HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	**123 of 2021**
Date of filing:	**19.02.2021**
First date of hearing:	**24.03.2021**
Date of decision:	**01.02.2024**

1. **Sh. Akshaya Chandan**
   S/o Sh. R.S.PD. Singh
2. **Mrs. Shweta**
   W/o Sh. Akshaya Chandan

Both R/o Flat no.506, Sidhartha Society,
Plot no.31, Sector-56, Gurugram 122011

.....COMPLAINANTS

Versus

Dwarkadhis Project Pvt. Ltd
PD-4A, Pitampura, New Delhi-110088

.....RESPONDENT

CORAM: Parneet S Sachdev **Chairman**
Nadim Akhtar **Member**
Dr. Geeta Rathee Singh **Member**
Chander Shekhar **Member**

Hearing: 21st

Present: - Mr.Sushil Kumar, counsel for the complainants through VC.
Mr. Alok Mittal, counsel for the respondent.

ORDER (PARNEET S SACHDEV-CHAIRMAN)

1. Present complaint has been filed by the complainants under Section 31 of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred as RERA, Act of 2016) read with Rule 28 of the Haryana Real Estate (Regulation & Development) Rules, 2017 for violation or contravention of the provisions of the Act of 2016 or the Rules and Regulations made thereunder, wherein it is inter-alia prescribed that the promoter shall be responsible to fulfil all the obligations, responsibilities and functions towards the allottee as per the terms agreed between them.

A. UNIT AND PROJECT RELATED DETAILS

2. The particulars of the project, 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 table:

S.No.	Particulars	Details
1.	Name of the project	"Casa Romana", Sector-22, Dharuhera, Haryana (earlier project name was Aravali Greenville).
2.	Name of the promoter	Dwarkadhis Projects Pvt. Ltd
3.	RERA registered/not registered Unit No.	Registered

4.	Unit No. allotted	S-033, 3rd floor, Tower S
5.	Unit area (Super built up area)	1225 Sq.ft
6.	Date of allotment	20.08.2014
7.	Date of Builder Buyer Agreement	27.09.2014
8.	Possession clause in BBA	***Clause 11.1*** *"The developer based on its present plans and estimates should endeavor to complete the construction of the apartment within 48 months from the date of receipt of all approvals/clearances/permission necessary for the construction and development of the apartment or from the date of commencement of construction of the particular building/tower/block in which the apartment in question is situated or from the date of execution of this agreement whichever is later, excluding the grace period of six months……".*
9.	Due date of offer of possession	10.03.2019
10.	Basic sale price	₹55,00,000/- approx.. as per para (iii) of pleadings
11.	Amount paid by the complainants	₹50,86,387/-
12.	Offer of possession	Not given till date

B. FACTS OF THE COMPLAINT

3. That respondent has launched a project under the name and style of 'Casa Romana' situated at village Maheshwari, Sector- 22, Tehsil, Dharuhera, District, Rewari, Haryana and accordingly advertised about the lucrative schemes, timely construction and handing over of possession thereof just after the completion of project in terms of Builder Buyer Agreement (BBA). Complainants came under the impression of respondent's advertisements and booked the flat in the project 'Casa Romana' vide application no. CR/0389/14-15 as customer ID booking no. 00389/14-15 dated 20.08.2014. Accordingly, apartment No.33, third floor, Tower S admeasuring super area of 1225 sq.ft. approx. @ basic sale price of Rs.3582/- per sq. ft. was allotted accordingly one sided 'Agreement to. Sale' was executed on 27.09.2014 after issuing sanction letter.

4. That as per Clause 11 of the Builder Buyer Agreement, respondent failed to deliver possession of unit to the complainant on time. That after the agreed date of completion of tower, complainants visited the site a number of times on spot and it was periodically found that the construction of tower concerned is either on slow mode or completely halted. Even the material of the project, prima facie seems defective and not up to mark.

5. That respondent has already received an amount of Rs.50,86,387/- out of total sale consideration amount of Rs.55,00,000/- approx. of the flat. Out of Rs.50,86,387/- complainants have already paid an amount of Rs.13,90,140/- from their own pocket whereas, Rs.36,96,347/- has been paid from their bank, namely, OBC (Oriental Bank of Commerce) (now merged with PNB Bank) in terms of housing loan amount on behalf of complainants.
6. That complainants are facing a huge financial burden as Rs.41,300/- per month approx., as an EMI of the bank loan amount whereas Rs.35,000/- approx. as a housing rent in the expensive city of Gurugram, Haryana. On the other hand, act and attitude of respondent towards completion of tower seems dissatisfactory after observation of the construction speed on site of the project/ tower and same has not been completed even in terms of agreement fixed by respondent themselves.
7. That it is essential to disclose herein that the respondent has assured to the complainants to pay the interest to the bank till handing over the possession of the flat but unfortunately in the month of June 2019, the said amount of interest was left to pay without any prior intimation to the complainants after violating the agreed terms. Later on, after expiry of three months the officials of OBC bank intimated to the complainants that the rate of interest is not being paid by the

complainants and their loan may be treated as NPA. Thereafter, under compelling circumstances, the complainants started to pay the interest to the bank to maintain their credit score. Thus the respondent, infact, has betrayed to the complainants due to which complainants suffered a lot of mental agony in many folds.

8. That frustrated from the attitude of respondent the complainants have sent a legal notice on 20.10.2020 through their counsel with a request to refund the entire paid amount of Rs.50,86,287/- after withdrawal from the project with a reasonable rate of interest @ 12% per annum from the date of actual receipts till its realisation which was also duly served but again neither any reply was given nor any efforts were made towards the refund of amount obtained from the complainants by respondent.

