



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	525 of 2020
Date of filing:	16.06.2020
Date of first hearing:	20.10.2020
Date of decision:	06.02.2025

Sushila Jain W/o Sh.Jai Prakash Jain
R/o House no. 82 Sector-17,
Kheri Kalan, Faridabad, Haryana

....COMPLAINANT

VERSUS

Adore Realtech Pvt. Limited.
1F-24-25-26 Ozone centre
Sector-12, Faridabad, Haryana-121007

....RESPONDENT

CORAM: Parneet Singh Sachdev
Nadim Akhtar
Dr. Geeta Rathee Singh
Chander Shekhar

Chairman
Member
Member
Member

Present: -Mr. Rajat Jain, Representative of complainant through VC.
Mr. Rohan Gupta, Counsel for the respondent through VC.

ORDER(PARNEET S SACHDEV-CHAIRMAN)

1. Present complaint has been filed on 16.06.2020 by complainant under Section 31 of the Real Estate (Regulation & Development) Act, 2016 (for short Act of 2016) read with Rule 28 of the Haryana Real Estate

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(Regulation & Development) Rules, 2017 for violation or contravention of the provisions of the Act of 2016 or the Rules and Regulations made thereunder, wherein it is inter-alia prescribed that the promoter shall be responsible to fulfil all the obligations, responsibilities and functions towards the allottee as per the terms agreed between them.

A. UNIT AND PROJECT RELATED DETAILS

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

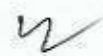
S.No.	Particulars	Details
1.	Name of the project	Happy Homes Sector-86, Faridabad (affordable group housing colony)
2.	Name of the promoter	Adore Realtech Pvt Ltd
3.	RERA registered/not registered	Registered. HRERA-PKL-FBD-151 of 2017 dated 28.08.2017
4.	DTCP License no.	108 of 2014,
	Licensed Area	5.0 acres
5.	Unit no.	Flat no. 302, Type-A, 3 rd floor, Tower-H
6.	Unit area	473.594 sq. ft.
7.	Date of allotment	29.10.2015



8.	Date of builder buyer agreement	02.11.2015
9.	Due date of offer of possession 48 months from commencement date-18.04.2015	18.04.2019
10.	Possession clause in BBA-48 months from commencement date-18.04.2015	Clause 5.1.1 " Subject to clause 14 herein or any other circumstances not anticipated and beyond the control of the developer or any restraints/restrictions from any courts/authorities but subject to the purchaser having complied with all the terms and conditions of this agreement and not being in default under any of the provisions of this Agreement including but not limited to timely payment of the consideration and having complied with all provisions, formalities, documentations etc. as prescribed by the developer, the developer proposes to offer the handing over the physical possession of the flat to the purchaser within a period of forty eight (48) months from the commencement date."
11.	Total sale consideration	₹ 19,44,376/-
12.	Amount paid by complainant	₹ 20,18,505.27/-
13.	Offer of possession	24.09.2018
14.	Date of Occupation Certificate	07.09.2018
15.	Possession taken by the complainant	In year 2021 as recorded in para 4 of order dated 14.05.2024 passed by Hon'ble Appellate Tribunal.

B. FACTS OF THE COMPLAINT

3. Facts of complaint are that complainant had booked a unit in the project of the respondent namely; Happy Homes situated in Faridabad by making payment of ₹1,00,000/- on 13.10.2015, following which allotment letter for flat no. H-302, 3rd Floor having an area measuring 473.594 sq. ft was issued in favor of complainant. Builder buyer agreement was executed between the parties on 02.11.2015 and in terms of clause 5.1.1 of it, possession was supposed to be delivered within 48 months from date of commencement (18.04.2015) i.e. upto 18.04.2019.
4. Complainant has paid an amount of ₹ 20,18,505/- against total sale consideration of ₹19,44,376/-. The builder sent the demand for the due instalments as per builder buyer agreement and as laid down by the Affordable Housing Policy 2013. All the installments were paid to the promoter in time. Complainant has already paid 100% amount as per the demand letters.
5. That the builder obtained occupation certificate on 07.09.2018 for 10 towers inclusive of tower in which complainant's unit is located. A letter for offer of possession dated 24.09.2018 was received by complainant from the respondent stating that the builder has obtained the occupation certificate and invited the complainant to submit the



documents and charges. A meeting was setup with the promoter at his office on 29.09.2018 wherein neither list of any documents required nor no dues certificate was provided to the complainant by the builder. Instead promoter demanded an additional amount of ₹2,60,000/- in cash for the issuance of no due certificate to enable the complainant to execute the conveyance deed of the flat.

6. That complainant demanded the description of the charges and the intimation letter for the amount being demanded in cash. But no valid response has been received from side of builder. Infact builder threatened that in case the complainant insists for the intimation letter of the charges or no due certificate without depositing this amount then she will have to wait till May 2025 or longer.
7. The promoter issued an entrance letter to visit the flat. (Annexure 10)
The "Offer of Possession" (Annexure 9) stated that
"Also, we have been able to offer the you the physical possession for ten towers of project, with your support, 2 years before the agreed date of delivery as per the terms of the builder buyer agreement executed by us with our customers. Thus, our belief that our customers' gain is our gain is fortified by offering the physical possession of the units of ten towers of Happy Homes, 2 years before the agreed date of delivery which will ultimately result in saving of rent for the said 2 years."

The statement is misleading and reflected the ill-intention of the promoter to harass the Flat buyers by misquoting the agreed date of delivery. The promoter offered the possession 206 days before the agreed date while claimed 2 years in the letter. This was a way to harass the flat buyers by indirect warning that the flat buyers shall not receive the flat at least for 2 years if they do not yield to promoter's demand of money in cash.

8. The complainant enquired about the status of the physical possession of the flat vide email dated 17.01.2019 (Annexure 11) and further protested the demand of such amount without any formal receipt vide email dated 29.04.2019(Annexure 12). The Complainant waited till 18.04.2019 for the period of 48 months to expire and continued follow ups with the promoter through emails, telephone and in-person but the promoter insisted on the payment of ₹2,60,000 in cash.
9. The complainant corresponded regularly with the builder for the enquiry of physical possession and any dues thereof through emails. The complainant tried to contact the Promoter at all possible email addresses but no response was received. Till the date of complaint, the complainant contacted the promoter on multiple occasions through e-mails and telephone. All e-mails remained unanswered.
10. During a telephonic call on 28.05.2020, Sh. Vikram Sharma representative of promoter again insisted for the amount and asked the

representative of complainant, Dr. Rajat Jain S/o Mrs. Sushila Jain, to pay the amount to get the 'No Dues Certificate' and stated that there shall be no receipt or description of charges issued to the complainant. The call was recorded and informed to the representative, to which he threatened that complainant may send innumerable emails or recordings to any forum but there is no possibility that the possession shall be given without the amount. A brief description of the conversation and protest for the demand of cash was emailed immediately to the Promoter. Email did not illicit a response.

11. Promoter has not complied with the rules of Haryana Affordable Housing Policy 2013 (Policy). The Policy provides for the possession of a unit in Affordable Housing Project within a period of 48 months and provides an extension of 12 months under Force Majeure Events. The developer however modified the Buyer's Agreement to his favour to provide himself an unlimited time for the development of the project by modifying clause 5.1.6 in the builder buyer agreement. The period of one year stated in the policy has been modified as "Reasonable extension of Time" to take undue advantage of the complainant. The complainant herein wants to submit that the intention of the promoter from the very beginning was to cheat the complainant as the above act was nothing but to illegally gain additional time for handing over possession.



