

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

Complaint no. : 4617 of 2022
Date of filing: 24.06.2022
Date of decision : 05.03.2024

1. Bhrigu Nagal (Through SPA Holder)
2. Balraj Nagal
R/o: B-104, Plot No. 33, Sector 4,
Dwarka, New Delhi - 110078

Complainants

Versus

1. M/s Varali Properties Ltd.
2. M/s. Athena Infrastructure Ltd.
3. M/s. Soril Infra Resources Ltd.
Registered Office: M - 62 & 63,
First Floor, Connaught Place, New Delhi - 110001

Respondents

CORAM:

Shri Arun Kumar
Shri Vijay Kumar Goyal
Shri Ashok Sangwan

Chairman
Member
Member

APPEARANCE:

Sh. Nitin Yadav (Advocate)
Sh. Rahul Yadav (Advocate)

Counsel for complainants
Counsel for respondents

ORDER

1. The present complaint has been filed by the complainants/allottees 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

provisions of the Act or the Rules and regulations made there under or to the allottees as per the agreement for sale executed *inter se*.

A. Unit and project related details

2. The particulars of unit details, sale consideration, the amount paid by the complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S. N.	Particulars	Details
1.	Name of the project	"Indiabulls Enigma", Sector-110, Gurugram Haryana
2.	Nature of the project	Residential project
3.	Unit and area	D151 admeasuring 3400 sq. ft. (super area)
4.	Date of execution of BBA	05.10.2013
5.	Occupation certificate obtained on	17.09.2018
6.	Offer of possession	02.01.2019
7.	Date of conveyance deed	13.06.2019 (Page 23 Of Complaint) Between complainant and R1 and R2
8.	Total sale consideration	₹1,90,45,000/- (Page 27 of complaint)
9.	Amount Paid	₹1,90,45,000/- (Page 8 of complaint)
10.	Legal notice by the complainant seeking withdrawal of demands towards maintenance charges amounting to Rs.4,65,054/-	29.01.2022 [Page 112 of complaint]

B. Facts of the complaint

3. The complainants have made the following submissions in the complaint:
- a. That the complainants are law abiding citizens of India who bought a unit bearing no. D-151, 15th Floor, having carpet area 1955 sq. ft. and super area 3400 sq. ft. in a residential project, namely, "India bulls Enigma" at Sector 110, Village Pawala Khusrupur, Gurgaon Tehsil, Gurgaon, Haryana, developed by respondent no. 1 and 2 jointly. The booking was made on 05 Jan 2012.
 - b. That respondent no. 1 and 2 are pioneer Companies engaged in development of real estate projects, these are 100% subsidiary companies of India bulls Real Estate Limited (IBREL) and respondent no. 3 is a company engaged in business of providing maintenance, security and facility services also from India bulls group of companies.
 - c. Thus, the respondent no. 1 lured and enticed the complainants to part with their hard-earned lifelong savings to the tune of ₹1,90,45,000/- towards total consideration of the unit by Dec 2012, and in June, 2019 the complainants paid ₹16,34,300/- as last instalment to include, maintenance security charges ₹380,802/-, electricity charges for 11 KV and 33 KV lines ₹4,56,962/-, club house charges ₹2,24,000/-. Respondent 1 knew that the 33 KV Line will not be laid at an early date but still took ₹4,56,962/- in May 2019, which has neither been returned nor interest ever paid to the owners, all queries to customer care India bulls remain unanswered. A stamp duty of ₹13,33,300/- was paid in May 2019 and ₹50,003/- as registration charges in Jun 2019.
 - d. That as per the terms of initial the builder buyer's agreement dated 18 Jun 2012 with Athena Infrastructures Limited respondent no 2 the completion date including grace period was 18 Dec 2015. This BBA was



changed by customer care India bulls to Varali Properties on 05.10.2013, and then executed between complainants and respondent no. 1 under the terms of which respondent no. 1 was under an obligation to complete the project and handover the physical possession of the unit on or before 05.03.2016 to the complainants (including grace period). It is also important to note that the first BBA was fraudulent as Athena Infrastructure did not own the land on which tower D was to be constructed, and to induce buyers a BBA was signed which was cancelled more than a year later on 13.08.2013, and the buyer forced to sign the new BBA adding three months to the completion time or risk losing all the money paid.