9. Thus complainants are unable to wait for indefinite period towards completion of Tower-S in the project of Casa Romana even after expiry of unexpected time from the deemed/ declared/ agreed date of completion. That due to monopolistic and arbitrary attitude of the respondent, complainants are suffering mental pain and agony and are still homeless even after investment of their life time savings and earnings. On the other hand respondent is enjoying the hard earned money obtained on the basis of false assurance and promise, hence the present complaint.

C. RELIEFS SOUGHT:-

10. It is therefore, humbly prayed to this Hon'ble court/ authority:

(i) To direct the respondent to pay/ return / refund of Rs.50,86,387/- as a principal amount after withdrawing from the project of respondent by the complainants namely 'Casa Romana situated at village Maheshwari, Sector-22, Tehsil, Dharuhera, District, Rewari, Haryana allotted as an apartment No. S-33, admeasuring an area of 1225 Sq.ft. after failure to handover the apartment/ flat in terms of agreed date in view of clause 11 of 'agreement to sale' or builder buyer agreement as well as the provision of the act of RERA.

(ii) To direct the respondent to pay the interest at the rate of normal rate of interest, i.e., 12% per year since the date of actual periodical payment till 31.12.2020 and further more to the complainants by the respondent upon the payment made by complainants from their own sources and funds.

(iii)To direct the respondent to pay the interest at the rate of normal rate of interest, i.e., 12% per year from the month of June 2019 till 31.12.2020 and further more after defendants left to pay interest to bank as agreed to the complainants by the respondent upon the payment made by bank in terms of housing loan amount as calculated in separate sheet.

(iv)To direct the respondent to pay the sufficient compensation as per section 18 of the Act of RERA for violating the terms and conditions of one sided agreement prepared by respondent themselves for delivery of the flat to the complainants as well as mental pain and agony caused after considering entire pros and cons.

(v) To direct to pay the cost of litigation;

(vi)Pass any other or further order/ relief which this Hon'ble forum deems fit and proper in the aforesaid facts and circumstances, in favour of complainants, in the interest of justice

D. REPLY ON BEHALF OF RESPONDENT

11. That the project " Casa Romana" is being developed by respondent is a residential group housing colony project situated at Sector-22, Dharuhera, District Rewari with applicable construction standards, comprising of 660 Units (2 BHK, 3 BHK etc.) comprised in 11 towers.

12. Present status of the project: The construction of 11 towers is being carried out in phased manner out of which almost 8 towers are at finishing stage and balance 3 towers are at different levels of structure. The overall project is complete to the tune of 80% if construction of all the towers is taken together however phase wise, the work in the 8 towers range from 80~90% and upto 40% in the 3 towers. Copy of Photographs and labour working along with register

showing number of labour working in the project depicting the completion of the project are annexed as Annexure - R/1.

13. That on July 01, 2017 RERA Act, 2017 and HRERA Act, 2017 were made applicable to the developer companies working in real estate in the state of Haryana and according to provisions of this Act and rules and regulations, the company was to obtained RERA registration for the project. That in due compliance of the HRERA Act, 2017 and rules and regulations issued there under the company applied for registration of the project under HRERA vide application dated 31.07.2017. However this application was kept pending for want of renewal of license till May 2019 when the RERA registration was granted to the project with specific averments contained in point (vi & v) of order dated 20.05.2019 analysing the theory of granting the license by the State government to a project and its renewal from time to time wherein the hon'ble authority concluded that the license/ approved plans being having a sovereign assurance of the state to the general public. Also that the state government cannot withhold renewal of license of a project in respect of which third party rights have been created. In compliance of the order, the developer has submitted the service plan estimates of the project to the HSVP vide application dated 31.05.2019, however, the Town & Planning

department has neither renewed the license nor approved the service plan estimates of the project in compliance of the order.

14. Simultaneously many allottees/ their banks have withheld payments since late 2017 giving excuse of not making any further payment until grant of RERA registration, despite the fact that milestones have been achieved, which led to slowdown of the construction pace of project. During this period also, the respondents borrowed money and invested in the project so that the construction could go on. All this created a Force Majeure situation for the project for the period of 31.07.2017 till the resolution of the above issues. These years / months shall be excluded from the completion period of project. The project can be completed within a period of 18-24 months subject to clearance of pending dues and further timely payments of instalments by all the allottees who have hold the payment with the excuse of non-availability of RERA registration and non-renewal of license of the project and pendency of the resolution of the above issues.

15. Preliminary objections: That the complainants have neither any cause of action nor any locus standi to maintain the present complaint against respondent, especially when the complainants are actually seeking the complete amendment/ modification/ re-writing of the terms of the concluded and binding inter-se agreements entered into between the complainants and respondent in October, 2013. This is

evident from the averments as well as the prayers sought in the complaint.

16. That the respondent has obtained timely approvals of revised building plan Memo No. ZP-873/AD (RA)/2014/15199 Dated 14.07.2014, LOI to develop residential Group Housing Colony Memo No. 5DP-V- 2012/LC-1325/21763, Dated 31.10.2012, Licence No. 13 of 2013. Endst. No. 5Dp-V-2013/LC-1325/34028 Dated 18.03.2013, Environmental Clearance No. SEIAA/HR/2014/375 Dated 28.02.2014 and Issue of Consent to Establish HSPCB/Consent/:2821214REWCTE1010052. No. Dated 10.09.2014 all licenses and approvals are attached as Annexure R/2 (Colly) to prove that the project was having all necessary permissions.

