

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

Complaint no.	:	991 of 2022
Date of complaint	:	29.03.2022
Date of decision	:	01.04.2025

The Residency Residents Welfare Association
R/o: The residency, Ardee City, Sector 52,
Gurugram

Complainant**Versus**

M/s Adree Infrastructure Pvt. Ltd.
Office at: 28 Barakhamba Road, New Delhi-
110001

Respondent**Coram:**

Sh. Arun Kumar
Sh. Ashok Sangwan
Sh. Vijay Kumar Goyal

Chairperson
Member
Member

APPEARANCE:

Sh. K.K. Kohli (Advocate)
Sh. Venkat Rao (Advocate)

Complainant
Respondent

ORDER

1. The present complaint has been filed by the complainant-association under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provisions of the Act or the Rules and regulations made there under or to the allottees as per the agreement for sale executed *inter se*.

A. Facts of the complaint:

2. The complainant has made the following submissions in the complaint:
 - a. That the respondent has failed to procure the occupation certificate ("OC") for the project even after 19 years since keys to the apartments flats/ units were handed over to the purchasers; and the respondent promoter has committed contractual breach and contravention of applicable laws, rules and regulations as described in detail in succeeding paragraphs. The respondent launched the project sometime in June 2002 along with promoters' profile, project specifications, payment plans, terms, and conditions etc. on their website. The timelines and sequence of events regarding the development of the project is detailed with relevant annexures in succeeding paragraphs, and which form an integral part of the present complaint.
 - b. Because the respondent is legally obliged to obtain the OC/ CC, and because the respondent miserably failed to obtain the same, therefore, the respondent is legally obliged to register the project with this Hon'ble Authority under the applicable provisions of Real Estate (Regulation and Development) Act, 2016 ("RERA") and Haryana Real Estate (Regulation and Development) Rules, 2017 ("HRERA Rules") and Regulations made thereunder. The respondent's utter disregard to applicable laws and failure in registering this on-going project with this Hon'ble Authority is a contravention of RERA, HRERA Rules and Regulations made thereunder.
 - c. The sanctioned plan area prior to project commencement was 11.43 acres. As can be seen from the annexed document, the sanctioned plan was approved with 161.7% FAR as against 175% permitted; 19.28% ground coverage as against 35% permitted; and 16% organised green

space. The sanctioned plan area for the project of 11.43 acres was clearly referred to even by the Senior Town Planner, DTCP in memo dated 17.2.2010.

- d. The sanctioned plot area was subsequently revised to 9.85 acres vide DTCP Drg No. 2319 dated 06.12.2010. The plot area was further reduced to 5.42 acres vide DTCP Drg. No 5267 dated 31.07.2015. Aforementioned revisions were without information to and without consent of the allottees. It is pertinent to mention that the latest revision which reduced the plot area from 9.85 acres to 5.42 acres was carried out in 2015 despite association's protest in Dec. 2013 against any further revisions.
- e. The actual physical plot area accessible to allottees/ residents is only 3.59 acres instead of originally sanctioned 11.43 acres which was unilaterally, without any information to and consent of the allottees and the Association, reduced first to 9.85 acres and then 5.42 acres as detailed above. Even the latest sanction plan area of 5.42 acres is not entirely part of the complex yet pending partition with HUDA. This incomplete and ambiguous plan has been at the cost of the allottees whereby:
- Absence of proper boundary wall has gravely affected the safety, security and privacy of residents especially on lower floors of tower F;
 - Absence of separate exit/entry gates as promised in the brochure has resulted in the complete failure of Respondent's security agency to regulate incoming vehicular traffic and entry of unauthorised persons in the complex;

- Organised green space as a percentage of land area has shrunk from 16% as approved to 7.38% as provided; besides falling afoul of minimum 15% stipulated by DTCP. The reduction in green areas has made it impossible to balance growing children's need to play and elderly citizen's desire to have a safe and leisurely stroll;
- **Faulty Land Titles:** The promoter/ Respondent has often taken the plea of disputed land to shirk contractual obligations to complete the project with promised amenities and common areas, as well as completion of EWS to obtain OC. The same has been confirmed by competent authority as far as the 209-acre colony is concerned. It is therefore humbly requested that this Authority investigate the matter of defective land titles on which this project is developed;
- **Non-issuance of Occupation Certificate and Completion Certificates:** The Complainant has been begging the Respondent to fulfil the contractual obligations without any success. It is important to mention here that the Complainant approached DTCP and other government agencies including the offices of the Hon'ble Chief Minister, and even the most Hon'ble Prime Minister. Having tirelessly agitated the matter with the Respondent and various authorities; the Association is given to understand that construction of EWS tenements is a fundamental prerequisite for the grant of OC and CC. Since the promoter has neither constructed EWS nor fulfilled applicable building code requirements such as rainwater harvesting, solar panels etc. it is not known whether any serious effort has ever been made by the Respondent to obtain OC. While Town & Country planning officials have sympathetically held

that allottees cannot be made to suffer for builder's negligence, their recommendations for granting OC in 2017 and 2021 have also not fructified;