- e. That respondent no. 1 & 2 promised to complete the project in a timely manner and took huge payments from the complainants. However, the project was inordinately delayed and thereby resulting in huge mental agony and financial losses to the complainants.
- f. That being aggrieved by the acts and omissions of respondent no. 1, the complainants filed a complaint bearing no. 798 of 2018 before the Ld. Real Estate Regulatory Authority, Gurgaon, Haryana, seeking penalty for delay in offering of possession. The Hon'ble Real Estate Regulatory Authority, Gurgaon, Haryana was pleased to pass an order dated 13.03.2019 granting the delay penalty in favor of the complainants and against the respondent no. 1, on the amount paid by the complainants to respondent no. 1 at 10.75% of the interest rate from the due date of possession, i.e., 05.03.2016 till the offer of possession, i.e., 02.01.2019.
- g. That at the time of issuance of letter of offer of possession, the situation of the project was completely uninhabitable and in no position to be granted an occupation certificate dated 17.09.2018. The said offer of



possession given to the complainants is only a frivolous attempt on the part of the respondent no. 1 to wrongly reduce its liability. On first inspection of the unit more than 50 faults were pointed out within the flat to the building supervisor, and the snag list was sent to the customer care of India bulls. It is pertinent to mention here that on 07.05.2019 many faults and shortcomings were pointed in letter acknowledged by customer care India bulls and by offering possession on 11 Jan 2019 the builder reduced his liability even though the flat was not handed over for another five months and was not fit for inhabitation.

- h. That the respondent no. 1 & 2 are grossly negligent in constructing, managing and operating the said project, which resulted in negligible footfalls even till date. The viability of habitation in the said project has been jeopardized on account of failure on the part of respondents to make the project and unit livable. It is stated that the said project and unit is highly ill maintained, crumbling plaster dilapidated, missing lobby windows and inhabitable with no infrastructure to support daily living. The malafides of the respondents are apparent on face of record, when the respondent no. 1 in connivance with other respondents issued pre-mature letter of offer of possession, even when the project was incomplete. It is stated that tower B and C are still under construction and yet to be completed and handed over to the owners. It is also stated that the approach roads are now under construction and the main roads i.e. the Dwarka Expressway, to the project are yet to be constructed.
- i. That the respondent no. 1 & 2, arbitrarily and with malafide intentions had nominated respondent no. 3, which is the sister company of respondent no. 1 and 2, involved in business of maintenance and security. It is stated that the appointment of respondent no. 3 as



maintenance agency was without any prior information or intimation to the complainants and the registered resident's welfare association in the project. It is stated that all the requests to customer care India bulls to provide information and issue of transparency on nomination of respondent no 3 never replied. It is further stated that numerous emails and personal queries were sent to the customer care India bulls and their representatives, but the said communications and queries were ignored and not answered.

- j. That respondent no. 1 transferred the property in name of the complainants vide deed of conveyance dated 13.06.2019 for the unit bearing no. D-151, 15th Floor, having carpet area 1955 sq. ft. and super area 3400 sq. ft. and forced the complainants to deposit an amount of ₹3,80,802/- as maintenance security charges as mandatory applicable charges in the last instalment before signing of conveyance deed and threatened the complainants that until and unless the said payment is not made the conveyance deed will not be made. It is pertinent to mention here that the respondent no 1 did not abide by the statute and its rules. That the respondent no. 2 has four RERA registrations vide RERA registered no 239 of 2017, 351 of 2017, 353 of 2017 and 354 of 2017 and Varali Properties is RERA registered vide 346 of 2017. It is pertinent to mention here that "India bulls Enigma" Varali Properties owns only 3.256 acres of land for Tower D, whereas the balance of 19.856 acres is owned by Athena Infrastructures Ltd for all Towers less D and common areas for club, electrical systems, water, sewage and sports. All common areas of the project less the lift lobbies of Tower D are under Athena Infrastructures who is yet to complete Towers B & C. The four RERA Registration approvals for Athena Infrastructures leave



many doubts for the future, in the conveyance deed there is the clause where the builder may make more buildings.

- k. That the customer care India bulls further coerced the complainants to pay ₹84,252/- to respondent no. 3 as maintenance charges for six months in advance. After full payment made to the respondents in May, 2019, the respondents kept on threatening the complainants that they will not hand over the keys of the said unit to the complainants even after the execution of the conveyance deed until and unless the above-mentioned payments were made in favor of the respondents. Once the cheque was handed over the respondent on 14.06.2019, the respondent handed over the keys of the flat.
- l. That the customer care India bulls also insisted that the complainants sign the maintenance agreement with respondent no. 3 before signing the conveyance deed, which was refused by the complainants as the said pre- printed maintenance agreement was unfair, unethical, biased and geared against the complainants. It is pertinent to mention here that the paragraph 6 of the conveyance deed clearly states that the project is incomplete, thus the respondents 1 & 2 themselves admit that they are continuing construction and owners will be put to inconvenience and hardship.
- m. That intentions of respondents were dishonest right from the beginning and that's why at the time of execution of the conveyance deed the representative of the respondents have promised to execute the maintenance agreement on mutual agreed terms, but again shared a copy of pre-printed, unilateral terms and conditions of the maintenance agreement with the complainants. It is further stated that the said terms and conditions are entirely unfair, unjust, unconscionable, oppressive



