

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

Complaint no. : 3812 of 2020  
 Date of filing of complaint: 28.10.2020  
 Date of decision : 09.04.2024

Central Park-1 Condominium Association R/o: Central Park-1, Sector-42, Golf Course Road, Gurugram, Haryana-122002.	<b>Complainant</b>
Versus	
1. M/s Gulab Farms Pvt. Ltd. <b>Office:</b> 18/48, Malcha Marg, Diplomatic Enclave, New Delhi, 110021 2. M/s Sweet-peas Farms Pvt. Ltd. <b>Office:</b> Asset 5B, Hospitality District, Delhi Aeocity, IGI Airport, Mew Dlh, 110037.	<b>Respondents</b>
<b>CORAM:</b>	
Shri Arun Kumar	<b>Chairman</b>
Shri Vijay Kumar Goyal	<b>Member</b>
Shri Ashok Sangwan	<b>Member</b>
<b>APPEARANCE:</b>	
Ms. Brinda Batra	<b>Counsel for the complainant</b>
Sh. Naman Saraswat	<b>Counsels for the Respondent</b>

**ORDER**

- The present complaint dated 28.10.2020 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 there under or to the allottee as per the agreement for sale executed *inter se*.

**A. Unit and project related details**

2. The brief particulars of the project have been detailed in the following tabular form:

S. N.	Particulars	Details
1.	Name of the project	"Central Park-1", Sector 42, Gurgaon
2.	Project area	13.478 acres
3.	Nature of the project	Group Housing Colony
4.	DTCP license no. and validity status	9-10 of 1999 valid upto 29/01/2016
5.	Name of licensee	M/s. Gulab Farms Pvt. Ltd. & M/s. Sweet Peas farms Pvt. Ltd.
6.	RERA Registered/ not registered	Not registered
7.	RERA registration valid up to	NA
9.	Occupation certificate /Completion certificate	10.03.2005 for Block A, B and C 12.12.2005 for Blocks D and E 04.10.2006 for Blocks F, G, H and J

		11.07.2007 for Blocks K1, K2, EWS Block, Community Building and Shops
10.	Association registered	12.04.2005 vide DR/GGN/0010
11.	Responsibility handed over to Association	18.08.2008 through MoU (page 299 of Reply)
12.	Deed of declaration	28.03.2007 and 03.05.2010

### B. Facts of the complaint

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

- I. The above mentioned respondents are the registered owners of certain pieces and parcels of lands situated in village Wazirabad, Tehsil and District Gurgaon, Haryana, aggregating 13.478 Acres (hereinafter referred as the "Land"). The respondents as above named are companies established under the companies Act, 1956 who have for the purposes of development of a residential group housing colony on the aforesaid Land have applied for and were issued licenses by the Town Planner, Gurugram. License No. 9 of 1999 dated 30.01.1999, was granted to Gulab Farms Pvt. Ltd. under the Haryana Development and Regulation of Urban Areas Act, 1975 ("Development Act") and The Haryana Development and Regulation of Urban Area Rules, 1976 ("Development Rules") vide a letter dated 1.2.1999, for setting up a residential group housing colony. It was renewed by a letter dated 21.01.2002 till 29.01.2003.
- II. That similarly, license No. 10 of 1999 dated 30.01.1999 was granted to Sweet Peas Farms (P) Ltd. under the Development Act and Development Rules there under, vide a letter dated 01.02.1999 for setting up a residential group

housing colony. This license was renewed vide a letter dated 31.01.2002 till 29.1.2003. (Licenses No.9 and 10 are together referred to as "Licenses"). As per the Licences, certain portions of sector/master plan road, forming part of the licensed area were to be transferred, free of cost, to the Government. In accordance with the conditions for grant of License, the respondents executed a bilateral agreement dated 30.01.1999 with the Director, Town and Country Planning which inter alia detailed the development works to be undertaken by the respondents. It is pertinent to note that as per the approved plan and the licenses, the respondents were required to construct internal community buildings and were expressly prohibited from recovering any amount whatsoever on that account from the flat holders.