12. Also, the occupation certificate was obtained by the promoter on 07.09.2018 attached as Annexure 8, thus any extension on grounds of Force Majeure Events neither be claimed now nor it has been informed to the complainant on any occasion earlier.
13. The copy of Haryana Affordable Housing Policy, attached as Annexure 17, under section 7(i) of Special Dispensations provides for the following to protect the interest of the buyers.

"As a matter of security against any possible delinquencies in completion of the project, the coloniser shall be required to furnish bank guarantee against the total realization from the project at the rate of 15% for areas falling in the Development Plans of Gurgaon, Faridabad, Panchkula, Panchkula Extn and Pinjore-Kalka and at the rate of 10% for rest of the towns to be furnished within 90 days of the date of commencement of the project. The bank guarantee shall be proportionately released against block-wise occupation certificate obtained by the licensee. However 10% of the total bank guarantee submitted shall be retained to be released at the end of 5 years maintenance period."

The condition was recorded as Point (p) in the license granted to the promoter by Department of Town and Country Planning under license no 108 of 2014 dated 13.08.2014 (Annexure 18) as:

"The Licensee shall submit BG against total realization from the project @ 15% within 90 days from the commencement of the project as per policy dated 19.08.2013"

14. DTCP failed to provide any details of the Bank Guarantee on enquiry by the complainant vide email dated 02.06.2020 (Annexure 19). It may be inferred that the promoter has never submitted any bank

guarantee as per policy and the license granted thus jeopardizing the project and investments made by the complainant. The intention of the Promoter from the very beginning was to cheat the complainant as the above act was nothing but to illegally provide him an opportunity to harass the Flat buyers in view of no financial loss to himself. The protections provided by the provisions of the Policy are still jeopardized as the promoter has not submitted any bank guarantee till the date of complaint as per the provisions of the Policy. The promoter may harass the complainant by not maintaining the property as per the Policy during the free maintenance period of 5 years.

15. The policy clause 5(iii)h dated 19.08.2013, states "*In case of surrender of flat by any successful applicant, an amount of Rs 25,000/- may be deducted by the colonizer*". The Promoter has been using this clause to his advantage to harass the complainant since any wilful withdrawal from the project may cause a financial loss of paid amount and interest only to the complainant. Utilising Clauses 5(iii)h to his advantage and his non-compliance of Clause 7(2) the promoter has created a situation wherein there may be no financial loss to the promoter and used it for harassing the complainant to pay undue amount in cash or wait indefinitely for the possession of the flat.
16. The promoter has also violated the conditions stated in the Occupation Certificate bearing memo no ZP-1037/SD(BS)/2018/25935 dated,....



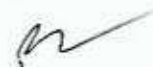
issued by the Department of Town and Country Planning point 2 which states

"that you shall abide by the provisions of Haryana Apartment Ownership Act, 1983 and rules framed thereunder. All the flats for which Occupation Certificate is being granted shall have to be compulsorily registered and a deed of declaration will have to be filled by you within the time schedule as prescribed under the Haryana Apartment Ownership Act, 1983. Failure to do so shall invite legal proceedings under the statute."

17. The builder has charged the Service Tax and GST to the complainant for the construction of project but has not passed the benefit of the input tax credits availed by him to the complainants and other buyers in the project. This has led to profiteering of large amount of money by him at the expense of the Flat Buyers. As per Notification number 12/2012- Service Tax, dated the 17th March, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 210 (E), dated the 17th March, 2012 in its section 14(c), the promoter was exempted from any Service Tax liability on his receipts in the pre-GST era.
18. As per the judgment in case of Ms. Santosh Kumar Vs M/s Aster Infrahome Pvt. Ltd, (National Anti-Profitteering Authority) case no 57/2019, the respondent has wrongly charged Service Tax in the Pre GST period and have not passed the benefits of Input Tax Credits availed by him. The complainant and other flat buyers are eligible for the benefit of input tax credit for pre-GST and GST period. The

complainant enquired about the GST input credit refund due to her. Promoter ignored all such requests and has not provided any information/Refund.

19. Other flat buyers of the project developed under licence no 108 of 2014 dated 14.08.2014, license no 46 of 2018 dated 09.07.2018, and 29 of 2016 dated 27.12.2016 have also protested to the illegal demand of EDC, IDC and GST by the promoter. The protest was registered with Senior Town Planner, Faridabad and Director, Town & country Planning, Haryana vide Memo 4297 dated 4/09/2019 diary no 21184 dated 06.09.2019 by Senior Town Planner, Faridabad Circle, Faridabad. (Annexure 20).
20. Grievance of the complainant is that the Promoter has complied neither with the agreement nor with Affordable Housing Policy 2013 and has used pressure tactics to harass the complainant and extort money.
21. The complainant is going through immense mental agony, stress and harassment, has constantly raising the issue of huge delay with promoter but unfortunately no satisfactory response or any concrete information or the reasons of this huge delay has come forth from promoter's end. Even after paying 100% of the amount as raised by the promoter, the complainant is still not in the rightful possession of the



flat. Hence, the present complaint has been filed before this Hon'ble Authority.

C. RELIEF SOUGHT

22. Complainant in his complaint has sought following reliefs:-

- i. The amount paid to the promoter be refunded with interest.

Due to the harassment by the promoter and not handing possession in spite of obtaining Occupation certificate almost 2 years ago, the complainant feels insecure to reside in the flat. Also, interest (if any) not conveyed to the complainant by valid means, should be waived.

- ii. Submission of Bank Guarantee by the promoter and a suitable penalty for non-compliance of the provisions of Haryana Affordable Housing Policy, 2013.

Provisions of the Haryana Affordable Housing Policy 2013 be equally applied to the promoter and he be directed to submit the Bank Guarantee for the project being developed under the building plan vide Memo no ZP-1037/AD(NK)/2019/13123 dated 31.05.2019.



A suitable penalty for non-compliance of Haryana Affordable Housing Policy, 2013 and endangering the fate of the flat buyers be imposed.

- iii. The Service Tax and ITC for GST be refunded with interest @ 18% to the complainant.

As per the recent judgement by the National Anti-Profitteering Authority in case of Ms. Santosh Kumar Vs M/s Aster Infrahome Pvt. Ltd, case no 57/2019 has held that, the promoter has wrongly charged the Service Tax for the period of 11.10.2015 to 30.06.2017 and not provided due ITC benefits for GST to the complainant. A suitable penalty on the promoter for cheating the flat buyers be imposed.

- iv. The promoter should also provide an undertaking for free maintenance as per the provisions of Haryana Affordable Housing Policy, 2013.
- v. Compensation for the mental agony and harassment caused by the promoter.

**AMENDED RELIEFS SOUGHT VIDE APPLICATION DATED
19.07.2021 AND 05.05.2022**



- i. The complainant be compensated with ₹5,00,000/- for the false facts stated by the respondent in the Builder Buyer Agreement.
- ii. Compensation interest for the delay in handing over the possession of the flat.
- iii. The complainant was entitled for free maintenance for the period of 5 years which formed an important value proposition for Affordable Housing Policy 2013. Compensation of ₹6,00,000/- for the loss of the free maintenance period due to delay in handing over the possession.
- iv. ₹2,00,000/- for mental agony and harassment at the hands of the respondent.
- v. ₹1,00,000/- towards cost of litigation.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

Learned counsel for the respondent filed detailed reply on 10.12.2020 pleading therein:

23. That the present complaint cannot be adjudicated by this Hon'ble Authority as this Hon'ble Authority does not have the jurisdiction to entertain and adjudicate the present complaint.
24. That present complaint is a sheer abuse of the provisions of RERA Act, 2016 as the complainant has not disclosed the true and correct facts and had rather hidden the true facts from this Hon'ble Authority.

Present case is a classic case where inspite of offering of physical possession before the agreed timeline by a developer a complainant with the sole intention of receiving interest from the respondent had filed the present complaint.

