

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

Complaint no.	5393 of 2022
Date of filing of complaint	29.07.2022
Date of decision	30.04.2024

1. Dinesh Kumar 2. Shashwat Nigam (through guardian Mr. Sandeep Nigam) R/O: Flat no. 103, House No. 119/563, Guru Kripa Complex Darshan Purva, Kanpur, Uttar Pradesh-208012.	Complainants
Versus	
Haamid Real Estates Private Limited Regd. Office: The Masterpiece, Sector 54, Golf Course Road, Gurugram	Respondent

CORAM:	
Shri Arun Kumar	Chairman
Shri Ashok Sangwan	Member
Shri Sanjeev Kumar Arora	Member
APPEARANCE:	
Sh. Garv Malhotra (Advocate)	Complainants
Sh. Dhruv Rohatagi (Advocate)	Respondent

ORDER

1. The present complaint has been filed by the complainant/allottee under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 29 of the Haryana Real Estate (Regulation and

Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the rules and regulations made there under or to the allottee as per the agreement for sale executed inter se.

A. Unit and project related details

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

S. N.	Particulars	Details
1.	Name of the project	"The Peaceful Homes", Sector 70A, Gurgaon
2.	Project area	8.38 acres
3.	Nature of the project	Group Housing Colony
4.	DTCP license no. and validity status	16 of 2009 dated 29.05.2009 valid upto 28.08.2024 73 of 2013 dated 30.07.2013 valid upto 09.07.2019
5.	Name of licensee	Haamid Real Estates Pvt. Ltd.
6.	RERA Registered/ not registered	63 of 2019 dated 22.10.2019
7.	RERA registration valid up to	31.12.2019
8.	Allotment Letter	21.06.2013 for unit C102 (Page 127 of the reply)



9.	Unit no.	Earlier unit no. C102 A272
10.	Unit area admeasuring	C102- 2475 sq. ft. (super area) A272- 1321 sq.ft. (super area)
11.	Date of execution of Flat Buyer's Agreement	07.03.2015 for unit C102 23.08.2021 for unit A272 (page 80 of complaint)
12.	Possession clause as per agreement dated 23.08.2021	5 Time is essence The Promoter shall abide by the time schedule for completing the Project, handing over the possession of the Unit to the Allottee(s) and the Common Areas and Facilities of the AIPL Projects to the Association of Allottee(s) or the Governmental Authority or Maintenance Agency, as the case may be, as provided under Rule 2(1) (f) of Rules, 2017 by 31 December 2019 as disclosed at the time of registration of the Project with the Authority or such extended period as may be intimated and approved by Authority from time to time. The completion of the Project shall inean grant of Occupancy Certificate for the Project (Page 147 of reply)
14.	Due date of possession	31.12.2019
15.	Total sale consideration	Rs. 1,78,09,545/-

		(SOA on page 115 of the reply)
16.	Amount paid by the complainants	Rs.1,90,26,120/- (Alleged by complainant in Reliefs sought)
17.	Occupation certificate /Completion certificate	29.10.2019
18.	Offer of Possession (unit no. C-102)	05.11.2019 (Page 195 of reply)
19	Offer of Possession (unit no. A-272)	04.07.2020
	Conveyance deed of unit no. A272	24.12.2021 (page no. 132 of complaint)

B. Facts of the complaint:

- That on 31.01.2013 the booking application was signed and executed by paying Rs 10,00,000/- between the complainants and the respondent promoter of the project, 'TPH' Homes for a 2bhk unit No C102 with Super Area of 1565.00 Sq. Ft. Thereafter on 11th June and 25th June 2013 respectively Rs 12,00,000/- and Rs 63,000/-. Thus, the complainant had paid Rs 22,63,000. In the first 6 months which is much more than 10 % of total sale consideration.
- That the respondents are a developer, developing plot into group housing colony/Society were raising construction at sector 70-A, village Palra District -Gurgaon, Haryana.
- That the complainant has booked a 2BHK flat in the project THE PEACEFUL HOME having a super area of 1565 sq. ft. in Tower No. C, 10th Floor Unit-C,

102 in the project called "**THE PEACEFUL HOMES (TPH)**" in Sector 70A, Gurugram, Haryana.