and one-sided. Moreover, a perusal of the terms and conditions of the said maintenance agreement makes it abundantly clear that they are a reflection of the wide disparity between the bargaining power, and status of the parties involved. It is clearly evident from a bare read of the said agreement that the respondents have imposed completely biased terms and conditions, thereby tilting the balance of power in their favor.

- n. That the complainants with bonafide intentions in person suggested various amendments to the head of Soril deputed to look after the project, in the said pre-printed, unilateral, unfair, unjust, unconscionable, and oppressive and one-sided maintenance agreement but the respondents never considered the suggestions from the complainants. Therefore, no such maintenance agreement was ever executed.
- o. That the respondents are not entitled to charge or recover any maintenance charges, as the said project is not complete in all aspects and construction on the site of the project is still going on. It is stated that only few units in the said project are occupied. Moreover, the respondent no. 1 is liable to pay the delay penalty charges to the Complainants granted by the Hon'ble Real Estate Regulatory Authority, Gurgaon, Haryana vide its order dated 13.03.2019 in favor of the complainants and against the respondent no. 1.
- p. That the demands raised by the respondents are ex-facie illegal inasmuch as the project is incomplete and the respondents have failed to perform their obligations towards the said project. It is stated that the respondents have failed to disclose the facilities, which were provided by them and the expense sheet on basis of which the said



mischievous and misconceived calculations have been done by them to inflate claims and raise exorbitant demands towards alleged maintenance. The malafides of respondent no. 1 are apparent on face of record, when respondent no. 1 in connivance with other respondents issued pre-mature letter of offer of possession, even when the project was incomplete. It is stated that the respondents were grossly negligent in constructing, managing and operating the said project, which resulted in negligible footfalls. The viability of habitation in the said project has been jeopardized on account of failure on their part to make the project and unit highly unsafe, dilapidated and inhabitable. Furthermore, the respondents should not have an audacity to claim any maintenance charges, when the complainants are yet to be compensated for the inordinate delay for around three (3) years in handing over the unit.

- q. That in absence of maintenance agreement, there is no cause or reason for the respondent to raise the demand towards maintenance charges. The demand raised by the respondents is wholly illegal and untenable and they are liable to withdraw the same. That the respondents are liable to refund an amount of ₹3,80,802/- and ₹84,252/- which they have asked from the complainants to deposit towards the maintenance security charges at the time of execution of conveyance deed and six months maintenance advance charges before handing over the keys of the flat on possession. The respondents are further liable to perform their obligations and ensure proper foot fall in the project to enable the complainants to use their unit.
- r. That the respondents are further liable to provide the complete expense sheet for the expenditure done by them for the maintenance of the



project with specific break-up income from owners and for vacant/incomplete /unsold flats from respondents number 1 & 2, of the proportionate expense on the unit of the complainants with proper bifurcation of actual cost and additional profit load on the cost.

- s. That being aggrieved by the acts and omission of the respondents that the complainants issued a legal notice dated 29.01.2022 to the respondents calling them to withdraw their illegitimate demands towards the maintenance charges, to refund an amount of ₹4,65,054/-. The respondents failed to act accordingly. Hence the present complaint.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s).
- Direct respondents 1 & 2 to hand over the maintenance to the RWA/ Association of Allottees, which was formed under the relevant provisions of law.
 - Direct the respondents 1, 2 & 3 not to demand any maintenance charges till handing over of maintenance to Association of Allottees.
 - Direct the respondent to withdraw the maintenance demand letters issued by the respondent in respect of the unit bearing no. D-151, 15th floor, having carpet area 1955 sq. ft. and super area 3400 sq. ft. belonging to the complainants.
 - Direct the respondent to refrain it selves from issuing any further demand till the execution of maintenance agreement on mutually agreed terms between the association of allottees and the maintenance agency.
 - Direct the respondent to refund an amount of ₹3,80,802/- which the respondents have forced the complainants to deposit towards the



maintenance security deposit charges at the time of execution of conveyance deed.

