

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

**Complaint no. :** 3893 of 2021  
**Order reserved on:** 02.04.2024  
**Order pronounced on:** 09.07.2024

Atharva Residents Welfare Association  
(Through Sh. Ashok Topa, Secretary)

**Registration no.** HR-018-2014-01494 dated  
21.07.2014 under Haryana Registration and  
Regulation of Societies Act, 2012

**Regd. Office:** - RWA Office, Club House, Raheja  
Atharva, Sector- 109 Gurugram Haryana - 122017

**Complainant**

**Versus**

M/s Raheja Developers Limited.

**Regd. office:** W4D, 204/5, Keshav Kunj, Western  
Avenue, Cariappa Marg, Sainik Farma, New Delhi-  
110062

**Corporate office:** 406, Rectangle One, D-4, District  
Center, Saket New Delhi- 110017.

**Also, at:** - Raheja Mall, 3<sup>rd</sup> Floor, Sector- 47, Sohna  
Road, Gurugram - 122001

**Respondent**

**CORAM:**

Shri Arun Kumar  
Shri Ashok Sangwan  
Shri Sanjeev Kumar Arora

**Chairman**  
**Member**  
**Member**

**APPEARANCE:**

Shri Aaditya Vijay Kumar (Advocate)  
Shri Garvit Gupta (Advocate)

Complainant/Association  
Respondent/promoter

**ORDER**

1. The present complaint has been filed by the complainant in form CRA 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 14(3) of the Act wherein it is inter alia prescribed that the promoter is liable to rectify any structural defect or any other defect in workmanship, quality or provisions of services if such defect is brought to the notice of the promoter within a period of five years from the date of handing over possession without further charge within 30 days. Further, in the event the promoter fails to rectify the defect within such time, the aggrieved allottees shall be entitled to receive appropriate compensation in the manner as provided under the Act.

**A. Unit and project related details**

2. The particulars of the project, details of the complainant, etc. have been detailed in the following tabular form:

S. No.	Particulars	Details	
1.	Project name and location	"Raheja Atharva", Sector-109, Gurugram	
2.	Project area	14.812 acres	
3.	Nature of project	Residential Group Housing Colony	
4.	RERA registered/not registered	Registered vide no. 90 of 2017 dated 28.08.2017	
5.	RERA registration valid up to	27.08.2022 5 Years from the date of revised Environment Clearance	
6.	DTPC License no.	257 of 2007 dated 07.11.2007	
	Validity status	06.11.2017	
	Name of licensee	Brisk Construction Pvt. Ltd and 3 others	
7.	Occupation Certificate detail	<b>20.05.2014</b>	<b>19.11.2014</b>
		A, B, C, D and EWS	For Tower: - E, F, I, II, and III
8.	Date of environment clearance	01.04.2009 [As per obtained by planning branch]	
9.	<b>Resident housing group society</b>	<b>Registered vide no. HR-018-2014-01494 dated 21.07.2014</b>	



<p><b>"Atharva Residents Welfare Association" - RWA</b> complainant herein (Through Sh. Ashok Topa,)</p>	<p>under Haryana Registration and Regulation of Societies Act, 2012</p>
--	---

**B. Facts of the complaint**

3. The complainant/association has made the following submissions in the complaint: -
- i. The present complaint is filed by the Atharva Residents Welfare Association. The present complaint is signed and verified by Mr. Ashok Topa who is authorized by resolution dated 06.06.2021 to sign and verify all pleadings and petitions and to represent the complainant/association.
  - ii. The complainant herein the association has been duly registered on 21.07.2014 under the Haryana Registration and Regulation of Societies Act, 2012 having its registered office at Maintenance Office, Vedaanta Apartments, Sector 108, Gurugram, and Haryana. Being the resident's welfare association, the residents living in the society automatically are members of the complainant/association. This is in terms of Bye Law No. 5 of the Bye Laws of the association
  - iii. That the respondent acquired land admeasuring 14.812 acres (approx.) situated in village Pawla, Khusrupur, Gurugram, Haryana presently falling in Sector 109, Gurugram with the intention of constructing a group housing colony. The respondent received its license for the project in the year 2007, and it announced its plans

to construct a housing colony, bifurcated in two separate blocks under the name and style of '**Atharva**' (having Eleven (11) residential towers from towers no. A to H consisting of luxurious 4BHK and 3BHK apartments) and '**Shilas**' (having Three (3) residential towers consisting of towers T1, T2 and T3 having 3 BHK compact apartments) on the acquired land. The entire housing colony proposed to be constructed by the respondent, comprising of both Atharva and Shilas.

iv. That the respondent made several representations regarding the said project with the deliberate intention to lure homebuyers to invest in the project. The respondent represented that the said residential colony would be a luxury residential society consisting of 440+ units which would be complete with modern amenities, high quality construction and quality facilities/amenities such as health club, spa, gymnasium, swimming pool, waste management, lifts, WIFI connectivity, dedicated access parking etc. Believing the representations made by the respondent to be true, several innocent homebuyers came forward to invest their hard earned monies in the said project. Accordingly, allotment letters were issued. Thereafter, two agreements were executed with each resident i.e., the flat buyer's agreement and the maintenance agreement. The terms of the flat buyer's agreement are as under:

- a) The respondent undertook that it would provide not only a unit in 36 months but would also provide maintenance services;

- b) As per clause 3.3: It was represented that parking would be provided by the respondent to the allottee;
  - c) As per clause 4.1: The condition precedent for grant of possession was that the allottee was required to pay IBMS to the respondent or the maintenance agency appointed by it (for which a separate agreement was to be executed);
  - d) As per clause 8.13: The respondent was to plan and distribute the electrical load in conformity with the systems;
  - e) As per clause 8.14: The respondent agreed that upon the incorporation of the apartment owners association, the common equipment would be transferred to the apartment owners association.
- v. That the members of the association/homebuyers verily believed that the project will be completed within the stipulated time. However, after receiving huge amounts of monies, the respondent deliberately failed to honour its obligations. The respondent failed to deliver the project as undertaken thereby causing grave hardships to the members of the association. Similarly, a maintenance agreement was executed between the allottee and the respondent.
- vi. Finally on 20.05.2014 and 19.11.2014, the respondent managed to obtain occupancy certificates on 20.05.2014 and 19.11.2014 for the said project. The terms of the occupancy certificates stated hereinabove were that:
- a) The respondent would obtain a connection for disposal of sewerage and drainage within 15 days from the issuance of the occupation certificate;
  - b) The respondent would maintain roof top rain water harvesting system properly and keep it operational all the time;
  - c) The respondent was to be responsible for the supply of water;