- **Licence Cancellation:** The complainant humbly submits that the licences bearing nos. 58-67 of 1995, 1-9 of 1997, 2-13 of 1998 and 49-65 of 2002 issued by the DTCP have been cancelled for various reasons, inter alia, the licence holders (which include the respondent) not complying with terms and conditions of the licence, not resolving the issues of disputed lands and not rectifying the deficiencies conveyed from time to time, despite being allowed more than sufficient time since 2011 for the same;
 - **Insurance:** Because the project is on-going on account of not having OC/ CC, the respondent is in contravention of section 16 of RERA, having failed/ refused to take the necessary insurance.
- f. Whereas details with respect to allotted apartment/ flat/ unit number, dates of booking, allotment, and execution of agreement for sale ("**Agreement/ AFS**") and sale consideration therein and amounts collected by the respondent vary between allottees; major milestones, sequence of events, and clauses in the agreements executed by the allottees individually, to the best of the complainant's knowledge, are strikingly similar if not altogether the same. It is pertinent to mention here that the agreement clauses are not only ambiguous but also one-sided for the benefit to the respondent, and oppressive to the allottees. It is important to mention here that the purchasers of the apartment/ flat/ unit are allottees as defined in RERA. It is humbly submitted that the allottees include subsequent allottees. The Hon'ble Authority is

requested to seek the list of allottees including all details such as sale consideration etc. from the respondent.

- g. The Respondent launched the project in June 2002 along with promoters' profile, project specifications, payment plans, terms, and conditions etc. on the website. Prospective buyers upon visiting the site office or brokers were also given a printed brochure showing a bounded residential complex comprising 6 residential towers, organised green spaces, EWS tenements and clubhouse, internal roads, and separate exit/ entry gates. It is pertinent to mention here that the Respondent in the prospectus promised- "The company would pay penalty to its customers @ Rs. 5/- per sq. ft. per month for any delay in handing over the flat beyond the committed period of **24 months** from the date of commencement. Similarly, the flat owner would be liable to pay holding charges @ Rs.5 per sq. ft per month if he fails to take possession within 30 days from the date of issue of **occupation certificate**".
- h. The respondent, since early 2003, allotted apartments/ flats/ units to the buyers and executed standard flat buyers' agreement/ agreement for sale ("**Agreement/ AFS**"). The agreement stipulated in clause 20 that possession would be deemed if the purchaser failed to take it, thereafter, said premises being at the risk and cost of the purchaser, and the purchaser was made liable to pay holding charges @Rs.5/- per sq. ft. per month of delay in taking possession, beyond 90 days of being notified in writing.
- i. **Letter of permissive possession:** Having paid 95% of the sale consideration on demand and expecting offer of possession from the Respondent, allottees/ purchasers of respective apartments/ flats/ units received letters titled "**permissive possession...**" wherein the



respondent demanded balance payments, additional payment towards 5% increase in area, stamp duty, miscellaneous charges, completion of paper works i.e. signing of maintenance and power backup agreements and payment of security deposits mentioned therein as a prerequisite to handing over the flat.

- j. It is pertinent to mention here that the allottees/ purchasers of respective apartments/ flats/ units in good faith, considering this to be the offer of possession, and to avoid liabilities under one-sided and oppressive terms of the agreement including but not limited to payment of holding charges and termination with forfeiture of earnest money, paid as demanded by the Respondent in full, and signed off the various 'paperwork' i.e. agreements towards maintenance, power backup, indemnity cum undertaking on the dotted lines.
- k. Possession letter suppressed and withheld the fact that OC had not been obtained on date. Moreover, the letters' timing, wording and brazen demands cemented the misconception that it was the expected legal possession under applicable laws and as per the AFS. While unsuspecting buyers accepted it as legal possession, enquiring buyers were encouraged to occupy the premises with the assurance that OC was under process and expected shortly; whereas it was subsequently learnt that OC was only applied for in Oct'07. In any case it was not financially viable for allottees to vacate the premises and arrange alternate accommodation.
- l. **Holding charges:** The Respondent carried out the threat of levying and collecting 'Holding Charges' from those allottees/ purchasers of apartments/ flats/ units who delayed making payment in full and

complying with the paperwork as demanded by the Respondent in 'permissive possession' letter.

- m. The Respondent demanded and collected from the allottees/ purchasers of the apartments/ flats/ units "provisionally" towards proportional Additional Infrastructure Development Charges from some allottees. It is subsequently learnt that AIDC demand had no nexus to flat area, and that no subsequent demand was raised by the Respondent on allottees who did not pay the provisional IDC. It is most pertinent to mention that Conveyance Deed has not been executed with many allottees/ purchasers of the apartments/ flats/ units till date despite the allottees/ purchasers of the apartments/ flats/ units paying stamp duty and registration charges. Many allottees acting on the advice of the Respondent deposited applicable stamp duty directly with the State Government and yet the Respondent refused to execute the Conveyance Deed for reasons best known to the Respondent.
- n. Ever since accepting 'permissive' possession, the allottees/ purchasers of apartment/ flat/ unit have been subjected to Respondent unjustifiably and unlawfully demanding and collecting maintenance charges under threat of electricity disconnection and public naming and shaming under the maintenance agreement signed. It is pertinent to mention that per clause 34 of the agreement/ AFS, the security deposit as a collateral against the allottee's default in payment of maintenance charges is only payable at the time of possession. Ergo sequitur, maintenance charges secured thereby are only applicable after possession.
- o. Respondent abused monopolistic position in unilaterally determining maintenance quality and charges without justification and has

consistently refused to hand over maintenance to the Association, the Complainant herein, along with necessary drawings, plans and refund of deposits and outgoings unaccounted for. It is most pertinent to mention here that use of poor quality of construction materials, substandard workmanship and inadequate waterproofing and overall gross negligence by the Respondent has caused severe damage to both exterior and interior of the apartments, leading to a very dilapidated and shabby appearance.