- f. Direct respondent no 3 to refund ₹84,252/- forcibly taken as maintenance charges for six months on 14 Jun 2019.
 - g. Direct respondent no 1 to refund ₹4,56,962/- with interest for three years taken for 33 KV Line which has not been laid till date.
 - h. Direct the respondent to the provide information and details of the maintenance charges collected for unsold flats in all towers less B & C, possession not given flats and flats of tower B & C flats under construction.
 - i. Direct the respondents to provide audited accounts for the last three years, i.e., 18-19,19-20, 20-21 and facilities which were provided by the respondents and the expense sheet on basis of which the maintenance calculations have been done.
 - j. Direct the respondents to reply satisfactorily all queries addressed to them by owners.
 - k. Direct the respondents to pay a sum of ₹50,000/- to the complainants towards cost of litigation.
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 no. 1 & 2 has contested the complaint on the following grounds.
 - a. That the instant complaint filed by the complainants qua the answering respondent is not maintainable, on facts or in law, and is as such liable



- to be dismissed/ rejected at the thresh hold, being filed wrongly and is liable to be dismissed on the same ground.
- b. That the present complaint is devoid of any merits and has been preferred with the sole motive to harass the answering respondent. In fact the present complaint is liable to be dismissed on the ground that the said claim of the complainants is unjustified, misconceived and without any basis as against the answering respondent. That the present complaint is baseless and flagrant abuse of process of law to harass the respondent no.1.
- c. That it is submitted that the allegations made in the instant complaint are wrong, incorrect and baseless in the fact and law as such denied in toto. Nothing stated in the said complaint shall be deemed to be admitted by the respondent no.1 merely on account of non-transverse, unless the same is specifically admitted herein. The instant complaint is devoid of any merits and has been preferred with the sole motive to extract monies from the answering respondent, hence the same is liable to be dismissed.
- d. That the instant complaint filed by the complainant against the answering respondent is outside the purview of this Hon'ble Authority as the complainants through their complaint is disputing the charges towards maintenance for which demand was raised by the maintenance agency and not by the answering respondent as such the claim qua the respondent no.1 is not maintainable.
- e. That the complainant is disputing the offer of possession which the respondent no.1 issued to the complainant after receipt of occupational certificate for the tower wherein the complainants got booked their unit. It is submitted that the occupational certificate was issued the



- Director General, Town and Country Planning Department, Haryana by the competent authority i.e. after conducting inspection. That any dispute/ grievance of the complainants if any with respect to occupational certificate is to be taken up before the competent authority only and not before the Hon'ble Authority.
- f. That the present complaint of the complainants is liable to be rejected qua the answering respondent on the sole ground that the complainants are disputing the offer of possession as pre-mature, however have already taken the physical possession of the same and also conveyance deed is executed for the unit on 13.06.2019 which is also placed on record by the complainants.
- g. That the relationship was started between the respondent no.1 & the complainants upon execution of application form for provisional allotment of the flat in group housing project titled as "Indiabulls Enigma", in Sector-110, Gurugram (Haryana) ("project"). Subsequently, builder buyer agreement ("agreement") dated 05.10.2013 was executed unit bearing no. D151 in the project, whereby the complainants have agreed upon various terms & conditions, as stipulated therein. Amongst other clauses agreed, the complainants have specifically agreed upon the applicability of maintenance charges on the unit.
- h. That it was further agreed between the respondent no.1 and the complainants vide clause 34 of the agreement that, a separate "agreement for maintenance" will be executed for the booked unit, at the time of taking possession of the unit. Apart from execution of maintenance agreement, clause 34 further defines & clarifies the obligation upon the complainants to pay maintenance charges either to

the respondent no.1 or the maintenance agency while taking possession of their unit, which is re-produced hereunder for ready reference of this Hon'ble Authority:

".....The Buyers shall pay proportionate maintenance charges as may be determined by the Developer or its nominee/maintenance agency from time to time for maintenance and upkeep of common areas and services of the Complex. Such charges shall be determined by the maintenance agency subject to escalation/ variation in prices of consumables and / or increase of present levies or imposition of new ones by any authorities. Delay in payment of maintenance charges will make the Buyer liable for interest @ 18% per annum. Non-payment of the charges within the time specified may also dis-entitle the Buyer to the enjoyment of common services and facilities such as watch and ward, water, electricity, lifts. The Buyer agrees to sign a separate Maintenance Agreement with the Developer or their nominee Maintenance Agency before taking possession of the Unit incorporating inter alia the said terms. The Buyer agrees and consents to the arrangement herein....."