6. It is humbly submitted that on 11.06.2013 more than 10% of the total basic sale price was paid and thus the onus of registering a builder buyer agreement as per section 13 of RERA was on the builder. Thus, the due date of possession is to be calculated from this date i.e. 11.06.2013 and thus the due date of possession comes out to be 11.12.2016 i.e. after 3 years 6 months as the buyer agreement had a delivery timeline of 3 years and 6 months grace period.
7. That the complainants also repeatedly followed up with the respondent to execute a builder buyer agreement (hereinafter referred to as "BBA") but all to no avail. The respondent company, through its representatives and various employees, assured the complainants from time to time that the "agreement to sell" is still under process and till date the respondent have not sent any documents related to unit. In the meantime the complainant approached to the respondent office for getting his grandson's name included in the BBA/ execution of sale deed and further asked to respondent employee to kindly get his accounting done for the payment of the complainant deposited in respondent project.
8. That as per the account statement the total consideration of the flat was Rs.1,23,93,040.20/- (though the total amount paid was of Rs 1,27,47,521/-) as per allotment letter dated 10-05-2014 was issued by the respondent to the complainant.
9. That respondent is the promoter/ developer/builder of the project. The respondent had launched a new residential project called "**THE PEACEFUL HOMES (TPH)**" in Sector 70A, Gurugram, Haryana & had published many advertisements for the project to attract the public at large. The respondent

is a fully owned subsidiary company of AIPL and has, at all material points of time, been and is still engaged in the commercial business of developing and selling housing projects/flats/plots and other construction layouts to various individuals and/or others in lieu of valuable considerations for profit being their primary objective.

10. That at the time of the booking, the respondent-builder had promised the complainant state-of-the-art residential spaces that are affordable yet modern and well-equipped residential project within a stipulated time period. One of the unique selling point (usp) of the project that was marketed was the 16/6 space i.e 06 towers in 16 acres of land with a lot of open area and lush green Landscape. But after taking the possession, the complainants realized that the respondent builder had made significant changes to the site plan wherein instead of making 06 towers in 16 acres he has now made 06 residential towers within 11.78 acres only including the club area. In addition, 'community building as per brochure of 2014' has been converted into a 'community building and tower e as per brochure of 2018' thereby increasing total no of units within the reduced area of 11.78 acres, thus effectively reducing the common area for all residents without passing any of these details to the allottees, thus leading to serious deficiencies in the project, which directly amount to unfair trade practice. Moreover, the site plan has also significantly changed in the brochures of 2014 and 2018 as a significant area comprising of two towers has been removed and the earlier single tower i.e. D has been changed to two new i.e. Towers Zen - 1 and Zen - 2 respectively. Moreover, the respondent Builder has made another tower illegally and arbitrarily over the club house in the name and style of club residences without the approval from the authorities and the allottees. The '**Community Building as per Brochure of 2014**' has

been converted into a **'Community Building and Tower E as per Brochure of 2018'**, thereby reducing common area for all residents without passing these details to allottees. Such an unlawful act has consequently reduced the per capita common area space available to each resident by a huge margin, which has neither been taken into consideration, nor commented upon by the respondent. It is yet again reiterated that the respondent has sought the change in layout plans on the basis of a false undertaking and the same is liable to be revoked.

11. That as per the respondent's own brochure of 2014, TPH was to come as a project of "16/6 Space - Never before open areas and greens with just 6 towers in 16 acres", which has got reduced to 11.78 acres as per Sub-Para viii of Definitions of conveyance deed which clearly defines "Land Parcel 1" which includes 'The Peaceful Homes', 'Club Residences', 'Zen Residences', 'Club Tanta' and 'AIPL Boulevard', all of which are collectively known as TPH. Further, even after including 'Club Tantra' in land Parcel 1 (11.78 acres), The respondent has excluded same from the 'common areas and facilities of AIPL Projects' as mentioned at 'Schedule B of the Conveyance Deed, which further brings the acreage of the project down from advertised acreage of 16 acres revised arbitrarily to 11.78 Acres in other documents to further lower size. On top of this, it is an admitted fact by the respondent builder has revised the plans thrice and the revisions carried out to the original plans in the years 2014, 2017 and 2021, he further increased the number of units in TPH from 1256 to 1430 thereby reducing the Common area and the Super Area of original allottees and yet failed to pass on benefits accrued therefrom to them. But the complainants did not receive an intimation about the same any of the time. In addition, for obtaining approval of his revised plans after giving out a 'Public Notice' on 27.03.2021,