- III. That the respondents undertook development on the land through a contractor project manager viz. Mahendra Gesco Developers Limited in a phased manner thereby completed the construction of the group housing colony namely Central Park-1 at Sector 42, Golf Course Road, Gurugram, Haryana 122002. The respondents constructed various buildings/ blocks numbering towers A to J in three (3) Phases- Phases-I, II and III, and constructed further buildings / block numbering Tower K (comprising building K-1 & K-2) in Phase IV on the said land, in the locality known as Central Park-I. Upon completion of the construction of Towers A-J, the Director, Town & Country Planning, Haryana issued Occupancy Certificates, on various dates for the aforementioned Towers A to J. Similarly, upon completion of the construction of Tower K (K-1 & K-2), the Director, Town & Country Planning, Haryana issued occupancy certificates for the said tower.
- IV. That the complainant- Central park-1 Condominium Association is an association of apartment owners of the residential group housing colony known as central park-1 who is the complainant herein. The Central Park-1 has been constructed on parcels of lands situated in village Wazirabad, Tehsil

and District Gurgaon, Haryana, aggregating 13.478 Acres which as on date is known as Sector 42, Golf Course Road, Gurugram. The complainant association is a society registered under the Societies Registration Act, 1860, having registration number DR/GGN/0010 dated 12 April 2005. The Association has its registered office in Central Park-1, Sector 42, Gurgaon. The complainant association has authorized representative Sh. Dhanesh Relan to represent the complainant association.

- V. That It is respectfully submitted that members of the complainant association are the owners of various apartments in central park-1 as also of common areas and facilities therein in their respective proportion.
- VI. That after the residents started to reside in their respective flats, the members of the complainant association upon inquiry became aware that the respondents who have got constructed the above mentioned group housing colony have till date deliberately not registered the aforesaid group housing colony project with the Haryana Real Estate Regulatory Authority thereby violating the provisions of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as 'the RERA Act') and also the Haryana Real Estate (Regulation and Development) Rules thereunder.
- VII. That the section 3(1) of the RERA Act specifically states that any project which are ongoing and the completion certificate has not been issued, the promoter has to make an application with the Authority as established under the Act for the registration of their project within a period of 3 months from the date of the commencement of the said Act.
- VIII. That the respondents have till date deliberately and intentionally neither have obtained the completion certificate for the said group housing colony nor have they got themselves registered as under the said Act.
- IX. That It is imperative to mention that had the respondents registered themselves with respect to the project/ group housing colony as provided

under the RERA Act, they were bound to disclose various particulars with respect to the group housing colony to the competent authority and also to the purchasers/ owners and residents of the group housing colony.

- X. That the members of the complainant association who are the owners of their respective flats in the Central Park-I have along with ownership rights of their apartment has also undivided interest in the common areas and facilities (hereinafter referred to as 'common areas and facilities).
- XI. That as per the provisions of the RERA Act it was incumbent upon the respondents to get themselves registered and further disclose the 'common areas and facilities' to the competent authority and also to the purchasers of the flat.
- XII. That the respondents with the continuation of the completion of the construction of the group housing colony central park-1 got executed various separate conveyance deeds with respect to each flats in favor bona fide purchasers/ members of the complainant-association by selling various flats in the central park-1. It is pertinent to mention and highlight that the respondents have collected money for various common areas and facilities' wherein the residents/ flat owners have undivided interest which has also been described in their conveyance deeds.
- XIII. That the respondents since have garnered all the money from the purchasers by selling almost all the flats in the group housing colony- Central Park-1 and have nothing more left thus has to apply for the issuance of completion certificate with the appropriate authority.
- XIV. That now the respondents surreptitiously taking undue advantage of their non-registration and non-disclosure with the authorities have been claiming and demanding ownership of the common areas and facilities in the group housing colony which undoubtedly is against the interest and welfare of all the residents who are the members of the complainant-association herein,

since the owners and residents have already paid for these areas under common areas and facilities and have undivided interest in the same. The respondents taking undue advantage of their non-registration and non-disclosure with the authorities have been threatening to commence an illegal construction of a residential building. The respondents admittedly have been adamantly demanding the ownership of the common areas and facilities despite the same are owned by the owners and residents of the various apartments in the group housing colony. The respondents admittedly are on the stepping stone of initiating an illegal construction within the vicinity of the group housing colony. The respondents till date have already made flagrant violation of the law of the land by non-registration and further by various non-compliances of the said Act and rules thereunder.