- i. That it is also pertinent to mention herein the Section 19(6) of the Real Estate (Regulation And Development) Act, 2016, whereby it has been clarified that the allottee who has entered into an agreement for sale will be responsible to make payments towards maintenance charges time to time once the possession of the unit is handed over to him, and in the event the allottee fails to meet his obligation the allottee shall also be liable to pay interest on the outstanding maintenance charges, same is reproduced as below:

"Section 19(6) Every Allottee, who has entered into an agreement for sale to take an apartment, plot or building as the case may be, under Section 13, shall be responsible to make necessary payments in the manner and within the time as specified in the said agreement for sale and shall pay at the proper time and place, the share of the registration charges, municipal taxes, water and electricity charges, maintenance charges, ground rent, and other charges, if any."

Section 19(7) The allottee shall be liable to pay interest, at such rate as may be prescribed, for any delay in payment towards any amount or charges to be paid under Sub-section (6)."

- j. That it is worth to highlight herein that, till the time of handing over the completed project in the hands of the association of allottee /RWA of the project, it is the duty & responsibility of the promoter/ developer for providing and maintaining essential services like parks, lobbies, stairs, elevators, fire escapes, entrances and exits of the building, common parking areas, power, light etc. the things that are necessary for the existence, maintenance and safety of the allottees who had taken possession of their respective unit, on the reasonable maintenance charges i.e. ₹3.50/- per sq. ft. plus GST to be paid by the occupants of the project, which is at a very minimum cost as compare to any other residential project.
- k. That the complaint of the complainants qua the respondent no.1 pertains to maintenance charges/cost which are paid to respondent no.3 "**SORIL INFRA RESOURCES LTD,**"(Maintenance Agency) and not the answering respondent. That as per the letter dated 11.01.2019, the complainants were informed that 06 months advance maintenance charges are in terms of the application form /buyers agreement, and further that the cheque is to also to be issued in the name of the maintenance agency.
- l. It is stated that the complainants have not come before this Hon'ble Authority with clean hands and wishes to take advantage of the provisions of the RERA, which have been propagated for the benefit of customers who have suffered wrongful losses in the Real Estate Sector,

however the present complaint is mere an afterthought with purpose to harass the answering respondent.

- m. That it is pertinent to mention here that from the very beginning it well within the knowledge of the complainants, that at the time of possession offer they will have to pay charges towards Interest Free Maintenance Security (IFMS) and towards electricity charges. That all the cost and charges paid by the complainants were strictly in terms of the buyer's agreement dated 05.10.2013, and nothing has been demanded from the complainants which are not part of the buyer's agreement.
- n. It is a respectful submission of the respondent that a bare perusal of the complaint will sufficiently elucidate that the complainants have miserably failed to make a case against the respondent no.1. It is submitted that the complainants have questioned the legality of the occupational certificate, adjudication of which can be done by the competent authorities only and is not maintainable before this Hon'ble Authority.

E. Reply by respondent no. 3: -

- a. That the instant complaint filed by the complainants qua the answering respondent is not maintainable, on facts or in law, and is as such liable to be dismissed/ rejected at the thresh hold, being filed superfluously impleading the respondent no.3 as a party to the complaint. Hence the instant complaint against the respondent no.3 is liable to be dismissed on the same ground.
- b. That the present complaint qua the answering respondent is not maintainable before the Hon'ble Authority for the reason that the answering respondent is neither the developer of the project under dispute nor promoter of the real estate project, as such do not fall under

the purview of the Real Estate (Regulation and Development) Act 2016. Hence, this Hon'ble Authority cannot adjudicate the present complaint qua the answering respondent. That dispute if any, qua the answering respondent can only be raised before civil courts and not before this Hon'ble Authority.

- c. That the present complaint was filed on 22.06.2022 as per the Performa-B of the complaint. It is submitted that a termination agreement dated 05.01.2023 the terms of which are effective from 01.04.2022, got executed between the respondent no.2 and answering respondent whereby terminating the answering respondent of services as contractor /maintenance agency. Accordingly, it is submitted that as on the date of filling of the present dispute against the answering respondent, the same was not on contract of the respondent no.2 for the project under dispute. As such the present complaint against answering respondent is liable to be dismissed.
- d. That the complainant has preferred the present complaint with the sole motive to harass the respondent no.3. That there is no privity of contract between the complainant and the respondent no.3, hence the contentions taken in the instant complaint by the complainants against the respondent no.3 are false, baseless and without any veracity. Hence the instant complaint filed against respondent no.3 is liable to be dismissed on the very sole ground.
- e. That it is submitted that the allegations made in the instant complaint against the respondent no.3 are wrong, incorrect and baseless in the fact and law. The respondent no.3 denies them in toto. The instant complaint is devoid of any merits and has been preferred with the sole motive to extract monies from the respondent no.3 and defame the

reputation of the answering respondent, hence the same is liable to be dismissed in limini.