25. That complainant is aware that Hon'ble Authority is entertaining the customers and is granting interest at the SBI MCLR plus 2% to every complainant who is approaching this Hon'ble Authority with their complaints. It is also pertinent to note here that the complainant is a practicing chartered accountant and living in his own residential property at plot no. 82, sector 17, Faridabad and had purchased a flat in the affordable housing colony as an investment, which further proves that the complainant is not a genuine buyer of the flat but only an investor.
26. That complainant was allotted a unit in the project in question on 29.10.2015 and a flat buyer agreement dated 02.11.2015 was executed between the parties.
27. That the complainant was offered physical possession by the respondent vide letter dated 25.09.2018. in response, the complainant visited the site on 29.09.2018. Thereafter, the complainant kept on delaying the taking over of the physical possession on false and flimsy grounds despite the fact that the respondent had offered possession to more than 816 allottees of the said project since the receipt of



occupation certificate in September,2018. As on date, more than 650 families are already enjoying the physical possession of their allotted units in the project. But the complainant with malefide motives and intentions kept on delaying the taking over of the physical possession of the allotted unit on false and flimsy grounds.

28. That the respondent vide letter dated 03.07.2020 reminded the complainant to take over the physical possession of the unit, after payment of balance consideration as well as charges as detailed in the statement of account enclosed to the said letter dated 03.07.2020. Respondent had sent the details of the various amounts in writing on various occasions. Lastly on 03.07.2020, the respondent had raised the demand of ₹1,95,165/- , a copy of the same is annexed on page no. 25 of reply.
29. That the complainant had also become liable to pay the holding charges for the delay in taking over the physical possession of the allotted unit.
30. That it is denied that the respondent demanded an additional demand of ₹2,60,000/- in cash for the issuance of no dues certificate to enable the complainant to execute the conveyance deed of the flat.

E. WRITTEN SUBMISSION BY COMPLAINANT FILED ON 18.10.2024

31. During the hearing dated 08.09.2021, the complainant informed the Hon'ble Authority that she has changed her relief from refund and was




ready to take possession of the property challenging only the validity of the demand raised against her.

32. That complainant bought a flat under Affordable Housing Policy, 2013 in project "Adore Happy Homes" in sector 86 Faridabad. Allotment letter was issued on 29.10.2015 and the builder buyer agreement was executed on 02.11.2015, deemed date of possession was 18.04.2019. Respondent received occupancy certificate for the complainant's unit on 07.09.2018 and sent a letter to notify possession on 24.09.2018. However, this letter was a call for a meeting at the respondent's office to discuss the terms of possession and was not accompanied by any demand for dues. In the meeting on 25.09.2018, a verbal demand for an amount of ₹2,60,000/- was made by the respondent. Which the complainant objected to. The complainant initially sought a refund of the amount deposited with the respondent but later changed the plea to possession of the flat without payment of the added demand.
33. That complainant refers to complaint no. 849/2020 filed with the Hon'ble RERA Authority against the same respondent in the same project. Facts of the complaint are similar to the current complaint. Hon'ble Authority passed an order in complaint no. 849/2020 deciding that the offer of possession sent by the respondent on

25.09.2018 was a mere call for a meeting and could not be construed as a valid offer of possession.

34. Since the flat in question was bought under the Haryana Affordable Housing Policy, 2013 the respondent can charge the complainant as per the provisions of the policy, i.e. ₹4000/- per sq. ft. and the cost of balconies at ₹500 per sq. ft upto a maximum of 100 sq. ft. The rates are all inclusive of the cost of the apartment. BBA executed by the builder violates the said policy and the license granted by DTCP. Therefore, the respondent cannot claim charges other than labour cess and electricity meter charges.
35. Respondent has not sent any offer of possession alongwith the demand for any pending payments under any head until 11.11.2020. It was when Authority directed the respondent to send a fresh offer of possession alongwith demand, if any, in writing within 15 days of uploading of said orders. The Authority also imposed a penalty of ₹10,000/- on the respondent for not filing his response to the complaint on time, and the respondent still defaulted in the payment of penalty.
36. In the present complaint and referred complaint no. 849/2020, Hon'ble Authority has held conflicting views. In the present complaint, the Authority had considered BBA as valid and the charges demanded by the respondent in accordance with the agreement, as



valid. Whereas in the complaint no. 849/2020, the Authority has held that the BBA was void as it was executed in violation of the terms and conditions of Haryana Affordable Housing Policy 2013 and license granted by the Department of Town and country planning. Therefore, other charges being demanded cannot be claimed by the respondent.

37. Promoter has inserted unilateral clauses in the agreement that violate the provisions of the Affordable Housing Policy 2013 and the license granted by the Department of Town and Country Planning.
38. As per clause 1.11, charges, the BBA itself acknowledges that all charges are 'subject to the terms and conditions of the policy' which is Affordable Housing Policy, 2013 in this context. This clause explicitly subordinates the definitions and imposition of charges in the BBA to the regularly framework of the Affordable Housing Policy, 2013. This means that any charges outlined in the BBA are not inherently binding unless they are expressly permitted by the Affordable Housing Policy, 2013.
39. The Hon'ble Authority has erroneously accepted the respondent's arguments that the complainant defaulted in taking possession of the Flat and did not come forward to take possession. However, the delay in possession was not due to the complainant's reluctance but rather the respondent's failure to share a valid offer of possession accompanied by a demand letter for charges. The respondent also did



not respondent to the complainant's inquiries regarding the possession of the flat. Despite these facts, the Authority has accepted the respondent's excuse for the delay in possession.

40. In light of aforementioned case law and the provisions of the Haryana Affordable Housing Policy, 2013, the offer of possession dated 03.07.2020 which was sent via mail on 11.11.2020, contained illegal demands and thus cannot be considered a valid offer of possession. Therefore, the delay interest for the delayed handover of the flat should be granted upto the date of actual handover of the flat by the respondent-promoter.
41. That the builder buyer agreement was not signed in a free environment where the complainant has free will to apply her wisdom before entering into such one-sided agreement.
42. Given that the environment clearance and building plan approval dates are clearly defined the BBA and the commencement date is established as 18 April, 2015, the builder was obligated to deliver possession by 18 April, 2019. Failure to do so constitutes a delay and the complainant is rightfully entitled to compensation for this delay.
43. In respect of holding charges, it is submitted that the NCDRC in its order dated 03.01.2020 in the case titled as "Capital Greens Flats Buyer Association and Ors. vs DLF Universal Ltd". Consumer case no. 351 of 2015 has categorically held that developers are not entitled

to demand holding charges from allottees stating that once the developer has received the sale consideration, it does not suffer any financial loss by holding possession of the allotted flat except for the maintenance of the apartment.

44. That demand for maintenance charges by the promoter is not only contrary to the provisions of the Haryana Affordable Housing policy 2013 but also goes against the established legal principles set forth by Hon'ble National Consumer disputes Redressal Commission.
45. Moreover, the respondent under provisions of Affordable housing Policy is responsible for maintaining the colony free of cost for five years from the date of the occupation certificate. Therefore, any demand for maintenance charges within this five year period is in direct violation of this policy.
46. Demand of additional electrification charges is not only excessive but lacks transparency/justification.
47. No where in the BBA, it is mentioned that the flat will have load of only 1KW and that any additional load will be charged at such an exorbitant rate. This lack of clarity in the agreement itself is a significant point of contention.

