as per the agreement for sale, or to the association of allottee, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottee, or the common areas to the association of allottee 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 promoter, the allottee and the real estate agents under this Act and the rules and regulations made thereunder.

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

F. Finding on the relief sought:

F.I Direct the builder to refund the excess amount of EDC/IDC charged with interest at prescribed rate .

27. The complainant has been allotted a unit in the project of respondent "Lumbibi Terrace Homes", in Sector 109, Gurugram in 2013. A buyer's agreement was executed between the parties on 27.05.2013. The due date of possession was in December 2014.
28. The occupation certificate has been received by the respondent on 19.05.2016 and possession certificate has been received on 15.07.2016



even conveyance deed has also been executed between the parties on 28.08.2019. It is also a point to be noted that complainant is residing in the subject unit.

29. The complainant through complaint has sought the relief of refund of the excess amount charged on account of EDC and IDC along with interest. Vide proceeding dated 03.11.2023, the counsel for the respondent stated that BBA had been executed between the parties and the amount of IDC/EDC is very well mentioned in the allotment letter itself, hence, the respondent had not charged extra beyond that. Further stated that the respondent has charged EDC/IDC as per payment plan already supplied to the allottee alongwith allotment letter and conveyance deed of the unit has already been executed way back in 28.08.2019 and possession was taken by the complainant on 15.07.2016 and the present complaint has been filed six years after taking possession of the unit and the said EDC/IDC which they are talking about was paid by the complainant in 2012-13 in 3rd and 4th instalment of the unit.
30. It is observed that respondent has already mentioned in the agreement as well as in the payment plan that it will be taking the amount of EDC and IDC at commencement of foundation work and completion of basement slab. Also, respondent has contested the said complaint on the ground of limitation as the conveyance deed have been executed in the year of 2019 and the alleged charges have been paid as in accordance with the agreement and payment plan. There has been complete inaction on the part of the complainant for a period of more than six years till the present complaint was filed.

31. The complainant remained dormant of their rights for more than 6 years and they didn't approach any forum to avail their rights. There has been such a long unexplained delay in pursuing the matter. No doubt, one of the purposes behind the enactment of the Act was to protect the interest of consumers. However, this cannot be fetched to an extent that basic principles of jurisprudence are to be ignored.
32. One such principle is that delay and laches are sufficient to defeat the apparent rights of a person. In fact, it is not that there is any period of limitation for the authority to exercise their powers under the section 37 read with section 35 of the Act nor it is that there can never be a case where the authority cannot interfere in a manner after a passage of a certain length of time but it would be a sound and wise exercise of discretion for the authority to refuse to exercise their extraordinary powers of natural justice provided under section 38(2) of the Act in case of persons who do not approach expeditiously for the relief and who stand by and allow things to happen and then approach the court to put forward stale claims. Even equality has to be claimed at the right juncture and not on expiry of reasonable time.
33. Further, as observed in the landmark case i.e., ***B.L. Sreedhar and Ors. Vs. K.M. Munireddy and Ors. [AIR 2003 SC 578]*** the Hon'ble Supreme Court held that "Law assists those who are vigilant and not those who sleep over their rights." Law will not assist those who are careless of their rights. In order to claim one's right, one must be watchful of his rights. Only those persons, who are watchful and careful of using their rights, are entitled to the benefit of law.

34. Separate proceeding to be initiated by the planning department of the Authority for taking an appropriate action against the builder as the project is not registered.
35. In the light of the above stated facts and applying aforesaid principles authority is of the view that the present complaint is not maintainable after such a long period of time as the law is not meant for those who are dormant over their rights. The Act has been established to regulate real estate sector and awarding relief in the present case would eventually open pandora box of litigation. The procedure of law cannot be allowed to be misused by the litigants. It is a principle of natural justice that nobody's right should be prejudiced for the sake of other's right, when a person remained dormant for such an unreasonable period of time without any just cause. In light of the above, the complaint stands dismissed.
36. File be consigned to registry


(Sanjeev Kumar Arora)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 16.02.2024