

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

Complaint no. : 1836 of 2022
Date of complaint : 21.04.2022
Date of decision : 19.12.2023

Brisk Lumbini Apartment Welfare Association R/O - Brisk Lumbini Terrace Homes Sector-109 Gurugram	Complainant
Versus	
Brisk Infrastructure And Developers Pvt Ltd R/O: Fno 1001 Sector B Pocket 1 Vasant Kunj New Delhi 110070	Respondent

CORAM:

Sh. Vijay Kumar Goyal	Member
Sh. Ashok Sangwan	Member
Sh. Sanjeev Kumar Arora	Member

APPEARANCE:

Sh. K.K Kohli (Advocate) Sh. Kanish Bangia (Advocate)	Complainant
Sh. J.K. Dang (Advocate)	Respondent

ORDER

1. The present complaint has been filed by the complainant/association under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 29 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 there under or to the allottee as per the agreement for sale executed inter se.

A. Unit and project details

2. The particulars of unit, 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. No.	Heads	Information
1.	Project name and location	"Lumbini Terrace Homes", Sector 109, Gurugram
2.	Project area	10.793 acres
3.	Nature of project	Group Housing Colony
4.	RERA registered/not registered	Not registered
5.	DTPC License no.	174 of 2008 dated 01.10.2008
6.	Validity status	30.09.2018
7.	Name of licensee	Brisk Construction Pvt. Ltd. & Raheja Developers Pvt. Ltd.
8.	Licensed area	10.79 acre
9.	Date of approval of building plan	01.12.2011
10.	Date of approval of revised building plan	19.02.2015
11.	Occupation Certificate details	OC received dated 19.05.2016 for tower/block- Tower A to D (Ground Floor to 13 th floor), Tower E (Ground Floor to 12 th floor), EWS (Ground floor to 3 rd floor), Community building (Ground floor & 1 st floor, Shopping (Ground floor), Nursery school (k1& K2)

B. Fact of the complaint

3. That the complainant being Brisk Lumbini Apartment Resident Welfare Association, Brisk Lumbini Terrace Homes, Sector 109, Gurugram – 122017 Haryana (hereinafter called the Complainant) is a registered Association registered with the District Registrar of Firms & Societies, Gurugram, Haryana bearing Registration No. 03793 dated 20.05.2019. The association is legally entitled to represent the allottees of the residential group housing colony namely Brisk lumbini terrace homes. The said association was formed with the primary objective of protecting the collective interest of buyers of group housing project namely brisk lumbini.
4. That the members of the complainant association being buyers through an apartment buyer agreement were assured the delivery of their respective units within 36 months from the date of start of construction being March 2011. The delivery of the flats was given to the members of the complainant association from 2016 onwards.
5. That as per the Haryana Urban Development of Regulated Areas Act in the preconditions of the LC-IVA which is undertaken by the builder clause (h) state as under:

“That the responsibility of the ownership of the common area and facilities as well as their management; and maintenance shall continue to vest with the colonizer till such time the responsibility is transferred to the owner of the dwelling unit under the Haryana Apartment Ownership Act, 1983.”
6. That the Haryana Real Estate (Regulation and Development) Rules, Paragraph 11 of the annexure to the aforementioned rules provide for

maintenance of the project states that *"the promoter shall be responsible to provide and maintain essential services in the project till the taking over of the maintenance of the project by the association of the allottees"*. Furthermore, *paragraph 1.8(ii) of the same annexure provides that "the promoter shall hand over the common areas to the association of allottees"*

7. That the complainant association started raising various issues with the respondent connected to the various defects that were being noticed from time to time including the handover of the activities of the maintenance to the complainant association. It is the responsibility of the promoter to rectify all defects related to structural defect or any other defect in workmanship, quality or provision of services or any other obligations of the promoter as per the agreement for sale relating to such development, for five years. We have brought to the notice of the promoter the major issues related to the entire Fire hydrant system being non-functional, the paint / plaster is chipping off from the building / balconies, Leakage in the expansion joint of basement resulting in crumbling of the structure, Flooding of transmission room with water with extreme possibility of electrocution, Non-functioning of STP as the water is not being recirculated, which is illegal, seepages of the shafts in each towers, walls inside houses adjoining to bathrooms due to poor plumbing at various points in the complex but unfortunately the promoter has been giving a deaf year to the requests of the residents.
8. That when the entire responsibility to maintain the entire complex up to five years is with the builder, with no liability on the allottee, hence asking the allottees to pay for the painting to the tune of Rs. 48,40,000.00/- is illegal

and this amount, under none of the provisions of the HARYANA Apartment Ownership Act, 1983 is payable by the allottee and hence the amount cannot be asked from the RWA or the allottee. The complainant Association have brought to the notice of the respondent, major issues related which are as following:

- a) Structural
 - b) Leakages in the balcony and seepages at various points in the complex
 - c) Expansion joints and cracks in parapit
 - d) Corriossion of reinforcement
 - e) Cracks in stair case
 - f) Corrosion of reinforcement in basement beams of fit
 - g) Pocket garden leaking
 - h) Non-functional rain water harvesting system
 - i) Flooding of transmission room
 - j) Paint/ plaster
 - k) Stp
 - l) Wtp
 - m) Fire fighting system
9. That the complainant made various request and representations to the respondent no. 1, however that the complainant, had their own, appointed a professionally qualified company namely M/s Desman for conducting a structural audit of the entire complex.
10. Structural Defects - That the office of the DTP on 23.02.2022 issued a notification vide memo no 5515 -17 directing the STP and DTP(P) and DTP (E) stating that a detailed structural audit shall be undertaken to ensure the safety and quality of the construction were as per the prescribed norms. That despite the requirement of the structural audit, there exist various structural

deficiencies which require immediate inspection and repair. The report clearly established the following major defects :

- i. Security cabin column cracks
- ii. Reinforcement at corner of number of balconies are exposed and corroded
- iii. Bad conditions of balconies
- iv. Expansion joints need repairs
- v. Cracks at soffit of edge stiffener
- vi. Cracks in parapet
- vii. Edge stiffener plaster spilled off
- viii. Corrosion of reinforcement
- ix. Staircase cracks
- x. Cracks in staircase flight edge
- xi. Poor plaster on boundary walls
- xii. Corrosion of reinforcement in basement beam soffit
- xiii. Splitting corners of the planter etc.