- XV. That the complainant-association highlights that the respondents have been attempting to initiate an illegal construction in the group housing colony- Central Park-1 which is not permitted nor approved and also claiming ownership over the common areas and facilities in the group housing colony Central Park-1 and also have misrepresented to the residents/ purchasers of the said group housing colony thereby committing fraud to the members of the complainant association who are the residents of the central park- 1 society. Taking the benefit of such non-registration the respondents are claiming for ownership of the common areas and facilities which was shown otherwise as per the layout plans while the members of the complainant-association were purchasing the apartments.
- XVI. That the promoters/ respondents have till date have never supplied the complainant association with their RERA registration number nor have they provided with the completion certificate of the group housing colony. Since the respondents have not registered themselves, the layout plans of the group housing colony have not been duly approved by the competent

authorities. Such non-adherence by the respondents and abusive use of their position as against the residents such as the members of the complainant association herein will eventually would affect the rights of the residents of the group housing colony. Further, it is against the welfare of the group housing colony as a whole.

XVII. Thus the complainant association has been constrained to approach the present adjudicating authority through its authorized representative by filing the present complaint seeking various reliefs as detailed under including but not limited to mandatory registration of the group housing colony by the respondents as under RERA Act, complete disclosure of various particulars of the group housing colony- Central Park-1 with the competent authority as mandated under the RERA Act and rules thereunder. Further penalize the respondents for their flagrant violations of law and their conduct which is not in the beneficial interest of the flat owners/ residents who are the members of the complainant association. Further prevent the respondents and also penalize them for their illegal and adverse conduct against the residents of the group housing colony- Central Park -1. The respondents be also directed to comply and abide by their representations made to the members of the complainant association who are also the residents of the central park-1 thereby providing necessary documents/disclosures such as the deed of declaration after filing the same with the authority thereby getting the completion certificate issued with respect to the group housing colony. Also prevent and stop the respondents from claiming any ownership over the common areas and facilities in the group housing colony and hand over the common areas and facilities to the residents of the central Park-1.

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

4. The complainants have sought following relief(s).



- I. *To direct the Respondent for mandatory registration under Sec. 3 of RERA Act.*
- II. *To direct the Respondent under Sec. 37 r/w Sec. 11(3) of the Act to make complete disclosures;*
- III. *To direct respondent to disclose with respect to common areas and facilities and layout;*
- IV. *Appointment u/s. 35 to conduct inquiry into affairs of the respondent;*
- V. *Penalise respondent u/s. 38 of the Act for deliberate violation of law;*
- VI. *Restrain and penalize respondent u/s. 37 and section 38 respectively for their illegal claiming of facilities and non-handing over of the common area;*
- VII. *Direct respondent to apply and provide for completion certificate;*
- VIII. *Direct the respondent to comply with Sec. 34 of the Act;*
- IX. *Direct the respondent to comply and abide by their representation by providing necessary documents/ disclosures such as DODs;*
- X. *Prevent and restrain the respondent from initiating, carrying out or continuing with any illegal construction;*
- XI. *Restrain and prevent the respondents from claiming ownership over common area and facilities and hand over the same to respondents;*
- XII. *Pass an order u/s. 36 of the Act directing the respondent not to carry out any further activity against the beneficial interest of the Association;*
- XIII. *Pass an order u/s. 36 to continue with the maintenance and operations of residential flats*

5. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the act to plead guilty or not to plead guilty.

**D. Reply by the respondent**

6. The respondent has contested the complaint on the following grounds.
- That central park i residential project situated at Sector 42, Gurugram (hereinafter referred to as "**Project**") was completed and delivered in the year 2007 i.e. more than a decade ago when the applicable provisions of Real Estate Regulation and Development Act, 2016 ("**Act**") were notified on 01.05.2017. Pertinently, the Act does not intend to have a retrospective effect on the completed project.
  - That a total of 409 apartments were constructed in Four (4) phases in the said project. The occupation certificates of all phases were obtained by the year 2007 as per the following details:

S. No.	Phase	Towers	Occupancy Certificate Date
1.	I	A, B, and C	10.03.2005
2.	II	D and E	12.12.2005
3.	III	F, G, H, and J	04.10.2006
4.	IV	K1,K2, EWS Block, Community Building and Shops	11.07.2007

- That the possession of all the above mentioned 409 apartments was offered as early as year 2007 and accordingly the same were handed over. The conveyance deeds of 407 apartments have already been executed. The allottees in respect of balance 2 apartments are not coming forward for

completing the registration of conveyance deeds despite several reminders.