- d) The basement, community sites, shopping complex was to be completed within a period of three months from the issuance of the occupation certificate;
  - e) The occupancy certificate made the respondent submit power load requirement within a period of 2 months. In other words, the respondent was to apply for permanent residential electricity connection and discontinue the commercial electricity connection obtained for the purposes of construction;
  - f) The provision of parking was to be made in the area earmarked/ designated for parking in the colony.
- vii. That upon taking possession (possession was taken at differing times by the residents), it was found that the project was incomplete and did not provide basic amenities and the is set out hereunder:-
- a) Non-functional sewage treatment plant, solar system, gas connections, swimming pool, diesel generator set, firefighting and fire detection system. (**Note:** this was contrary to the occupation certificate as also the provisions of the Act, 2016);
  - b) Sewage line of certain blocks are connected to the rain water harvesting pipe which resulted in sewage disposal being collected in the rain water harvesting pit;
  - c) The lower basement parking is still not open and is not available to the residents. (**Note:** this was contrary to the occupation certificate, the apartment buyers agreement as also the provisions of the Act, 2016);
  - d) Water logging in the basement and seepage of the ground water in the basement. This was on account of there being an improperly placed raft and incorrectly undertaken guniting. As a consequence, the columns and the walls in the basement have extensive and deep cracks, the shuttering around the columns are rusted and require not only strengthening but also extensive work. This entire defect is on account of the respondent's insufficient services, had construction been carried out properly, there would have been no question of seepage of ground water;
  - e) Allotted non-existent parking to the residents. (**Note:** this was contrary to the occupation certificate, the apartment buyers agreement as also the provisions of the Act, 2016);



- f) Leakage in the water tanks on the terrace resulting in seepage in top flats;
  - g) Failure to provide domestic electricity connection: it is stated that the electricity connection which was procured was a temporary commercial connection for the purposes of construction. As a consequence, the residents had to pay commercial electricity rates rather than paying residential rates;
  - h) The electricity and project requirement was far greater while the electricity provided was grossly deficient. Similar was the case with the power backup which was grossly inadequate;
  - i) Structural defects in various parts of the project and water leakage from the water tanks on the terrace causing seepage in the lift shaft and basement;
  - j) Plaster of the lift shaft falling down thereby making it considerably risky for the allottees;
- viii. That the respondent had collected monies towards IBMS which was to be handed over to the complainant upon its constitution. The respondent has not transferred the monies towards IBMS to the complainant/association. This is against the tenor of section 11 of the Act, 2016. Further, it was found that the front façade of the buildings started to fall which itself reflects the abysmal manner in which the buildings were constructed and the quality of construction.
- ix. Therefore, even until date no completion certificate has been issued with respect to the project till date (even though the respondent was and continues to be liable to procure a completion certificate in terms of section 11(4) (b) of the Act of 2016).
- x. That the association/allottees were constrained to approach the respondent several times to remedy the aforementioned

deficiencies but in vain. It is submitted that the respondent has deliberately failed, *inter alia*, in the following: -

- a) To act in accordance of the terms of the occupation certificate, application form, flat buyer's agreement etc;
  - b) To provide proper necessary fire and lift NOC, have fire and safety equipment in running conditions;
  - c) To provide amenities and services such as PNG gas connection, ample parking space, solar water system etc. despite charging the residents for them and thereby making unlawful gains;
  - d) To cure the structural defects developed because of seepage, and leaking water tanks causing damage to the lift shafts and water logging in the basement;
  - e) To release the interest bearing maintenance security/interest free maintenance security to our client, which was provided for maintenance of the society;
  - f) To provide continuous water, electricity and security etc;
- xi. Despite collecting interest bearing maintenance security/interest free maintenance security, the respondent has evidently failed to provide any maintenance services. *Per contra*, the allottees have incurred additional costs for repairs and rectification that was the sole responsibility of the respondent. The respondents have also been coerced to pay water charges, which are already inclusive of the CAM charges, as more particularly spelt out in paragraph above.
- xii. That faced with such grossly deficient services and owing to the multitude of non-compliances by the respondent, some allottees lodged a complaint with the District Town Planner, Department of Town and Country Planning (DTCP), Gurugram for redressal of their grievances and also to shed light on the various issues faced by the homebuyers in the project due to the acts and omission of the respondent. On the basis of the complaint, the District Town



Planner issued a show-cause notice dated 25.06.2018 to the respondent and the respondent was directed to appear for a meeting.

- xiii. During the said meeting, the Town Planner, DTCP enquired about status of the project, the several defects and the failure of the respondent to furnish the Bank Guarantee to the Dakshin Haryana Bijli Vitran Nigam; however the respondent failed to furnish a response or a valid justification. The respondent through its representative duly acknowledged the defects as enlisted hereinabove and assured the association that the same will be resolved at the earliest. Despite lapse of sufficient time, no steps have been taken by the respondent to rectify the same till date.
- xiv. That the complainant/association has issued multiple communications to the respondent informing it about the poor quality of construction and have requested for urgent action. The complainants have also provided adequate evidence to further its case including photographs of the projects and detailed presentation with respect to the issues faced them. However, the respondent has willfully failed to act on the same. The complainants were, thereafter, compelled to issue further multiple communications such as 17.02.2020, 15.03.2020, 22.05.2020, 16.06.2020, 03.08.2020, 20.09.2020 etc. but to no avail. The association continues to suffer due to the dishonest acts of the respondent. Most importantly, it was discovered that although the

occupation certificate (OC) was issued in 2014, the project still remains incomplete in light of the absence of solar water system, which was mandatory for all apartments and the inaccessible and incomplete basement.

- xv. That a meeting was held between the complainant/association and the respondent on 25.07.2020 and a spate of issues were discussed such as providing domestic electricity connection, transfer of IBMS, providing PNG connection, STP work, plaster work and façade painting. The respondent either gave dates by which these issues would be resolved or assured that the same would be resolved on the next date.
- xvi. That the respondent neither complied by the timelines it had provided in the meeting dated 25.07.2020 nor reverted on the issues such as transfer of IBMS to the complainant/association. In fact, the respondent actively avoided setting up a meeting.
- xvii. Since no response or action was forthcoming, the complainant was therefore compelled to issue a letter dated 22.09.2020 to the Chief Minister, Government of Haryana. In the letter, the complainant apprised the Hon'ble Chief Minister that as per the occupation certificate the respondent failed to provide domestic water supply within 15 days of the issuance of the occupation certificate. Further, despite the lapse of several years, the electricity being provided was at commercial rates, in defiance of the terms of the occupation certificate. In addition to the charge of electricity in

commercial rates, the complainant also stated that the respondent has failed to abide by the following terms of the occupation certificate:

- a) Sewage connection;
- b) Activation of lower basement;
- c) Activation of main gate and road;
- d) Commercial shopping complex;
- e) Storm water drain connection.

xviii. Contemporaneously and in terms of the meeting dated 25.07.2020, the complainant/association addressed letters to the respondent, the DTCP, the Chief Minister dated 01.10.2020 *inter alia*, informing it of the following failures on its part:-

- (a) Domestic Electricity supply;
- (b) Sewage Connection;
- (c) Activation of lower basement;
- (d) Activation of main gate and road;
- (e) Commercial shopping complex;
- (f) Storm water drain connection;
- (g) PNG Connection;
- (h) Lift license renewal;
- (i) Fire license renewal;
- (j) Building insurance;
- (k) Refund of IBMS/IFMS to the complainant.

xix. Despite the lapse of several months, there was no response forthcoming from the respondent, nor did the respondent take any steps to remedy the lapses on its part. The complainant again issued a letter dated 28.11.2020 to the respondent expressing its dismay with the inaction of the respondent with regard to the issues raised in the previous correspondences.