17. Lack of jurisdiction:-

a. That the complainants have made baseless allegations of unfair trade practice, deficiency in service, etc with an ulterior motive to amend / modify or re-write any concluded agreement / contract duly executed between the parties purely to invoke jurisdiction of this Hon'ble Authority. It is trite that this Hon'ble Authority cannot adjudicate upon the matter where the prima facie prayers are for modification of the clauses of the agreement. In the instant complaint, the complainants are seeking additional benefits beyond the agreement, by seeking modification in the terms and conditions of the

agreement. The complainants are virtually inviting this Hon'ble Authority to assume the powers conferred under the Competition Act and / or under the Civil Court. Therefore, ex-facie, this Hon'ble Authority does not have the jurisdiction to consider the present complaint or pass orders on the relief claimed.

b. That it is further submitted that the terms of the agreement are binding between the respective parties and as per **clause 57** of the Builder Buyer Agreement to sell, it has been clearly mentioned that any dispute with regard to the said agreement shall be resolved by way of Arbitration and, as such, the complainant cannot go beyond the signed agreement between the parties wherein Arbitration Clause has been specifically included. It is a settled law that the parties are bound by the terms of the contract. There is no power or jurisdiction under the Act to direct modification of any Article of the agreement. An Article of the agreement which is agreed to and binding between the parties has to be implemented in terms thereof and no direction can be given to implement the same contrary to the terms and scope thereof.

In the absence of lack of jurisdiction by this Hon'ble Authority, to entertain the present complaint, the complaint is liable to be dismissed.

18. Respondent has acted in accordance with the terms and conditions of the builder buyers agreement:

a. That respondent has acted as per the terms and conditions mentioned in the Builder Buyers Agreement.

b. That the complainant was duly aware that under Clause 9.1 of the Builder Buyers Agreement, that the building plans/layout plan were subject to change till occupation certificate is received from the competent authority.

c. That the project was mainly divided in 2 parts through a 24 Meter wide sector road wherein there were 11 towers in Part A and 4 towers in the Part B. The developer has continued with the 11 towers of Part A as there was no allottee in Part B. Also there has been no change whatsoever in the tower location/ apartment layouts/ common facilities or any other services. However looking at the grim economic situation of the real estate industry, the developer has requested the allottees of 3 towers to move to other 8 towers which are at finishing stage so that all the funds and resources can be utilized towards completing them so that the same can be handed over to the allottees. This shows that even in such situation, the intention of the developer is to hand over the units to the allottees. That in background of the above facts the respondent after making due publications in the newspapers applied to the Town and Country

Planning department for migration of the land earmarked for Part B (Four Towers) under Deen Dayal Jan Awas Yojana Scheme. After due inquiry the department has allowed this application. That by migration of this land parcel norms of group housing project has not been impacted in any respect.That all these developments were duly discussed and informed to/ with the complainant.

d. Complainants were duly informed about the Schedule of Possession as per Clauses 11.1 & 11.2 of the Builder Buyers Agreement entered into between the complainants and respondent. That on perusal of above clauses, per the Clause 11.1 the company endeavoured to complete the construction of the said project within 48 + 6 + 3 months unless there was delay due to a force majeure condition or due to reasons mentioned therein.

e. That respondent cannot be made liable for the delay or failure due to force majeure conditions. It has been clearly stipulated in Clause 47 of the Agreement that:

> *"The Developer shall not be responsible or liable to perform any of its obligations or undertakings provided for in the Agreement, if such performance is prevented due to Majeure conditions as described herein above."*

That the terms of the agreement must be examined in its entirety and totality with reference to the relevant clauses 11.1 & 11.2 along with

Clause 47 contained therein in order to decide the grievance raised by the complainant.

19. Parties are bound by the terms and conditions mentioned in the agreement: That it is trite law that the terms of the agreement are binding between the parties. The Hon'ble Supreme Court in the case of "Bharti Knitting Co. vs. DHL Worldwide Courier (1996) 4 SCC 704" observed that that a person who signs a document containing contractual terms is normally bound by them even though he has not read them, and even though he is ignorant of their precise legal effect. It is seen that when a person signs a document which contains certain contractual terms, then normally parties are bound by such contract; it is for the party to establish exception in a suit. When a parties to the contract disputes the binding nature of the singed document, it is for him or her to prove the terms in the contract or circumstances in which he or she came to sign the documents.

20. Respondent company cannot be made liable for the delay caused due to force majeure conditions:

a. That it is submitted that as per clause 47 of Builder Buyer's Agreement which clearly states that Respondent shall not be liable or responsible for not performing any of its obligations or undertaking

as provided in the Agreement if such performance is prevented or delayed due to force majeure conditions.

b. That the complainants applied for the unit in the project of respondent in September 2013. It is worth mentioning here that in the year 2016, when the RERA Act was passed and it became compulsory to register all the projects under the said act. Although the respondent applied for the said registrations under the RERA Act in the July 2017 itself, however, since there was a dispute regarding renewal of license, the registration in the RERA Act got delayed by 2 years without there being any sort of default on the part of respondent and as a consequence, the registration number under the RERA Act was only given in the May 2019 and confirmed in Aug 2019 itself.

c. That the delivery of possession of the independent unit is pending on account of force majeure i.e. a pending litigation before this Hon'ble Authority and delay in renewable of license of project without there being any such fault on the part of respondent. Reference on this aspect can also be drawn from the latest judgment rendered by this Hon'ble Authority in case titled as Sunita Devi vs. Baderwals Projects Pvt. Ltd. bearing Complaint No. 526 of 2019 decided on 17.10.2019.Copy of the Judgment is attached as Annexure R/3.

d. That at the time applying for registrations, nearly 300 workers were deployed on the site for completion of the project. However, due to non payment of installments by the allottees/ their banks, the respondent had to slow down the construction activity and consequently, large chunk of the work force, which were paid on a daily basis, migrated to other places. Subsequently, after getting the registration number of the project, the respondent has mobilized the resources, as per the directions of the Hon'ble authority, to bring the construction activity to the desired pace.

e. That however, there was considerable difficulty for respondent to gather the work force and to resume construction activity in the said project. The respondent took several months for gathering the requisite work force and for resuming the construction work in full swing and now the respondent is following up with the allottees for payment of outstanding dues however most of the allottees are still not paying the dues. Therefore, it is amply clear that the delay in handing over possession was a result of Force Majeure conditions as covered in the Application for Allotment as well as the Builder Buyers Agreement executed between the parties.