- d. Thereafter deeds of declaration ("DODs") in compliance with The Haryana Apartment Ownership Act, 1983 were also filed on 28.03.2007 (for Towers A to J) and 03.05.2010 (for Towers K1, K2, EWS Block, community building (club), commercial (shops) between K1 & K2) respectively.
- e. The conveyance deed also clearly mentions that the area to be utilized for the clubhouse, convenient shops, nursery school, crèche & EWS units shall not form part of the common area or general areas of the said apartment/building & ownership thereof shall remain with the landowner/vendor therein.
- f. Further, as per the DOD compliance with the Haryana Apartment Ownership Act, the respondents herein declared the common area and services very specifically and categorically. It is pertinent to mention here that the club area which is inside the project was not charged from the buyers of the apartment and therefore was not declared as the common area. The ownership of said club area was retained by the Respondents and no cost of the club/its development was recovered from the buyers. Similarly, school & shops were not charged from the buyer & accordingly did not form part of the common areas.
- g. That the respondents herein handed over the common areas and maintenance of the project to the complainant way back in 2008, precisely on 18.08.2008, by the way of MOU executed between the complainant and respondents. The respondents further handed over the entire equipment installed for the project by way of list annexed to the said MOU. The respondents not only handed over the project but also handed over the entire amount of maintenance security deposit of approx. 10.5 crores along with entire accumulated interest thereon on 18.08.2008 in a

bonafide and transparent manner which was the example of first such instance and action by any Developer in NCR.

- h. That it is further submitted that post the handing over of the common areas, maintenance of the project, and all its equipment, nothing remains to be handed over by the respondents to the complainant. It is an admitted fact that the complainant association is handling the common areas and maintenance of the complex since year 2008. Therefore, the present complaint is not only without any cause of action so far as handing over of the common areas and maintenance of the Project is concerned but also barred by limitation.
- i. That the project in question delivered by the respondents is one of the premium projects in the area and is known for its excellent construction quality and amenities. The present complaint is an act of some disgruntled office-bearers of the complainant association who have grudges against the respondents and trying to grab the property of the Respondents for their own benefits.
- j. That all the apartments in the project were sold before the year 2007 and there is no apartment in the project which the Respondents need to sell, advertise, market, etc. as for which registration in terms of Section 3 of the Act is required.
- k. That the project of the respondents is not an ongoing project as per the definition in the Haryana Real Estate Regulation and Development Rules, 2017 ("**Rules**"). It is pertinent to mention that the ongoing project has been defined only in the rules and not in the Act, therefore, the definition of the ongoing project has to be construed as per Rules only. It is worthwhile to mention that all the occupation certificates of the said project were obtained by the year 2007 i.e. almost a decade before the Act came into operation.

- l. That the respondents have not been able to obtain the completion certificate because of several hindrances and obstructions setup by some of the residents in the project with their vested interest under the protection of the complainant association. These residents/complainant have not allowed to complete the construction of the school which is the only remaining requirement for completion. It is submitted that complainant has time and again obstructed the respondents to use the common access/road to complete the construction of the school despite being clearly provided that such common access/road are equally usable as approach road for the school as well. The complainant have also persistently raised the demand that the said school shall only be available for the children of residents in the project only. Pertinently, the purpose of the Government in providing the school in the layout is to make it available for the entire population in the surrounding area of the colony without any discrimination of status, caste and community.
- m. That a civil suit bearing CS No. 4243 of 2020 was filed by the respondents against the complainant w.r.t. to issues related to the club and is pending before the Hon'ble Civil Court, Gurgaon. The Hon'ble Court after hearing the parties has granted a stay order against the complainant.
- n. That another complaint bearing no. 2 of 2007 titled as "Welfare Association of Aggrieved Residents of Central Park versus Gulab Farms Pvt. Ltd." is pending before the National Consumer Dispute Redressal Commission, New Delhi for the issues related to club which case is within the knowledge of the complainant and its officers but have concealed this fact from this Hon'ble Authority.
- o. That from the said complaint filed before the Hon'ble NCDRC, it is evident that the complainant herein is not the body representing the interest of all the residents of the complex. It is further imperative question to be

