

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

Complaint no.: 6439 of 2022
Date of filing: 14.10.2022
Order pronounced on: 29.02.2024

1. Vikas Goyat

2. Sarita Goyat

Both R/o:- A7-703, Tulip Voilet, Sector 69, Gurugram,
Haryana

Complainants

Versus

1. Tulip Infratech Pvt. Ltd.

Regd. Office at:- 1201-1204, Indraparkash
Building, 21-Barakhamba road, New Delhi-
110001

2. Brahm Parkash

R/o:- Tyagi Street, V.P.O Badshapur, Gurugram,
Haryana-122001

3. M/s Apple Facility Services Pvt. Ltd.

Regd. Office at:- 1204, Indraparkash Building, 21-
Barakhamba road, New Delhi-110001

Respondents

CORAM:

Shri Vijay Kumar Goyal

Member

APPEARANCE:

Shri Sukhbir Yadav (Advocate)

Shri Sudesh Ranjan Singh (Advocate)

None

Complainant

Respondent no. 1 & 3

Respondent no. 2

ORDER

1. This complaint has been filed by the complainant/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 provision of the Act or the Rules and regulations made thereunder or to the allottees as per the agreement for sale executed *inter se*.

A. Unit and project related details.

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

S. No.	Particulars	Details
1.	Project name and location	"Tulip Violet, Sector-69-70, Gurugram
2.	Project area	25.44 acres
3.	Nature of the project	Residential group colony
4.	DTCP license no. and validity status	78 of 2010 dated 15.10.2010 valid upto 14.10.2025
5.	Name of licensee	Amit and 7 others
6.	RERA registration details	Registered Vide registration no. 36 of 2018 dated 18.12.2018 valid up to 31.12.2020
7.	Unit no.	703, 7 th floor, tower-A7 (page 62 of complaint)
8.	Unit area admeasuring	2010 sq. ft. (super area) (page 62 of complaint)
9.	Date of execution of agreement	31.01.2022 (page 56 of complaint)
10.	Possession clause	10 (a) Schedule for possession of the said apartment. <i>The construction of the said building/said apartment is completed, and the landowners/vendor has already applied for occupation certificate. The landowner/vendor will offer the physical possession of the said apartment within 30 days from the obtaining the OC from concerned authority.</i> (page 65 of complaint)
11.	Basic sale consideration	Rs.85,00,000/- (as per BBA page 62 of reply)
12.	Amount paid by the complainant	Rs.85,00,000/- (as alleged by complainant page 14 of complaint)

A ✓

13.	Letter for allotment of subject unit by respondent no. 2 to respondent no. 1	08.04.2019 (submitted by complainants with written arguments)
14.	Possession letter	18.02.2022 (page 77 of complaint)
15.	Conveyance deed	18.02.2022 (page 42 of complaint)
16.	Maintenance agreement	10.02.2022 (page 79 of complaint)

B. Facts of the complaint.

3. The complainants have made the following submissions: -

- I. That an agreement to sell was executed between the (collaborator/ authorised vendor) Mr. Brahm Parkash and the complainants vide dated 12.12.2021 for 4BHK, flat no. A7/703 admeasuring 1210 sq. ft. in Tulip Voilet, Sector 69, Gurugram, Haryana where it was clearly mentioned and agreed by the parties that the total sale consideration was Rs.85,00,000/- inclusive of 1 covered car parking, 1 open car parking, GST, IFMS (Interest Free Maintenance Security), Electricity Maintenance Charges, External Development Charges, Internal Development Charges, VAT etc. The complainants paid Rs.3,00,000/- on the same day.
- II. That the conveyance deed was executed by M/s Tulip Infratech Pvt. Ltd. and Mr. Brahm Parkash in favour of complainants vide registration of conveyance deed no. 12702 dated 18.02.2022. All the payments amounting to Rs.85,00,000/- of the total sale consideration was paid by the complainants as per the demand by the respondents.
- III. Further, the respondents demanded an amount of Rs.1,50,000/- in the name of IFMS charges. The complainants wrote several emails dated 07.02.2022, 12.02.2022, 09.03.2022, 11.03.2022, 17.04.2022, 20.06.2022, 31.07.2022 and 06.09.2022 raising objections regarding IFMS demand raised, No dues certificate, account statement and car parking. The complainants' parents being senior citizens suffering from severe diseases

A

are facing difficulties to walk for car parking in another tower/tower basement.

- IV. That 9 car parking slots are free and lying vacant in the basement in subject unit tower i.e. A7. The slots have been reserved for tower B11 flats. But, builder/collaborator has not sold any flat from tower B11 so far. Further, there are 16 open car parking slots in front of Tower A7, which have been reserved for Tower A5/A6 flats. The tower A6 flats are not sold by builder/collaborator and the parking slots are lying vacant.
- V. That all the requests made by the complainants went in vain and there were no positive reply and solutions offered by the respondent(s). The complainants left with no option approached the Authority Gurugram, seeking justice as per RERA Act, 2016 and Rules 2017.