- p. Despite Hon'ble HERC holding administrative charges, over and above Domestic Supply category tariff as wrongful and to be refunded, the Respondent and their assigns continue to demand and invoice such unpaid administrative charges masqueraded as previous balance. It is most pertinent to mention that the Respondent arrogantly refuses to acknowledge, respond, or rectify defaults brought to their attention by the Association. Even where the Association has been successful in getting competent authorities to intervene, the Respondent pays lip service with deliberately vague, conditional and misleading assurances on matters related to obtaining Occupation Certificate, rectification of sewerage system, construction of boundary wall, provision of club/community centre etc.
- q. It is most humbly submitted that the Project layout as depicted on the Brochure and even till date on the Respondent's website www.ardeecity.com, and the Respondent's advertising the Project as being complete on his website are utterly wrong, unlawful, and misrepresentation of facts and truth because the project has neither been physically completed as depicted nor as per sanction plans nor has the project been granted OC nor completion certificate ("CC") by the



competent authorities. It is most pertinent to mention here that the Respondent's claim regarding Project offering "*the resident complete peace of mind*" is not only false, misleading, and utter lie but a gross abuse of the allottees' hopes and aspirations as despite paying their life's earnings the hapless allottees are in a distressed and disgruntled state for the last 18 years over the incomplete project lacking facilities and amenities as promised, lacking occupancy certificate and lacking proper maintenance and upkeep.

- r. With these acts of omission and commission, the Respondent committed wilful negligence, irregularity, unfair practice, breach of contractual obligations, faith, trust and displayed utter contempt for the applicable laws, causing mental agony, harassment, and loss of hard-earned money to the allottees/ purchasers of the apartment/ flat/ unit in the project. The Respondent is liable to the allottees and the Association, the Complainant herein, under RERA provisions because the project, devoid of an occupation certificate, is an on-going project where the possession in accordance with the terms of the agreement and RERA provisions has not been handed over till date because of the negligence and utter failure of the Respondent entirely in obtaining the same from the competent authority.
- s. The Complainant most humbly submits that under the settled legal position in furtherance of equity, justice and principles of natural justice, the Respondent is legally obliged to indemnify the allottees and the association, the complainant therein, from any penal and statutory actions by any authority and instrumentality of the government, and keep the allottees and the Association, the Complainant herein, harmless against any such penal actions.

- t. The Complainant further submits that the maintenance charges collected by the Respondent, in the absence of occupation certificate, are unlawful act, and the Respondent is liable to maintain the project till the possession in accordance with RERA provisions is handed over upon the grant of the occupation certificate. The Complainant most humbly seeks the indulgence of this Hon'ble Authority to investigate the actions, breaches, non-compliance, contraventions, and evasion of contractual obligations and legal duties that the Respondent are legally bound to.
- u. The Complainant most humbly craves the indulgence of this Hon'ble Authority to exercise its powers available under RERA provisions to find a way out of the current situation where the licences granted to the Respondent have been revoked since September 2021 and show the direction to the Complainant to ensure that the OC is granted to the project.

B. Relief sought by the complainant:

3. The complainant has sought following relief(s).
- a. Direct the respondent to register the project with this Authority and penalize the respondent for the contravention of section 3 of RERA.
 - b. Direct the respondent to complete the construction of the project at the cost of and consequence entirely to the respondent, including inter alia-
 - the entire plot area as per sanction plan;
 - Complete demarcation with HUDA as necessary/applicable to provide separate in/out gates, boundary wall for smooth traffic flow and safely and security of residents;
 - Solar panels, rainwater harvesting, and any other statutory requirements as per applicable building code;

- Club-house as advertised in the brochure and promises made to allottees.
- c. Direct the respondent to rectify, replaster and repaint at the cost of and consequence entirely to the respondent, deterioration and damages caused to tower facades due to structural defects in design and plumbing, faulty workmanship, improper waterproofing, inferior quality materials and paint, and damages to the apartment interiors on account of seepage from common area shafts, interior quality internal plumbing and adjacent flats in custody of the respondent.
- d. Direct the respondent to submit estimated cost details with justification thereof, and deposit the amount from the respondent's account with this authority for restoration of sanctioned plot area, cost of construction of EWS, boundary walls & club house etc.
- e. Restrain the respondent from demanding and collecting any amount from the allottees for carrying out the construction, restoration and provisions to complete the project.
- f. Direct the respondent to handover possession of the common area land and facilities to the association, the complainant herein, at the cost of and consequence entirely to the respondent as per section 17(1) of RERA Act and clause 32 of the agreement.
- g. Direct the respondent to return holding charges collected from all allottees, with 18% interest from the date of collection till the date of refund into allottees account.
- h. Direct the respondent to furnish justification of EDC & AIDC amount collected from the allottees and refund the excess amount collected from the allottees along with interest @18% compounded p.a.

- i. Direct the respondent to furnish proof of the deposit of EDC & AIDC with the competent authority.
- j. Direct the respondent to refund the additional charges collected from the allottees in the light of HERC order and restrain the respondent from showing such unlawful demands as electricity bill outstanding in the name of the allottees.
- k. Direct the respondent to handover the maintenance of common areas & facilities to the association, the complainant herein, along with original documents, as built drawings, statutory permissions/certifications, and sanctioned plans as per section 17(2) of the RERA.
- l. Direct the respondent to transfer the security deposits on maintenance and power backup received from the allottees, along with 18% compound interest thereon into the account of the association, the complainant herein.
- m. Direct the respondent to pay for taking appropriate and adequate insurance for the project in favor of the association as per section 16 of RERA provisions.
- n. Direct the respondent to refund the monthly maintenance amounts wrongfully collected from the allottees since the handing over of keys under 'permissive' possession offer with 18% per annum interest on the collected amount.
- o. Direct the respondent to refund the amount collected towards assets replacement funds and any such deposit with interest thereon @18% per annum into the account of the association.
- p. Direct the respondent to refund the exorbitant amounts collected towards ARD with 18% interest.