21. No deficiency in service or unfair trade practice on part of respondent company:

a. It is submitted that respondent has not incurred any deficiency of service as the delay in delivery of the project was caused due to above said force majeure conditions and same was beyond the control of respondent.

b. It is submitted that the relief which are being asked before the Authority do not come within the ambit of the definition of 'deficiency' as prescribed under the Consumer Protection Act,1986. It is submitted that the complainant is seeking beneficial treatment through amendment in terms of the agreement which cannot be permitted by this Authority.

c. That complainant by not complying with the terms and conditions of the agreement have themselves been negligent and thus cannot be allowed to allege that the respondent have been deficient in providing services.

22. Complainant has not approached this hon'ble authority with clean hands:

a. That the complainants have approached the Hon'ble Authority with unclean hands and has suppressed and concealed material facts and proceedings which have a direct bearing on the very maintainability of the purported complaint and if there had been disclosure of these material facts and proceedings, the question of entertaining the purported complaint would not have arisen. It is settled law as held

by the Hon'ble Supreme Court in **S.P. Chengalvaraya Naidu v. Jagannath 1994(1)SCC(1)** that non-disclosure of material facts and documents amounts to a fraud on not only the respondent but also on the Court. Reference may also be made to the decisions of the Hon'ble Supreme Court in **Dilip Singh Vs State of UP 2010-2-SCC-114 and Amar Singh Vs Union of India 2011-7-SCC-69.**

b. That the complainant are attempting to raise non issues and is now, at a belated stage, attempting to seek a modification of the agreement entered into between the parties in order to acquire benefits for which the complainant is not entitled in the least.

c. That the complainants had willfully agreed to the terms and conditions of the Agreement and are now at a belated stage attempting to wriggle out of their contractual obligations by filing the instant complaint before this Hon'ble Authority.

23. Reply on merits:

a. The construction pace of the project is slow because of the delay in timely payments of the allottees. Most of the allottees have withheld payments since late 2017 giving excuse of not making any further payment until grant of RERA registration. This created a Force Majeure situation for the project where the allottees/ their banks denied to make payment of installments despite the fact that milestones have been achieved. During this period also, the

respondents borrowed money and invested in the project so that the construction could go on. Now since the RERA registration has been granted by the authority and confirmed in Aug 2019, the project can be completed within a period of 30 months depending on the timely payments of the allottees. Not only this, since last more than one year, the whole world is facing the wrath of COVID-19 and due to the Pandemic, the whole construction activity has further halted at the site. Further, due to the surge in the COVID-19 Cases, the second wave which is more deadlier than the 1st wave and NCR region being the epicentre of the Second Wave, the construction activities have been totally banned by the concerned State Govt. and with the lockdowns and curfews being imposed in majority of the cities, it has been nearly impossible to carry forward the construction activity as of now. The preliminary submissions and preliminary objections are reiterated.

b. It is submitted that asking for refund at this stage is nothing but sheer blackmailing to the respondents since, the respondents are not in a dominant position although the delay caused in handing over the possession of the unit caused by the situation which was not even in the hands of the respondent. Furthermore, it would also be relevant to point out that since, the project is overall 70% completed and, as such, the refund cannot be issued since the project is completed more

than 40%. It is to mention here that by granting right to one party, rights of others shall not be jeopardised as refund at this stage shall adversely affect completion of the project and consequently all other allottees who intends to continue in the project will suffer.

c. It is submitted that the complainants out of his own free will signed the agreement after reading each and every clause. Now after a period of more than 6 years, the complainants cannot cry foul and say that the agreement was one- sided. It was complainants who chose the construction linked plan and with the said plan, there is always a risk involved of getting the construction delayed for any reason whatsoever, which in this case, falls under the purview of force majeure conditions. It is further stated that the complainants are well educated persons and by their own wishes and fancies had approached the respondent in order to buy the house. It is submitted that the complainants were neither forced nor influenced by the respondent to enter into the said Agreement. It is submitted that the complainants on his own will/understanding and accord has purchased the flat in question.

E. REJOINDER ON BEHALF OF COMPLAINANTS:

24. Complainant had made following submissions vide rejoinder dated 12.07.2021:

a. After going through the reply it is clear that project of the respondent has been delayed beyond the period of more than two years in terms of the agreement executed between the parties.

b. Amount paid by the complainants to the respondent company to the extent of ₹5086384/- has been admitted by the respondent.

c. Respondent has never made sincere efforts to complete the project in accordance with assurance commitment about terms and conditions of the agreement to sale executed between the parties. Since august 2019 no work is being carried out in the project site.

d. It is mockery of law that respondent is trying to shift hid own burden upon the others without any substantial documents, reasoning and valid ground in this regard.

e. That complainants are neither seeking any amendment modifications or rewriting of the terms and conditions. Complainants are entitled to get relief as sought in prayed clause after indefinite delay in handing over the possession with respect to the flat which was to be handed over prior to the outbreak of pandemic of COVID 19 in month of June 2019 as per terms and conditions of the agreement.

f. That respondent has got the letter of intent to develop residential housing colony on 31.10.2012, approval of building plan on 14.07.2014 whereas license was granted on 18.03.2013.

g. That clause 57 is not applicable with present complaint in terms of judgment held by Hon'ble Supreme Court in "IREEO Grace Realtech Pvt. Ltd vi. Abhishek Khanna and ors." In Civil Appeal no.5785/2019 whereby it clearly mentioned that an allottee may elect or opt for any of the remedies, one out of remedies provided by the law for redressal of injury/grievances.