C. Relief sought by the complainants:

4. The complainant has sought following relief(s):
- To revoke or cancellation of demand of IFMS Charges amount Rs. 1,50,000/- from conveyance deed.
 - Direct the respondent(s) for issuing a No Dues Certificate.
 - Instruct the respondent for allotment of covered/basement car parking's in the same tower in which unit is allotted to the complainants.

D. Reply by the respondent.

5. The respondent contested the complaint on the following grounds: -
- That the complainants entered into a buyer agreement with the respondent no. 2 on 31.01.2021 wherein the respondent no. 1 was only the confirming party and post execution of the said agreement the subject unit had been allotted to the complainants subject to the performance of the obligations obligated upon them. It has specifically been appended therein that the consideration of unit shall not include IFMS and other incidental charges which includes but not limited to payment towards stamp duties, registration charges etc. The clause 1 sub-clause 1.1 to 1.13 duly set out the terms and conditions of the payment, tax and other ancillary charges which bind the complainants with respect to said transaction.

A

- b. That the conveyance deed was executed between the respondent no. 1 & 3 in favour of complainants, every aspect has been made crystal clear therein that the price of the unit doesn't include Interest Free Maintenance Security (IFMS), other related, incidental and/or contingent charges etc. The para 2(c) of the conveyance deed states:

"That the above price of the flat does not include membership fee for the re-recreational club/gym, payment towards Interest Free Maintenance Security (IFMS), Stamp Duty and other incidental or allied charge payable towards the execution of Conveyance

Deed, proportionate charge towards instruments/security deposits required for pipe gas supply (if provided), taxes, GST & or VAT (as applicable) and/or any other impositions or levies any Govt. or local Authorities and Agencies from time to time and all other charges or levies not specifically defined in the terms of the agreement but levied or imposed by any authority under any relevant Rules, Act or Notification etc. as per its proportionate imposition thereupon"

- c. That the complainants are under an obligation to make payment at towards 'Interest Free Maintenance Security' (IFMS) which shall be separately maintained by respondent no.3. The IFMS is not a part of sale consideration of the unit. The amount of IFMS has to be charged in addition to the consideration of the unit along with other charges as defined and revealed therein the transactional documents signed and executed by the complainants. However, herein the IFMS has neither been charged by respondent no.1 nor by respondent no. 3 at any point of time. As a trade practice, if any such charges have been charged from the allottee(s), a separate receipt depicting the receipt of such charges will be issued to the concerned. If any such documentary proof is in the possession of the complainants, they are supposed to adduce the same to corroborate their version for all intent and purposes.

6. The present complaint was filed on 14.10.2022 in the Authority. On 14.02.2023 the respondent no.2 was directed to file the reply within 2 weeks in the registry of the Authority. However, despite specific directions and providing an opportunity of being heard, no written reply has been filed by

the respondent no.2. Thus, keeping in view the opportunity given to the respondent, the respondent failed to file the reply in the registry. Therefore, in view of order dated 27.07.2023, the defence of the respondent no.2 was struck off.

E. Written submissions by the complainants.

7. The complainants have filed the written submission on 26.10.2023 and made following submissions:

i. That the maintenance agreement was executed between the M/s Apple Facility Services Pvt. Ltd. and complainants on 10.02.2022. The complainants were asked to execute the maintenance agreement wherein clause no.4 of the agreement categorically stated:

*"In Order to secure timely payment and due performance, by the Buyers) if its obligations, under this agreement, the Buyers) has deposited with the maintenance Company a sum of
Rs. 1,00,000/- (Rs. One Lac Only) for 2 BHK,
Rs. 1,00,000/- (Rs. One Lac Only) for 3 BHK
Rs. 1,50,000/- (Rs. One Lac Fifty Thousand only) for 4 BHK"*

ii. The complainants were assured that the IFMS charges are already by them to respondent no.3.

iii. However, when the respondent no.3 was asked to execute the said agreement, the respondent no.3 overwrite the IFMS charges with use of blue pen and wrote 'IFMS NIL' and provided same to the complainants.

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

9. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submissions made by the parties.

F. Jurisdiction of the Authority:

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

F.I Territorial Jurisdiction:

A

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

F.II Subject-matter Jurisdiction:

12. 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)(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.

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

G. Findings on the relief sought by the complainants.

G.I. Direct the respondent to revoke or cancellation of demand of IFMS charges amount Rs.1,50,000/- from conveyance deed.

G.II Direct the respondent to issue no dues certificate.