- q. Direct the respondent to provide detailed drawings and calculations for 'saleable' area and carpet areas contained therein and justify increased area charges as per Haryana Carpet Area Regulations 2021, failing which to refund the same with 18% interest.
- r. Direct the respondent to complete contractual & license obligations pertaining specifically to this project, comply and cooperate with competent authorities to ensure OC & CC are granted to the project.
- s. Direct the respondent to execute a registered conveyance deed transferring the title of the project lands as sanctioned and the common area in favor to the association.
- t. Direct the respondent to indemnify the allottees and the association against increase in stamp duty and all charges pertaining to conveyancing and registration.
- u. Direct the respondent to pay delay possession interest at prescribed rates to allottees as per provisions of section 18(1) of RERA, for delay in handing over of lawful possession in the apartment/ flat/ unit including but not limited to common areas appurtenant thereto as per sanctioned plan, wherein allottees have undivided interest, for the entire period of delay so far from the expected date of possession, and every month thereafter for any further delay until legal and complete possession is granted with an occupancy certificate in accordance with applicable RERA provisions.
- v. Direct the respondent to pay ₹5/- per sq. ft. per month enforcing adherence to delay penalty as per prospectus and clause 21 of the agreement for the entire period of delay calculated from the commitment date till handing over of lawful possession in accordance with the agreement and RERA provisions, over and above the delayed

possession interest under charges in accordance with section 18(1) of RERA Act & rule 15v of HARERA Rules.

- w. Direct the respondent to submit on oath complete details of allotments as below: name & details of allottees, details of license, permissions, sanction plans, building plans as obtained from the competent authority for the construction and completion of the project, date of commencement of construction of the project, AFS date, promised delivery period in months as per AFS, date of issuing letter of permissive possession, amount collected towards increased area, amount collected towards stamp duty, amount collected towards AIDC, amounts collected towards holding charges, amounts collected towards maintenance security deposit, amount collected towards power backup security deposit.
 - x. Restrain the promoter the respondent herein, and any statutory authority from taking any coercive steps against the allottees or the property.
 - y. Direct the respondent to indemnify allottees and the association the complainant herein, against any charges including but not limited to increase and introduction of existing and new duties, cess, levy, maintenance charges, penalty, registration, taxes or any other such levies that the authority may impose during period of delay till the grant of OC.
 - z. Direct the respondent to bear the cost of litigation.
4. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

C. Reply by the respondent.

5. The respondent has contested the complaint on the following grounds:

- a. It is noted herein that the present complaint has been preferred by an alleged association of home buyers of the project "the residency" developed by the respondent. At the outset it is stated that the complaint is time barred without any privity of contract between the complainant and the respondent. That the complainant association vide the present complaint claims to represent all allottees/ buyers of the project and therefore the present complaint has been filed on behalf of all the allottees/homebuyers of the project. However, no such mandate has been filed on behalf of the members of the complainant association or the homebuyers of the project in question. As per the knowledge of the respondent, the complainant association even does not hold 50% membership of the entire allottees/homebuyers of the project.
- b. That without any such valid mandate from the homebuyers, the plea of the complainant association that it represents all the homebuyers of the project cannot be accepted. That the complainant association at the time of filing the complaint, was obligated to disclose the names of its members who they will be representing, however, the complainant association has only attached the certificate of incorporation and memorandum of association with the present complaint. That before going into the merits of the case, and especially in absence of any material document on record stating the names of the members of the complainant association or the homebuyers who are being represented, confirmation should be sought from the complainant association with respect to the homebuyers/members who are being represented.

- c. Similarly, when objections were raised by a respondent with respect to the names of the members of the appellant buyer association in the matter of ***“Greenopolis Welfare Association vs Orris Infrastructure Pvt. Ltd. & Anr.”*** bearing ***Appeal No. 432 of 2022***, the Hon’ble Haryana Real Estate Appellate Tribunal vide Order dated 31.10.2022 directed the appellant buyer’s association to furnish the list containing the names of the members of the appellant -association from whom mandate has been received to file the said appeal. It is humbly submitted that the complainant association vide this instant complaint is seeking certain reliefs which can only be sought by an allottee, for who an individual cause of action has risen and which has to be adjudged on an individual basis.
- d. That the aforementioned reliefs cannot be sought by the complainant. It is most humbly submitted that the complainant is not an allottee, and no flats have been allotted to the complainant association. Thus, it has no cause of action to seek delay penalty, claims for delay penalty, if any, arise from agreement for sale executed between an allottee and the promoter/ developer. Since, the complainant association is not an allottee and no agreement has been executed with the complainant association, it is barred from seeking any relief that arises from an individual cause of action having no common ground.
- e. That the complainant being an alleged association of buyers can file a complaint only to represent the common interest and seek redressal of common grievances of its members who are having common cause of action, arising from the common areas of the project. However, the complainant through this present complaint is seeking delay possession charges and refund of monies paid by its members, wherein there is no

common cause of action for all the members of the association. It is pertinent to note the reliefs of compensation, refund, delay penalty, if any, as sought by the complainant for the members of its association have to be adjudicated on case-to-case basis and not en-masse. Thus, the complaint on behalf of the members of the complainant for common relief is not maintainable.