- xx. To this end, the respondent finally agreed to a meeting and the same was recorded in the minutes of meeting dated 23.12.2020. However, a perusal of the minutes of the meeting dated 23.12.2020, would reveal that the respondent gave completely evasive responses to the issues raised by the complainant/association. The tactic adopted by the respondent was to delay and defer issues rather than address any issues in any manner whatsoever.
- xxi. That the complainant was compelled to again issue a letter dated 01.01.2021 to the Hon'ble Chief Minister's office, again re-iterating that despite the lapse of 6 years, the residents of the project were not being allotted electricity at domestic rates. Therefore, the complainant sought the intervention of the Hon'ble Chief minister's office. However, there has been no response forthcoming to this end either.
- xxii. That the complainant also sent various emails from the months of April until 09.08.2020 imploring the respondent to carry out rectification work but to no avail.
- xxiii. That the respondent was also required to pay a sum of Rs.4.29 Crores as Bank Guarantee to the Dakshin Haryana Bijli Vitran Nigam, to obtain the required power supply in the project. However, no such Bank Guarantee was furnished by the respondent. The complainant/association was shocked to learn about the failure of the respondent to submit the said Bank Guarantee for supply of electricity in 2018, and was constrained to

yet again approach the respondent. The respondent made false assurances that the Bank Guarantee would be submitted at the earliest. However, despite requests and reminders, the respondents have still not furnished the Bank Guarantee which is amply evident from the demand notice dated 12.02.2021 and a follow up letter dated 23.06.2021 issued by the Dakshin Haryana Bijli Vitran Nigam to the respondent.

- xxiv. Having no recourse left, after running from pillar to post to have the grievances addressed, the complainants were constrained to issue a legal notice dated 16.08.2021 enlisting and highlighting the corrupt and deficient services of the respondent and calling upon the respondent to rectify and remedy the defects immediately. However, despite the service of the legal notice, there was no response forthcoming from the respondent.
- xxv. That the project as handed over by the respondent is highly deficient and lacks basic amenities making it extremely uninhabitable for the residents. The residents are facing immense hardships due to the failure of the respondent to perform its obligations and the project is a state of disrepair. The stability and safety of the project and the residents have been willfully ignored by the respondent. The residents have discovered deficiencies in the structure of the buildings which the respondent has failed to rectify thereby willfully putting the lives of the residents in danger and jeopardy. One such instance is that a huge piece of plaster fell

on the ground from the top in tower F (this is not a one-time event and has been continuously happening in the towers) and a passer by nearly escaped from being grievously injured. The respondent has no regard for the safety of the hundreds of people living in the project. The state of the project is in poor condition and requires immediate action as it is threatening the safety and security of the residents at large.

- xxvi. That the respondent was not willing to provide the services which it was contractually bound to. It is a disconcerting issue that even basic amenities such as electricity supply for domestic load has not been provided by the respondent. It is also a matter of concern that issues such as sewerage, rain water harvesting, parking issues, electricity and seepage issues, all of which were an issue which had to be complied by as per the occupation certificate issued in the year 2014 (almost 7 years). Similarly, the complainant is inept in carrying out or rectifying the issues considering IBMS is not yet handed over despite the multiple requests. Similarly, there is no formal hand over and take over certificate issued by the respondent/builder to the complainant/association. Even as on date, there is no completion certificate, an obligation which was a sine qua non as per section 11 of the Act of 2016 and the occupation certificate as well. In sum and substance, the respondent has failed in every conceivable manner.

- xxvii. That the respondent has been grossly deficient in the services provided to the complainant/association as it has failed to complete the construction in all respect. The respondent has miserably failed to adhere to the stipulated timelines and deliver all facilities as agreed between the parties, thereby causing immense mental agony to the members of the complainant/association. The respondent has deliberately published misleading advertisement regarding the said project and has made false assurances and representations thereby misleading the homebuyers into making huge payments. The above narration of events leaves no manner of doubt that the respondent's sole intention was to lure innocent consumers in order to extort moneys out of them without any intention of discharging their obligations on the basis of which it obtained such payments.
- xxviii. That this is not an aberration with the respondent. This is a routine manner in which the respondent has operated by using materials of pathetic quality, by not taking care of issues which were squarely the responsibility of the respondent. Similar issues are being faced with the residents of the Vedaanta complex as well. This Hon'ble Court has passed several orders which underscore the deficiencies in that project (which is similar to the deficiencies in the present matter). Not only has this Authority taken suo motu action but a consolidated petition has been filed by the Vedaanta Association.

xxix. In view of the foregoing, the complainant/association has been compelled to approach this Authority seeking redressal of their grievances. The instant complaint has been filed seeking directions for refund of the amounts deposited by the allottees together with prescribed rates of interest along with directions for rectification of the defects.

**C. Relief sought by the complainant/association**

4. The complainant/association has sought following relief(s).
  - i. Direct the respondent, its agents and assigns to provide a domestic electricity supply to the residents of the complainant association or convert the existing commercial connection to domestic connection in a time bound manner.
  - ii. Direct the respondent, its agents and assigns to repair of the columns and beams in the basement which have cracked and to strengthen the beams and the columns with good quality material.
  - iii. Direct the respondent, its agents and assigns to repair the raft and undertake guniting work in order to prevent ground water from accumulating in the basement.
  - iv. Direct the respondent, its agents and assigns to repair the front facade of each tower and undertake plaster work with immediate effect.
  - v. Direct the respondent, its agents and assigns to repair and plaster the lift shafts as also direct the Respondent to renew the license of the lift in a time bound manner.
  - vi. Direct the respondent, its agents and assigns to take/ renew all fire NOC's and licenses and comply by the fire and building bye laws as applicable.
  - vii. Direct the respondent, its agents and assigns to carryout water proofing in respect of the top of each tower and rectify all seepage issues in the complainant society.
  - viii. Direct the respondent, its agents and assigns to replace the STPs as also direct the respondent to provide a working sewerage connection in terms of the representations made by the respondent to the allottees.