- f. It is respectfully submitted that there is no privity of contract between the complainant and the respondent no.3, hence in the absence of any relationship between the complainant and the answering respondent, the complainant is not entitled for any claim/relief from the respondent no. 3 as contended in the instant complaint.
- g. It is respectfully submitted before this Hon'ble Authority that the relationship that forms the basis of the instant complaint arises out of the documents executed by and between the complainant and the developer of the tower wherein the complainant booked their unit. It is pertinent to note that there is no contractual relationship between complainant and the answering respondent since no documents were ever signed/executed by and between the complainants and the respondent no.3. Ergo, there is no legal relationship or privity of contract between the complainant and the respondent no.3. Therefore, in light of the fact that there is no contract between the answering respondent and the complainant and no alleged cause of action qua the answering respondent has arisen in favor of the complainant, much less as alleged.
- h. It is a respectful submission of the respondent no.3 that a bare perusal of the complaint will sufficiently elucidate that the complainants have miserably failed to make a case against the respondent no.3. It is submitted that the complainant has merely alleged in his complaint about delay on part of the respondents no.3, but have failed to substantiate the same against respondent no.3. In view of the same the

complaint of the complainant against the respondent no.3 is baseless and false and is liable to be dismissed.

- i. That the complainant have made false and baseless allegations against the respondent no.3 and further impleaded them as a party in the instant complaint with a mischievous intention to take illicit benefits from the respondent no.3. It is submitted that there is no cause of action in favour of the complainant and against the respondent no.3 to institute the present complaint against respondent no.3 and hence needs to be dismissed.

7. 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.

F. Jurisdiction of the authority

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

F.I Territorial jurisdiction

9. 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.

F.II Subject-matter jurisdiction

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

Section 11

.....

(4) The promoter shall-

(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

Section 34-Functions of the Authority:

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

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

G. Findings on the relief sought by the complainants.

- G. I Direct respondents 1 & 2 to hand over the maintenance to the RWA/ association of allottees, which was formed under the relevant provisions of law.**
- G. II Direct the respondents 1, 2 & 3 not to demand any maintenance charges till handing over of maintenance to association of allottees.**

12. The above mentioned reliefs are being taken up together for adjudication being similar in nature. The authority observes that certain rights and obligations which flows to a promoter as per the Act of 2016 are discussed herein below:

13. Section 11(4)(d) states that the promoter shall be responsible for providing and maintaining the essential services, **on reasonable charges, till the taking over of the maintenance** of the project by the association of the allottees.
14. Moreover, as per section 11(4)(e) of the Act, it is very clear that the promoter is under an obligation to **enable the formation of an association** or society or cooperative society, as the case may be, of the allottees or a federation of the same, under the laws applicable.
15. Section 11(4)(f) states that the promoter shall execute a registered conveyance deed of the apartment, plot or building, as the case may be, in favour of the allottee **along with the undivided proportionate title in the common areas to the association of allottees** or competent authority, as the case may be, as provided under section 17 of this Act.
16. Further, section 11(4)(g) states that the promoter shall pay all outgoings **until he transfers the physical possession of the real estate project to the allottee or the associations of allottees**, as the case may be, which he has collected from the allottees, for the payment of outgoings (including land cost, ground rent, municipal or other local taxes, charges for water or electricity, maintenance charges, including mortgage loan and interest on mortgages or other encumbrances and such other liabilities payable to competent authorities, banks and financial institutions, which are related to the project).
17. Section 17(2) of the Act says that after obtaining OC and handing over physical possession to the allottees in terms of sub section (1), it shall be the responsibility of the promoter to handover the necessary documents, plans, including common areas, to the association of the allottees or the competent

authority, as the case may be, as per the local laws. The clause is reproduced below for reference:

17. Transfer of title.—(1) *The promoter shall execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of the allottees or the competent authority, as the case may be, and hand over the physical possession of the plot, apartment of building, as the case may be, to the allottees and the common areas to the association of the allottees or the competent authority, as the case may be, in a real estate project, and the other title documents pertaining thereto within specified period as per sanctioned plans as provided under the local laws:*

Provided that, in the absence of any local law, conveyance deed in favour of the allottee or the association of the allottees or the competent authority, as the case may be, under this section shall be carried out by the promoter within three months from date of issue of occupancy certificate.

(2) *After obtaining the occupancy certificate and handing over physical possession to the allottees in terms of sub-section (1), it shall be the responsibility of the promoter to **handover the necessary documents and plans, including common areas, to the association of the allottees or the competent authority, as the case may be, as per the local laws:***

Provided that, in the absence of any local law, the promoter shall handover the necessary documents and plans, including common areas, to the association of the allottees or the competent authority, as the case may be, within thirty days after obtaining the [completion] certificate.