14. The above-mentioned reliefs sought by the complainants are being taken together as the findings in one relief will definitely affect the result of the other relief and the same being interconnected.

A

15. The facts presented in this case reveals that the respondent no. 2 (Mr. Brahm Parkash) entered into an agreement to sell dated 12.12.2021 with the complainants for the sale of a 4BHK flat unit no. A7/703 admeasuring 1210 sq. ft.. As per the terms of the agreement to sell, the total sale consideration for the unit was Rs.85,00,000/-, which included charges for IFMS (Interest Free Maintenance Security) and other charges. The relevant portion of the agreement to sell is extracted below:

"WHEREAS THE VENDOR has agreed to transfer all his rights and interest in the said property and the VENDEE has agreed to purchase the same for a total sale consideration of RS.85,00,000/- (Rupees Eighty Five Lacs Only). Inclusive of 1 covered car parking & 1 open Car parking. 'GST, IFMS (Interest Free Maintenance Security), Electricity Maintenance Charges, External Development Charges, Internal Development Charges, VAT etc."

16. Prior to the agreement to sell, the respondent no. 1 (M/s Tulip Infratech Pvt. Ltd.) issued a letter dated 08.04.2019 to the respondent no. 2, wherein it was clearly stated that before handing over possession of the flat, the respondent no. 2 shall have to pay the IFMS and other charges. This indicates that the respondent no. 2 was contractually obligated to pay the IFMS charges to the respondent no. 1 before completing the sale transaction with the complainants. The relevant part of the abovesaid letter is extracted below:

1. "Before handing over the possession of the flat, you shall enter into flat buyer agreement with the company and shall have to pay GST/VAT, Electricity Connection Charges, Interest Free Maintenance Security Deposit (IFMS) and maintenance charges etc"

17. However, the respondent no.2 has failed to put in appearance during proceedings and provide any documentary evidence to show that the IFMS charges have, in fact, been paid by the respondent no. 2 to the respondent no. 1. This lack of evidence is further compounded by the complainants' allegations that they have made several requests through emails, dated 07.02.2022, 12.02.2022, 09.03.2022, 11.03.2022, 17.04.2022, 20.06.2022, 31.07.2022, and 06.09.2022, to the respondent no.1, raising objections regarding the IFMS charges being paid to respondent no.3 by the respondent

no.2 and seeking a "No Dues Certificate" and account statement, but have received no positive response.

18. A, burden of proof lies on the respondent no. 2 to demonstrate that the IFMS charges have been paid to the respondent no. 1, as per the terms of the allotment letter and the agreement to sell. In the absence of such evidence, it is clear that the respondent no. 2 has failed to fulfil his contractual obligation to pay the IFMS charges to the respondent no. 1 before handing over possession of the unit to the complainants.

19. Therefore, the respondent no. 2 (Mr. Brahm Parkash) is required to pay the IFMS charges to the respondent no. 1 (M/s Tulip Infratech Pvt. Ltd.) within a period of 30 days from the date of this order. Upon receipt of the IFMS charges from the respondent no. 2, the respondent no. 1 shall be responsible for passing on the IFMS charges to the respondent no.3. Further, the respondents shall provide the complainants revised account statement within 30 days from the date of this order.

G.III. Instruct the respondent for allotment of covered/basement car parking's in the same tower in which unit is allotted to the complainants.

20. The complainants have raised concerns regarding the allocation of car parking slots, stating that there are 9 free and vacant car parking slots in the basement of the subject unit tower (A7) that have been reserved for the flats of tower B11, even though the units in tower B11 have not been sold yet. There are also 16 open car parking slots in front of tower A7 that have been reserved for the flats of towers A5/A6, where the units have not been sold. This allocation of car parking slots raises concerns about the accessibility of the parking facilities for the complainants.

21. The Authority, after carefully considering the submissions presented by the parties, finds that the complainants have failed to substantiate their claims with any documentary evidence or established agreements regarding the allocation of car parking slots. In the absence of such material proof, the

Authority is unable to ascertain the legitimacy of the complainants' concerns about the claimed difficulties for the parking facilities. Furthermore, the Authority observes that, in the absence of any binding contractual obligations, the respondent appears to have exercised its discretion in the management and distribution of the parking slots, which falls within the scope of the respondent's right. Hence, the Authority cannot accede with the above sought relief in absence of any agreed terms between the parties.

H. Directions of the authority

22. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

- i. The respondents are directed not to charge any amount on account of IFMS from the complainants and to issue fresh account statement to the complainants for the subject unit.
- ii. The respondent shall not charge anything from the complainants which is not the part of the buyer's agreement.

23. Complaint stands disposed of.

24. File be consigned to registry.

Dated: 29.02.2024


(Vijay Kumar Goyal)
Member
Haryana Real Estate
Regulatory Authority,
Gurugram