11. This has been the case ever since the respondent offered possession. Persistent seepage in the basement is likely to weaken the structure of the building and can be a cause of serious disaster as it has caused flooding in the transmission room which can be disastrous in the future. The plaster around the boundary wall have fallen and the plaster is coming off from the main building facade. In order to upkeep the look of the project, the complainant association has repaired some portion of the boundary wall, incurring expenditure of Rs.1,05,000/-approximately. It is most respectfully prayed that the respondent reimburse the complainant association for all such works that have been undertaken by the complainant association.

12. That the present STP plant installed on the premises is dysfunctional right since the inception. It is not out of place to mention, that the STP plant built by the respondent is under capacity which causes it to overflow during the rainy season. The plant becomes non-functional, since the treated

wastewater gets mixed on the surface. Moreover, due to overflow it flows back in the drains and leaks in the basement through the various joints in the drainpipes. Thus exposing the residents to various dangerous and life threatening health hazards. The STP plant is most vital for the living conditions of the residents in the project and a necessity in our daily living, hence since 2020 the complainant association has spent a more than Rs. 12,00,000/- to Rs. 14,00,000/- to fix it.

13. That since the water filtration plant has been choked and non-functional since 2020. That the current supply of water is being supplied from HUDA and is being bye-passed through WTP and filled in overhead tanks. The builder must fix the filter before handover to RWA.
14. That erstwhile RWA and the complainant association have been taking up the following two issues with the respondent since 2019 but unfortunately the respondent has been giving a deaf ear to all the requests of the erstwhile RWA and the complainant association. The respondent is requested to undertake urgent repair and hand over all these in working condition, including proper NOC from respective authorities, wherever mandated as per Government regulations. That the respondent is in violation of the Fire NOC granted for Tower E, wherein the respondent had undertaken to construct a fire escape staircase which is in direct violation of the NOC granted to them.
15. That the fire fighting system is completely non-functional, and complainant association wrote a letter to the respondent to rectify the non-functional fire fighting system vide there letter dated 21.05.2021. After having conducted a survey and getting a professional agency to assess the functionality of the fire

fighting system. However, the respondent paid no heed to the letters written by the complainant association.

16. That it is not out of place to mention that the respondent project was visited by the officers of the Municipal Corporation of Gurugram and a letter was issued by the Commissioner of the MCG to rectify the defects in the Fire fighting system. However, the respondent failed to take any action.
17. That under some or the other pretext the complainant association have not been handed over anything in a proper manner but for some documents, without providing any, proper and appropriate details, to our predecessors being the erstwhile RWA, as is being claimed by the respondent of having handed over on 29.01.2020.
18. That the office bearers of the complainant association got elected only on 24.08.2020. The handover of the maintenance was done through a communication date 29.01.2020. The erstwhile RWA was handed over the maintenance under very compelling circumstances, without the proper documentation, technical snag list, IFMS and other documents as elaborated above. That since a very improper handover was done without following the rule books hence it cannot be considered to be a handover.
19. That the previous resident welfare association had filed a CM Window complaint against the builder i.e Brisk Infrastructures and Developers Pvt. Ltd. vide CM Window Grievance NO; CMOFF/N/2019/133139 dated 27.11.2019. That on 23.01.2020 the DTCP issued the following instructions to the builder which have been reproduced hereunder:-

"Both were heard. The following decisions were agreed by the complainant and the representative of the builder: -

*"1. Since, RWA has been formed, but handover of maintenance, IFMS etc. has not been done by the builder to the RWA. So, it was decided among both the parties that **the builder will officially handover the maintenance, AMC, NOC, operational manual, etc.,** to RWA from 01.01.2019 and the builder will be liable for maintenance and operation and collection of previous dues till 31.10.2019.*

2. Further, it was agreed by everyone present in the meeting that the builder will complete the official/legal process of handover which will include transfer of IFMS etc by 31.03.2020, as directed by District Registrar Societies, Gurugram.

3. The builder agreed to transfer the single point electricity connection from builder to the RWA in consultation with DHBVN."

20. That while the previous RWA took the documentation from the respondent it had categorically stated that the documents were "*subject to verification of the originals*".
21. That on 19.03.2020 the builder further handed over several material equipment to the erstwhile RWA. It is pertinent to mention that upon examining the documentation, maps, and the equipment handed over by the promoter, serious flaws and defects are seen observed, due to the various defects found in the handover
22. The erstwhile RWA vide letter dated 28.03.2020 issued a letter to the promoter highlighting the various defects in the handover. In spite of the orders of the Senior Town Planner, Gurugram as stated above, no proper handover has been done by the respondent. Another complaint was therefore

- filed before the Honourable CM on 17.02.2022. Prior to the handover by the respondent to the complainant association on 29.03.2020, the maintenance was being done from by FCFML a company formed by the respondent itself. Since the GST Registration of FCFML had expired they could not raise the bills for the quarter from November 2019 to January 2020 on the members resulting in being left with no option but to handover the maintenance of the complex to erstwhile RWA on 23.01.2020.
23. That the period of August to December 2020 the complainant association was under administrator appointed by District Registrar's office due to election in the society. A letter for handover of the project to complainant association in terms of the ATR of 20.01.2020 was written by the current RWA President, Ms. Persis Sherpa Reineu on 23.08.2021 to the builder. The respondent had written a letter dated 08.06.2021 stating that he wants to handover the project to the complainant Association. In the period between June and August 2021, there were 2 meetings of the Handover committee, complainant association and the respondent association, however there was no resolution due to illegal demands of builder to deduct money from IFMS. Following the failure of the internal handover process, the association raised a complaint with DTP and CM window in September and October 2021 respectively.
24. That in the present case, the builder required the purchaser/ allottee to pay a lump-sum amount towards interest free maintenance security amounting to a sum of Rs. 50-60 per sq. ft from every allottee. At the time of handover of maintenance to the residents the builder shall also handover the balance

amount in each of the bank accounts relating to the maintenance, as well as a copy of the description of income and expenditure statement duly certified by the chartered accountant.