WRITTEN SUBMISSION BY RESPONDENT FILED ON 03.02.2025



48. That the project Adore Happy Homes is governed by the terms and conditions of the Affordable Housing Policy, 2013 read with the various amendments issued by the DTCP. As per clause 5(1) of the said policy, the Government of Haryana had fixed the allotment rate for the apartment being built in affordable housing projects at the rate of Rs. 4,000/- per square feet. The developers are further entitled to charge Rs. 500 per sq. ft. against balcony area attached to the flat. subject to the maximum of 100 square feet.
49. The said policy does not have any clause or terms as regards the charges payable on account of electricity connection, common area power backup charges, operation cost and augmentation of electrical infrastructure. However, the Directorate of Town and Country Planning Haryana (DTCP) has issued a clarification bearing no. PF-27A/2024/3676 dated 31.01.2024, whereby the DTCP had clarified that the Developer/ Builder are entitled to collect the Maintenance/Use/utility charges which can be charged from the Allottees as per their consumption, the Interest Free Maintenance Charges (IFMS) and any charges agreed between the parties through bilateral agreements, i.e., the Flat Buyer Agreement/ Agreement for Sale in the instant complaint. The copy of Clarification bearing no. PF-27A/2024/3676 dated 31.01.2024 issued by the Directorate of

Town and Country Planning Haryana is annexed herewith as Annexure - A.

50. That as per the terms of the Flat Buyer Agreement (Bilateral Agreement) the Respondent had mentioned the list of charges which shall be payable by the complainant and the complainant is an educated and well qualified person and had accepted and admitted such terms and conditions. Following clauses of flat buyer agreement dated 02.11.2015 are relevant for the adjudication of the present complaint; **Clause 1.11-charges, Clause 1.24-Government dues, Clause 1.30-Maintenance agreement, Clause 1.42-Statutory dues, Clause 1.43-Tax amount, Clause 2.2-for payment of statutory dues as may be applicable on the consideration payable in respect of the flat, Clause 2.5-Electricity connection charges; Utility connection charges, Firefighting charges, Clause 9.1-Statutory taxes, maintenance charges and other dues, Clause 11.2-Electrification charges, Clause 16.4-Payment of EDC.**
51. That the Complainant in the complaint filed before this Hon'ble Authority had earlier sought refund of the amount paid along with compensation for mental agony and harassment. Later on, the Complainant withdrew her relief of seeking the refund along with compensation and at the time of filing of rejoinder has demanded the reliefs of compensation and other reliefs. The Complainant had not



sought any relief for grant of interest and therefore this Hon'ble Authority does not have the jurisdiction to entertain and adjudicate the present complaint.

52. Since the Complainants are seeking the reliefs of compensation from the Respondent therefore as per the provisions of the RERA Act, 2016, this Hon'ble Authority does not have the jurisdiction to entertain and adjudicate the present complaint.
53. The other reliefs being sought are not bonafide and cannot be granted in view of the terms and conditions of the Flat Buyer Agreement duly admitted and accepted by the Complainant (as mentioned hereinabove).
54. **First Argument-** The reliefs of compensation cannot be granted to the Complainant by this Hon'ble Authority in view of Sections 71 and 72 of the Real Estate (Regulation and Development) Act, 2016. The reliefs of compensation cannot be granted by this Hon'ble Authority as the compensation can only be determined by the Ld. Adjudicating Officer as per Section 71 of RERA Act, 2016. Therefore, the present complaint is liable to be dismissed as this Hon'ble Authority is not having any jurisdiction of grant the reliefs of compensation as prayed for by the Complainant in her Rejoinder. Furthermore, in view of the law laid down by the Hon'ble Apex Court in the case of "Newtech Promoters & Developers Pvt. Ltd. vs. State of UP & Ors. Etc. 2022(1)

R.C.R. (Civil) 357", the Hon'ble Authority has no jurisdiction to entertain and adjudicate upon the complaint filed by the Complainant allottees seeking reliefs of reliefs of compensation as the compensation can only be determined by the Ld. Adjudicating Officer as per Section 71 of RERA Act, 2016.

55. **Second Argument**-Possession offered within the specified period as per Affordable Housing Policy, 2013 as well as in accordance with the terms of the Flat Buyer Agreement-Hence, no compensation or interest payable by the Respondent to the Complainant.
56. It is pertinent to note here that the license for the development of the project Adore Happy Homes was granted on 19.08.2014 and the environmental clearance of the said project was received on 20.05.2016. As per the terms of the Affordable Housing Policy, 2013 the Developer/ Respondent was entitled to complete the project within a period of four years from the date of grant of environmental clearance. Thus, the Respondent was having time period till 20.05.2020. Whereas the Respondent had obtained the occupation certificate on 07.09.2018 and offered the physical possession on 25.09.2018 to the Complainant which is much prior to the date of handing over the physical possession. The Complainant did not come forward to take over the physical possession as the Complainant is only an investor and a speculator. The Complainant had made

multiple bookings in the project in the name of other family members. Therefore, the Complainant was expecting premium over the units which due to adverse market scenario did not come. Thus, the Complainant had filed this present complaint against the Respondent in order to pressurize the Respondent to succumb to the blackmail tactics of the Complainant. The Complainant had earlier filed a complaint bearing no. 849 of 2020 which is of the Complainant's relative and which proves that the Complainant is only an investor and a speculator. Since the Complainant is not receiving the premium which the Complainant had expected, hence the Complainant had filed this false and frivolous complaint. The copy of Environmental Clearance letter dated 20.05.2016 is annexed as Annexure - B.

57. That the allegations made by the Complainant as regards the **demanding of cash are wholly false**, frivolous and incorrect and the same are denied. The Respondent is not indulging in any such malpractices and the Complainant is only trying to concoct false stories against the Respondent.
58. That since the possession of the allotted unit was offered way back vide Offer of Possession Letter dated 25.09.2018 and the Complainant had already agreed to pay additional charges as per the terms of the Flat Buyer Agreement, therefore the submission of the Complainant that the Respondent cannot demand such additional charges are



devoid of any merits. The Respondent had allotted the flat/unit at the allotment rates as prescribed by Department of Town and Country Planning Haryana, in its Affordable Housing Policy, 2013. The Respondent has demanded the additional charges under various heads and the same are mentioned on page-17 of the Reply. The various heads under which the Respondent is raising the demand of additional charges of Rs. 1,95,165/- (Rupees One Lakh Ninety Five Thousand One Hundred And Sixty Five Only) are holding charges, interest on delayed payments, VAT Cost, labour cess, electrical meter charges, common area power backup charges, electricity connection charges, operation and maintenance cost and re-imbursement of electrical infrastructure augmentation charges. As per the terms of the Affordable Housing Policy, 2013, the licensee of an Affordable Group Housing Colony is obligated to carry out the maintenance of the colony for a period of five years from the date of occupation certificate.

59. **Third Argument-**The charges being demanded by the Respondent does not contravene the provisions of the Affordable Housing Policy, 2013 and is within the purview of Section 2(i) of the Haryana Development and Regulation of Urban Areas Act, 1975. The Respondent is carrying out the maintenance of the said project 'Adore Happy Homes' since the date of grant of occupation certificate,



however the running and operational costs for providing the maintenance services have to be borne by the allottees of the Affordable Group Housing Colony. The maintenance being referred as per the terms of the Affordable Group Housing Colony covers only such "Internal Development Works" which are mentioned under Section 2 (i) of Haryana Development and Regulation of Urban Areas Act, 1975. It defines the "internal development works" as under:

- i. Metalling of roads and paving of foot paths;
- ii. Plantation with trees of open spaces;
- iii. Street lighting;
- iv. Adequate and wholesome water supply;
- v. Sewerage and drains both for strong solid water and necessary provisions for the treatment of disposal and
- vi. Any other works that the director may think necessary in the interest of proper development of a colony.

60. All other services being provided in addition to the above shall have to be paid by the Complainant as the same are recurring in nature and are towards the operational and running costs for providing the maintenance services.