the respondent submitted a false undertaking to CTP Chandigarh and DTCP Gurugram to conceal the fact that he had not received any objection from any of the existing allottees whereas the complainant had submitted an objection and to the best of our knowledge, 04 more residents had submitted their objections to the respondent vis Emails dated 27 and 28 Mar 2021. This clearly shows that the sanction of CTP Chandigarh accorded to the respondent on his provisional plan on 18.05.2021 is based on a false undertaking by the respondent thereby making the sanction infructuous and liable for initiation of criminal proceedings against the respondent. It is a settled principal of law that the respondent Builder is to transfer all common areas including club/community building to the association of Allottees and the same is a property of the AOA/RWA but the respondent-builder has arbitrarily transferred the same to his own name.

12. Moreover, at the time of booking in the year 2014, the complainants were told that the total number of units in the project would be 1256 only whereas since the year 2018 that number has been increased to 1430 without any corresponding change in area of the project. Similarly, the EWS unit and servant quarters have increased from 223 to 252/253 and 130 to 143 respectively. Thus, collectively the population has increased from 6986 to 7940 or more i.e., a change in the population density of 34.729 per person.
13. That it is humbly submitted that after this revelation the complainants apprehended the builder time and again to provide the detailed break-up of the super area for which they have adequately paid as and when demanded so as to know how the super area being promised to them is being actually and physically being delivered. But till date the respondent has failed to provide any satisfactory reply. Moreover, it is clearer and from the above-

mentioned increase in number of units that in no possibility the super area promised can be delivered as the portion of common area is now being divided in more allottees than before.

14. That in December 2019 the respondent's employee contacted to the complainant and asked for a cheque of Rs 23,600/- along with document so that fresh document in the name of respondent and the complainant's grandson be done.
15. That in February 2020 the respondent employee gave an offer to the complainant that if the complainant are not willing to take the possession of 2BHK flat than the amount deposited by the complainant will be adjusted in a 3BHK flat having an area 2350 sq. ft. to which the complainant agreed but later on the respondent provided a fresh payment plan and fixed the cost of 3bhk flat for Rs.1,78,09,545/-. That the respondent-builder while transferring into the new unit has failed to transfer the full amount deposited into the 2bhk unit to the 3bhk unit and the amount of Rs 1,79,634/- is not transferred and thus this amount needs to be reimbursed with interest.
16. That another buyer agreement is executed between the parties on 23.08.2021 for flat no. A272 on 27 floors in the Tower A in project "THE PEACEFUL HOME" at the time of booking the complainant paid an advance amount of Rs. 10,000/- and 2nd cheque for Rs.54,06,506/- was deposited and now the complainant has deposited approximately Rs. 1,90,26,120/- to the respondent. Resulting the respondent getting an additional amount of Rs 10,43,465/-.
17. That the complainant was promised luxury apartment with high standard quality and a big 3BHK apartment of **2350 square feet super area**. But

after possession was delivered the carpet area of only **1321.89** sq ft i.e. 56% of the super area.

18. That the conveyance deed no. 10238 dated 24.12.2021 is executed between the respondent and the complainant.
19. That on 5.10.2020 according to account statement the club charges of Rs.28,320/- is levied on the complainant. As per BBA in schedule K payment plan it is clearly mention that club charges is zero. That is arbitrarily, illegal and malafide. It is pertinent to note that the aforementioned acts of the respondent builder were just a well thought out strategy by respondent builder to illegally demand and extort more money from the complainant and to illegally levy interest when he is himself not meeting the timelines of construction and milestones promised by the builder. This unfair trade practice resorted to by the builder was to threaten the honest complainant in order to dupe them of her hard-earned money.
20. That the complainants have complied with all the terms and conditions of the various documents executed but the respondents have failed to meet up with their part of the contractual obligations and thus are liable for dpc and interest for every month of delay at prevailing rate of interest from the due date of possession till valid offer of possession and physical possession. But till date no amount has been paid back to the complainants and the respondents are enjoying the hard-earned money of the complainants for past more than five years approximately.
21. That the complainants had approached the respondents time and again seeking the information related to the statement of accounts so that before executing sale deed the complainant will be in position to know whether any further amount is to be given by the complainant or the respondent refund the additional amount given by the complainant. After repeated

reminders the complainant also sent notices on requesting the respondents to provide all the details of amount deposited by the complainant to the respondent after adjusting the amount of 2bhk flat into 3BHK Flat and supply the copy of statement of account before sale deed is to be executed but despite the notice being served, they did not provide any copy of statement of account.