25. That the respondent has been maintaining the entire society from day one and it has been almost three years. The respondent has been demanding money from the members of the complainant association towards the maintenance of the complex every month since but without having provided any details towards the actual cost being incurred towards maintenance. It is appropriate to mention that the respondent and its subsidiary has not got their books of accounts audited since August 2016 till October 2019, despite repeated requests.
26. That the factual position would be available only once a Financial Audit of the entire set of expenses for the last 3 years is conducted with the kind intervention of your good offices so that the innocent buyers are not forced to pay what is not being spent by the respondent. No electricity and water connection is possible to be obtained by the builder without having deposited the security for the same and hence once the occupation certificate is received the connections are to be then transferred to the residents welfare association under the laws of the land. It is the builder's responsibility such as electricity and water connection to the TWA during the handover of the amenities.
27. That the entire relief being sought by the Colonizer is based on a circular No. D 14/2018 dated 27.03.2018 for demand of Money for Cost of 500 Sq. Yds of land for installation of switching station. The respondent while handing over

the possession of the flats to the owners issued letter dated 25.07.2018 seeking additional funds amounting to Rs. 70,703.00/- from each of the Allottees of Tower A, B, D, E; Rs. 88,739.00/- from each of the Allottees of Tower C on account of a bank guarantee which was to be furnished by the Respondent No.1 to DHBVN. Hence, charging the complainant association for a bank guarantee towards the PEC amounts to unjust enrichment and the respondent must remit the same back along with the prescribe rate of interest.

28. That we find that firefighting NOC for approval of firefighting system installed in the towers, basement and ground of Brisk Lumbini Terrace Homes has expired on July 2019 for Tower E and on January 2020 for towers A, B, C and D respectively. It is not out of place to mention that since then the same has not been renewed.
29. That regarding the external development charge & internal development charge a specific provision has been made in sub clause (a) of the Agreement by incorporating a provision regarding the EDC / IDC. As per the provisions of the agreement EDC and IDC is payable by the complainant on a prorata basis. The complainants have been making payments in this regard in the past also. Complainants can only contribute to the principal amount of EDC/IDC which has been demanded by DTCP from the Builder for the project, on prorata basis. By RTI received from DTCP and figures from builder submitted DOD, it is revealed that EDC/IDC has been over-collected.
30. That it is appropriate to mention that the respondent not only has failed to handover the Undivided common area but also has illegally and unjustly sold

the undivided common area of the Common Lobby, Roof and or Terrace in Tower C with exclusive rights of the Common Lobby, Roof and or Terrace in complete contravention to Section 42 of the Haryana Regulation and Registration of Societies Act 2012. That due to this illegal sale of the said terrace, the access to the common terrace is out of bounds to the other 52 owners of this tower, depriving them of their common space which has been illegally usurped and violated the common rights of owners.

31. That it appropriate to mention that the complainant association upon reviewing the FAR distribution is mentioned in the approved drawings and super area is mentioned in the DOD it can be seen that the respondent has unequally divided the FAR between ground floor and the thirteen floors. The super area, arrived at after loading common areas, shows loading of 34-35% or so, for all flats except for 2 flats, where it is 13%. Thus the 6.18 Sq. ft. super area (for 274 Flats tower A to Tower E), has been disproportionately loaded or rather underloading of certain flats has resulted in overloaded of the remaining flats. Resulting in one time over pricing and monthly maintenance overcharging.
32. That the respondent is guilty of charging Rs. 1,25,000/- from the owners and members of the complainant association on account of car parking charges, being well aware of the fact that open car parking's are squarely covered under the undivided common area, for which the complainant association is already making payments in the maintenance.
33. The complainant- association has filed the written submission and the same has been taken on record and perused further.

C. Relief sought by the complainant:

34. The complainants have sought following relief(s):

- i. Direct the respondent to pay delay possession charges along with interest and to refund the excess EDC/ IDC charged.
- ii. Direct the respondent to restrain from selling any portion of the undivided common area of the project belonging to the complainant Association.
- iii. Direct the respondent to appoint a technical committee to ensure a proper handover of the project to the owners from the respondent no. 1, within a period of the next 30 days.
- iv. Direct the respondent to appoint a local commissioner to examine the defects and submit a detailed report on the same and direct the respondent to rectify all the defects as per the report of the local commissioner.
- v. Direct the respondent to refund the amount of IBMS along with interest.
- vi. Direct the respondent to handover duly audited financial details on the maintenance from the day the money towards the maintenance is being collected till the date of handover of the maintenance.
- vii. Direct the respondent not to charge anything from the owners which is not a part of the buyer's agreement.
- viii. Direct the respondent not to charge the cost towards the security for the electricity connection in the form of a bank guarantee.
- ix. Direct the respondent not to charge the security towards the water connection , electrical installation , towards the painting and repair of the plaster chipping off etc. as is being asked for by the builder from the owners of the flats, since the maintenance for first five years is to be done.

- x. Direct the respondent to arrange installation of 33 KW connection for the project as was assured at the time of booking of the flats, as the present connection of 11 KW is insufficient.
 - xi. Direct the respondent to refund the excess money charged on account of the open car parking from the owners and not to charge for the car parking in open space as the same is a part of the FAR and hence a part of the undivided common area.
 - xii. Direct the respondent to transfer the permanent electricity connection in the name of the complainant association and to transfer the water connection in the name of the complainant association.
 - xiii. Direct the respondent to fix the deviation in parking spaces on ground versus the approved parking plan.
35. On the date of hearing, the authority explained to the respondent/ promoters 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

36. The respondent has contested the complaint on the following grounds.
37. That the respondent herein had completed the project and applied for the grant of occupation certificate on 29.09.2014 before the Act came into force and was granted the occupation certificate on 19.05.2016, even before the publication of the rules. Thus, the present project, where the development is complete and occupation certificate has been granted before publication of the Rules, is not an ongoing project and hence, is outside the ambit of RERA.. In the case in hand, the project already stands completed in all respects and hence, RERA is not applicable to the project.