decided by this Hon'ble Tribunal whether the complaint has been filed with the proper authority of the members in their general meeting. It is pertinent to note that no resolution of such general meeting is annexed to the complaint. It is also not clear whether the authorized representative who has filed the complaint is representing the complainant in his personal capacity or as an advocate since there is no Vakalatnama to this effect.

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

#### **E. Jurisdiction of the authority**

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

#### **E.I Territorial jurisdiction**

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

#### **E.II Subject-matter jurisdiction**

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

#### **Section 11**

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*(4) The promoter shall-*

*(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made*

*thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;*

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

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

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

**F. Objections raised by the respondents.**

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

**F.II The Act does not intend to have a retrospective effect on the completed project**

13. The respondent-promoter has raised the contention that the said project of the respondent is a pre-RERA project as the respondent has already obtained occupation certificate from the competent authority on 10.03.2005, 12.12.2005, 04.10.2006 and 11.07.2007 respectively i.e., before the coming into force of the Act and the rules made thereunder.

14. The authority is of the view that 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.*

15. The legislation is very clear in this aspect that a project shall be regarded as an "ongoing project" until receipt of completion certificate. It is important to note that till date, the respondent-builder has not obtained the completion certificate from the competent authorities till date. After taking note of the statutory provisions of section 3 of the Act, 2016, it is observed that the RERA is retroactive in nature and covers all ongoing projects for which completion certificate has not been issued.

16. Further the Hon'ble Supreme Court of India in **Civil Appeal No(S). 6745 6749 of 2021** titled as **M/S. Newtech Promoters and Developers Pvt. Ltd. vs. State of U.P and Ors.** also observes that:

*52. The Parliament intended to bring within the fold of the statute the ongoing real estate projects in its wide amplitude used the term "converting and existing building or a part thereof into apartments" including every kind of developmental activity either existing or upcoming in future under Section 3(1) of the Act, the intention of the legislature by necessary implication and without any ambiguity is to include those projects which were ongoing and in cases where completion certificate has not been issued within fold of the Act.*

17. Therefore, in view of the above, the plea advanced by the respondent/promoter is hereby rejected.

**G. Findings on the relief sought by the complainant.**

**G.I To direct the Respondent for mandatory registration under Sec. 3 of RERA Act.**

**G.II Direct respondent to apply and provide for completion certificate.**



The above mentioned reliefs no. F.I, &F.II as sought by the complainant is being taken together being interconnected as the findings in one relief will definitely affect the result of the other reliefs.

18. The complainant took a plea that in accordance with section 3 of the Act, 2016 specifically states that any project which are ongoing, and completion has not been issued, it is the duty of the builder to get it registered with the authority. Even respondent builder did not obtain any occupation certificate w.r.t. the school and completion certificate of the project, which is violation of the provisions of the Act, 2016.
19. On the contrary, the respondent-builder states that as per the definition of 'ongoing projects' under rule 2(o) of the said rules, any project for which an application for occupation certificate, part thereof or completion certificate or part completion certificate is made to the competent authority on or before the publication of the said rules is outside the purview of Haryana Real Estate (Regulation & Development) Rules, 2017. So, it is not necessary for it to apply for registration of project as the occupation certificate for the project was granted on 10.03.2005 for Block A, B and C, 12.12.2005 for Blocks D and E, 04.10.2006 for Blocks F, G, H and J, and 11.07.2007 for Blocks K1, K2, EWS Block, community building and shops and hence has pleaded that registration of the project is not important under RERA.
20. After consideration of the facts and circumstances, the authority is of view that even if the definition of ongoing project as given under rule 2(1)(0) of the Haryana Real Estate (Regulation and Development) Rules, 2017 is accepted, any part of a project for which a completion, occupancy certificate, or part thereof has been granted before the publication of these rules is not included in the definition of an ongoing project. Accordingly, projects which do not have occupation certificate or part occupation certificate on the date of publication of the Haryana Real Estate (Regulation Development) Rules, 2017 i.e.