- f. That each member of the complainant association is required to get their grievances of delayed possession charges as per the agreement for sale, adjudicated individually since the facts and circumstances of each and every case is unique in itself, and thus arise individual cause of action. It is submitted that the points raised in the complaint are regarding the contravention of the terms and conditions of the agreement for sale executed between the members of the complainant association individually with the respondent and the same cannot be adjudged as a common dispute. Moreover, it is important to bring it to the knowledge of the Ld. Authority that the respondent as per the obligation cast upon it under Section 17 of the RERA Act, 2016 has executed the conveyance deed for most of the homebuyers of the project in question. That the complainant association with a mala fide intention of extracting illegitimate gains from the respondent, has not disclosed the exact numbers of homebuyers in whose favour the respondent has executed the conveyance deed. That the Ld. Authority in a similar matter titled as "Zara Awas Buyers Association vs Perfect Buildwell Private Limited" bearing complaint no. 98 of 2021 held vide its order dated 08.09.2021 that the association of home buyers cannot seek delayed possession charges on behalf of all the home buyers.

- g. That in view of the aforementioned, it is crystal clear that the complainant association is abusing the process of law by seeking reliefs which are not maintainable before this Ld. Authority and thereby hampering the spirit of the law. Hence the present complaint is liable to be dismissed. That it is well established proposition of law that compensation cannot be uniform. This proposition has already been upheld by the Hon'ble Apex Court in numerous cases. The Apex Court in *Ghaziabad Development Authority vs. Balbir Singh (2004)5 SCC 65* has held that there cannot be same yardstick in all the cases to determine the compensation of whatsoever nature, as the compensation has to be based on a finding of loss or injury and has to co-relate with amount of loss or injury.
- h. That in *Ghaziabad Development Authority vs. Balbir Singh (supra)* it has been further held that award of compensation must be under different separate heads and must vary from case to case depending on the facts of each case. That where there arise questions of grant of reliefs relating to compensation or refund to the members of an association of buyers, it should be taken into consideration that facts of each case would be varying and different and thus grant of a uniform relief would not be justifiable.
- i. It is important to bring it to the knowledge of the Ld. Authority that the instant complaint is barred by limitation as all the units in the project in question has already been handed over to all the allottees of the project prior to 2007. That now the members of the complainant association after a lapse of more than **15-17 years (approximately)** from the date of receiving the physical possession of the unit have filed the present complaint in the year 2022 allegedly claiming the delayed possession

charges, which is in itself a complete abuse of the process of law and highly delayed.

- j. It is noted herein that Section 18 of the RERA Act, 2016 under which the complainant association is seeking delay possession charges in the complaint provides that in case of non-delivery of possession of the unit in accordance with the terms agreed between the parties in the builder buyer agreement, and if an allottee does not wish to withdraw from the project, then the promoter will be liable for payment of interest for every month of delay, **till the handing over of the possession**, at such rate as may be prescribed.
- k. That in the present case, the physical possession of the units has already been handed over to the allottees of the project by the year 2007. The allottees have been residing in the said units and enjoying the same ever since taking over of the physical possession of their respective units. The respondent will be in a position to provide the individual details of handing over of possession to the individual allottees only upon receiving the list of allottees who are being represented by the complainant association.
- l. It is most respectfully submitted that the legislative intent on the aspect of "Limitation" is abundantly clear on a bare perusal of the aforementioned provision. It is pertinent to mention that the legislators have explicitly kept out any compensation sought under the provisions of Section 18(2) of the RERA Act, 2016 from the ambit of limitation however, claim(s)/compensation or interest arising by the virtue of Section 18 (1) & (3) of the RERA Act, 2016 are not immunized from the bar of limitation. It is noted that since Section 18 (1) & (3) of the RERA Act, 2016 does not provide for the period of limitation, therefore, the

provisions of the Limitation Act, 1963 shall become applicable by virtue of Section 29 (2) and Section 3 of the Limitation Act, 1963.

- m. Therefore, it is abundantly clear that the period of Limitation in case of delayed possession charges shall be deemed to be **3 years**, therefore, the Allottees should have filed the case before the appropriate forum within 3 years from the date of receiving the physical possession. Furthermore, it is submitted that the complainant association vide the present complaint put forth allegations with respect to structural defects on part of the respondent. However, it is pertinent to mention herein that Section 14 (3) of the RERA Act, 2016 clearly provides that in case of structural defects or any other defects in workmanship, relating to the development of the project are brought to the knowledge of the promoter within five years from the date of handing over of possession, it shall be the duty of the promoter to rectify the said defects without charging anything, within 30 days, and in the case where the promoter fails to rectify the said defects, then the aggrieved allottee shall be entitled to receive compensation as per the provisions mentioned in the RERA Act, 2016.
- n. That from a mere perusal of the above-mentioned provision it is abundantly clear that Section 14(3) clearly provides that the promoter/developer is liable for rectifying the structural defects which arise within 5 years from the date of handing over of possession. Therefore, the period of limitation in case of structural defects shall be deemed to be 5 years from the date of handing over of possession. That without prejudice to the submissions made herein and without admitting the averments of the complainant association, it is further clarified that the right to sue, i.e., cause of action, with respect to

payment of delay penalty charges or structural defects, if any, should have accrued to the complainant association from the date of receiving possession of the unit till 3 years in case of delayed possession charges and 5 years in case of structural defects.