38. That the common areas and facilities of the project were handed over by the applicant to the then existing association of apartment owners on 29.01.2020. Pertinently, no objection was raised by the Association w.r.t to the hand over. After the present association (Complainant herein) was formed, some differences appear to have arisen between the governing bodies of the previous association and the complainant.
39. That thus an association which is competent to institute and maintain a complaint under the Authority has to be an association that represents all the allottees in the project. To the best of the respondent's knowledge, out of 274 units in the project, only around 160 unit owners claim to be the members of the complainant association. It is for this reason that the complainant has deliberately refrained from annexing the complete list of its members, bye laws etc.
40. That the complainant has impleaded the Senior Town Planner, Town and Country Planning Department as a party to the present proceedings and has also sought relief against the said authority. It is submitted that the complaints under RERA are only maintainable against promoters, allottees and real estate agents. In order to seek relief against the Senior Town Planner and implead him as a party to the present false.
41. That the respondent is in collaboration with the Raheja Developers Pvt. Ltd. to develop a land admeasuring about 10.793 acres situated in Sector-109, Gurgaon, Haryana vide license dated 01.10.2008 bearing LC-V Licence No. 174 from Town and Country Planning, Department of Government of Haryana vide Endst. No. DP-V-2008/8621 dated 01.10.2008, launched a

project "Lumbini Terrace Homes" (hereinafter referred to as the said project) in early 2011 and the bookings were accepted from prospective buyers for acquiring the flats/units in the project. As per the supplementary agreement, the respondent was under an obligation to develop its project in its share of 57% of the licenced land, i.e. 6.156 acres. The balance share of 43% of the licenced land fell to the share of M/s Raheja Developers, which is an independent entity and was to develop its own project on the balance land, independent of the respondent. Thus, the project Brisk Lumbini Terraces has been developed by the respondent at its allocated share of the licenced land and hence, is to be treated as an independent project. The project already stands completed much before the publication of the RERA rules.

42. That the approval of transformers from Executive Engineer (Electrical), Gurgaon, Haryana was obtained on 31.08.2012. It is noteworthy mention that the excavation work on the project commenced from the mid-June, 2011 as per the agreed timeline and in August, 2011, the respondent started the foundation work and as per the terms and conditions of the buyer's agreement. It is submitted that the respondent raised demands upon the allottees/buyers as per the schedule of payment plan as opted by the members of the complainant.
43. That the Commissioner, Municipal Corporation of Gurgaon (MCG) vide Memo no. FS/MCG/2012/1823 dated 05.07.2012 granted the approval for Fire Fighting Scheme with Jet Fan System to be installed in the basement. The NOC dated 25.05.2018 for construction of the diesel generator sets was also issued by the Executive Engineer, Haryana. It is respectfully submitted that

the statement of no dues as against EDC, enhanced EDC and IDC dated 28.05.2013 was duly issued by the Accounts Officer, DTP, Haryana. The contract for ventilation work (Jet Fan System) dated 28.07.2014 was awarded for Rs. 1,75,00,000/-. It is respectfully submitted that a structural stability certificate dated 28.09.2014 was issued by NNC and DFY. An application for grant of Occupancy Certificate dated 29.09.2014 to Director General, Town and Country Planning (DG TCP) was made by the respondent.

44. That subsequently on 31.12.2014, the occupancy certificate report was sent by DTP, Gurgaon to STP Gurgaon. On 27.01.2015 approval for capacity of Solar Water Heating System from Director, Renewable Energy Department, Haryana was obtained. That it is respectfully submitted that on 29.01.2015 the Occupancy Certificate report in respect to the project was sent by STP Gurgaon to DG TCP Chandigarh. That sometimes in February, 2015, an inspection by Fire Department Gurgaon was conducted and an objection was raised for the first time by the Inspectors that the pre-approved fire fighting system i.e. JET fan system for fire-fighting is required to be changed to GI Ducting Ventilation System. This was despite the fact that in the sanction plan, the Jet Fan System was pre-approved and in terms of the said approval the said fire-fighting system was already installed and made operational by the respondent. It was informed that the Jet Fan System is no longer an approved Fire Fighting System.

45. That it is pertinent to note that on 10.03.2015 report of the Principal Architects confirming the visit of fire officials with regard to issuance of fire NOC was received. The Architects further confirmed that the officials have

required modification of the fire fighting system to incorporate Ductable Ventilation System after removing already completed Jet Fan Ventilation System.

46. That on 18.11.2015 an application for correction of the FAR and the construction was recorded by the DTP Gurgaon. That the said constructed area was measured incorrectly and as per the same the effect upon the buyers was substantial since the project is charged at a per square feet area attributable to a buyer. Subsequently, on 02.12.2015, the DG TCP directed DTP Gurgaon to verify the measurements Thereupon measurements were recalculated and reports duly submitted. Thereafter, on 10.03.2015 another inspection by Fire Inspectors, fire department Gurgaon was done. There was a fresh demand for modifications since it was claimed that revised guidelines have come into force and the same requires construction of an additional staircase in Tower E. It is submitted that on 29.01.2016 NOC from Fire Department for Tower A,B,C & D was obtained. An application dated 02.02.2016 was made for grant of NOC for Tower-E.
47. That the consent to operate the effluent treatment plant, water treatment plant, discharge of air etc. was granted by competent Authorities. This permission was granted only upon the successful testing of environmental related installation upon testing the same in real life conditions after the occupiers start to actually reside in the buildings and brings it closer to grant of Completion Certificate by competent authority.
48. That the respondent immediately upon receipt of the occupancy certificate commenced the process of handing over the possession to the buyers. It is

submitted that the construction of the project commenced in August 2011 (at the time of laying of Foundation). Under the terms of the builder buyer agreement i.e. Clause no. 9.1 read with clause no. 9.4 it is clearly specified that the company shall handover the possession of the respective units within three years "commitment period" from the date of start of construction with a grace period of 180 days. It is submitted that the respondent has offered the possession of their respective units within the stipulated time and in a habitable conditions. It is submitted that despite there being a pre-approved sanction for jet fan system for fire fighting, it was required that the fire fighting system be changed to G.I. ducting system. These requirements were not applied upon the project at the time when the building plans were sanctioned and construction commenced. These changed norms and requirements of the various authorities over a period of time were beyond the control of the respondent and were not anticipated at the time of commencement of the project.

