

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

Complaint no. : 7218 of 2022
Date of filing : 11.11.2022
Date of decision: 27.05.2025

Aashiyara Society Through Its president
R/o: - House no. 31/P3, Block F, Saraswati Enclave,
Gurugram

Complainant

Versus

M/s Renuka Traders Private Limited.
Regd. Office at: B-2/3, KH No. 8/8, Second Floor,
Chattarpur Ext., New Delhi-110074

Respondent

CORAM:

Shri Arun Kumar
Shri Vijay Kumar Goyal
Shri Ashok Sangwan

Chairman
Member
Member

APPEARANCE:

Sh. Kanish Bangia (Advocate)
Sh. Shubham Mishra (Advocate)

Complainant
Respondent

ORDER

1. The present complaint dated 11.11.2022 has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 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 thereunder or to the allottee as per the agreement for sale executed *inter se*.

A. Unit and project related details

2. The project related details are as under::

S.No.	Particulars	Details	
1.	Name of the project	Aashiyara (Both Phase I and II)	
2.	Location of the project	Sector 37C, Gurugram, Haryana	
3.	Nature of the project	Affordable Group Housing Colony	
		Aashiyara I	Aashiyara II
4.	DTCP License no.	15 of 2018 dated 13.02.2018	09 of 2020 dated 09.03.2020
5.	License valid up to	12.02.2023	08.03.2025 Merged with LC-3014B
6.	Licensed area	5 acres	2.53125 acres
7.	Licensee	Renuka Traders Pvt. Ltd.	Renuka Traders Pvt. Ltd.
8.	Building plans approved on	08.10.2018	08.10.2018
9.	HRERA registered or not	26 of 2018 dated 28.11.2018	53 of 2021 dated 16.09.2021

10.	Registration valid up to	W.e.f. July 2018 till 31.01.2023	W.e.f. 16.09.2021 till 08.12.2025
11	Completion date of registration extended by 6 months as per notification dated 26.05.2020 due to outbreak of COVID-19	31.07.2023	N/A
12.	Area of project under registration	5 acres	2.53125 acres
13	Status of the project	Around 65% [As per page 20 of complaint] The respondent is contending that the project is 80% completed [Page 2 of application for dismissal of complaint]	
14	Occupation certificate	Not received	

B. Facts of the complaint

3. The complainant has made the following submissions: -

- I. As per project scheduled and BBA (Builder Buyer Agreement) signed, the allotted flats supposed to be delivered on 31st Jan 2023, on 10-10-2022 we have received construction schedule from M/s Renuka Traders Pvt Ltd through STP office that colonizer confirmed 31st July 2023 construction will

be completed, when will we received OC? The date for OC issue is not declared by colonizer, applying all required NOC and OC will take time minimum 3 months' time or will take another nine month extension time to provide flat, that means the flat will not be delivered before Oct 2023, due to delay of possession, buyers will lose additional bank interest along with the house rent, as extra time taking by colonizer (M/s Renuka Traders Pvt. Ltd) in this duration advance paid money is not utilizing for construction purpose, so give relief to the complainant-association not to take last installment now and will pay last installment before six month of OC receive date, due to delay possession as per BBA colonizer has to be return back interest on paid amount same has to be followed by colonizer (M/s Renuka Traders Pvt. Ltd) the date delay possession shall count start from 31st Jan, 2023.

- II. Aashiyara Project site construction works is very slow, last 43 Months Builder has completed only 62% of total work, not sure how can they complete the remaining work on or before 31st Jan 2023, detail planning construction schedule is required.
- III. That for last few months at site there was no sufficient cement bags and steel bars and other construction materials, sub-contractor was not getting paid, as we have already paid 87.5% of total cost of flats, why is not colonizer able to manage financially? Hence give order for financial audit of Aashiyara Project, 37C, Gurugram, please refer news published on 2/10/2022 and 3/10/2022, video clip the works are on strike due to non-payment last 5 to 7 months.

- IV. That at the time of approval for Aashiyara Phase - II, M/s Renuka Traders Pvt. Ltd. presented total land area as 7.531 Acre, which is included 0.84 Acre the area of 60M wide main road outside of Aashiyara boundary wall and FAR (Floor Area Ratio) has been calculated including the road area, due to which Aashiyara's Society population will be increased and common amenities area not received, will be congested, as per DTCP if any design change existing allottees opinion must be taken, maximum allottees had filed objection with written complaint but till today there is no actual communication.
- V. That MOM dated 26-07-2021, meeting with STP, its was confirmed for safety and security of our family, during construction of Aashiyara Ph-2, all the commitment needs to fulfill before possession the flat, kindly ask to M/s Renuka Traders Pvt. Ltd to follow the same safety and security related all the points mentioned in MOM.
- VI. That MOM dated 26-07-2021, meeting with STP all the common amenities design and dimensions to be according to total population including Aashiyara phase -2, please ask M/s Renuka Traders Pvt. Ltd to provide calculation sheet.
- VII. Non Quality issues:
- A. As per HRERA specifications all the door frames shall be wooden, actual at site only main door fixed wooden, all other are MS angle, which needs to replace to wooden door frame.
 - B. As per approved drawings it's clearly mentioned all the internal wall shall be RCC 90mm thk. and external wall shall be 150mm Thk. RCC, whereas at site construction, in 3BHK all the wall construction is done

by Ash bricks and in 2 BHK internal walls used ash bricks, kindly confirm, why are those changes made? Complainant have booked the flats under affordable.