h. No force majeure conditions were there and all the clauses are favourable to the respondent company and very limited rights have been provided to the complainants, hence the agreement is itself is one sided.

i. That complainants are regularly paying ₹413000/- as bank loan amount whereas ₹35000/- approx. as housing rent in city of Gurugram.

j. Rest of the averment are same to the complaint and written submissions dated 26.07.2021 filed by the complainants are also same

F. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT

25. Ld counsel for respondent reiterated facts of reply and made following submissions regarding grant of zero/ force majeure period:

a. That as per clause 11 of agreement signed between allottees and respondent, timeline for completion of construction was 48+6+3= 57

months from the date of receipt of approval/ permission necessary for the construction. Haryana State Pollution Control Board granted consent to construct the project on 10.09.2014 which was necessary for start of construction, as was required under environment clearance granted on 28.03.2014. Accordingly, the initial date of possession comes to July, 2019(excluding any force majeure conditions).

b. That project of the respondent was suffering from force majeure conditions due to the inaction of office of DTCP Haryana for non renewal of license and non approval of service plan estimates etc for approximately 5 years 9 months. It prevented the company from carrying out the construction leading to non completion of the project as license lapsed in March 2017 and was renewed by DTCP on 06.12.2022.

c. That due to non-renewal of license, various permissions lapsed or were not granted, e.g., validity of building plans lapsed, grant of RERA registration got delayed from July 2017 to August 2019, service plans were not approved.

d. That company kept giving representations at all levels including DGTCP, Additional Chief Secretary, T& CP Department, Hon'ble CM Haryana and Hon'ble RERA Authority.However,

representations could not reach any conclusions due to frequent transfer of the officials from time to time; Covid 19 lockdown etc.

e. That in absence of RERA Registration allottees and their financing banks withheld payments since Sep-Oct 2017. Even after grant of RERA Registration in May 2019, most of the allotees and their banks did not make payment of the instalments due to non-renewal of license.

f. That on 06.06.2022, a complaint was filed before NCLT by a group of allottees. However, matter was mutually settled between group of allottees and respondent by entering into MOU dated 25.01.2023 wherein dates of completion of project were worked out from March 2024 to December 2024. Accordingly, the matter got disposed of as withdrawn on 16.02.2023. Further, as per terms of the MOU, the allottees group has also formed a steering committee (with few allottees from each tower) to monitor the progress of the project on a regular basis. The construction is going on at fast pace and the construction is expected to be completed well within time as per the terms of MOU wherein 4 out of 8 towers have been completed.

g. That clause 11.1 and 11.2 of the agreement executed between allotttees and respondent states condition that allottees shall extend time for delivery of possession, if there is any delay due to force majeure conditions. Also as per clause 7.1 of model agreement to

sale, annexed as Annexure-A with Haryana Real Estate (Regulation & Development) Rules, 2017, provides for force majeure conditions. Therefore, in light of clause 11 of agreement and clause 7.1 of RERD Rules 2017, agreement for sale, deemed date of possession comes to May 2025.

h. That RERA Authority granted conditional registration dated 21.05.2019 and that too without any completion date because renewal of license was awaited from the DTCP.

i. As Hon'ble Authority in case no.1048/2018 titled as Nirmala Devi Chaudhary & another V. M/s Jindal Realty Pvt Ltd , considered intervening period where the concerned authority has failed to grant necessary approval, as force majeure period.

j. To conclude there is no fault of the respondent as it is clear from the above reasons that one thing led to the other because of delay on part of the government authorities (govt. policies, guidelines and decisions) which affected the regular development of the project. Non-renewal of license led to delay in RERA registration which in turn led to allottees to stop payment/ funding, service plans not approved, etc. Since there is no delay on the part of respondent and if remaining 27 months (between license lapse date in March 2017 and initial date of possession in July 2019) are considered from the date

of renewal of license ,i.e., 06.12.2022 the deemed date of possession comes to March 2025.

k. Absence of valid building plans, non-renewal of license and non-approval of Service Plan Estimates (SPE) leading to delay in grant of RERA registration and stoppage of payment of instalment by allottees/ banks, all these are force majeure conditions, beyond the control of respondent. Hence, force majeure period may be excluded from the period for calculating the delay and may be treated as zero period.

26. Ld counsel for respondent admitted project "Aravali Greenville" and "Casa Romana" are same projects being developed by respondent.

27. Ld counsel for complainants reiterated the facts of the complaint and stated that complainants had paid ₹50,86,387/- till 2017 and rest of the amount was to be paid at time of offer of possession. Further, reference has been made to section 6 of RERA Act of 2016 which states that registration of project may be extended in case of force majeure conditions. However, in present there are no circumstances of force majeure as respondent had raised approx.. 90% of funds and thereafter halted the construction. As per section 18 or RERA, Act of 2016, it is unqualified right of the allottee to seek refund of the paid amount if the respondent fails to fulfil its obligations on time. Therefore, complainant are seeking refund under section 18 of

RERA Act of 2016. Authority put specific question regarding how much amount complainants had received till date as assured return. In this regard, complainant Mr. Akhshaya Chandan stated that he had opted for payment plan and assured return to be paid till 5 years. As agreement was executed in year 2014, respondent had paid amount till June 2019 and thereafter respondent failed to pay assured return.

28. Submissions made by the respondent are similar to applications/written submissions dated 17.08.2023 and 30.01.2024 respectively. To avoid repetitions, said applications and written submissions are not reproduced.

G. ISSUE FOR ADJUDICATION

29. Whether the complainants are entitled to refund of the amount deposited by them along with interest in terms of Section 18 of Act of 2016?