49. The buyers/allottees have raised frivolous objections concerning the following issues:

- a) Objection qua demand for Electricity Supply Installation- As regards this objection is concerned, the charges as levied are for the facilities and installations provided for the common areas and other installations outside the apartment. Needless to state here that the complainants were well aware in terms of Clause no. 1.1, 1.3 and 1.4 of the buyer agreement as entered into by the members of the complainant/buyers with the respondent. It has been clearly described that the price as mentioned in clause no. 1.1 is only towards



the basic sale price of the unit and all the other charges are to be paid extra. Further in terms of Clause no. 2.10, the basic cost includes electricity wiring and access points in the apartments and firefighting equipment only and does not include the cost of all electrical fixtures inside the apartment. Further, it has been clearly mentioned that all the installations outside the walls of the apartment are chargeable which has been so charged. It is necessary to state that 130 buyers have already paid for this facility. Thus, this objection is without any basis.

- b) Objection qua Deposit for installation of 33 KVA electricity line- As regards this objection is concerned, the charges as levied are for the charges as levied by Dakshin Haryana Bijli Vitran Nigam (DHBVN) for providing a permanent electricity supply to the housing complex. This is a demand/levy raised by a statutory body and as clearly mentioned in clause no. 2.10, the basic sale price (BSP) does not include the cost of providing electricity connection to the society as well as to the unit. This amount is to be deposited with DHBVN and there is no benefit accruable to the respondent for such amount. It is necessary to state that 130 buyers have already paid for this facility.
- c) Objection qua parking space and charge- As regards the parking space and the price charged for the same, it is submitted that it has been clearly provided at the time of application as also in the builder-buyer agreement itself that the parking i.e. both covered and open parking are duly approved and sanctioned in the approved building plans. The cost of parking which is being charged is the cost as actually incurred for construction and development of the parking space in as much as it is not a simple undeveloped ground but in fact a proper developed area clearly earmarked and identified as a Parking Area and is being



provided as such. Further such area is reserved for the buyer who makes the payment for such parking area whether covered or uncovered. The said parking area is not being sold separately but only along with the apartment and are clearly assignable to an individual apartment. It was informed since the beginning that this shall be charged separately and the buyer with open eyes has agreed to pay such charges and it was for the convenience of the buyers that the rate was separately mentioned with a view to make available additional parking space for the buyers. Further, it is necessary to state that as per sanctioned drawings, 130 parking slots were to be allotted, which have been duly provided in the project. Parking is a separate and distinct facility which is provided on chargeable basis. Moreover, this issue is pending before the Hon'ble NCDRC in the complaint titled Vikas Saini and ors. Vs. Brisk infrastructure & Developer Pvt. Ltd.

- d) Objection qua Inferior quality- It is submitted that in September 2014, all the buyers were invited to inspect their respect unit and submit their feedbacks. It is submitted that many of the members of the complainant, visited the site and submitted their feedback. In none of the feedbacks there is any dispute qua the quality of the work and the material used. In fact majority of the customers have appreciated the workmanship and the quality of the material used in the construction.
- e) Objection qua transfer of IFMS (Interest Free Maintenance Security to the complainant - The residents/ apartment owners have been in default in payment of their respective maintenance charges, which have to be recovered from them by the builder. The said amount is approx. Rs. 1,40,00,000/-. Over and above the said amounts, there are certain allottees, whose dues are much higher than the IFMS deposited by them. Moreover the association should be directed to



obtain noc from each apartment owner / allottee to the transfer of OFMS amount , after adjustment. That it is submitted that matters are pending against such allottees and their, IFMS is put on hold until the outcome of the court case. It is further submitted that the BIDPL had got painting and repair works in the complex for which it incurred an expense of Rs. 48,40,000/-, which amount is to be compensated to BIDPL.

f) Objection qua transfer of Electricity and Water Connection in the name of complainant

- It is submitted that the respondent has received the land license for construction of Brisk Lumbini Terrace Homes on 01.10.2008. It is relevant so mention that the said license comprised of area approx. 10.973 acres, which comprises of adjoining area also, which does not form part of the project Brisk Lumbini Terrace Homes, but for phase 2 of another project. BIDPL applied for electricity connection in respect of the entire land under the license in its name on 11.11.2014. At the relevant time, under the licence, the connection was applied for a 11KVA supply line and the respondent deposited an amount of Rs.76,66,500/- as security for the same.
- Vide a notification bearing Circular No. D-14/2018 was issued by DHBVN, whereby it became mandatory for builder to introduce a 33kva supply line instead of earlier approved 11kva line. In addition, it was also mandated to provide 500sq. yards land for switching station. The respondent duly complied with the said requirements and had to incur additional costs for allotting an additional plot of 500 sq. yards outside the project Brisk Lumbini Terrace Homes for



installation of switching station and to submit Bank Guarantee of Rs 4,18,15,914/- for construction of switching station. It is relevant so submit that the respondent had already completed the construction of the project as per the sanctioned plans and approvals. However, due to these change in norms and additional requirements, the builder had to incur additional costs, which the allottees/ RWA is liable to reimburse.

- The Association further needs to reimburse pro rata the cost of 500 sq. yards plot, additionally made available by the respondent, outside the project, for installation of the switching station. The said land does not form part of the project and has been additionally procured by the respondent for an additional cost of Rs. 2,50,00,000/-.
- The Association will also be required to bear the pro rata expense of construction and installation of the switching station on the said plot earmarked by the respondent for the switching station, for which reason an additional cost of Rs.15,00,00,000/- has to be borne. In addition, if the association wants to get the title of the electricity connection in its name, it is required to refund the security amount Rs. 76,66,500/- submitted by the respondent, as they cannot be allowed to utilize the funds of the respondent for their own benefit for transferring the title in its name.
- Thus, in case the title is to be transferred in the name of the BLARWA, they need to undertake to provide the connection for phase 2. Similarly, for water connection, the respondent has submitted a sum of Rs. 7,00,000/- as security for water connection from the relevant authority. In addition, the



respondent has incurred a cost of Rs. 10,00,000/- laying of water supply lines till the project site, which the association is liable to reimburse to the respondent, in case, they want to get the transfer of title of water connection in their favour.