- o. Moreover, it is reiterated herein that the respondent handed over the possession of the units to the homebuyers in 2006-2007 only and thereafter conveyance deed has also been executed in favour of most of the homebuyers. That presently all the homebuyers are residing in their allotted unit and enjoying the amenities provided in the project. That, without admitting anything contained in the complaint, even if, there was some delay in handing over of the possession or if there were some structural defects then the homebuyers were duty-bound to file a complaint before the appropriate court/forum within 3 years from the date of handing over of possession of the unit in case of delay possession charges and within 5 years in case of structural defects. It is further submitted that neither of the provisions mention anything about necessity of obtaining of occupation certificate. It only and clearly mentions "handing over of physical possession" to the Allottees. It is humbly submitted that approximately more than 15-17 years have elapsed from the date of handing over of physical possession of the units, the present complaint is not maintainable before the Ld. Authority and it is the duty of the Ld. Authority to dismiss such complaint initiated beyond the limitation period as laid down in catena of judgements by various courts including the Hon'ble Apex Court.
- p. It is noted herein that in the present complaint, some of the grievances of the complainant association is arising out of the maintenance agreement executed between the allottees and the maintenance agency.

It is most humbly submitted that this Ld. Authority constituted under the provisions of the RERA Act, 2016 can exercise its power, control and jurisdiction in respect of the Real Estate Project on the "Promoter", "Allottee" and "Real Estate Agent". It is further submitted that the Ld. Authority has no jurisdiction over the maintenance agreement as it does not fall within the meaning of "Agreement for Sale".

- q. It is important to bring it to the knowledge of the Ld. Authority that throughout the RERA Act, 2016 there is no provision in wherein it is mentioned that the maintenance agreements are within the ambit and scope of the RERA Act, 2016 or the Ld. Authority has the Jurisdiction to entertain the complaint arising out of the maintenance agreement. That in a catena of judgments it has been reiterated that the confines of the disputes shall be within the builder-buyer agreement. The only suited forum that the complainant can approach is the civil courts for any dispute arising out of the 'Maintenance Agreement'. Therefore, the present complaint is liable to be dismissed solely on the ground that the maintenance agreement is outside the purview of the RERA Act, 2016 and there are no provisions under the RERA Act, 2016 which empower the Ld. Authority to adjudicate issues pertaining to maintenance agreement.
- r. That the respondent company applied for grant of occupation certificate to the office of the Director, Town and Country Planning, Haryana (DGTCP), vide memo No. 25079 dated 04.10.2007. Pursuant to the application, the DGTCP office circulated the application for field reports to District Town Planner, Gurugram and Senior Town Planner, Gurugram. On 08.07.2008, DTP, Gurugram sent his field report for six number towers namely A, B, C, D, E & E1 to STP office. On 15.07.2008,

STP, Gurugram sent his report to DGTCP. In these reports an area measuring 27317.16 sq. mts. was recommended for composition for occupation without obtaining occupation certificate and that the total achieved FAR was mentioned as 34093.125 sq. mts. Thereafter, the same was pending with the DGTCP and on 14.02.2013 DGTCP asked the respondent company to construct EWS apartments for grant of occupation certificate.

- s. That as per DGTCP the construction of EWS tenements is necessary for the grant of an occupation certificate/ completion certificate. That the construction of the EWS block was also held up due to land-related court cases, pending in Hon'ble Punjab & Haryana High Court since 2013 in Civil Writ Petitions bearing No. 26790 of 2013 and 26677 of 2013. Further, somewhere in 2014, a dispute arose regarding the partition in the group company of the respondent no.1 which led to the filing of a civil suit in the Hon'ble High Court of Delhi i.e., CS (OS) 1781 of 2014. That vide order dated 29.05.2014, the Hon'ble High Court of Delhi was inter alia pleased to restrain the selling, alienating, creating any third-party interest, in respect to the unsold plots/ flats/ commercial - residential plots in Ardee City, Gurugram and/or conclude any sale therein. The mortgaging or creation of any third-party rights in respect of the immovable assets of the company was also prohibited.
- t. It is important to bring it to the knowledge of the Ld. Authority that the Directorate of Town & Country Planning, Haryana (hereinafter referred to as the "DTCP") vide its order dated 02.09.2021, has cancelled the license due to pending land dispute. Without prejudice to the averments made in the complaint, it is submitted herein that since the license of the project in question stands cancelled by the DTCP as on date, therefore,



the respondent cannot undertake any construction activity at the project site. Moreover, it is noteworthy to mention herein that the respondent has already filed an appeal against the said cancellation order and the same is pending before the competent authority.

- u. It is pertinent to mention herein that the maintenance agency is willing to hand over the operation of the project in question to the complainant association and over the past few years have made requests to the complainant association to take over the operation of the project. However, the complainant association is not willing to take control of the operation of the project and malafidely has filed this present complaint. In fact, after an interim order passed by the Hon'ble DCDRC, New Delhi in Consumer complaint bearing No. CC/268/2009, the maintenance agency wrote a letter dated 03.09.2012 to the complainant association withdrawing from providing maintenance service and requesting them to find another maintenance agency. However, the complainant association filed an interlocutory application against the said order seeking stay and direction to the maintenance agency to continue its services. That pursuant to the order of the Hon'ble DCDRC, New Delhi dated 10.09.2012 the maintenance agency continued with the services.
- v. That to sum up the preliminary submissions and objections it is reiterated herein that the present complaint is not maintainable on the following grounds:
- The complainant association has not disclosed the names of its members/ allottees who are being represented by the said association.