H. OBSERVATIONS AND DECISION OF AUTHORITY

30. The Authority has gone through the rival contentions. In light of the background of the matter as captured in this order and also the arguments submitted by both parties, Authority observes that respondent has taken the following objections w.r.t maintainability of the complaint :

1. Respondent has taken objection that complainants and respondent are bound by the terms of agreement. As per clause 57 of the flat buyer

agreement it is clearly mentioned that any dispute with regard to the said agreement shall be resolved by way of Arbitration and, as such, the complainant cannot go beyond the signed agreement between the parties wherein Arbitration Clause has been specifically included. It is a settled law that the parties are bound by the terms of the contract. There is no power or jurisdiction under the Act to direct modification of any Article of the agreement.

In this regard, Authority is of the opinion that jurisdiction of the Authority cannot be fettered by the existence of an arbitration clause in the agreement as it may be noted that section-79 of the RERA Act bars the jurisdiction of civil courts about any matter which falls within the purview of this Authority, or the Real Estate appellate Tribunal. Thus, the intention to render such disputes as non-arbitrable seems to be clear. Also, section-88 of the RERA Act says that the provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force. Further, the Authority puts reliance on catena of judgments of the Hon'ble Supreme Court, particularly on ***National Seeds Corporation Ltd. v. M. Madhusudhan Reddy and Anr. (2012) 2 SCC 506***, wherein it has been held that the remedies provided under the Consumer Protection Act are in addition to and not in derogation of the other laws in force, consequently the Authority would not be

bound to refer parties to Arbitration even if the agreement between the parties had an arbitration clause.

Further, in ***Aftab Singh and ors. v. Emaar MGF Land Ltd and ors., Consumer case no. 701 of 2015 decided on 13.07.2017***, the National Consumer Disputes Redressal Commission, New Delhi (NCDRC) has held that the arbitration clause in agreements between the complainants and builder could not circumscribe the jurisdiction of a consumer. The relevant paras are reproduced below:

> *"49. Support to the above view is also lent by Section 79 of the recently enacted Real Estate (Regulation and Development) Act, 2016 (for short the Real Estate Act"), Section 79 of the said Act reads as follows-*
> *"79. Bar of jurisdiction - No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Authority or the adjudicating officer or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act."*
> *It can thus, be seen that the said provision expressly ousts the jurisdiction of the Civil Court in respect of any matter which the Real Estate Regulatory Authority, established under Sub-section (1) of Section 20 or the Adjudicating Officer, appointed under Sub-section (1) of Section 71 or the Real Estate Appellant Tribunal established under Section 43 of the Real Estate Act, is empowered to determine. Hence, in view of the binding dictum of the Hon'ble Supreme Court in A. Ayyaswamy (supra) the matters/disputes, which the Authorities under the Real Estate Act are empowered to decide, are non-arbitrable, notwithstanding an Arbitration Agreement between the parties to such matters, which, to a large extent, are similar to the disputes falling for resolution under the Consumer Act*
> .....
> *56. Consequently, we unhesitatingly reject the arguments on behalf of the Builder and hold that an Arbitration Clause in the*

afore-stated land of Agreements between the Complainants and the Builder cannot circumscribe the jurisdiction of a Consumer Fora, notwithstanding the amendments made to Section B of the Arbitration Act."

While considering the issue of maintainability of a complaint before a consumer forum/commission in the fact of an existing arbitration clause in the application form, the Hon'ble Supreme Court in case titled as ***M/s Emaar MGF Land Ltd. V. Aftab Singh in revision petition no. 2629- 30/2018 in civil appeal no. 23512-23513 of 2017*** decided on 10.12.2018 has upheld the aforesaid judgement of NCDRC and as provided in Article 141 of the Constitution of India, the law declared by the Supreme Court shall be binding on all courts within the territory of India and accordingly, the Authority is bound by the aforesaid view. The relevant para of the judgement passed by the Supreme Court is reproduced below:

"25. This Court in the series of judgments as noticed above considered the provisions of Consumer Protection Act, 1986 as well as Arbitration Act, 1996 and laid down that complaint under Consumer Protection Act being u special remedy, despite there being an arbitration agreement the proceedings before Consumer Forum have to go on and no error committed by Consumer Forum on rejecting the application. There is reason for not interjecting proceedings under Consumer Protection Act on the strength an arbitration agreement by Act, 1996. The remedy under Consumer Protection Act is a remedy provided to a consumer when there is a defect in any goods or services. The complaint means any allegation in writing made by a complainant has also been explained in Section 2(c) of the Act. The remedy under the Consumer Protection Act is confined to complaint by consumer as defined under the Act for defect or deficiencies caused by a service provider, the cheap and a

quick remedy has been provided to the consumer which is the object and purpose of the Act as noticed above."

Furthermore, Delhi High Court in 2022 in ***Priyanka Taksh Sood V. Sunworld Residency, 2022 SCC OnLine Del 4717*** examined provisions that are "Pari Materia" to section 89 of RERA act; e.g. S. 60 of Competition act, S. 81 of IT Act, IBC, etc. It held "*there is no doubt in the mind of this court that giving a purposive interpretation to sections 79, 88 and 89 of the RERA Act, there is no bar under the RERA Act from application of concurrent remedy under the Arbitration & Conciliation Act, and thus, there is no clash between the provisions of the RERA Act and the Arbitration & Conciliation Act, as the remedies available under the former are in addition to, and not in supersession of, the remedies available under the "Arbitration & Conciliation Act.*" Remedies that are given to allottees of flats/apartments are therefore concurrent remedies, such allottees of flats/apartments being in a position to avail of remedies under the Consumer Protection Act, 1986, RERA as well as the triggering of the Code.