61. Furthermore, the Directorate of Town and Country Planning Haryana (DTCP) has issued a Clarification bearing no. PF-27A/2024/3676 dated 31.01.2024, whereby the DTCP had clarified that the



Developer/ Builder are entitled to collect the Maintenance/ Use/utility charges which can be charged from the Allottees as per their consumption, the Interest Free Maintenance Charges (IFMS) and any charges agreed between the parties through bilateral agreements, i.e., the Flat Buyer Agreement/ Agreement for Sale in the instant complaint.

62. **Fourth Argument-** The Complainant admitted to pay the charges towards electricity meter, electricity connection and other costs towards augmenting the electrical infrastructure as per the terms of the Flat Buyer Agreement. The said Flat Buyer Agreement is duly approved by this Hon'ble Authority since the project was duly registered with Haryana Real Estate Regulatory Authority, Panchkula vide registration no. 151 of 2017.
63. That the Respondent apart from the above running and operation recurring costs is demanding meter charges because these are prepaid meters and hence as per the terms of the Flat Buyer Agreement the Complainant is liable to pay the cost of electricity meter. The Respondent is further demanding the sum of ₹10,000/- for providing 2KW additional electricity load. The Respondent is providing 1KW of electricity load for free and the additional 2 KW electricity load is being charged on payment of additional charges of ₹10,000/- for providing additional electricity load to the occupants/allottees. The



cost of augmentation of electrical infrastructure which is installed in the Project is calculated at ₹58,180/- (Rupees Fifty-Eight Thousand One Hundred and Eighty Only). These charges are being demanded on account of re-imbursement of electrical infrastructure on account of the fact that the Respondent is burdened to submit the bank guarantee of ₹2,41,33,639/- for laying of 33 KVA electricity line from the nearest electricity sub-station to the site of the project which is an additional cost for the Respondent to be incurred for providing the continuous and un-interrupted electricity supply to the allottees.

64. That the Complainant had agreed to pay the VAT Taxes and cess and amount in accordance with the terms of Flat Buyer Agreement and therefore the Respondent is charging the respective sums from the Complainant. In view of the above the demand of ₹1,95,165/- (Rupees One Lakh Ninety Five Thousand One Hundred and Sixty Five Only) is reasonable and justified as the same is in accordance with the terms and conditions of the Flat Buyer Agreement executed by the Complainant. The relevant clauses of the Flat Buyer Agreement are Clause -2.5(b), 9.5 and 11.2.
65. **Fifth Argument-** That none of the terms and conditions mentioned in BBA executed between the Parties contravene the terms and conditions of the license and Affordable Housing Policy, 2013.



66. The draft of the Flat Buyer Agreement / Agreement for Sale to be executed between the promoter and allottees was duly submitted by the promoter / Respondent herein with the Hon'ble Haryana Real Estate Regulatory Authority, Panchkula ("HRERA Authority") while applying for the registration of the project under the provisions of the Real Estate (Regulation and Development) Act, 2016 and rules framed thereunder. The HRERA Authority after carefully scrutinizing the application of the promoter / Respondent had granted the registration of the project and permitted the Respondent to receive bookings and give allotment upon execution of the BBA / agreement for sale which was duly approved by the HRERA Authority upon registration.
67. It is reiterated that the Complainant has filed a false, frivolous complaint against the Respondent as the Complainant is a financial investor who is having grudge against developer for the project for not getting the premium which the financial investor/ the Complainant anticipated at the time of making the booking and had filed the present complaint only in order to recover the same through this Hon'ble Authority. The copy of the power of attorney given in another RERA complaint bearing no. HRERA-PKL-849/2020 titled as Sandhya Gupta Vs Adore Realtech Pvt. Ltd. is annexed as Annexure - D.



68. The Respondent had already handed over the physical possession to the Complainant and the Complainant immediately upon taking the physical possession of the flat in the affordable housing project had given the said unit on rent. The copy of rent agreements are annexed herewith as Annexure - E. The Respondent is mis-using the benefit given under the Affordable Housing Policy as the Complainant had made several bookings in the name of her close relatives namely Smt. Sandhya Gupta and had filed a complaint before this Hon'ble Authority. It clearly proves that the Complainant is not a bonafide user/ customer rather the Complainant is a financial investor and the speculator as the Complainant had made the financial investment in the residential flat of the affordable housing project for her commercial business purposes. The Complainant is trying to recover the premium from the Respondent. The Complainant had filed the present complaint as a means to satisfy her greed for earning interest and is using the powers and authority of this Hon'ble Haryana Real Estate Regulatory Authority, Panchkula.

**WRITTEN SUBMISSIONS FILED BY COMPLAINANT IN
REGISTRY ON 20.02.2025**

69. At the outset, the complainant purchased a flat under the Affordable Housing Policy 2013 (AHP 2013), which assures affordable housing at pre-determined rates. The complainant was presented with a



Buyer's Builder Agreement (BBA) containing clauses that assured the respondent had obtained all necessary environmental clearances and building plan approvals. According to Affordable Housing Policy 2013, the allotment of flats is permitted only after securing such clearances and approvals.

70. However, the BBA misled the complainant into believing that the respondent had drafted the agreement in accordance with the provisions of Affordable Housing Policy 2013, while in reality, the respondent stated blatant inaccuracies regarding the approvals from the relevant Government authorities.
71. Despite the complainant's compliance with all contractual obligations under the Affordable Housing Policy 2013 (AHP 2013) and the Buyer's Builder Agreement (BBA), the respondent failed to deliver possession of the flat. The respondent issued a notice for a meeting on 25.09.2018, during which an unlawful demand for cash payment was made as a condition for possession. The complainant rightfully resisted this illegal demand, resulting in the respondent withholding possession of the flat.
72. The complainant made numerous attempts to resolve the issue, including making hundreds of phone calls and sending over ten emails to the respondent, seeking clarity on any outstanding demands or issues related to the flat. Despite these efforts, the respondent ceased



all communication and did not provide any responses to the complainant's inquiries.

73. Faced with the respondent's inaction and silence, the complainant was compelled to file a formal complaint. It was only after the Haryana Real Estate Regulatory Authority (HRERA) imposed costs on the respondent that a "Reminder Letter" was issued on 11.11.2020. Notably, this letter was backdated to 03.07.2020, raising further concerns about the respondent's intent and transparency.
74. To date, the respondent has persisted in the baseless claim that the complainant failed to take possession of the flat yet has not furnished any credible documentation to support the assertion that legitimate demands were communicated. This behaviour exemplifies a tactic employed by unscrupulous builders, effectively holding the property hostage after receiving full payment, and attempting to extort additional funds from honest allottees under the guise of unmet demands.
75. The complainant was subjected to an unjustified demand for Reimbursement of Electrical Infrastructure Augmentation charges, which are not defined anywhere in the Buyer's Builder Agreement (BBA). The respondent has admitted that these charges are being imposed due to the burden of a bank guarantee. However, the

respondent's attempt to equate a bank guarantee with actual expenses is misleading and intended to confuse the authority.

76. The Buyer's Builder Agreement lacks any mention that the flat would have an electrical load of only 1 KW, nor does it specify that any additional load would incur exorbitant charges. This absence of clarity within the agreement itself is a significant point of contention, as it fails to transparently communicate the terms and conditions regarding electrical infrastructure to the complainant.
77. The respondent's actions reflect an attempt to impose additional financial burdens on the complainant through vague and undisclosed terms, contrary to the principles of transparency and fairness expected under the Affordable Housing Policy 2013. The complainant seeks appropriate redress to rectify these discrepancies, ensure compliance with the original terms agreed upon, and prevent the imposition of unjustified charges.
78. These actions by the respondent not only breach the contractual obligations outlined in the BBA but also undermine the principles of transparency and good faith. The complainant seeks appropriate redress. **The complainant, Smt. Sushila Jain, seeks relief from the Hon'ble Authority by dismissing the unjustified additional charges, awarding compensation for the delayed possession, and**



directing the respondent to execute the conveyance deed promptly.