28.07.2017 are not exempted from the definition of the ongoing project and are thus registrable. It is important to note that till date respondent builder has not obtained occupation certification for the school site which otherwise is part of the project. Keeping in view the fact that the Haryana Real Estate (Regulation and Development) Rules, 2017 were published on 28.07.2017 and the project in question required registration as no completion certificate was issued to the promoter by the competent authority on or before the commencement of the Act and therefore the project in question falls within the purview of the 'ongoing project' and also proviso to section 3(1) of the Act defines "on-going Projects" and states that the projects that are on-going on the date of commencement of this Act 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 3 months from the date of commencement of the Act of 2016.

21. Further, it is obligation upon the builder to complete the site earmarked for nursery school and to obtain occupation certificate for the nursery school. The respondent builder was responsible for transferring the title of the flats of the society along with the occupation certificate. The failure of the respondent to obtain occupation certificate is a deficiency in service for which respondent is liable and as per section 11(4)(b) of the Act, 2016, the respondent builder is responsible to obtain the completion certificate or occupancy certificate or both, as applicable from the competent authority and make it available to the allottees individually or to the association of allottees, which is reproduced as below:

***(11)(4)(b) be responsible to obtain the completion certificate or the occupancy certificate, or both, as applicable, from the relevant competent authority as per local laws or other laws for the time being in force and to make it available to the***

***allottees individually or to the association of allottees, as the case may be;***

22. Therefore, the respondent builder is directed to make an application for registration within 3 months as per the provisions of Act of 2016 and failing which the promoter is liable for penal action under section 59 of the said Act. Further, the respondent builder is directed to obtain occupation certificate of the school, thereafter apply and obtain the completion certificate from the competent authority and make it available to the allottees individually or to the association of the allottees.

**G.III To direct the respondent under Sec. 37 r/w Sec. 11(3) of the Act to make complete disclosures.**

**G.IV To direct respondent to disclose with respect to common areas and facilities and layout.**

**G.V Direct the respondent to comply and abide by their representation by providing necessary documents/ disclosures such as DODs**

The above mentioned reliefs no. F.III, &F.IV & F.V as sought by the complainant is being taken together as the findings in one relief will definitely affect the result of the other reliefs and these reliefs are interconnected.

23. The complainant is seeking relief under section 37 read with section 11(3) of the Act to make complete disclosures. Section 37 and 11(3) of the Act, 2016 is reproduced below:

**Section 37: Powers of Authority to issue directions.**

*The e Authority may, for the purpose of discharging its functions under the provisions of this Act or rules or regulations made thereunder, issue such directions from time to time, to the promoters or allottees or real estate agents, as the case may be, as it may consider necessary and such directions shall be binding on all concerned*

**11(3)** *The promoter at the time of the booking and issue of allotment letter shall be responsible to make available to the allottee, the following information, namely:—*

*(a) sanctioned plans, layout plans, along with specifications, approved by the competent authority, by display at the site or such other place as may be specified by the regulations made by the Authority;*

*(b) The stage wise time schedule of completion of the project, including the provisions for civic infrastructure like water, sanitation and electricity.*

24. It is important to note that as per Section 11(3)(a) of the RERA Act of 2016, developers are mandated to provide allottees with sanctioned plans, layout plans, and specifications at the time of booking and the issuance of the allotment letter. This disclosure ensures that homebuyers have comprehensive information about the proposed project from the outset. So, the respondent-builder is directed to provide all the necessary approvals obtained from the competent authority to the RWA within a period of 60 days from the date of this order.