22. That the main grievance of the complainants in the present complaint is that despite the complainants having paid more than 100% of the actual amounts of flat but the respondent(s) party has failed to deliver the possession of flat as per schedule, specifications and amenities are shown in brochure and builder buyer agreement. Moreover, the respondent(s) charged extra amount under different heads i.e. EDC/IDC, registration charges. Also the respondent builder failed to provide proper sewage treatment facilities, inadequate power backup and improper road approach and access.

C. Relief sought by the complainant:

23. The complainant has sought following relief(s):
- i. Interest for every month of delay at prevailing rate of interest.
 - ii. To direct the respondents to provide a detailed break-up of super area and common area applicable and allotted to the complainants and whether it includes the area designated under two paid car parkings or not.
 - iii. To direct that the development of two more towers namely zen 1 and zen 2 (without seeking approvals from the 2/3rd of the allottees and without creating essential services of piped water supply, 100% power back up, sewage disposal and treatment, reliable lifts road connectivity

and other amenities as promised for the existing allottees) be stayed and their construction be stopped till these essential services are provided to the existing residents and relevant approvals are taken from the complainants and other allottees and till they are adequately compensated for false and illegal promises.

iv. The standard of tiles promised, and the tiles delivered actually is of low quality and thus need to be replaced and damages for the same be given to the complainants.

v. To direct the respondents to make good the direct and continuous losses and damages due to cracks being developed on the walls due to poor quality of construction and inadequate cementing between the Big blocks of bricks.

vi. To order the respondents to waive off the arbitrarily and illegally levied interest free maintenance charges, club membership, excess VAT deductions other charges on various facilities and amenities as mentioned in the table of complaint and provide delay interest on the same as per RERA Guidelines from date of payment till date of actual availability of services/ Facilities.

vii. The respondents be directed to reimburse the arbitrary VAT amount charges of Rs 5,63,872 with Interest.

viii. The respondent be directed to immediately execute the conveyance deed without prejudice to any of the legal rights of the complainants. The complainants should be adequately reimbursed the burden of excess stamp duty charges due to increase in stamp duty because of delay in executing the conveyance deed by the respondents.

- ix. That the respondent builder has Illegally and Arbitrarily charged more External Development Charges/Internal Development Charges (EDC/IDC) than what is sanctioned as per the prevailing norms and rules of the government and the extra amount be directed to be deposited back to the Complainant.
- x. That the respondent builder be directed to disclose all documents regarding available water and electricity infrastructure and units as well as the expenditure on the same, failing which an audit be done by an independent authority.
- xi. To direct the Respondent to operate and start a direct water connection at once from the SPR, as per the orders of the GMDA in their letter of 30 Jul 2021.
- xii. To direct the respondent to charge on actuals as per the units consumed for electricity.
- xiii. To direct the Respondent to pay for litigation charges to the tune of Rs 1,50,000/-.
- xiv. To direct the respondent to hand over all the maintenance, management and control to the association of Allottees at once and constitute a RWA.

D. Reply by respondent:

24. That it is submitted that the respondent entered into collaboration agreements in the year 2012 with Rapid Infracon Private Limited, Capital Heights Private Limited and Classic Infrsolutions Private Limited and transferred the development rights to these developers. After transferring the development rights, Respondent was left with the land admeasuring 11.785 acres.

25. That it is submitted that the respondent is a wholly owned subsidiary of the Advance India Projects Limited. The development of the residential group housing colony under the name of "The Peaceful Homes" situated at Sector-70A, Gurgaon, Haryana (**hereinafter referred to as "the said project"**) has been undertaken by the respondent. The said project is registered with the Hon'ble Authority vide registration number 63 of 2019 dated 22.10.2019 declaring the respondent as the promoter/license holder of the project. The said project is developed on a land admeasuring 8.38 acres and the same is mentioned on RERA registration certificate. The complainants wrongly contend through their proforma-b that the project known under the name and style of "The Peaceful Homes" at Sector 70A, Gurugram ("**Project**") is "un-registered". It is submitted that the project is registered vide registration no. 63 of 2019 dated 22.10.2019.
26. That in the meantime, the respondent had applied for revision of building plans on the said licensed plan on 22.04.2013, which stood approved on 18.09.2014.
27. That it is submitted that the project underwent a change/modification and upon the same being done, objections/suggestions for approval of building plans were invited from the complainants on 13.06.2014. It is submitted that the complainants neither paid any heed to the requests of the respondent nor came forward with objections, if any.
28. That pursuant to the execution of the application form, the respondent had no reason to suspect the bonafide of the complainants and the allotment letter dated 21.06.2013 was issued to the complainants. The complainants were allotted unit no. C-102 on the 10th Floor of Tower C, having super area of 1565 sq.ft.