- ix. Direct the respondent, its agents and assigns to install and provide a storm water connection and PNG connection in a time bound manner.
  - x. Direct the respondent, its agents and assigns to execute a formal handover-takeover certificate handing over all the assets to the complainant.
  - xi. Direct the respondent, its agents and assigns to hand over the IBMS collected from the allottees to the complainant.
  - xii. Direct the respondent, its agents and assigns to construct a 24-meter road as represented by them at the time of the sale.
  - xiii. Direct the respondent, its agents and assigns to complete and handover the shopping complex to the complainant (which was agreed by the respondent to be handed over by 31.07.2021 vide meeting dated 25.07.2020).
  - xiv. Direct the respondent, its agents and assigns to provide a rainwater harvesting system which is to be mandatorily provided as per the occupation certificate.
  - xv. Direct the respondent, its agents and assigns to operationalize the lower basement in all respects so that vehicles could be parked in the basement.
  - xvi. Direct the respondent, its agents and assigns to take insurance since the project is not deemed to be complete without the completion certificate.
5. On the date of hearing, the Authority explained to the respondent /promoter on the contravention 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/promoter**

6. The respondent by way of written reply made following submissions: -

i. **Jurisdiction To Be Decided First**

a) That it is a trite law that a decree passed in the matter, where the tribunal which passed inherently lacked the jurisdiction, is nullity.

*The Hon'ble Apex Court in the matter of Sushil Kumar Mehta vs Gobind Ram Bohra on 10 November 1989 Equivalent citations: 1989 SCR, Supl. (2) 149 1990 SCC (1) 193 had held that:*

*"A decree passed by a court without jurisdiction over the subject matter or on other grounds which goes to the root of its exercise of jurisdiction, lacks inherent jurisdiction. It is a coram non iudice. A decree passed by such a court is a nullity and is non est. Its invalidity can be set up whenever it is sought to be enforced or is acted upon as a foundation for a right, even at the stage of execution or in collateral proceedings. The defect of jurisdiction strikes at the authority of the court to pass a decree which cannot be cured by consent or waiver of the party."*

- b) That the present complaint is liable to be dismissed *in limine* inter alia on the ground of consequential lack of jurisdiction of this Authority to entertain, try or decide the present complaint. The question of lack of jurisdiction is liable to be decided at the very first available opportunity since it goes to the very root of the matter and any judgment passed without Jurisdiction would be a nullity.
- ii. The agreement executed between the parties has prior to the Act of 2016, and no relief can be granted to him in respect of any alleged breach of the terms and conditions of a contract executed prior to coming into force of the aforesaid Act, as this would be a retrospective application of the Act.
- iii. That the respondent has taken project OC way back in the year 2014 and the same has come before the commencement of the Act in 2016, therefore the said project is outside the purview of this Authority and hence this Authority does not have jurisdiction to entertain the present complaint.
- iv. That there is no cause of action to file the present complaint. Even otherwise also 5 years have elapsed in 2019 after the grant of OC in 2014 in the project. As per Act of 2016 defect liability period is a maximum of 5 years which expired in 2019. Therefore any cause of

action arising out after this period will not be covered under this Act.

- v. That the complainants/association have no locus standi to file the present complaint as there are more than 400 residents in towers 60-70 residents in EWS are happily residing in the project after taking possession and are satisfied with the construction in all respect. That association is not having the support of the majority of the residents.
- vi. That the complainants have not approached the Authority with clean hands and have intentionally suppressed and concealed the material facts in the present complaint. The present complaint has been filed by them maliciously with an ulterior motive and it is nothing but a sheer abuse of the process of law. The true and correct facts are as follows.
  - a) That the respondent is a reputed real estate company having immense goodwill, comprised of law abiding and peace loving persons and has always believed in satisfaction of its customers. The respondent has developed and delivered several prestigious projects such as 'Raheja Atlantis', 'Raheja Atharva', 'Raheja Shilas' and 'Raheja Vedanta' and in most of these projects large number of families have already shifted after having taken possession and resident welfare associations have been formed which are taking care of the day to day needs of the allottees of the respective projects.
  - b) That the members of the association/complainant signed and executed the agreement to sell/sale deed and they are agreed to be bound by the terms contained therein.

- c) That despite the respondent fulfilling all its obligations as per the provisions laid down by law, the government agencies have failed miserably to provide essential basic infrastructure facilities such as roads, sewerage line, water and electricity supply in the sector where the said project was being developed at the time of grant of OC. The development of roads, sewerage, laying down of water and electricity supply lines has to be undertaken by the concerned governmental authorities and is not within the power and control of the respondent. The respondent cannot be held liable on account of non-performance by the concerned governmental authorities.
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.
8. The complainant and respondent have filed the written submissions on 23.04.2024 and 05.07.2024 respectively which are taken on record. No additional facts apart from the complaint or reply have been stated the written submissions.

**E. Jurisdiction of the authority**

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

**E. I Territorial jurisdiction**

10. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. In the present case, the project in



question is situated within the planning area of Gurugram district. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

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

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

### **Section 11**

.....

(4) The promoter shall-

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

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

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

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

## **F. Findings on the objections raised by the respondent:**

**F.I Objections regarding that the respondent has obtained the occupation certificate before coming into force of RERA:**

13. The respondent/promoter has raised the contention that the said project of the respondent is a pre-RERA project as the same has already obtained occupation certificate from the competent authority way back in the year 2014 i.e., before the coming into force of the



Haryana Real Estate (Regulation and Development) Rules, 2017 on 28.07.2017. As per proviso to section 3 of Act of 2016, projects that are ongoing on the date of commencement of this Act i.e., 28.07.2017 and for which completion certificate has not been issued, the promoter shall make an application to the authority for registration of the said project within a period of three months from the date of commencement of this Act and the relevant part of the Act is reproduced hereunder: -

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

14. The legislation is very clear in this aspect that a project shall be regarded as an "ongoing project" until receipt of completion certificate. It is important to note that till date, the respondent/builder has not obtained the completion certificate from the competent Authority. After taking note of the statutory provisions as mentioned in Section 3 of the Act of 2016, it is observed that the Act of 2016 is retroactive in nature and covers all ongoing projects for which completion certificate has not been issued by the competent authority.
15. Further, the Hon'ble Supreme Court of India in Civil Appeal No(s). **6745-6749 of 2021 titled as M/s Newtech Promoters and Developers Private Limited vs. State of U.P and Ors.** has observed that:

*52. The Parliament intended to bring within the fold of the statute the ongoing real estate projects in its wide amplitude used the term "converting and existing building or a part thereof into apartments" including every kind of developmental activity either existing or upcoming in future under Section 3(1) of the Act, the intention of the legislature by necessary implication and without any ambiguity is to*



*include those projects which were ongoing and in cases where completion certificate has not been issued within fold of the Act.*

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

**F. II Objection regarding jurisdiction of authority w.r.t. buyer's agreement executed prior to coming into force of the Act.**

17. Another objection raised by the respondent is that the authority is deprived of the jurisdiction to go into the interpretation of, or rights of the parties inter-se in accordance with the flat buyer's agreement executed between the parties and no agreement for sale as referred to under the provisions of the Act or the said rules has been executed inter se parties. The authority is of the view that the Act nowhere provides, nor can be so construed, that all previous agreements will be re-written after coming into force of the Act. Therefore, the provisions of the Act, rules and agreement have to be read and interpreted harmoniously. However, if the Act has provided for dealing with certain specific provisions/situation in a specific/particular manner, then that situation will be dealt with in accordance with the Act and the rules after the date of coming into force of the Act and the rules. Numerous provisions of the Act save the provisions of the agreements made between the buyers and sellers. The said contention has been upheld in the landmark judgment of **Neelkamal Realtors Suburban Pvt. Ltd. VS. UOI and others. (W.P 2737 of 2017)** decided on 06.12.2017 which provides as under:

"119. *Under the provisions of Section 18, the delay in handing over the possession would be counted from the date mentioned in the agreement for sale entered into by the promoter and the allottee prior to its registration under RERA. Under the provisions of RERA, the promoter is given a facility to revise the date of completion of project and declare the same under Section 4. The RERA does not contemplate rewriting of contract between the flat purchaser and the promoter.....*



122. *We have already discussed that above stated provisions of the RERA are not retrospective in nature. They may to some extent be having a retroactive or quasi retroactive effect but then on that ground the validity of the provisions of RERA cannot be challenged. The Parliament is competent enough to legislate law having retrospective or retroactive effect. A law can be even framed to affect subsisting/existing contractual rights between the parties in the larger public interest. We do not have any doubt in our mind that the RERA has been framed in the larger public interest after a thorough study and discussion made at the highest level by the Standing Committee and Select Committee, which submitted its detailed reports."*

18. Also, in appeal no. 173 of 2019 titled as **Magic Eye Developer Pvt. Ltd. Vs. Ishwer Singh Dahiya**, in order dated 17.12.2019 the Haryana Real Estate Appellate Tribunal has observed-

"34. *Thus, keeping in view our aforesaid discussion, we are of the considered opinion that the provisions of the Act are quasi retroactive to some extent in operation and will be applicable to the agreements for sale entered into even prior to coming into operation of the Act where the transaction are still in the process of completion. Hence in case of delay in the offer/delivery of possession as per the terms and conditions of the agreement for sale the allottee shall be entitled to the interest/delayed possession charges on the reasonable rate of interest as provided in Rule 15 of the rules and one sided, unfair and unreasonable rate of compensation mentioned in the agreement for sale is liable to be ignored."*

The agreements are sacrosanct save and except for the provisions which have been abrogated by the Act itself. Further, it is noted that the agreements have been executed in the manner that there is no scope left to the allottee to negotiate any of the clauses contained therein. Therefore, the authority is of the view that the charges payable under various heads shall be payable as per the agreed terms and conditions of the agreement subject to the condition that the same are in accordance with the plans/permissions approved by the respective departments/competent authorities and are not in contravention of any other Act, rules, statutes, instructions, directions





issued thereunder and are not unreasonable or exorbitant in nature. Further, as regards to argument of the respondent regarding agreement to sale being not executed inter se parties is vague and hence stands rejected.

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

- G.I** Direct the respondent, its agents and assigns to repair of the columns and beams in the basement which have cracked and to strengthen the beams and the columns with good quality material.
- G.II** Direct the respondent, its agents and assigns to repair the raft and undertake guniting work in order to prevent ground water from accumulating in the basement.
- G.III** Direct the respondent, its agents and assigns to repair the front facade of each tower and undertake plaster work with immediate effect.
- G.IV** Direct the respondent, its agents and assigns to repair and plaster the lift shafts and also direct the Respondent to renew the license of the lift in a time bound manner.
- G.V** Direct the respondent, its agents and assigns to carryout water proofing in respect of the top of each tower and rectify all seepage issues in the complainant society.
19. The above-mentioned reliefs sought by the complainant/association are being taken together as the findings in one relief will definitely affect the result of the other reliefs and the same are being interconnected.
20. The complainant/association has submitted that the association has approached the respondent/builder several times to remedy the aforementioned deficiencies but all went in vain. To this end, the complainants/association issued multiple communications on 17.02.2020, 15.03.2020, 22.05.2020, 16.06.2020, 03.08.2020, 20.09.2020 etc. Having no recourse left, after running from pillar to post to have the grievances addressed, the complainants issued a legal notice dated 16.08.2021 enlisting and highlighting the corrupt and deficient services of the respondent and calling upon the respondent



to rectify the defects immediately. However, despite the service of the legal notice, there was no response forthcoming from the respondent. The residents are facing immense hardships due to the failure of the respondent to perform its obligations and the project is in a state of disrepair. The stability and safety of the project and the residents have been willfully ignored by the respondent. The residents have discovered deficiencies in the structure of the buildings which the respondent has failed to rectify thereby willfully putting the lives of the residents in danger and jeopardy. One such instance is that a huge piece of plaster fell on the ground from the top floor in tower F (this is not a one-time event and has been continuously happening in the towers) and a passer by nearly escaped from being grievously injured. The respondent has no regard for the safety of the hundreds of people living in the project. The state of the project is in poor condition and requires immediate action as it is threatening the safety and security of the residents at large.

21. After considering all the documents available on record and submissions made by both the parties, the Authority observes that a license bearing no. 257 of 2007 dated 07.11.2007 valid up to 06.11.2017 for development of residential group housing colony to be developed on an area admeasuring 14.812 acres in the name of "Raheja Atharva" Sector- 109, Gurugram was issued by the Director Town and Country Planning Department Haryana in favour of Brisk Construction Private Limited and 3 others. Subsequently, the project got registered with the Haryana Real Estate Regulatory Authority, Panchkula, vide registration bearing No. 90 of 2017 dated 28.08.2017 and the same was valid up to 27.08.2022. Even two occupation



certificates dated 20.05.2014 and 19.11.2014 respectively for towers A, B, C, D and EWS & E, F, 1,2,3, were issued by the competent Authority. It is a matter of record that no completion certificate has been obtained with respect to the subject project till date (even though the respondent has a continuing liability to procure a completion certificate in terms of section 11(4)(b) of the Act of 2016).

22. The possession of the allotted units were taken over by the allottees, who subsequently formed "*Atharva Residence Welfare Association*" and registered the same vide registration no. **HR-018-2014-0149** dated **21.07.2014**, under the Haryana Registration and Regulation of Societies Act, 2012. There are certain grievances of the residents /allottee(s) of the above-mentioned group housing colony as the respondent/builder has failed to resolve the same. So, that body of residents approached this authority for redressal of their grievances.
23. Vide proceeding dated 24.05.2022, the Authority observed that the issue involved in the complaint relates to structure safety and structural audit of the building for which occupation certificate stood granted way back in the year 2014, i.e., much before coming into force of the Act, 2016 and a reference to DTCP be made for carrying out structural audit of the building on priority as per recent guidelines issued during SEWOCON held on 29.04.2022. No response has been received by the Authority from the DTCP Haryana with regard to carrying out for structural audit of the building on priority as per the recent guidelines issued during SEWOCON held on 29.04.2022. On 21.07.2022, the Authority issued a reminder letter in this regard.
24. Vide proceeding dated 02.09.2022, during last hearing the Authority decided to make a reference to DTCP for conducting structural audit of



the project. But no status report of having conducted the structural audit and its outcome received from DTCP and hence a reminder to DTCP be also issued to immediate conduct the structural audit in reference to latest guidelines framed by T&CP; department and to take immediate necessary corrective action. This is a very serious matter where life of the residents is at risk. The promoter despite of various opportunities have not even filed the reply. Keeping in view the gravity and seriousness of the situation, the director of respondent company was directed to appear in person and intimate as to what steps have been taken by it for correcting the defects and also structural audit. Rather than the structural audit being ordered by any agency or department of Government, it would have been much better that the promoter himself should have got the structural audit conducted so that this seriousness and concerned about tackling the problem are established. We have no hesitation in observing that the promoter is least concerned about the problem and there might happen any incident for which the promoter will be squarely responsible. The authorized representative deputed on the day of the proceedings was ignorant about the facts.