- g) Demand qua refund of amount charged for additional car parking, open parking space and, allegedly, unjust EDC/IDC/VAT- It is submitted that the amount has been demanded under clause no. 1.4.3 read with clause no. 2.8 of the builder buyer agreement. Moreover, these issues are pending consideration before the Hon'ble NCDRC.
- h) Demand qua compensation for reduction in quality and quantity - The reply to this demand has been given in reply to (G) above which may kindly be read in reply to this para since the complainants have already inspected the units and have accepted the quality of the workmanship and the quality of the material used.
- i) Demand qua Other Damages and costs as demanded by the Complainants- In reply to this para it is submitted that the possession was offered within the stipulated time and some of the buyers have chosen not to take possession and as such they are not entitled to any compensation whatsoever.

50. That there is no default or lapse on the part of the respondent and there is no equity in favour of the complainant. Thus, it is most respectfully submitted that the present complaint deserves to be dismissed at the very threshold.

51. The respondent has filed the written submission and the same has been taken on record and perused further.

52. All other averments made in the complaint were denied in toto.

53. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint decided

on the basis of these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority

54. 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

55. 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

56. 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.

57. 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.

F. Objection regarding that the respondent has made an application for grant of occupation certificate before coming into force of RERA

58. The respondent-promoter has raised the contention that the said project of the respondent is a pre-RERA project as the respondent has already applied for obtaining occupation certificate from the competent authority on 29.09.2014 i.e., before the coming into force of the Act and the rules made thereunder. As per proviso to section 3 of Act of 2016, ongoing projects on the date of commencement of this Act i.e., 01.05.2017 and for which completion certificate has not been issued, the promoter shall make an application to the authority for registration of the said project within a period of three months from the date of commencement of this Act and the relevant part of the Act is reproduced hereunder: -

Provided that projects that are ongoing on the date of commencement of this Act and for which the completion certificate has not been issued, the promoter shall make an application to the Authority for registration of the said project within a period of three months from the date of commencement of this Act:

59. The legislation is very clear in this aspect that a project shall be regarded as “ongoing project” until receipt of completion certificate. Since, no completion certificate has yet been obtained by the promoter-builder with regards to the

concerned project, the plea advanced by it is hereby rejected.

G. Findings on the relief sought by the complainants.

G.I Delay possession charges along with interest and to refund the excess EDC/ IDC charged.

60. These issues are to be adjudicated by the authority in individual cases and not as a relief to RWA. The complainant is not competent to seek such type of relief on behalf of homebuyers. Further, the same reliefs are pending adjudication before the Hon'ble NCDRC in consumer complaint bearing no. 1779 of 2016. Hence, the complaint is not maintainable qua these reliefs against the respondent/promoter.

G.II Direct the respondent to restrain from selling any portion of the undivided common area of the Project belonging to the Complainant Association.

61. Section 17(2) of the Act says that after obtaining OC and handing over physical possession to the allottees in terms of sub section (1), it shall be the responsibility of the promoter to handover the necessary documents, plans, including common areas, to the association of the allottees or the competent authority, as the case may be, as per the local laws. However, the complainant contended that the respondent has not only failed to handover the undivided common area but also has illegally and unjustly sold the undivided common area. Further Section 17(1) of the Act provides that the promoter shall execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of the allottees and handover physical possession of the common areas and the title

documents within specified period as per sanctioned plan as provided under the local laws. Therefore, the respondent no.1 is directed to handover the physical possession as well as title documents of the common areas to the association without making any change in the undivided portion of the common areas.

G.III Direct the respondent to appoint a technical committee to ensure a proper handover of the project to the owners from the respondent no. 1, within a period of the next 30 days.

62. The complainant has alleged that the handover of the project was not done adequately to the association and is seeking direction to STP, Gurugram to appoint a technical committee to ensure a proper handover of the project to the association. However, the respondent contended that the project was properly handed over to the complainant-association in all aspects and the same is recorded by Ms. Suyasha Jawa, then Civil Judge, Gurugram in case bearing no. CS/3983/2019 vide order dated 16.03.2020. Also, the respondent stated that the complainant may provide a list of documents and facilities left to be handed over to the association and it will handover the same to it if not already done. Hence, on supply of such list by the complainant association on basis of common areas as declared in deed of declaration, the respondent is directed to handover the documents and facilities left to be handed over to the association if any, as per sec 17(2) of the Act.

G.IV Direct the respondent to appoint a local commissioner to examine the defects and submit a detailed report on the same and direct the

respondent to rectify all the defects as per the report of the local commissioner.

63. The complainant has sought appointment of local commissioner w.r.t. examining the defects in the structure of building and directing the respondent to rectify the same as per report. Section 14(3) of the Act provides in case of any structural defect in workmanship, quality or any obligations of the promoter, it shall be the duty of promoter to rectify such defects within a period of five years from the date of handing over of possession. Section 14(3) of the Act, is reiterated as under: -

"In case any structural defect or any other defect in workmanship, quality or provision of services or any other obligations of the promoter as per the agreement for sale relating to such development is brought to the notice of the promoter within a period of five years by the allottee from the date of handing over possession, it shall be the duty of the promoter to rectify such defects without further charge, within thirty days, and in the event of promoter's failure to rectify such defects within such time, the aggrieved allottees shall be entitled to receive appropriate compensation in the manner as provided under this Act."

64. However, after going through the documents available on record it can be ascertained that the structural audit of the project has already been done and necessary repair works are in progress as admitted by the respondent vide proceedings dated 11.07.2023. Hence, no question of appointment of local commissioner arises at this stage.

65. It is prescribed in the Act of 2016, that the promoter shall be responsible for all obligations, responsibilities and functions to the allottees as per the section 14(3) of the Act where it is prescribed that in case of any structural defect or any other defect in workmanship, quality or provision of services or any other obligations of the promoter as per the agreement of sale relating

to such development is brought to the notice of the promoter within a period of 5 years , from the date of handing over of possession , it shall be the duty of the promoter to rectify such defects. The above section is reproduced as under :-

Section 14 (3) Adherence to sanctioned plans and project specifications by the promoter

In case any structural defect or any other defect in workmanship, quality or provision of services or any other obligations of the promoter as per the agreement for sale relating to such development is brought to the notice of the promoter within a period of five years by the allottee from the date of handing over possession, it shall be the duty of the promoter to rectify such defects without further charge, within thirty days, and in the event of promoter's failure to rectify such defects within such time, the aggrieved allottees shall be entitled to receive appropriate compensation in the manner as provided under this Act.