29. That in the meantime, the respondent had again applied for revision of building plans on the said licensed land on 16.10.2015, which stood approved on 27.01.2017. It is submitted that objections/suggestions for approval of building plans were invited from the complainants on 05.12.2018. It is submitted that the complainants neither paid any heed to the requests of the respondent nor came forward with objections, if any.
30. That it is further submitted that despite there being a number of defaulters in the project, the respondent itself infused funds into the project and has diligently developed the project in question. The respondent had applied for occupation certificate on 18.03.2019. It is pertinent to note that once an application for grant of occupation certificate is submitted for approval in the office of the concerned statutory authority, the respondent ceases to have any control over the same. The grant of sanction of the occupation certificate is the prerogative of the concerned statutory authority over which the respondent cannot exercise any influence. As far as the respondent is concerned, it has diligently and sincerely pursued the matter with the concerned statutory authority for obtaining of the occupation certificate. No fault or lapse can be attributed to the Respondent in the facts and circumstances of the case. Therefore, the time period utilized by the statutory authority to grant occupation certificate to the respondent is necessarily required to be excluded from computation of the time period utilized for implementation and development of the project.
31. That the complainants were offered possession of the unit in question through letter of offer of possession dated 05.11.2019. The complainants was called upon to remit balance payment including delayed payment charges and to complete the necessary formalities/documentation necessary for handover of the unit in question to the Complainants.

However, the complainants approached the respondent with request for payment of compensation for the alleged delay in utter disregard of the terms and conditions of the buyer's agreement. The respondent explained to the complainants that they are not entitled to any compensation in terms of the buyer's agreement on account of default in timely remittance of installments as per schedule of payment incorporated in the buyer's agreement. The respondent earnestly requested the complainants to obtain possession of the unit in question and to further complete all the formalities regarding delivery of possession. However, the complainants did not pay any heed to the legitimate, just and fair requests of the respondent and threatened the respondent with institution of unwarranted litigation.

32. That thereafter, the complainants approached the respondent for taking the possession of the said unit in question. That an indemnity cum undertaking for taking the possession of the said unit dated 05.12.2019 was executed by the complainants.
33. That pursuant to the execution of the indemnity cum undertaking for taking the possession of the said unit, the Complainants approached the respondent requesting for assignment of allotment of the said unit in question in the name of Mr. Shashwat Nigam (Through his guardian Mr. Sandeep Nigam). That the said request for name addition of Mr. Shashwat Nigam to assign their rights/benefits in respect of the said unit was acceded vide letter dated 27.12.2019. It is pertinent to mention that the Complainants further executed an affidavit dated 10.01.2020 and an indemnity cum undertaking dated 10.01.2020 whereby Complainants had consciously and voluntarily declared and affirmed that they would be bound by all the terms and conditions of the application form/buyer's

agreement. It is submitted that the filing of the present complaint is nothing but an abuse of the process of law.

34. It is relevant to mention that the respondent credited compensation amounting to Rs. 3,39,592/- and early payment rebate amounting to Rs. 4,61,146/- to the complainant in the year 2020, against the previous unit.
35. It needs to be highlighted that the complainants has further executed a conveyance deed dated 24.12.2021 in respect of the unit in question. The transaction between the complainants and the respondent stands concluded and no right or liability can be asserted by the respondent or the complainant against the other. It is pertinent to take into reckoning that the complainants has obtained possession of the unit in question and has executed conveyance deed in respect thereof. The instant complaint is a gross misuse of process of law. The contentions advanced by the complainants in the false and frivolous complaint are barred by estoppel.
36. All other averments were denied in total.
37. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority:

38. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.1 Territorial jurisdiction

39. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by the Town and Country Planning Department, the jurisdiction of the Real Estate

Regulatory Authority, Gurugram shall be the entire Gurugram District for all purposes 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.

E. II Subject matter jurisdiction

40. 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 allottee as per the agreement for sale, or to the association of allottee, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottee, or the common areas to the association of allottee 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 promoter, the allottee and the real estate agents under this Act and the rules and regulations made thereunder.