25. The Director, Town and Country Planning Haryana Chandigarh has issued a letter being memo no. **5515-17 dated 23.02.2022** to STP, DTP(P), and DTP(E) Gurugram regarding conducting structural audit in various colonies in district Gurugram such as "*Raheja Vedanta*", "*Raheja Atharwa*", "*Brisk Lumbini*", "*M3M Woodshire*", and "*Mahindra Aura*". So, keeping in view, the seriousness of this matter and its threatening impact on the lives of the residents, the DTCP Haryana Chandigarh had decided to get the audit of structural stability, quality



of construction which includes use of material in required ratio, quality of steel used, and quality of other material used etc. of the towers mentioned in the above colonies from IIT Roorkee on urgent basis on the same pattern as being done by IIT Delhi in Chintel Paradiso, sector 109, Gurugram. It was further directed that the audit team will also flag any other issues of stability of structure audit will be held on the cost of the respective developer. The letter issued by DTCP Haryana to STP Gurugram, and others also covers, the project under reference i.e., "Raheja Atharva" situated in sector- 109, Gurugram.

Considering the letter bearing memo no. 5515-17 dated 23.02.2022, the Authority adjudication the case issuing notices and reminder notices to DTCP and STP, DTP(P) and DTP(E), Gurugram to get the audit of structural stability, quality of construction inclusive of use of material in required ratio quality of steel and other material used etc. It was also directed that the audit team would flag any other issue of stability of structural audit to be held at the cost of the respective developer.

26. On 10.10.2023, STP Gurugram, has sent a letter to the Authority and shared an email link i.e., [https://drive.google.com/file/d/1xOs1LoaVsXVO0iF2mhk12v2pS8ZeIIQcN/view?usp=drive link](https://drive.google.com/file/d/1xOs1LoaVsXVO0iF2mhk12v2pS8ZeIIQcN/view?usp=drive_link) regarding visual inspection report with the RWA of society through email dated 31.05.2023. Further it is stated that 2<sup>nd</sup> phase of the structural audit i.e., NDT Test is under process and in the consideration of the District Administration, Gurugram and also, the report of the same shall be shared as and when received. Further on 13.10.2023, DTP(E) Gurugram vide said letter

mentioned that *"under reference copy of structural audit report of colony namely "Raheja Atharva" situated in Sector- 109, Gurugram has been sought. As the matter relates to structural auditing of various societies in the District Gurugram is being dealt by your office, the requisite report of the aforementioned colony, if any, may be forwarded to HARERA, Gurugram under intimated to this office."*

27. Vide order dated 13.02.2024, despite specific directions of the authority, no status report has been filed by the respondent w.r.t steps taken for rectification of defects as well as detailed schedule for handing over of the project along with all financial accounts, especially the amount realized towards IFMS and IBMS. In view of the default of the respondent, the respondent is hereby directed to show cause as to why the penalty of Rs.10 Lakhs may not be imposed under section 63 of the Act, 2016 in addition to other actions under the provisions of the Act, 2016. The respondent was further directed to file the updated status report as directed on 02.01.2024 within 3 weeks, failing which penal consequences will follow.
28. On proceeding dated 02.04.2024, the respondent has again failed to comply with the directions passed by the Authority. In view of the above, a penalty of Rs.5 Lakhs was imposed upon the respondent for non-compliance of the directions of the authority u/s 63 of the Act 2016.
29. No doubt, as per Section 14(3) of the Act of 2016, the respondent /promoter is obligated to rectify the defects brought to the notice of the promoter within a period of five years from the date of handing over of possession, without any further charge. However, despite multiple opportunities already granted, the respondent/promoter has



failed to complete the repair work till date. Therefore, considering the indefinite and inordinate delay on part of the respondent as well as in the interest of large number of allottees, the Authority is of the view that vide memo no. 5515-17 dated 23.02.2022, issued by the DTCP Haryana has decided to get the audit of structure stability, quality of construction which includes use of material in required ratio, quality of steel use and quality of other material use etc. in the said project from IIT Roorkee on the cost of the respondent-builder. The STP Gurugram issued a letter dated 04.10.2023 wherein it is stated that the 2<sup>nd</sup> phase of the structural audit i.e., NDT Test is under process and in the consideration of the District Administration, Gurugram and also, the report of the same shall be shared as and when received. In view of the above, as the District Administration is already seized with the matter, the promoter is directed to comply with the orders/directions in this regard issued by the District Administrator/competent Authority.

**G.VI Direct the respondent, its agents and assigns to provide a domestic electricity supply to the residents of the complainant association or convert the existing commercial connection to domestic connection in a time bound manner.**

**G.VII Direct the respondent, its agents and assigns to install and provide a storm water connection and PNG connection in a time bound manner.**

30. The complainant/association has sought the relief with regard to providing a domestic electricity supply to the residents of the complainant association or convert the existing commercial connection to domestic connection and to install a storm water connection and PNG connection to the complainant/ association. On the other hand, the respondent company in its reply submits that the respondent has obtained 11 KV load connection from the concerned



electricity department for the project vide letter dated 07.02.2013. Further, stated that due to change in policy in the year 2013 (implemented in 2016) by the electricity department/DHBVN all such project was required to take load connection after installing the necessary infrastructure in the project. However, the necessary infrastructure for the supply of 33 KV load connection by the Government/Department was not available till recently. The respondent in the meantime had installed the necessary infrastructure for the 33 KV supply and applied for the domestic connection on 22.07.2022 and based on inspection on 27.07.2022, the Department recommended for the grant of electricity connection of 33 KV load on 28.07.2022. It is further, stated that the respondent is not required to give Bank Guarantee to the Dakshin Haryana Vitran Nigam to obtain the required power supply in the project, as the respondent is working on the sharing cost module with the department for the said installation. That the respondent has therefore gifted a portion of land to DHBVN instead of BG and a meeting was held with the MD of DHBVN on 07.09.2022 wherein it was agreed that the respondent will deposit share estimated cost with the department which the department is in the process of calculating. Moreover, the gas pipeline had been laid for the purpose of gas connection. The connection for the gas has been applied to the authority/concerned department after completing the necessary infrastructure like laying the pipes etc.