- There is individual cause of action for each allottee, therefore, the aggrieved allottee, if any, has to file a separate complaint before the Ld. Authority.
 - The respondent handed over the possession to all the homebuyers before 2007 and executed the conveyance deed for most of the homebuyers. The homebuyers are residing in the project and enjoying the amenities provided by the respondent.
 - That delay possession charges cannot be adjudicated en masse.
 - Present complaint is barred by limitation, as the complaint has been filed by the complainant association after a delay of approximately 15-17 years.
 - That some of the grievances/allegations of the complainant association is arising out of the maintenance agreement which is not within the purview of the RERA Act, 2016.
 - The complainant association has a tendency of filing cases against the respondent to indulge it in un-necessary litigation.
 - That the present complaint is filed by the complainant association with the oblique motive of extracting illegitimate monetary benefits from the respondent.
6. 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 those undisputed documents and submissions made by the complainants.
7. The complainant has filed multiple written submissions along with the documents for kind consideration of the authority, the same have been taken on record and has been considered by the authority while adjudicating upon the relief sought by the complainant.

D. Jurisdiction of the authority

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

D.I. Territorial jurisdiction

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

D.II Subject-matter jurisdiction

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

Section 11.....

(4) The promoter shall-

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

Section 34-Functions of the Authority:

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

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

E. Findings on the relief sought by the complainant.

E.I. Direct the respondent to register the project with this Authority and penalize the respondent for the contravention of section 3 of RERA.

12. The said project is an on-going project in terms of proviso to Section 3(1) which states as under:

3(1) ----

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

Admittedly, the completion certificate of the project has not been obtained by the respondent from the competent Authority. In view of the above, the respondent is directed to apply for registration of the said project after obtaining requisite approvals from the competent Authority.

E.II. Direct the respondent to complete the construction of the project at the cost of and consequence entirely to the respondent, including inter alia-

- the entire plot area as per sanction plan;
- Complete demarcation with HUDA as necessary/applicable to provide separate in/out gates, boundary wall for smooth traffic flow and safety and security of residents;
- Solar panels, rainwater harvesting, and any other statutory requirements as per applicable building code;
- Club-house as advertised in the brochure and promises made to allottees.

13. In terms of Section 11(4)(a) of the Act, the respondent is responsible for all the obligations, responsibilities and functions under the provisions of the Act or Rules and Regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be till execution of conveyance of all the apartments, plots or building as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be. Further, as per Section 11(4)(b), the respondent is responsible to complete the project and to obtain completion certificate or occupation certificate, or both as applicable, from the competent authority and make it available to the allottees individually or

to the association of allottees, as the case may be. Accordingly, the respondent is directed to comply with the above provisions.

E.III. Direct the respondent to rectify, replaster and repaint at the cost of and consequence entirely to the respondent, deterioration and damages caused to tower facades due to structural defects in design and plumbing, faulty workmanship, improper waterproofing, inferior quality materials and paint, and damages to the apartment interiors on account of seepage from common area shafts, interior quality internal plumbing and adjacent flats in custody of the respondent.

14. Since the OC/CC has not been obtained by the respondent with respect to the said project. The above-mentioned reliefs sought by the complainant-association are pre-mature at this stage and shall be considered by the competent authorities at the time of grant of occupation certificate/completion certificate and thereafter in terms of the license, building plans and agreements to sell.

E.IV. Direct the respondent to submit estimated cost details with justification thereof, and deposit the amount from the respondent's account with this authority for restoration of sanctioned plot area, cost of construction of EWS, boundary walls & club house etc.

15. The respondent is obligated to register and disclose the details of the project including the cost estimates at the time of registration. Further, the respondent is also obligated to complete the project in terms of the approved licence, layout and building plans. In case, the complainant-association has any grievance regarding the layout/building plans/EWS specifications, they may approach the competent authority in this regard.

E.V. Direct the respondent to furnish justification of EDC & AIDC amount collected from the allottees and refund the excess amount collected from the allottees along with interest @18% compounded p.a.

E.VI. Direct the respondent to furnish proof of the deposit of EDC & AIDC with the competent authority.

E.VIII. Direct the respondent to provide detailed drawings and calculations for 'saleable' area and carpet areas contained therein and justify increased area charges as per Haryana Carpet Area Regulations 2021, failing which to refund the same with 18% interest.

E.IX. Direct the respondent to submit on oath complete details of allotments as below: name & details of allottees, details of license, permissions, sanction plans, building plans as obtained from the competent authority for the construction and

completion of the project, date of commencement of construction of the project, AFS date, promised delivery period in months as per AFS, date of issuing letter of permissive possession, amount collected towards increased area, amount collected towards stamp duty, amount collected towards AIDC, amounts collected towards holding charges, amounts collected towards maintenance security deposit, amount collected towards power backup security deposit.

16. In terms of Section 19(1) of the Act, the respondent is obligated to provide information relating to sanctioned plans, layout plans along with the specifications, approved by the competent authority and such other information as provided under the Act or Rules and Regulations to the allottees. Accordingly, the respondent is directed to comply with the above provision.

E.X. Direct the respondent to refund the additional charges collected from the allottees in the light of HERC order and restrain the respondent from showing such unlawful demands as electricity bill outstanding in the name of the allottees.