41. 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 relief sought by the complainant.

F.1 To direct the respondent to pay delay possession charges alongwith prescribed rate of interest.

42. The complainants initially booked a 2 BHK apartment (Unit No. C-102) in the project but later requested to cancel this allotment in favor of a larger 3 BHK apartment. The offer of possession for the original booking (unit No. C-102) was issued on 05.11.2019. However, due to the complainants' request for cancellation and fresh allotment of the 3 BHK unit (Unit No. A-272), a new offer of possession for this unit was issued on 04.07.2020. It is important to note that the allottee voluntarily opted for allotment of a new unit in the subject project and was fully aware at the time of allotment of the new unit regarding the status of the project, building plan, and layout, etc.
43. A new buyer agreement was executed between the complainants and the respondent on 23.08.2021, following the cancellation of the original booking. This agreement contained a clause indicating that "Time is of the Essence," specifying the deadline for possession and completion of the project. It is pertinent to mention that, as per clause 5 of the said buyer agreement, possession was supposed to be handed over to the allottee by December 31, 2019. However, the buyer agreement was executed on 23.08.2021, and possession of the unit was offered on 04.07.2020. It can be assumed that the unit was in a ready-to-move-in condition, which is why the respondent-builder offered possession of the unit on 04.07.2020, prior to the signing of the buyer agreement on 23.08.2021. It is important to note that it is not mentioned anywhere in the buyer agreement that the date of handing over the apartment would take effect retrospectively.
44. The authority is of the view that that the respondent-builder has met its obligation by offering possession of the new unit without any delay. Since the complainants' request for the new unit was voluntary and the offer for possession of the new 3 BHK apartment was provided even before the

execution of the buyer agreement, the complainants' current claim for relief does not hold good.

F.II To direct that the development of two more towers namely zen 1 and zen 2 (without seeking approvals from the 2/3rd of the allottees and without creating essential services of piped water supply, 100% power back up, sewage disposal and treatment, reliable lifts road connectivity and other amenities as promised for the existing allottees) be stayed and their construction be stopped till these essential services are provided to the existing residents and relevant approvals are taken from the complainants and other allottees and till they are adequately compensated for false and illegal promises.

45. The allottee voluntarily opted for allotment of a new unit in the subject project and was fully aware at the time of allotment of the new unit regarding the status of the project, building plan, and layout, etc. As per records, no changes have taken place in the layout after the allotment of the new unit to the complainant. The complainant cannot claim to have agreed or disagreed with previous changes in the plan, as they voluntarily opted for a new allotment after due diligence and participated in executing the buyer agreement dated 23.08.2021. In view of the above, no relief can be granted to the complainant regarding the issue of obtaining 2/3 consent of the allottees under Section 14 of Act, 2016. As for the issue of providing essential services, it shall be governed by the provisions of the buyer agreement, approved layout/building plan, and conditions of the license. The complainant may approach the competent authority for any matters related to the provision of essential services.

F.III That the respondent Builder be directed to disclose all documents regarding available water and electricity infrastructure and units as well

as the expenditure on the same, failing which an audit be done by an independent authority.

46. The complainant is seeking relief of disclosure all documents regarding available water and electricity infrastructure and units as well as the expenditure on the same, failing which an audit be done by an independent authority. It is important to note that as per Section 11(3)(a) of the RERA Act of 2016, developers are mandated to provide allottees with sanctioned plans, layout plans, and specifications (a clear schedule with dates for project completion, including infrastructure provisions such as water, sanitation, and electricity) at the time of booking and the issuance of the allotment letter. This disclosure ensures that homebuyers have comprehensive information about the proposed project from the outset. So, the respondent-builder is directed to provide all the necessary approvals obtained from the competent authority to the complainant.

F.IV To order the respondents to waive off the arbitrarily and illegally levied interest free maintenance charges, club membership, excess VAT deductions other charges on various facilities and amenities as mentioned in the table of Complaint and provide delay interest on the same as per RERA Guidelines from date of Payment till date of actual availability of services/ Facilities.

F.V The respondents be directed to reimburse the arbitrary VAT amount charges of Rs 5,63,872/- with Interest.