Therefore, in view of the above judgments and considering the provisions of the Act, the Authority is of the view that complainants are well within right to seek a special remedy available in a beneficial Act such as the Consumer Protection Act and Real Estate (Regulation

and Development) Act, 2016 instead of going in for an arbitration. Hence, we have no hesitation in holding that this Authority has the requisite jurisdiction to entertain the complaint and that the dispute does not require to be referred to arbitration necessarily. In the light of the above-mentioned reasons, the authority is of the view that the objection of the respondent stands rejected.

2. Second objection raised by the respondent is that complainants have made baseless allegations of unfair trade practice, deficiency in service, etc with an ulterior motive to amend / modify or re-write any concluded agreement / contract duly executed between the parties purely to invoke jurisdiction of this Hon'ble Authority.

In this regard Authority observes that respondent has only made the vague allegations without sufficiently proving as to which terms of the agreement are complainants seeking modifications and which additional benefits are complainants seeking beyond the agreed agreement. Furthermore, on plain reading of the builder buyer agreement it is clear that all the terms and conditions imputed in the builder buyer agreement are one sided and as such respondent is not taking any responsibility towards the allottees/complainants for non-performance of his part of contract. On the other hand respondent is transferring his liabilities to the DTCP and other govt. authorities.

In view of the aforesaid observations there remains no doubt that the complaint is maintainable as per provisions of RERA Act,2016 and the Authority has complete jurisdiction and mandate to adjudicate the same on merits.

3. It is admitted fact that complainants booked unit in the project "Casa Romana" at sector 22, Dharudhera, Haryana which being developed by the respondent/promoter namely; Dwarkadhis Projects Pvt. Ltd and complainants were allotted unit no.33, tower S, 3rd floor in project. The builder buyer agreement was executed between the parties on 27.09.2014. Complainants had paid a total sum of ₹50,86,387/- against the basic sale consideration price of ₹55,00,000/- approx.. as mentioned in para (iii) of pleadings.
4. As per clause 11.1 of the agreement, respondent/developer was under obligation to hand over the possession to the complainants within 48 months from the date of receipt of all approvals/clearances/permission necessary for the construction and development of the apartment or from the date of commencement of construction of the particular building/tower/block in which the apartment in question is situated or from the date of execution of this agreement whichever is later, excluding the grace period of six months. Considering the clause 11.1 of the agreement it is clear, that deemed date for possession is 48 months + 6 months from the date of receipt of all

approvals/clearances/permission necessary for the construction and development of the apartment or from the date of commencement of construction of the particular building/tower/block in which the apartment in question is situated or from the date of execution of this agreement whichever is later. As per reply and other additional documents submitted by the respondent, respondent received the environment clearance on 28.0.2014, building plan got approved on 14.07.2014 and Haryana State Pollution Control Board granted consent to construct the project on 10.09.2014. That means, as per possession clause, a period of (48+ 6) months is to be taken from 10.09.2014 and therefore, date of handing over of possession comes to 10.03.2019. Respondent has taken a plea that non-renewal of license led to delay in RERA registration which in turn led to allottees to stop payment/ funding, service, absence of valid building plans, non-renewal of license and non-approval of Service Plan Estimates (SPE) leading to delay in grant of RERA registration and stoppage of payment of instalment by allottees/ banks, all these are force majeure conditions, beyond the control of respondent there is no fault of the respondent as it is clear that one thing led to the other because of delay on part of the government authorities (govt. policies, guidelines and decisions) which affected the regular development of the project. Since there is no delay on the part of respondent and if remaining 27

months (between license lapse date in March 2017 and initial date of possession in July 2019) are considered from the date of renewal of license ,i.e., 06.12.2022, the deemed date of possession comes to March 2025 and delay period is to be considered as force majeure period.

In this regard, Authority observes that it is admitted fact that respondent got license in August, 2019 by the orders of the Authority and later on, license got renewed on 06.12.2022 up to 17.03.2024. Facts remains that today also respondent is unable to hand over possession to the complainants. The plea of the respondent that it got delayed due to inaction of the DTCP and other Govt. authorities stands rejected as respondent had lured the buyers/complainants to invest in its project on the promise that the unit would be completed within a period of 48 months, with six months of grace period. However, during the course of execution of the project, despite having the knowledge of various legal issues relating to renewal of license, approval of building and fire fighting plans, etc and the progress of the infrastructure development facilities, the respondent did not stop accepting deposits as it is clear from the ledger that complainants made last payment in July 2019. By not doing so, it continued to convey the impression that the project was proceeding on track and, in fact, given the complainants no indication for any ground for concern.

The contention that the complainants had been warned and informed that the project may be delayed on account of the responsibility for infrastructure creation lying with the Government/ Government nominated agencies cannot be entirely appreciated since these clauses only convey that the respondent would not be responsible for the absence of infrastructure in the sector which was not to be executed by it.

Further, as on date, there is admittedly no offer of possession and the respondent has admitted that the project is still under construction and respondent in para U of written statement dated 30.01.2024, stated that company/respondent will finish the work in respect of tower S as per MOU entered between the parties by May, 2023 and apply for occupation certificate by June, 2024 and give offer for fit out. W.r.t this, Hon'ble Supreme Court in **Fortune Infrastructure Vs Trevor D' Lima (2018) 5 SCC 442** laid down that:

> *'a buyer cannot be expected to wait indefinitely for possession and in a case of an unreasonable delay in offering possession, the consumer cannot be compelled to accept possession at a belated stage and is entitled to seek refund of the amount paid with compensation'.*

Even today, there is no indication when this project is likely to be completed. By making merely a bald assertion that the project was delayed due to inaction by the Government or its statutory

organisations, cannot by any stretch of imagination, be considered to be tenable. It is well known that the developer/respondent undertake to execute projects at the location indicated in the licence issued to them. The responsibility of completion of the project remains that of the builder and it cannot seek to transfer this responsibility to Government entities with whom the buyer has no privity of contract. Therefore, respondent has clearly defaulted in its contractual obligations of completing the project, to obtain the occupancy certificate, offer possession of the flat within the time stipulated in the Agreement [or within a reasonable period thereafter]. The complainant cannot therefore, be compelled to take the possession of the said flat. The Hon'ble Supreme Court in **M/s BPTP Anr., vs Sanjay Rastogi, Civil Appeal no. 1001 -1002 of 2021** decided on 04.12.2021 has held that under such a circumstance, the complainant is entitled to full refund with interest.