G. V Direct the respondent to refund the amount of IBMS along with interest.

66. The complainant is seeking IBMS along with interest from the respondent as now the RWA is maintaining the project. The Act mandates under section 11(4)(d), that developers would be responsible for providing and maintaining the essential services, on reasonable charges, till the time the same is taken over by the association of the allottees. Further, section 11(4)(g), provides that the developer will be responsible to pay all outgoings until it transfers the physical possession of the real estate project to the allottees or the association of allottees, as the case may be, which it has collected from the allottees, for the payment of outgoings (including land

cost, ground rent, municipal or other local taxes, charges for water or electricity, maintenance charges, including mortgage loan and interest on mortgages or other encumbrances and such other liabilities payable to competent authorities, banks and financial institutions, which are related to the project. It further provides that where any promoter fails to pay all or any of the outgoings collected by it from the allottees or any liability, mortgage loan and interest thereon before transferring the real estate project to such allottees, or the association of the allottees, as the case may be, the promoter shall continue to be liable, even after the transfer of the property, to pay such outgoings and penal charges, if any, to the authority or person to whom they are payable and be liable for the cost of any legal proceedings which may be taken therefore by such authority or person.

67. A quick glance at the provisions of the Act may be taken in this respect to the responsibility of the promoter or project developer for providing and maintaining essential and common services at a reasonable charge payable by the flat purchasers till the time the co-operative housing society or RWA is formed. The respondent/promoter is liable to transfer the amount which it has collected from the allottees on account of IBMS along with the interest accrued thereon to the association. The promoter cannot treat this money as his own or be free to utilize it for any purpose he considers appropriate. However, if any money out of this is spent on the project, an account thereof along with justifications has to be provided to the association of allottees. The authority considers that the IBMS collected by the developer from the allottees of the project is not a part of the sale consideration of the

apartment/plot. This charge is charged in addition to the consideration of the unit for future contingencies of the project which is meant to be handed over to the association whenever a lawful association is created, and the project is handed over to them. Thus, the respondent is directed to transfer the IBMS amount collected by it from the allottees, in the account of association. In so far as, if any amount has been spent by the promoter from the IFMS so collected from the allottees, the promoter shall give the justification with respect to such expenditure incurred and if any such expenditure is found to be in conflict with the permissible deductions as per law, the same shall also be transferred to the association. It is further clarified that the amount so collected under the head of IBMS is concerned, no amount can be spent by the promoter for the expenditure it is liable to incur to discharge its liability under section 14 of the Act.

G. VI Direct the respondent to handover duly audited financial details on the maintenance from the day the money towards the maintenance is being collected till the date of handover of the maintenance.

68. That as per section 4 (2) (1)(D) states that the respondent should get his accounts audited within 6 months after the end of every financial year .The same clause is reproduced as hereunder:-

Provided also that the promoter shall get his accounts audited within six months after the end of every financial year by a chartered accountant in practice, and shall produce a statement of accounts duly certified and signed by such chartered accountant and it shall be verified during the audit that the amounts collected for a particular project have been utilised for that project

and the withdrawal has been in compliance with the proportion to the percentage of completion of the project.

69. Therefore the respondent is directed to handover the duly audited financial details to the association.

G.VII Direct the respondent not to charge anything from the owners which is not a part of the buyer's agreement.

70. As per the builder buyer agreement signed between the parties, it is the duty of the respondent to raise any demand according to the builder buyer agreement and cannot charge beyond the agreement. Therefore, the respondent shall not charge anything which is not a part of builder buyer's agreement.

G.VIII Direct the respondent not to charge the cost towards the security for the electricity connection in the form of a bank guarantee.

71. The complainant stated that while handing over the possession of the flats to the owners on 25.07.2018 seeking additional funds amounting to Rs. 70,703/- from each of the allottee of tower A,B,D and E Rs. 88,739/- from each of the allottees of tower C on account of bank guarantee which was to be furnished by the respondent to DHBVNAs per the order of Varun Gupta vs. Emaar vide complaint no. 4031 of 2019 it is stated as under :-

72. It is the duty of the colonizer to arrange the electric connection from the outside source for electrification of their colony from Haryana Vidhyut Parsaran Nigam/Dakshin Haryana Bijlee Vitran Nigam Limited, Haryana. The installation of internal electricity distribution infrastructure as per the peak load requirement of the colony shall be the responsibility of the colonizer, for which the colonizer will be required to get the "electric(distribution) services

plan/estimates" approved from the agency responsible for installation of "external electrical services" i.e., Haryana Vidhyut Parsaran Nigam/Dakshin Haryana Bijlee Vitran Nigam Limited, Haryana and complete the same before obtaining completion certificate for the colony.

73. The authority is of the view that the internal amount is to be paid by the association on actual basis and details of the same are to be provided by the respondent to the association on actual basis.

G.IX Direct the respondent not to charge the security towards the water connection , electrical installation , towards the painting and repair of the plaster chipping off etc. as is being asked for by the builder from the owners of the flats, since the maintenance for first five years is to be done.

74. The respondent stated that for water connection, BIDPL has submitted a sum of Rs. 7, 00,000/- as security for water connection from the relevant authority. In addition, BIDPL has incurred a cost of Rs. 10,00,000/- laying of water supply lines till the project site, which the BLARWA is liable to reimburse to BIDPL, in case, they want to get the transfer of title of water connection in their favour.

75. The Act mandates under section 11(4)(d), that the developer will 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.