F. ARGUMENTS OF COMPLAINANT AND LEARNED COUNSEL FOR RESPONDENT

79. During oral arguments, ld. counsels appearing on behalf of both parties reiterated the submissions/arguments as were already submitted in complaint/reply/written arguments.

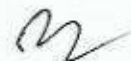
G. ISSUES FOR ADJUDICATION

80. Whether the complainant is entitled to the reliefs sought or not? If yes, the quantum thereof.

H. OBSERVATIONS AND DECISION OF THE AUTHORITY

81. The Authority has gone through the rival contentions. In light of the background of the matter as captured in this order and also the arguments submitted by both parties, Authority observes as follows:

(i) Respondent has taken an objection that complainant herein is a real estate investor not the allottee. It is observed that the complainant herein is the allottee/homebuyer who has made a substantial investment from her hard earned savings under the belief that the promoter/real estate developer will handover possession of the booked unit within 3-4 years of allotment/agreement. As per definition of allottee provided in clause 2(d) of RERA Act, 2016, present complainant is duly covered under it and is entitled to file



present complaint for seeking the relief claimed by him. Clause 2(d) of RERA Act, 2016 is reproduced for reference:-

“Allottee-in relation to a real estate project, means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter and includes the person who subsequently acquires the said allotment through sale, transfer, or otherwise but does not include a person to whom such plot, apartment or building as the case may be, is given on rent”.

Complainant has been allotted flat in the project of respondent by the respondent/promoter itself and said fact is duly admitted by the respondent in the allotment letter dated 29.10.2015 and builder buyer agreement dated 02.11.2015. Also, the definition of allottee as provided under Section 2 (d) does not distinguish between an allottee who has been allotted a unit for consumption/self-utilization or investment purpose. So, the plea of respondent to dismiss the complaint on the ground that complainant herein is investor does not hold merit and same is rejected.

(ii). It is pertinent to mention here that initially captioned complaint was disposed of vide order dated 19.07.2022. Against said order complainant preferred an appeal bearing no. 708/2022 titled as Smt. Sushila Jain vs Adore Realtech Pvt Ltd and the said appeal has been decided by Hon'ble Haryana Real Estate Appellate Tribunal vide



order dated 14.05.2024. Said order is reproduced below for reference:-

"Present appeal is directed against the order dated 19.07.2022 passed by the Authority. Operative part thereof reads as under:-

"8. Authority is of the view that complainant is liable to pay all these charges as per terms and conditions of builder buyer agreement was executed between parties with their free consent and now complainant cannot dispute these charges. Therefore, Authority is unable to accept the contentions of the complainant and thus this case is dismissed and disposed of. 9. Case is disposed of. File be consigned to the record room after uploading of order on the website of the Authority"

*2. At the outset, learned counsel for the appellant has pointed out that the Authority at Panchkula has taken different views in two matters of similar nature. **Complaint no. 849 of 2020** was preferred by Sandhya Gupta, wherein the Authority held that no additional charges were payable by the allottee except taxes. In the instant case i.e. **complaint no. 525 of 2020**, however, the Authority came to the conclusion that additional charges were payable by the allottee.*

3. Aforesaid contentions are not controverted by Mr. Rohan Gupta, counsel appearing for the respondent. He, however, submits that the matter relates to Affordable Housing Policy and additional amount sought to be charged are of Rs.1,96,00,000/- (odd).

4. Admittedly, allottee is in possession of the unit since the year 2021. In view of the divergent views taken on the same issue by the Authority below, counsel for the appellant submits that the matter may be remitted to the Authority for decision afresh. This prayer has not been opposed by counsel opposite.

5. Under these circumstances, order under challenge is set aside. Matter is remitted to the same authority for decision afresh within three months of the receipt of this order.

6. In view of the delay already occasioned in the matter, the authority shall be at liberty to decide the matter expeditiously by giving short dates.



7. Needless to observe that the Authority shall decide the matter afresh after taking into consideration the facts of the case and legal issues involved.

8. The appeal stands allowed of in view of the aforesaid observations.

9. Parties are directed to appear before the learned Authority on 30.05.2024.

10. Copy of this order be sent to the parties/learned counsel for the parties and the Haryana Real Estate Regulatory Authority, Panchkula."

(iii) It is to mention here that complaint no. 525/2020 and complaint no. 849/2020 were decided by the then Chairman/Members of the Authority. Now, the case is being decided on merits on the basis of documents placed on record. Moreover, perusal of record reveals that complainant initially had filed various applications and rejoinder in year 2021-2023, therein complainant is praying for different reliefs sought in each of document. For sake of clarity, representative of complainant was asked to refer the documents upon which he relies for his claim. Documents referred by him are discussed in this final order and same are relied upon for passing of this final order.

(iv) Admittedly, complainant herein had booked the flat in respondent's project-'Adore Happy Homes, Sector-86, Faridabad' by paying ₹1,00,000/- on 13.10.2015. Following which allotment of flat no. H-302, 3rd floor was issued in favour of complainant on 29.10.2015. Builder buyer agreement was executed between the parties on 02.11.2015 and in terms of clause 5.1.1. and 1.12, the

respondent was supposed to deliver possession within 48 months from commencement date, i.e., 18.04.2015. Accordingly, deemed date of possession in present case works out to 18.04.2019.

(v) Factual position reveals that respondent after obtaining/receipt of Occupation Certificate dated 07.09.2018 had issued offer of possession to complainant on 24.09.2018. It is the stand of complainant that said offer was merely an invitation to discuss/meet for possession and same was not valid as it was accompanied with illegal demands of ₹1,96,195/-. In order to adjudicate this issue, the contents of offer of possession and entrance letter dated 29.09.2018 is reproduced below for reference:-

"SUBJECT: Offer of Physical Possession

Reference: Unit No. H-302, Tower-H, "Happy Homes", Sector-86, Faridabad, Haryana.

Dear Sir/Madam.

With utmost pleasure we would like to share that Director General, Town and Country Planning (DTCP), Haryana, Chandigarh, has issued the requisite Occupation Certificate (OC) in respect to 10 towers of the project Happy Homes vide Memo no. ZP-1037/SD(BS)/2018/25935 dated 07-09-2018. We thank you for your incessant support in successful completion of the project Happy Homes and we desire that you occupy and enjoy the possession of your unit. It's a matter great pride to inform you that you are the first allottees of an Affordable Group Housing Project who has been granted the Occupation Certificate by DTCP, Haryana in the entire state of Haryana. Also, we have been able to offer you the physical possession for ten towers of the project, with your support, 2 years before the agreed date of delivery as per the terms of the builder buyer agreement executed by us with our customers. Thus, our belief



that our customers' gain is our gain is fortified by offering the physical possession of the units of ten towers of Happy Homes, 2 years before the agreed date of delivery which will ultimately result in saving of rent for the said 2 years.

We take this opportunity to formally present you this document as the "OFFER OF POSSESSION" for your unit and hereby offer physical possession of your unit..... (emphasis applied)

However, for taking over the physical possession of your aforementioned allotted unit, you are requested to get in touch with Mr. Vikram Sharma at Mobile No. 8130999369 or Mr. Abhishek Singh at Mobile No. 8130999368 and visit our office at 1F-22 First Floor, Ozone Centre, Sector-12, Faridabad, Haryana for completing the formalities.

You will be required to complete all the formalities and submit the necessary documents prior to taking over the physical possession of the allotted unit.

Kindly note that any delay in completion of the said formalities and remittance of any outstanding dues shall attract interest and other charges as per agreed terms of Buyer's Agreement.