5. Respondent had claimed the delays in renewal of license, approval of service plan estimates, adjustment of EDC, etc as force majeure and had requested the Authority to declare this period as zero period for all intended purposes. The Authority observes that the grievances of the respondent are against the Town & Country Planning Department which has corrected the calculation of EDC payable in its record. However, Town & Country Planning Department has neither

consider it as force majeure nor has declared the delay period as zero period. In the absence of the same, the Authority cannot considered deemed it fit to declare the said period as zero period and hence the plea of the respondent is rejected.

6. Concluding all the reasoning, Authority deems it a fit case for refund along with interest as complainants do not want to continue with the project. Further, complainants are at liberty to exercise their right to withdraw from the project on account of default on the part of respondent to offer legally valid possession and seek refund of the paid amount along with interest as per section 18 of RERA Act. Further, Hon'ble Supreme Court in the matter of "***Newtech Promoters and Developers Pvt. Ltd. versus State of Uttar Pradesh and others***" in Civil Appeal no. 6745-6749 of 2021 has highlighted that the allottee has an unqualified right to seek refund of the deposited amount if delivery of possession is not done as per terms agreed between them. Para 25 of this judgement is reproduced below:

> "25. *The unqualified right of the allottee to seek refund referred under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time*

stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed."

The decision of the Supreme Court settles the issue regarding the right of an aggrieved allottee such as in the present case seeking refund of the paid amount along with interest on account of delayed delivery of possession. The complainants wishes to withdraw from the project of the respondent, therefore, Authority finds it fit case for allowing refund in favour of complainant.

7. The definition of term 'interest' is defined under Section 2(za) of the Act which is as under:

(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.

Explanation.-For the purpose of this clause-

(i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;

(ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest

thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;

8. Rule 15 of HRERA Rules, 2017 provides for prescribed rate of interest which is as under:

"Rule 15. Prescribed rate of interest- (Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19] (1) For the purpose of proviso to section 12; section 18, and sub sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%: Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public".

9. Consequently, as per website of the state Bank of India i.e., https://sbi.co.in, the highest marginal cost of lending rate (in short MCLR) as on date, i.e.,01.02.2024 is 8.85%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e., 10.85%.

10. From above discussion, it is amply proved on record that the respondent has not fulfilled its obligations cast upon him under RERA Act, 2016 and the complainants are entitled for refund of deposited amount along with interest. Thus, respondent is liable to pay the complainants interest from the date the amounts were paid till the actual realization of the amount. Therefore, Authority allows refund of paid amount along with interest to the complainants at the rate prescribed in Rule 15 of Haryana Real Estate

(Regulation and Development) Rules, 2017, i.e., at the rate of SBI highest marginal cost of lending rate (MCLR)+ 2 % which as on date works out to 10.85% (8.85% + 2.00%) from the dates amounts were paid till the actual realization of the amount. Authority has got calculated the total amounts along with interest as per detail given in the table below:

Sr.no	Principal amount	Date of payment	Interest accrued till 01.02.2024
1.	₹100000/-	19.08.2014	₹102674/-
2.	₹578531/-	25.09.2014	₹587636/-
3.	₹1529010/-	29.09.2014	₹1551256/-
4.	₹100/-	17.02.2016	₹86/-
5.	₹250122/-	19.02.2016	₹215991/-
6.	₹1289647/-	23.02.2016	₹1112130/-
7.	₹461387/-	10.02.2017	₹349463/-
8.	₹877590/-	22.02.2017	₹661573/-
	Total= ₹50,86,387/-		₹45,80,809/-
Total amount to be refunded by respondent to complainant= ₹50,86,387/- + ₹45,80,809/- = ₹96,67,196/-			

11. Regarding relief under clause (iii), neither of the parties have placed on record documents and statement of accounts to show how much amount is due from respondent, nor it has been argued during the arguments. Therefore, said relief is rejected by the Authority.

12. Further, the complainants are seeking compensation with regard to mental agony, pain and litigation charges. It is observed that Hon'ble Supreme Court of India in Civil Appeal Nos. 6745-6749 of 2027 titled as ***"M/s Newtech Promoters and Developers PvL Ltd. V/s State of U.P. & ors."*** (supra,), has held that an allottee is entitled to claim compensation & litigation charges under Sections 12, 14, 18 and Section 19 which is to be decided by the learned Adjudicating Officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the learned Adjudicating Officer having due regard to the factors mentioned in Section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses. Therefore, the complainants are advised to approach the Adjudicating Officer for seeking the relief of litigation expenses.

I. DIRECTIONS OF THE AUTHORITY

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

(i) Respondent is directed to refund the amount of ₹50,86,387/- along with interest of ₹45,80,809/- to the complainants. It is further clarified that respondent will

remain liable to pay the complainants interest till the date of actual realization of the amount.

(ii) A period of 90 days is given to the respondent to comply with the directions given in this order as provided in Rule 16 of Haryana Real Estate (Regulation & Development) Rules, 2017, failing which legal consequences would follow against the respondent.

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

.....
CHANDER SHEKHAR
[MEMBER]

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

.....
NADIM AKHTAR
[MEMBER]

.....
PARNEET SINGH SACHDEV
[CHAIRMAN]