76. It is prescribed in the Act of 2016 , that the promoter shall be responsible for all obligations , responsibilities and functions to the allottees as per the

section 14(3) of the Act where it is prescribed that in case of any structural defect or any other defect in workmanship, quality or provision of services or any other obligations of the promoter as per the agreement of sale relating to such development is brought to the notice of the promoter within a period of 5 years, from the date of handing over of possession, it shall be the duty of the promoter to rectify such defects. The above section is reproduced as under :-

Section 14 (3) Adherence to sanctioned plans and project specifications by the promoter

In case any structural defect or any other defect in workmanship, quality or provision of services or any other obligations of the promoter as per the agreement for sale relating to such development is brought to the notice of the promoter within a period of five years by the allottee from the date of handing over possession, it shall be the duty of the promoter to rectify such defects without further charge, within thirty days, and in the event of promoter's failure to rectify such defects within such time, the aggrieved allottees shall be entitled to receive appropriate compensation in the manner as provided under this Act

77. Therefore, the justification of the amount paid by the association in respect of the charges of electricity, water and painting should be given to the respondent. The complainant is seeking relief w.r.t compensation in the aforesaid relief, *Hon'ble Supreme Court of India in civil appeal titled as M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP & Ors. (supra)*, held that an allottee is entitled to claim compensation 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 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 complaint in respect of compensation. Therefore, the complainant may approach the adjudicating officer for seeking the relief of compensation.

G.X Direct the respondent to arrange installation of 33 KW connection for the project, as was assured at the time of booking of the flats, as the present connection of 11 KW is insufficient.

78. The above mentioned relief sought by the complainant association .The relief was not pressed by the complainant counsel during the arguments in the course of hearing .The authority is of the view that the complainant counsel does not intend to peruse the relief sought by the complainant. Hence, the authority has not returned any findings with regard to the above mentioned relief.

G.XI Direct the respondent to refund the excess money charged on account of the open car parking from the owners and not to charge for the car parking in open space as the same is a part of the FAR and hence a part of the undivided common area.

79. The complainant stated that the respondent is guilty of charging Rs. 1,25,000/- from the owners and members of the complainant - association on account of car parking charges , being well aware of the fact that open car parking are squarely covered under the undivided common area for which the complainant is already making payments in the maintenance .Whereas the respondent stated that it has been clearly provided at the time of application as also in the builder-buyer agreement itself that the parking i.e.

both covered and open parking are duly approved and sanctioned in the approved building plans.

The cost of parking which is being charged is the cost as actually incurred for construction and development of the parking space in as much as it is not a simple undeveloped ground but in fact a proper developed area clearly earmarked and identified as a Parking Area and is being provided as such. Further such area is reserved for the buyer who makes the payment for such parking area whether covered or uncovered. The said parking area is not being sold separately but only along with the apartment and are clearly assignable to an individual apartment. It was informed since the beginning that this shall be charged separately and the buyer with open eyes has agreed to pay such charges and it was for the convenience of the buyers that the rate was separately mentioned with a view to make available additional parking space for the buyers.

This was also clearly mentioned in clause no. 2.8 of the buyers agreement and the same is a binding contract between the parties. Further this facility is additional for a buyer in order to not to burden any buyer with additional cost where he does not wish to use such facilities. It is necessary to state that as per sanctioned drawings, 130 parking slots were to be allotted, which have been duly provided in the project. A majority of the buyers have opted for more than 1 parking slot depending upon their requirement and for which they have separately paid to the respondent. Moreover the issue is pending before NCDRC. Therefore, the authority will not intervene between the matter which is already pending in other forum.

G.XII Direct the respondent to transfer the permanent electricity connection in the name of the complainant association and to transfer the water connection in the name of the complainant association.

80. The respondent stated that in case the title is to be transferred in the name of the association, they need to undertake to provide the connection for phase 2 of the project of the respondent as and when the need arises. Similarly, for water connection, the respondent has submitted a sum of Rs. 7,00,000/- as security for water connection from the relevant authority. In addition, the respondent has incurred a cost of Rs. 10,00,000/- laying of water supply lines till the project site, which the association is liable to reimburse to the respondent, in case, they want to get the transfer of title of water connection in their favour. It was the responsibility of the respondent to provide these facilities to the complainant-association.

The authority is of the view that the respondent has handed over the project to the complainant- association in the year 2020 .Therefore the respondent has to also handover the permanent electricity connection and water connection in the name of the complainant – association.

G.XIII Direct the respondent to fix the deviation in parking spaces on ground versus the approved parking plan.

81. The respondent is directed to adhere to the building plans already approved. For further clarification the association can take up the matter to the concerned plan sanctioning authority for necessary details and remedial action as required.

H. Directions of the authority


82. 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):

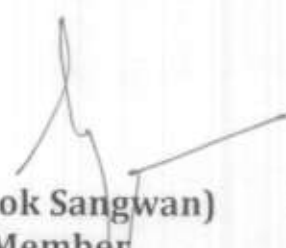
- i. The respondent/promoter is directed to transfer all the IFMS/IBMS amount received by it from the allottees in the account of RWA alongwith the amount of interest accrued on the IFMS/IBMS, if any.
- ii. The respondent/promoter is further directed to give details alongwith justification of expenditure incurred out of the IFMS deposit to the association and any expenditure made in conflict with the permissible deductions as per law, the same shall also be transferred to the association.
- iii. The respondent/promoter is obligated as per proviso to section 11(4)(a) of the Act of 2016 and is liable for removal of structural defect or any other defect in workmanship or services even after execution of conveyance deed for such period as prescribed under sub-section (3) of section 14 of the Act 2016.
- iv. The respondent no.1 is directed to handover the physical possession as well as title documents of the common areas to the association without making any change in the undivided portion of the common areas.

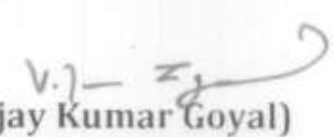
- v. The respondent is directed to handover the documents and facilities left to be handed over to the association if any, as per sec 17(2) of the Act.
- vi. The respondent shall not charge anything which is not a part of builder buyer's agreement.
- vii. In case of structural defects, if the respondent fails to rectify the same the complainant - association can also approach adjudication officer to claim compensation.

83. Complaint stands disposed of.

84. File be consigned to registry.


(Sanjeev Kumar Arora)
Member


(Ashok Sangwan)
Member


(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Date: 19.12.2023