We hereby invite you to come forward and take possession after completing the possession process. We look forward to your kind cooperation in our endeavor to make "Happy Homes" as your home.

Please note that in case you have availed housing loans facilities from Bank/ Financial Institutions/your employer, you are required to furnish requisite NOC from concern institution before taking possession.

"Entrance letter dated 29.09.2018-It is informed that Mrs. Sushila Jain allotted of flat no. 302, Tower-H. She is allowed to enter the site to check the flat no. H-302, 303."

(vi) Content and language of aforesaid documents clearly reveals that complainant was duly offered a proper offer of possession alongwith entrance letter to visit the project site. No doubt that the offer was accompanied with demand of ₹1,96,195/- which complainant is objecting to. But it is not the case in hand where respondent has

offered the possession without completing the flat in question or without obtaining occupation certificate. There is no plea raised/made by complainant pertaining to non-completion of unit or absence of any amenities at site. In general, offer of possession is to be evaluated in two aspects; first is completion of construction work alongwith receipt of necessary approvals/sanctions and second, is the additional demand, if any. Herein, first aspect towards completion of unit/flat and receipt of occupation certificate stands complied with in entirety. Moreover, the complainant has taken the physical possession in year 2021, (no exact date has been revealed by the complainant). In support, rent agreement dated 27.10.2021 for flat in question IS placed on record by the respondent, is referred. In prevailing circumstances, it can be deduced that complainant was offered a valid offer of possession on 24.09.2018 duly supported with Occupation Certificate dated 07.09.2018. It is the complainant who did not come forward to accept it due to issue of illegal/unjustified demand of ₹1,96,195/-. As such, demand of ₹1,96,195/- is not such a huge/hefty amount that can render the whole of offer of possession invalid. Therefore, complainant is not entitled to any delay interest as no delay has been caused by the respondent in offering a valid offer of possession. Infact, offer was made prior to the expiry of the stipulated deemed date of possession, i.e., 18.04.2019.



Now, the grievance of complainant which remains to be adjudicated is additional demand of ₹1,96,195/- raised with offer of possession dated 24.09.2018. It is relevant to mention here that though the complainant has not specifically asked to quash/set aside the demands in the amended reliefs sought but it is part of pleadings as well as written arguments. The Hon'ble Supreme Court in judgment of **Bachhaj Nahar v. Nilima Mandal & Anr.**, (2008) 17 SCC 491 held that: *"A relief not founded on the pleadings should not be granted. However, where a relief is not in the prayer clause but is clearly made out from the pleadings and evidence, it may be granted."* Also as per Doctrine of Substantial Justice, Courts (including Tribunals like RERA) are not bound by hyper-technicalities. If a complainant makes a factual case for relief, and the opposite party is aware and has had a chance to contest it, then not putting the relief in the prayer clause is not fatal.

(viii) It is relevant to refer to statement of account annexed with written statement.

Statement Annexure

Sr. No.	Heads	Basic	GST	Amount in ₹
1.	Flat due amount	0	-	0
2.	Holding charges	48111	8659.98	56770.98
3.	VAT cost	8937	-	8937
4.	Labour Cess	7578	-	7578
5.	Electrical meter	4674	841	5515

h

	charges			
6.	Common area power backup charges	10,000	1800	11800
7.	Electrical Connection charges 2KW	10000	1800	11800
8.	Interest	1059	190.62	1249.62
9.	Operation and maintenance cost	20900	3762	24662
10.	Reimbursement of Electrical Infrastructure Augmentation charges	58180	10472.4	68652.40
11.	Net dues	169439	25726.00	195165

(ix) Aforementioned charges are disputed by the complainant in totality stating that these charges are not allowed to be recoverable in terms and provisions of Affordable Housing Policy, 2013. Though, agreed by the complainant in builder buyer agreement but said BBA itself has been executed in violation of Affordable Housing Policy, 2013. It is the stand of respondent that complainant is misinterpreting the provisions of Affordable Housing Policy, 2013. He has placed on record clarification issued by DTCP on 31.01.2024 whereby it is clarified that what all charges are recoverable on part of builder-developer towards maintenance of the project. In order to resolve the issue of disputed charges, first it is important to refer to

contents of relevant provision of Affordable Housing Policy, 2013 and clarifications issued by DTCP.

Clause 5 (i) of Affordable Housing Policy, 2013

Allotment rate- The allotment rate for the apartment units approved under such projects shall be as follows:-

Sr. No.	Development plan	Maximum allotment rate on per sq ft carpet area basis	Additional recovery balcony of min 5ft clear projection#
1.	Gurgaon-Faridabad, Panchkula, Pinjore-Kalka	₹4000/- per sq. ft.	₹500 per sq ft against all balcony area in a flat adding upto and limited to 100 sq. fts as permitted in the approved building plans.
2.	Other high and medium potential towers	₹3600/- per sq. ft	
3.	Low Potential Towns	₹3000/- per sq. ft	
Note # Such cantilevered balconies unsupported on three sides shall not be part of carpet area and shall continue to be allowed free of FAR.			

Clarification dated 01.10.2018 issued by DTCP is as follows:-

It has come to the knowledge of the Department that the colonizers, to whom licences under Affordable Group Housing Policy 2013 (AGH) have been granted, are charging EDC over and above the rates prescribed in the AGH policy for the Apartment units. The allotment rates for the Apartment units approved under such projects have been prescribed in clause 5 of the said policy which are Rs. 4,000/- for Gurgaon, Faridabad, Panchkula, Pinjore-Kalka, Rs. 3,600/- for other High and Medium Potential Towns and Rs.3,000/- for Low Potential Towns. In addition, Rs 500 per sqft against all balcony areas in a flat adding upto and limited to 100 sqft, as permitted in the approved building plans are also chargeable. These rates are inclusive of External Development Charges (EDC).

In view of above, the following is clarified:

- i. *No colonizer is allowed to charge the EDC separately over and above the rates prescribed in the policy. However, any central taxes like GST etc. or taxes imposed by the State Govt./ Local Authorities are not part of the aforesaid rates and the same are liable to be paid by allottees.*
- ii. *If any colonizer has charged the EDC over and above the rates stipulated in clause 5(i) of AGH policy as mentioned above, he shall refund the said amount.*
- iii. *The colonizers shall submit an undertaking/ certificate to the effect that he has not collected any amount over and above the said rates. Further, if any amount was collected the same has been refunded to the allottees.*

Clarification dated 31.01.2024 issued by DTCP in respect of Maintenance charges. (fetched from site of DTCP)

In pursuance to the objections and suggestions received in reference to the public notice mentioned above, the Government has decided to issue the following clarification on clause 4(v) of the Affordable Group Housing Policy-2013 w.r.t. the mandatory services to be provided by the colonizer/ developer as per mandate of section 3(3)(a)(iii) of the Haryana Development and Regulation of Urban Areas Act, 1975 (Act no. 8 of 1975) read with Rule-5 of Haryana Development and Regulation of Urban Areas Rules, 1976 free of cost by the colonizer/ developer in affordable group housing colonies.