18. Furthermore as per section 19(6) of the Act, 2016, every allottee, who has entered into an agreement for sale to take an apartment, plot or building as the case may be, under section 13(1) of the Act, shall be responsible to make necessary payments in the manner and within the time as specified in the said agreement for sale and shall pay at the proper time and place, the share of the registration charges, municipal taxes, water and electricity charges, **maintenance charges**, ground rent, and other charges, if any.
19. The authority observes that an association have been formed by the allottees and has also been registered under the Haryana Registration & Regulation

of Societies Act, 2012 vide no. HR018/2020/02484 with the name "Enigma Residents Welfare Association" on 01.06.2020. However the same has not been recognised by the respondent till date.

20. From the above provisions, specifically section 11(4)(d) & (f) read with section 17 of the Act, it is quite evident that the respondent-promoter shall enable the formation of association of allottees and is liable to handover the necessary documents, plans, including common areas, to the association of the allottees in the real estate project. Also, on 09.01.2024 the counsel for the respondent stated at bar that the respondent is ready to handover the maintenance to the duly constituted RWA. In light of the above, the respondent no.1 & 2 are directed to handover necessary documents, plans, including common areas, to the duly elected association of the allottees within 3 months from the date of this order as per the deed of declaration under provision of the Haryana Apartment Ownership Act, 1983.

G.III Direct respondent no 3 to refund ₹84,252/- forcibly taken as maintenance charges for six months on 14 Jun 2019

21. The above mentioned reliefs are being taken up together for adjudication being similar in nature. The aforesaid issues have already been decided by the authority in complaint bearing no. *CR/4031/2019 titled as Varun Gupta V/s Emaar MGF Land Ltd.* wherein it is stated that the authority deems fit that the respondent is right in demanding advance maintenance charges at the rate prescribed therein at the time of offer of possession in view of the judgements (supra). However, the respondent shall not demand the advance maintenance charges for more than one (1) year from the allottee even in those cases wherein no specific clause has been prescribed in the agreement or where the AMC has been demanded for more than a year. Accordingly the respondent is right in charging the advance maintenance charges for 6 months.

- G.IV. Direct the respondent to withdraw the maintenance demand letters issued by the respondent in respect of the unit bearing no. D-151, 15th floor, having carpet area 1955 sq. ft. and super area 3400 sq. ft. belonging to the complainants.**
- G.V. Direct the respondent to refrain it from issuing any further demand till the execution of maintenance agreement on mutually agreed terms between the association of allottees and the maintenance agency.**
- G.VI Direct the respondent to the provide information and details of the maintenance charges collected for unsold flats in all towers less B & C, possession not given flats and flats of tower B & C flats under construction.**
- G.VII. Direct the respondents to provide audited accounts for the last three years, i.e., 18-19,19-20, 20-21 and facilities which were provided by the respondents and the expense sheet on basis of which the maintenance calculations have been done.**
22. The above mentioned reliefs are being taken up together for adjudication being similar in nature. The authority in the present matter observes that the respondent no.3 being the maintenance agency has issued the invoice of maintenance charges on monthly basis. Furthermore, as per clause 10(v) of the conveyance deed executed on 13.06.2019 it is expressly written that the vendor-respondent has handed over the maintenance of the said complex to SORIL Infra Resources Ltd. which shall be solely responsible for providing uninterrupted maintenance services upon payment of maintenance charges by the vendee-complainants. Thus the maintenance charges are payable by the complainants-allottees.
23. Whereas, as per the findings of the authority w.r.t. the relief no. 1& 2 the respondent no.1 is directed to handover necessary documents, plans, including common areas, to the association of the allottees within 3 months from the date of this order. Although the respondent should have handed over the necessary documents within 3 months from the receipt of OC therefore, the respondent no. 1 & 2 are directed to give justification with respect to the expenditure incurred from the common area maintenance

charges so collected from the allottees till date by the maintenance agency appointed by the respondent within 30 days and is directed to handover the remaining balance to the duly elected association in view of the foregoing provisions within 3 months from the date of this order. If any such expenditure is found to be in conflict with the permissible deductions as per law, the same shall also be transferred to the duly elected association.

G.VIII. Direct the respondent to refund an amount of ₹3,80,802/- which the respondents have forced the complainants to deposit towards the maintenance security deposit charges at the time of execution of conveyance deed.