31. In light of the aforesaid circumstances, the authority is of the view that the respondent has already obtained the occupation certificate in the year 2014, and as per condition no. 16 clearly states *That you shall apply for water supply, Sewage & Electricity connection within 15 days from the date of issuance of occupation certificate and shall submit the proof of submission thereof to*





*this office.* That as per above mentioned pre conditions issued by the Department of Town and country Planning, Haryana Chandigarh, the respondent/promoter is an under an obligation to fulfil the conditions of the OC and in case the respondent/promoter failed to comply the same, the complainant/association may raise the above said grievances before the competent Authority.

- G.VIII** Direct the respondent, its agents and assigns to take/renew all fire NOC's and licenses and comply by the fire and building bye laws as applicable.
- G.IX** Direct the respondent, its agents and assigns to provide a rainwater harvesting system which is to be mandatorily provided as per the occupation certificate.
- G.X** Direct the respondent, its agents and assigns to operationalize the lower basement in all respects so that vehicles could be parked in the basement.
- G.XI** Direct the respondent, its agents and assigns to replace the STPs, and also provide a working sewerage connection is in terms of the representations made by the respondent to the allottees.
- G.XII** Direct the respondent, its agents and assigns to construct a 24-meter road as represented by them at the time of the sale.
32. The above-mentioned relief sought by the complainant/association are being taken together as the findings in one relief will definitely affect the result of the other relief and the same being interconnected.
33. The complainant/association has submitted that the respondent /builder has failed to renew all fire NOC's and licences, rainwater harvesting system and to operationalize the lower basement. The Authority observes that the DTCP Haryana has issued two occupation certificates dated 20.05.2014 and 19.11.2014 respectively for towers A, B, C, D and EWS & E, F, 1,2,3,. The issuance of OC is subject to the following conditions and such relevant conditions as specified in OC are reproduced below:-
4. *That you shall be fully responsible to supply of water as per norms till such time the colony is handed over after final completion.*



8. *That you shall maintain roof top rain water harvesting system properly and keep it operational at the time.*
15. *That you shall complete the basement, community sites and shopping within three months from the issuance of this occupation certificate.*
34. In view of the above mentioned pre conditions issued by the Department of Town and country Planning, Haryana Chandigarh, the respondent/promoter is an under an obligation to fulfil the conditions of the OC and in case the respondent/promoter failed to comply the same, the complainant/association may raise the above said grievances before the competent Authority.
- G.XIII Direct the respondent, its agents and assigns to hand over the IBMS collected from the allottees to the complainant.**
- G.XIV Direct the respondent, its agents and assigns to execute a formal handover/takeover certificate handing over all the assets to the complainant.**
35. The Act mandates that developer would be responsible for providing and maintaining the essential services, on reasonable charges, till the time, the same is taken over by the association of the allottees as per provisions of section 11(4)(d) of the Act of 2016. On the other hand, section 19(6) of the Act states that 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/the builder buyer's agreement and shall pay within stipulated time and appointed place, the share of the registration charges, municipal taxes, water and electricity charges, maintenance charges, ground rent and other charges, if any.
36. The maintenance charges essentially encompass all the basic infrastructure and amenities like parks, elevators, emergency exits, fire and safety, parking facilities, common areas, and centrally controlled services like electricity and water, among others. Initially,



the upkeep of these facilities is the responsibility of the builder who collects the maintenance fee from the residents. Once a residents association takes shape, this duty falls upon them, and they are allowed to change or introduce new rules for consistently improving maintenance. In the absence of an association or a society, the builder continues to be in charge of maintenance. Usually, maintenance fees are charged per flat or per square foot basis. The maintenance charges on the other hand accounts for the maintenance charges thereafter builder incurs while maintaining the project before the liability gets shifted to the association of owners. Builders generally demand advance maintenance charges for 6 months to 2 years in one go on the pretext that regular follow up with owners is not feasible and practical in case of ongoing projects wherein OC has been granted but CC is still pending.

37. Further, section 11(4)(g) of the Act of 2016, provides that the developer will be responsible to 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. It is further provides that where any promoter fails to pay all or any of the outgoings collected by him from the allottees or any liability, mortgage loan and interest thereon before transferring the real estate project to such allottees, or the association



of the allottees, as the case may be, the promoter shall continue to be liable, even after the transfer of the property, to pay such outgoing and penal charges, if any, to the authority or person to whom they are payable and be liable for the cost of any legal proceedings which may be taken therefore by such authority or person.

38. A quick glance at the provisions of the Act may be taken in this respect to ascertain the responsibility of the promoter or project developer for providing and maintaining essential and common services at a reasonable charge payable by the flat purchasers till the time the co-operative housing society or RWA is formed. 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 allottee 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."*

39. Also, clause 11 of the Annexure A (Agreement for Sale) to the rules provide for maintenance of the project. It states that "the promoter shall be responsible to provide and maintain essential services in the project till the taking over of the maintenance of the project by the association of the allottees". Furthermore, it provides that the cost of such maintenance has been included in the total price of the plot/unit/apartment for residential/commercial/industrial/IT colony /any other usage. From aforesaid clause, it is clear that the maintenance charges are included in the total cost of the unit and in case, the allottee/association of allottees fails to take possession, then only the promoter has right to recover such amount as spent on maintaining such essential services after coming into force of the Act.
40. The complainant/association in its complaint stated that the flat buyer's agreement obligates the allottees of the unit to pay "interest bearing maintenance security or interest free maintenance security" to the respondent/promoter. The purpose of the payment of IBMS or IFMS was essentially highlighted in clause 6.2 of the buyer's agreement which is reproduced as under for ready reference:

**6.2 Maintenance Agreement**

*"The Allottee(s) undertakes to join society/association of the Apartment owners and to pay fees, charges thereof and complete such documentation and formalities as may be deemed necessary by the Company in its sole discretion for this purpose. The Allottee(s) upon completion of the said Building agrees to enter into an Maintenance Agreement with the Company of any association/body/condominium of Apartment owners or any other nominee agency/association(s) or other body (hereinafter referred to as the Maintenance Agency") as may be appointed/nominated by the Company from time to time for*