2. Accordingly, the following clarification is hereby issued under section 23A of Haryana Development and Regulation of Urban Area Act, 1975 regarding the services for which Maintenance/ Use/ Utility charges can be collected by the colonizer/ developer from the allottees in Affordable Group Housing Colonies: -

DETAILS OF MAINTENANCE CHARGES IN AFFORDABLE GROUP HOUSING COLONIES	
Category-I	Category-II
<i>Mandatory services to be provided by the colonizer/ developer as per section 3(3)(a)(iii) of the Act no. 8 of 1975 and Rule of 1976 and the facilities provided by the colonizers in Affordable Group Housing colonies.</i>	<i>Maintenance/ Use/utility charges which can be charged from the allottees as per consumptions.</i>
<i>i. Maintenance and upkeep of all roads.</i>	<i>i. Electricity bill (as per consumption)</i>
<i>ii. Maintenance and upkeep of all open spaces.</i>	<i>ii. Water bill (proportionate to the</i>

<p>iii. Maintenance and upkeep of all public parks.</p> <p>iv. Maintenance and upkeep of all public health services (this includes complete lying down of public health services and it's management)</p> <p>v. Annual Maintenance Charges (AMC) of the Lifts.</p> <p>vi. Cost incurred upon cleanliness of the common areas.</p> <p>vii. Provision of electricity in common areas (i.e. installation/ up-gradation/ upkeep of electrical equipment in common areas i.e. electric poles, bulbs & lights, lamps posts/ light installed in parks/ green areas/ internal roads etc.)</p> <p>viii. Expenses incurred for maintenance of the DG sets/ Generator sets (excluding the running cost of Diesel).</p> <p>ix. Cost incurred upon the maintenance of the parking space.</p> <p>x. Running and upkeep of Sewerage Treatment Plant (Disposal of Sewage)</p> <p>xi. Expenses incurred upon the salaries of management staff of colony & engineering manpower viz. plumbers, electricians etc.</p>	<p>net consumption)</p> <p>iii. Property tax (in case the colony is within MC limits)</p> <p>iv. Door to door waste collection charges, garbage collection and upkeep of each floor (other than common areas) .</p> <p>v. Any repair inside the individual flat for which services i.e. repair/ replacement of tap, sanitary works, plumbing any damage of flooring, electrical installation etc. can either be got done through the builder or from (i.e. installation/ up-gradation/ upkeep of electrical equipment in common areas i.e. electric poles, bulbs & lights, lamps posts/ light installed in parks/ green areas/ internal roads etc.)</p> <p>vi. Diesel cost for power back-up facilities.</p> <p>vii. Electricity bill of lifts (as part of common area facilities)</p> <p>viii. Running / fuel cost on DG sets/ generator sets for power back-up.</p> <p>ix. Any defect liability on part of allottee, but excluding any damage caused on account of lapse on part of developer.</p> <p>x. Any other State or Central taxes, any other utility charges, which can be governed through individual bills, telephone, internet etc.</p>
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NOTE: a) It is clarified that the Interest Free Maintenance Charges (IFMS) shall be collected from the allottees as prescribed under RERA Act, 2016 or Haryana RERA Rules, 2017. b) Further, any charges decided through bilateral agreements i.e. facility for security services etc., may be charged as per bilateral agreements.



(xi) Perusal of aforesaid clauses and clarifications establish the fact that the rate of allotment defined in Affordable Housing Policy 2013 is not the whole/only amount which allottee is liable to pay. Furthermore, the disputed amounts are categorised into following categories for better adjudication:-

- a. Basic sale consideration which in this case is '0'.
- b. Penal interest which in this case is Holding charges and interest.
- c. Taxes which in this case is VAT, Labour cess,
- d. Amount towards basic amenities which in this are Electrical meter charges, Common area power backup charges, Electrical connection charges, Operation and maintenance cost and reimbursement of electrical infrastructure plus augmentation charges.

(xii) At this stage, it is relevant to discuss each of the category in detail.

There is no dispute w.r.t Basic sale price. All other charges are disputed by the complainant.

- a. No dispute
- b. For the penal interest in the shape of holding charges and interest, respondent herein has not supported the amounts with proper documentary evidence. There is no document to refer to know as to how this figure is arrived at and rate and time period of such calculation. In absence of documentary evidence, the respondent is not entitled to claim these charges from complainant.



- c. Taxes amount –VAT and Labour cess. By way of aforesaid clarifications and even after going through the Affordable Housing Policy 2013, it is clear that 'no where it is expressly written that allottee is not entitled to pay these charges. However, in rebuttal/opposite to it clarification dated 01.10.2018 is relied upon'. So, the complainant is directed to pay these charges to the respondent.
- d. Amount towards basic amenities-Electrical meter charges, Common area power backup charges, Electrical connection charges, Operation and maintenance cost and reimbursement of electrical infrastructure plus augmentation charges. In respect of electrical meter and common area power backup charges, complainant has agreed to pay the same in the builder buyer agreement. Denial of payment of such charges has not been expressly stated in Affordable Housing Policy 2013. Similar is the case with electrical connection charges 2KW, however it is the argument of complainant that he did not ask for extra load of 1KW. So, respondent herein is directed to treat the allottee at par with similarly situated/placed allottee. If majority of the allottees have paid for it, then complainant cannot deny making payment of same.
- e. In respect of operation and maintenance cost, it is observed that DTCP has already clarified the said issue vide its clarification dated 31.01.2024. Since, it is not argued at length before Authority as which all charges are included in said maintenance cost the respondent is

directed to act in accordance with clarification dated 31.01.2024 and to charge only for the amount/charges clarified in referred clarification.

- f. In respect of reimbursement of electrical infrastructure plus augmentation charges, it is observed that it is the stand of respondent that said amount is charged as the respondent is burdened to submit the bank guarantee of ₹2,41,33,639/- for laying of 33KVA electricity line from the nearest electricity sub-station to the site of project which is an additional cost for respondent to be incurred for providing the continuous and in-interrupted electricity supply to the allottees. Herein Authority is of view that additional cost of submission of bank guarantee that too for the basic amenity of providing electricity cannot be burdened upon the allottee. Respondent in duty bound to provide basic amenities at site like water, electricity, sewage etc. Complainant is not liable to pay these charges to the respondent.

(xiii) Complainant is seeking compensation for mental agony, loss of rent and litigation. It is observed that Hon'ble Supreme Court of India in Civil Appeal Nos. 6745-6749 of 2027 titled as "*M/s Newtech Promoters and Developers Pvt Ltd. V/s State of U.P. & ors.*" (supra), has held that an allottee is entitled to claim compensation & litigation charges under Sections 12, 14, 18 and Section 19 which is to be decided by the learned Adjudicating Officer as per section 71 and the

quantum of compensation & litigation expense shall be adjudged by the learned Adjudicating Officer having due regard to the factors mentioned in Section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses. Therefore, the complainant is advised to approach the Adjudicating Officer for seeking the relief of litigation expenses.

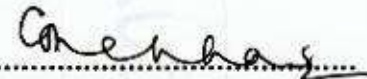
(xiv) As per section 11(4)(f) and section 17(1) of the Act of 2016, the promoter is under an obligation to get the conveyance deed executed in favour of the complainant. Whereas as per section 19(11) (j) of the Act of 2016, the allottee is also obligated to participate towards registration of the conveyance deed of the unit in question. The possession of the subject unit has already been offered after obtaining occupation certificate on 24.09.2018, and the same was taken by the complainant on in year 2021. So, the respondent is directed to get the conveyance deed executed within a period of two months from the uploading of this order.

H. DIRECTIONS OF THE AUTHORITY

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



- i. Both the parties to directed to comply with directions issued in this order in respect of disputed demands. Complainant is directed to pay the amount within next 45 days to the respondent. Further The respondent is directed to charge the maintenance/use/utility charges from the complainants-allottees as per consumptions basis as has been clarified by the Directorate of Town and Country Planning, Haryana vide clarification dated 31 .01.2024.
 - ii. The respondent is directed to get the conveyance deed executed within a period of two months from the date of uploading of this order.
83. **Disposed of.** File be consigned to record room after uploading of order on the website of the Authority.


CHANDER SHEKHAR
[MEMBER]


DR. GEETA RATHEE SINGH
[MEMBER]


NADIM AKHTAR
[MEMBER]


PARNEET SINGH SACHDEV
[CHAIRMAN]