24. The amount of ₹3,80,800/- has been paid by the complainants to the respondent towards interest free maintenance charges. The issue regarding the IFMS has already been decided by the authority in complaint bearing no. **CR/4031/2019 titled as Varun Gupta Vs. Emaar MGF Land Ltd.** wherein it was held that the promoter may be allowed to collect a reasonable amount from the allottees under the head "IFMS". However, the authority directs and passes an order that the promoter must always keep the amount collected under this head in a separate bank account and shall maintain the account regularly in a very transparent manner. If any allottee of the project requires the promoter to give the details regarding the availability of IFMS amount and the interest accrued thereon, the promoter must provide details to the allottee.
25. In view of the above, the respondent no. 1 & 2 are directed to handover the amount of IFMS collected by it along with the interest accrued on that amount coupled with the detailed account statement to the duly elected association of the allottees under the Haryana Registration and Regulation of Societies Act, 2012 within 3 months from the date of this order. It is further clarified that out of this IFMS/IBMS, no amount can be spent by the

promoter for the expenditure he is liable to incur to discharge his liability under section 14 of the Act.

G.IX. Direct respondent no 1 to refund ₹4,56,962/- with interest for three years taken for 33 KV Line which has not been laid till date.

26. The complainants-allottee have not placed any document on record w.r.t. the demand letter raised by the respondent demanding ₹4,56,962/- on account of laying 33KV line. Moreover, since the OC for the said complex has already been issued by the competent authority on 17.09.2018 and as per condition 16 of the OC the respondent was obligated to apply for connections of electricity within 15 days from the date of issuance of OC. Accordingly, the complainants are directed to approach the competent authority for violation of any terms of the occupation certificate, if any.

G.X. Direct the respondents to reply satisfactorily all queries addressed to them by owners.

27. The above said relief has neither been pleaded by the complainants in their pleadings nor has been argued during the course of hearing accordingly, the authority cannot deliberate upon the said issue.

G.XI. Direct the respondents to pay a sum of ₹50,000/- to the complainants towards cost of litigation.

28. The complainants are also seeking relief w.r.t litigation expenses. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & 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 adjudicating officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses. Therefore, the complainants are

advised to approach the adjudicating officer for seeking the relief of litigation expenses.

H. Directions of the authority

29. 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):

- a. The respondent no.1 & 2 are directed to handover necessary documents, plans, including common areas, to the duly elected association of the allottees within 3 months from the date of this order as per the deed of declaration under provision of the Haryana Apartment Ownership Act, 1983.
- b. The respondent no. 1 & 2 are directed to give justification with respect to the expenditure incurred from the common area maintenance charges so collected from the allottees till date by the maintenance agency appointed by the respondent within 30 days and is directed to handover the remaining balance to the duly elected association in view of the foregoing provisions within 3 months from the date of this order. If any such expenditure is found to be in conflict with the permissible deductions as per law, the same shall also be transferred to the duly elected association.
- c. The respondent no. 1 & 2 are directed to handover the amount of IFMS collected by it along with the interest accrued on that amount coupled with the detailed account statement to the duly elected association of the allottees under the Haryana Registration and Regulation of Societies Act, 2012 within 3 months from the date of this order. It is further clarified that out of this IFMS/IBMS, no amount can be spent by the

promoter for the expenditure he is liable to incur to discharge his liability under section 14 of the Act.

30. Complaint stands disposed of.
31. File be consigned to registry.

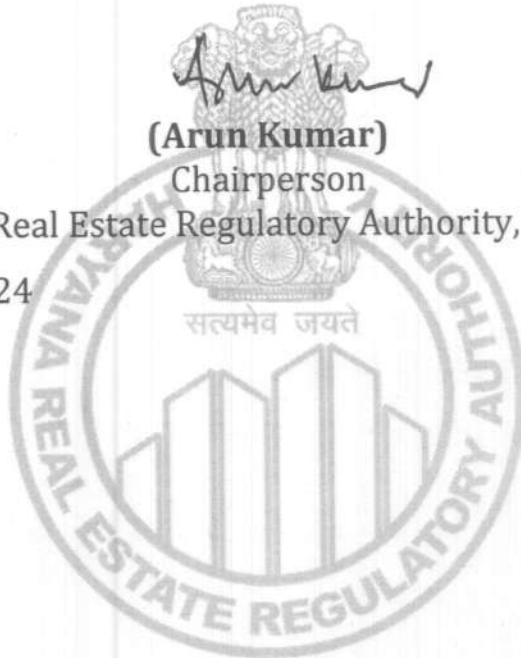

(Ashok Sangwan)
Member


(Vijay Kumar Goyal)
Member


(Arun Kumar)
Chairperson

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 05.03.2024



HARERA
GURUGRAM