*the maintenance and upkeep of the said building and the Allottee(s) undertakes to pay the maintenance bills as raised by the Maintenance Agency from the date of the certificate for occupation and use granted by the competent authority on pro-rata basis irrespective of whether the Allottee(s) is in occupation of the Apartment or not and construction work still in progress in adjacent tower/buildings and infrastructure facilities including club etc. are not fully completed. In order to secure due performance by the Allottee(s) in prompt payment of the maintenance bills and other charges raised by the Maintenance Agency, **the Allottee(s) agrees to deposit, as per the schedule of payment and to always keep deposited with the Company or the Maintenance Agency, nominated by the Company, an Interest Bearing Maintenance Security (IBMS) at the rate of Rs.100/- per sq. ft. of the super area of the Apartment carrying a simple yearly interest as per the applicable rates on fixed deposits accepted by The State Bank of India at the close of each financial year ending on 31" March.** In case of failure of the Allottee(s) to pay the maintenance bill or other charges on or before the due date, the Allottee(s) in addition to permitting the Company/Maintenance Agency to deny him /her to use such services being maintained and also authorizes the Company/ Maintenance Agency to adjust in the first instance, the interest accrued on the IBMS against such defaults in the payments of maintenance bills and in case such accrued interest falls short of the amount of the default, the Allottee(s) further authorizes the Company/Maintenance Agency to adjust the principal amount of the IBMS against such defaults. If due to such adjustments in the principal amount, the IBMS falls below the agreed sum of Rs.100/- per sq. ft. of the super area of the said Apartment, then the Allottee(s) hereby undertakes to make good the resultant shortfall within fifteen (15) days of demand by the Company/Maintenance Agency. Further, the Company reserves its right to increase IBMS from time to time in keeping with the increase in the cost of maintenance services and the Allottee(s) agrees to pay such increases within fifteen (15) days of demand by the Company. If the Allottee(s) fails to pay such increases in the IBMS or to make good the shortfall as aforesaid on or before its due date, then the Allottee(s) authorizes the Company to recover the amount with an interest 24% p.a. or at its sole discretion to treat the allotment as cancelled without any notice to the Allottee(s) and to recover the shortfall from the sale proceeds of the said Apartment and to refund to the Allottee(s) only the balance of the amount realized from such sale after deducting therefrom the entire earnest money, brokerage/ commission paid, interest on delayed payments, any interest paid, due or payable and all other dues as set out in the payment plan. It is made specifically clear and it is so agreed by and between the parties hereto that this condition relating to IBMS as stipulated in this clause shall survive irrespective of the conveyance of title in favour of the Allottee(s) and the Company shall have first*



*charge/lien on the said Apartment in respect of any such non-payment of shortfall/increase, as the case may be.*

*The Company shall, if already paid by the Allottee(s) to the Company may, at its sole discretion, refund to the allottee(s) in full and final settlement of IBMS or as an alternative, the Allottee(s) hereby authorizes the Company to transfer to the Maintenance Agency the IBMS of this agreement, after adjusting there from any outstanding maintenance bills and/or other outgoings of the Allottee(s) at any time including upon execution of the Conveyance Deed and thereupon the Company shall stand completely absolved/discharged and all clauses Maintenance Agency, upon transfer of the IBMS or in case of fresh IBMS is sought from the allottee(s) as stipulated hereinabove, shall have the sole right to modify/ revise all or any of the terms of the IBMS, Tripartite Maintenance Agreement, including but not limited to the amount/rate of IBMS, etc. In addition, Sinking Fund will be created dealing /concerning the IBMS mentioned in this Agreement and the Conveyance Deed, as far as, they are applicable to the Company shall cease to be valid and effective. It is hereby specifically agreed by the Allottee(s) that such transfer of IBMS shall not be linked in any manner whatsoever to the implementation of the Haryana Apartment Ownership Act, 1983 by the Company for, the said Complex. Further the allottee(s) agrees that the and will be paid extra by the allottee(s) for replacement, refurbishing, major repairs of the plants and equipment etc., installed in the said Complex or towards any unforeseen contingency in future. The Allottees) hereby undertakes to comply with all the terms and conditions stipulated in the Maintenance Agreement. The Company reserves its rights to terminate this agreement and forfeit the Earnest Money on account of non- execution of the Maintenance Agreement along with outstanding interest, if any. However, the Allottee(s) agrees to pay the Maintenance charges to the Company computed as shown in the payment plan and annexed as an application form for the purpose of enrolling the Allottee(s) as a member of such association is attached as Annexure C,D,E & F."*

41. On bare reading of the above-mentioned clause, it can be ascertained that the amount paid to the respondent as IBMS or IFMS charge is to secure due performance by the allottees in prompt payment of maintenance bills and other charges raised by the maintenance agency or whoever for maintenance of the society. It is understood that the IBMS and IFMS would be set off, if required, against the maintenance dues, which were liable to be particularly paid by the residents after possession had been granted. Further, the IBMS or IFMS charges were



only to be temporarily held by the respondent until the maintenance responsibility was accepted by the complainant/association. Further, it is observed that the complainant/association has been registered under Haryana Registration and Regulation of Societies Act, 2012 vide registration no. HR-018-2014-01494 dated 21.07.2014. Thus, the IBMS or IFMS deposit being a security against failure to pay maintenance charges by the allottees, ought to be handed over to the complainant/association, who are presently in charge of the maintenance of the project. Further, as per section 17(2) of the Act the respondent/promoter is directed to handover the necessary documents, plans, including common areas, to the association of the allottee or the competent authority, as the case may be, as per the local laws.

**G.XV Direct the respondent, its agents and assigns to complete and handover the shopping complex to the complainant (which was agreed by the respondent to be handed over by 31.07.2021 vide meeting dated 25.07.2020).**

42. In the present relief, the complainant/association has sought that the respondent has completed and handed over the shopping complex to the complainant/association by 31.07.2021, as agreed between the parties vide meeting dated 25.07.2020. The Authority observes that the said relief governed by the Deed of Declaration and the same relief shall be regulated according to the terms and condition of the Deed of Declaration. In case, the complainant/association have any grievances in this regard they may approach the DTCP for redressal of the same.

**G.XVI Direct the respondent, its agents and assigns to take insurance since the project is not deemed to be complete without the completion certificate.**

43. As per section 16(2) of the Act 2016, the promoter is obligated to pay *the premium and charges in respect of the insurance specified in sub-section (1) and shall pay the same before transferring the insurance to*





*the association of the allottees. Further as per section 16(4) of the Act on formation of the association of the allottees, all documents relating to the insurance specified under sub-section (1) shall be handed over to the association of the allottees.*

44. Therefore in view of the above said provisions of the Act of 2016, the respondent is only obligated to pay the premium of charges in respect of the insurance till transferring the insurance to the association of the allottees and after formation of association of allottees all documents relating to the insurance shall be handed over to it.

**H. Directions of the authority**

45. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):
- i. The respondent/promoter is directed to transfer all the IFMS/IBMS amount received by it from the allottees in the account of RWA. Further, if it has received any interest on the IFMS/IBMS deposit, then the same shall be transferred in the account of RWA within a period of 90 days failing which legal consequences would follow.
  - ii. The respondent/promoter is directed to rectify the defect and deficiency in the construction and service mentioned in the report of the District Administration Gurugram within time specified provided by the District Administration Gurugram.
  - iii. The respondent/promoter is directed to deposit the penalty of Rs.5 Lakhs imposed vide order dated 02.04.2024, upon the respondent for non-compliance of the directions of the Authority under section

63 of the Act of 2016, with in a period of 90 days from the date of this order.

46. All the pending applications, if any, are also disposed off.
47. Complaint stands disposed of.
48. File be consigned to registry.

  
(Sanjeev Kumar Arora)  
Member

  
(Arun Kumar)  
Chairman

  
(Ashok Sangwan)  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 09.07.2024



HARERA  
GURUGRAM