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

48. It is important to note that the conveyance deed was executed between the parties on 28.01.2020. The conveyance deed is a legal document that transfers the title of property from one party to another, signifying the completion of the property transaction especially regarding payments related to the purchase price, taxes, registration fees, and any other contractual financial commitments outlined in the agreement. However, despite the conclusion of the financial obligations, the statutory rights of the allottee persist if any provided under the relevant Act/Rules framed thereunder. Execution of conveyance deed is a sort of entering into a new agreement which inter alia signifies that both parties are satisfied with the considerations exchanged between them, and also that all other obligations have been duly discharged except the facts recorded in the conveyance deed.

49. It is pertinent to mention here that complainant took the possession and got the conveyance deed executed, without any demur, protest or claim. The complainant has neither raised any grievance at the time of taking over the possession or at the time of execution of the conveyance deed, nor reserved any right in the covenants of the conveyance deed, to claim any refund of preferential location charges or any other charges. Also it is a matter of record that no allegation has been levelled by the complainant that conveyance deed has been got executed under coercion or by any unfair means.

50. The Authority is of view that after the execution of the conveyance deed between the complainant and the respondent, all the financial liabilities between the parties come to an end except the statutory rights of the allottee including right to claim compensation for delayed handing over of possession and compensation under section 14 (3) and 18 of the RERA Act.

2016. In view of the above, the complainant cannot press for any other relief with respect to financial transaction between the parties after execution of conveyance deed except the statutory obligations specifically provided in the Act of 2016.

F.VI The respondent be directed to immediately execute the conveyance deed without prejudice to any of the legal rights of the complainants. The complainants should be adequately reimbursed the burden of excess stamp duty charges due to increase in stamp duty because of delay in executing the conveyance deed by the respondents

51. As per, the documents on record, the Authority observes that the conveyance deed stands already executed between the parties on 24.12.2021. Therefore, no directions can be given in view of same.

F.VII To direct the respondents to provide a detailed break-up of Super Area and common area applicable and allotted to the Complainants and whether it includes the area designated under two paid car parkings or not

52. The complainant is seeking relief of disclosure all documents regarding detailed break-up of Super Area and common area applicable and allotted to the Complainants and whether it includes the area designated under two paid car parkings or not. It is important to note that as per Section 11(3)(a) of the RERA Act of 2016, developers are mandated to provide allottees with sanctioned plans, layout plans, and specifications (a clear schedule with dates for project completion, including infrastructure provisions such as water, sanitation, and electricity) at the time of booking and the issuance of the allotment letter. This disclosure ensures that homebuyers have comprehensive information about the proposed project from the outset. So,

the respondent-builder is directed to provide all the necessary approvals obtained from the competent authority to the complainant.

F.VIII To direct the Respondent to operate and start a direct water connection at once from the SPR, as per the orders of the GMDA in their letter of 30 Jul 2021.

53. As per the condition stipulated in point 4 of the occupation certificate dated 29.10.2019, the respondent is hereby directed to ensure the provision of water supply. This obligation will continue until such time that the Haryana Shahari Vikas Pradhikaran (HSVP) or any other competent authority makes these services available according to their established scheme.

F.IX To direct the respondent to charge on actuals as per the units consumed for electricity

54. The respondent-builder is directed to comply with the point 16 of the occupation certificate dated 29.10.2019 which states that "*you shall apply for connection of Electricity within 15 days from the date of issuance of occupation certificate and shall submit the proof of submission thereof to this office. In case the electricity is supplied through Generators then the tariff charges should not exceed the tariff being charged by DHBVN*".

F.X That the Respondent Builder has illegally and arbitrarily charged more External Development Charges/Internal Development Charges (EDC/IDC) than what is sanctioned as per the prevailing norms and rules of the government and the extra amount be directed to be deposited back to the Complainant

55. The complainant states that respondent builder has illegally and arbitrarily charged more External Development Charges/Internal Development Charges. On the contrary respondent builder states that the charges


towards EDC/IDC are levied by the government. The respondent-builder has presented a "no dues certificate" issued by the relevant authority, indicating a payment of Rs. 66 crore towards EDC and IDC. Hence, the Authority cannot accede with the above relief sought.

H. Directions of the Authority:


56. Hence, in view of the factual as well as legal positions detailed above, the complaint filed by the complainant seeking above reliefs against the respondents is decided in terms of paras 42 to 55 above. Ordered accordingly.

57. Complaint stands disposed of.

58. File be consigned to the registry.


(Sanjeev Kumar Arora)
Member


(Arun Kumar)
chairman


(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 30.04.2024