17. The above relief does not fall under the jurisdiction of this Authority. The complainant-association may approach the competent authority in this regard.

E.XI. Restrain the respondent from demanding and collecting any amount from the allottees for carrying out the construction, restoration and provisions to complete the project.

18. The respondent shall not charge anything which is not part of the agreement to sell.

E.XII. Direct the respondent to handover possession of the common area land and facilities to the association, the complainant herein, at the cost of and consequence entirely to the respondent as per section 17(1) of RERA Act and clause 32 of the agreement.

E.XIII. Direct the respondent to handover the maintenance of common areas & facilities to the association, the complainant herein, along with original documents, as built drawings, statutory permissions/certifications, and sanctioned plans as per section 17(2) of the RERA.

19. The respondent shall handover possession and necessary documents, plans including common areas and facilities to the complainant-association subject to local laws as provided under Section 17 of the Act, 2016.

E.XIV. Direct the respondent to return holding charges collected from all allottees, with 18% interest from the date of collection till the date of refund into allottees account.

20. The respondent is not entitled to claim holding charges from the allottees at any point of time even after being part of the builder buyer agreement as per law settled by *Hon'ble Supreme Court in civil appeal nos. 3864-3889/2020* decided in 14.12.2020.

E.XV. Direct the respondent to transfer the security deposits on maintenance and power backup received from the allottees, along with 18% compound interest thereon into the account of the association, the complainant herein.

E.XVI. Direct the respondent to refund the monthly maintenance amounts wrongfully collected from the allottees since the handing over of keys under 'permissive' possession offer with 18% per annum interest on the collected amount.

E.XVII. Direct the respondent to refund the amount collected towards assets replacement funds and any such deposit with interest thereon @18% per annum into the account of the association.

E.XVIII. Direct the respondent to refund the exorbitant amounts collected towards ARD with 18% interest.

21. Since neither the occupation certificate nor the completion certificate of the project has been obtained by the respondent till date, the said reliefs cannot be granted at this stage. However, the respondent is obligated under Section 11(4)(d), for providing and maintaining the essential services, on reasonable charges, till the time the same is taken over by the association of the allottees.

E.XIX. Direct the respondent to pay for taking appropriate and adequate insurance for the project in favor of the association as per section 16 of RERA provisions.

22. The respondent is directed to comply with the provisions of Section 16 of the Act, 2016 and shall handover the documents relating to the insurance as specified under Section 16(1) of the Act, to the complainant-association.

E.XX. Direct the respondent to complete contractual & license obligations pertaining specifically to this project, comply and cooperate with competent authorities to ensure OC & CC are granted to the project.

23. The above relief does not fall in the jurisdiction of the Authority and the complainant-association may approach the competent authority in this regard in case any specific relief is made out.

E.XXI. Direct the respondent to execute a registered conveyance deed transferring the title of the project lands as sanctioned and the common area in favor to the association.

24. No such relief is made out under the provisions of the Act of 2016. However, on obtaining of OC for the project, the respondent is obligated under Section 17(1) to get the conveyance deed executed in favour of allottees along with undivided proportionate title in common areas to the association of allottees within a period of three months.

E.XXII. Direct the respondent to indemnify the allottees and the association against increase in stamp duty and all charges pertaining to conveyancing and registration.

E.XXIII. Direct the respondent to indemnify allottees and the association the complainant herein, against any charges including but not limited to increase and introduction of existing and new duties, cess, levy, maintenance charges, penalty, registration, taxes or any other such levies that the authority may impose during period of delay till the grant of OC.

25. No such relief can be granted. Statutory charges are liable to be paid at the time of the registration to the competent authority.

E.XXIV. Direct the respondent to pay delay possession interest at prescribed rates to allottees as per provisions of section 18(1) of RERA, for delay in handing over of lawful possession in the apartment/ flat/ unit including but not limited to common areas appurtenant thereto as per sanctioned plan, wherein allottees have undivided interest, for the entire period of delay so far from the expected date of possession, and every month thereafter for any further delay until legal and complete possession is granted with an occupancy certificate in accordance with applicable RERA provisions.

E.XXV. Direct the respondent to pay ₹5/- per sq. ft. per month enforcing adherence to delay penalty as per prospectus and clause 21 of the agreement for the entire period of delay calculated from the commitment date till handing over of lawful possession in accordance with the agreement and RERA provisions, over and above the delayed possession interest under charges in accordance with section 18(1) of RERA Act & rule 15v of HARERA Rules.

26. No such relief can be granted to the complainant-association and the allottees may file individual complaints regarding the said relief in respect of their respective claims.

E.XXVI. Restrain the promoter the respondent herein, and any statutory authority from taking any coercive steps against the allottees or the property.

27. No specific instance wherein the Authority is empowered to take action has been pointed out by the complainant-association. Therefore, no such relief can be granted.

E.XXVII. Direct the respondent to bear the cost of litigation.

28. The complainant-association is also seeking relief w.r.t litigation expenses. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors.* (supra), has held that an allottee is entitled to claim compensation & litigation charges under sections 12,14,18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses.
29. The complaint is accordingly decided in terms of the findings contained in para 12 to 27 above.
30. Complaint as well as applications, if any, stands disposed of accordingly.
31. File be consigned to registry.

(Ashok Sangwan)
Member

(Vijay Kumar Goyal)
Member

(Arun Kumar)
Chairperson

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 01.04.2025