**G.VI Appoint a delinquent u/s. 35 to conduct inquiry into affairs of the respondent;**

**G.VII Penalise respondent u/s. 38 of the Act for deliberate violation of law.**

**G.VIII Direct the respondent to comply with Sec. 34 of the Act;**

**G.IX Pass an order u/s. 36 of the Act directing the respondent not to carry out any further activity against the beneficial interest of the Association;**

**G.X Prevent and restrain the respondent from initiating, carrying out or continuing with any illegal construction.**

25. The above mentioned reliefs are being sought by the complainant association in above complaint but the same were not pressed by the complainant counsel during the arguments in the course of hearing. Moreover, no specific details of above violation have been provided in the complaint to enable further

proceeding in the matter. 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 Restrain and penalize respondent u/s. 37 and section 38 respectively for their illegal claiming of facilities and non-handing over of the common area**

**G.XII Restrain and prevent the respondents from claiming ownership over common area and facilities and hand over the same to complainant-association.**

The above mentioned reliefs no. F.XI, &F.XII as sought by the complainant are being taken together as the findings in one relief will definitely affect the result of the other reliefs and these reliefs are interconnected

26. The complainant is seeking relief of restraining the respondent for the illegal claim of facilities and non-handing over of the common area. The present complaint is with regard to the association namely Central Park-I Condominium association who stated that the handover of the association was done in the year 2008. A deed of declarations are placed on record and which was executed in the year 28.03.2007 and 03.05.2010 respectively. The respondent has not handed over the common area to the complainant/association till date.
27. The Authority places reliance on Section 3(f) of the Haryana Apartment Ownership Act, 1983 provides the definition of common areas and facilities wherein except sub-clause (vii) i.e. such commercial activities as may be provided in the declaration, rest of the items shall form part of the common area and facilities. Section 3(f)(iii) provides that the basement parking areas, garden and storage spaces have been included in the common area and facilities apart from other parts. Section 3(f)(i) provides that land on which

the building is located is also included in the definition of common area and facilities.

28. Herein, the authority places reference on the Hon'ble Supreme Court judgement in SLP no. 34275 of 2009 titled as **DLF Ltd. Vs. Manmohan Lowe and others [2014(12) SCC 231]** wherein it was held as under:

*"43. We are also of the view that the High Court has committed an error in directing the DTCP to decide the objections of the apartment owners with regard to the declaration made by the colonizer. The Competent Authority is defined under Section 3(i) of the Apartment Act. Section 11(2) provides for filing of declaration in the office of the Competent Authority. Section 24A of the Act prescribes penalties and prosecution for failure to file a declaration and Section 24B permits the prosecution only with the sanction of the Competent Authority. In a given case if the developer does not provide common areas or facilities like corridors, lobbies, staircases, lifts and fire escape etc. the Competent Authority can look into the objections of the apartment owners but when statute has given a discretion to the colonizer to provide or not to provide as per Section 3(f)(7) of the Apartment Act the facilities referred to in Section 3(3)(a)(iv) of Development Act, in our view no objection could be raised by the apartment owners and they cannot claim any undivided interest over those facilities except the right of user. In the instant case the apartment owners have raised no grievance that they are being prevented from using the community and commercial facilities referred to in Section 3(3)(a)(iv) of Regulation Act, but they cannot claim an undivided interest or right of management over them."*

29. The deed of declarations after obtaining occupation certificate were filed on 01.12.2009 and 15.10.2010 by the promoter / colonizer under the provisions of the Haryana Apartment Ownership Act, 1983 which is much prior to coming into force the RERA Act, 2016.

30. Therefore, the issue if any pertaining to handover of community building as part of common area as per the deed of declaration, the complainant association is at liberty to raise the said issue before the concerned competent

authority as per the principle laid down by the Hon'ble Apex Court in **DLF LTD. Vs. Manmohan Lowe**(Supra).

**H. Directions of the authority**


31. 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):

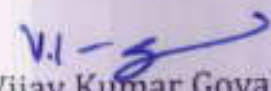
- i. The respondent is directed to apply for registration of the project within 3 months as per the provisions of Act of 2016 and failing which the promoter is liable for penal action under section 59 of the said Act.
- ii. The respondent builder is further directed to obtain occupation certificate of the school, thereafter apply and obtain the completion certificate from the competent authority and make it available to the allottees individually or to the association of the allottees.
- iii. The complainant - association is at liberty to raise the issue of handover of community building as a part of common area before the concerned competent authority.

32. Complaint stands disposed of.

33. File be consigned to registry.

  
Ashok Sangwan  
Member

  
Arun Kumar  
Chairman

  
Vijay Kumar Goyal  
Member

**Haryana Real Estate Regulatory Authority, Gurugram**  
Date: 09.04.2024