- C. As per approved drawing, stating that the external wall finishes, so far as possible shall be in natural or permanent type of materials like bricks, stone, concrete, terracotta, grits, marble, chips, class metals or any other finish which may be allowed by the DTCP, Haryana.
- D. Top floors flats, all the room doors and windows toward balconies there is no roof, minimum RCC chajia is required to protect the doors and windows from rainwater and sunlight, it's one of the mistakes from Architect Engineer, same has been discussed with (M/s Renuka Traders Pvt. Ltd.) several times, but till today no implementation done. Later, 2BHK top floor owners will be constructed different type shade with different colour of sheets to protect the doors and windows, which will look odd to the Aashiyara society, kindly ask to (M/s Renuka Traders Pvt. Ltd.) to provide permanent type of extended shade for doors and windows of top floor flats of towers 2 BHK.
- E. There are many cracks found in newly constructed flat roofs and walls, with team RTPL jointly visited site on 25-02-2022, by request some major cracks repairing works done. STP MOM reference dated 21-02-2022 as per last meeting, it was confirmed that random RMC cube sample will be collected by existing allottees and test to be done from any NABL Lab, the cost of test will be borne by existing allottees, but RTPL disagreed to provide the RMC cube sample, as you know recently

Gurugram district administration planned to structural audit 60 Nos high rise apartments to avoid future accident. You are requested, please ask to (M/s Renuka Traders Pvt. Ltd.) provide random RMC cube sample for testing and get ensure quality of RMC used as per approved specification/drawings.

F. Aashiyara Ph-1 and Aashiyara-2 now merged as single project under affordable scheme, as per updated/latest affordable scheme car parking will be facilitated to all the allottees, you requested kindly ask to (M/s Renuka traders Pvt. Ltd) to arrange car parking for all the existing allottees of Aashiyara Ph-1 & Ph2.

G. There are many approved specifications is not following by builder, after construction there will be very difficult to manage to implement, please ask to (M/s Renuka Traders Pvt. Ltd) to follow 100% approved specification.

H. BUILDING SPECIFICATIONS MUST BE FOLLOWED BY BUILDER (M/S Renuka Traders Pvt. Ltd)

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):

- I. Direct the respondent to pay delay possession charge alongwith prescribed rate of interest.
- II. Direct the respondent o replace the door frame from MS ANGLE to wooden door frames.
- III. Direct the respondent to replace the internal wall from Ash bricks to 90mm RCC thick internal wall and 150 thick mm RCC external wall.

- IV. Direct the respondent to provide sliding door in the balcony as promoter is fixing doors to MS ANGLE.
 - V. Direct the respondent to provide the parking as per the amendment in the affordable housing policy.
 - VI. Direct the respondent to provide RCC Chajja On the top floor of the building.
 - VII. Direct the respondent to use good material in constructing the project as there are cracks in the newly constructed flats.
 - VIII. Direct the respondent to do the construction of the project as per the specification given in the drawing in the approved plan
5. 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.

D. Reply by the respondent.

6. The respondent has contested the complaint on the following grounds: -
- i. The answering respondent upon receiving the notice of the complaint filed an application for dismissal of the complaint as the same was filed at a premature stage. It was pleaded in the said application that since as per the BBA and RERA Registration of the project, the date of handing over the possession was 30.07.2023, no cause of action had arisen in favor of the complainant society or the allottees for filing any complaint before the Authority. It was thus prayed to dismiss the complaint being premature.
 - ii. That it is settled position of law as also held by the Authority in various decisions that unless there is a cause of action in favour of the complainant,

no complaint can be filed at a premature stage and the same is liable to be dismissed. It is submitted that the present complaint was filed when no cause of action had arisen in favour of the complainant and hence in absence of the basic ingredient for maintainability of the case i.e., cause of action which is *sine qua non*, complainant cannot survive even if the cause of action had arisen during the pendency of the complaint. It is most respectfully submitted that the present complaint may kindly be dismissed on this ground alone.

- iii. That the complainant cannot blow hot and cold at the same time, as on the one hand the original complaint was filed for reliefs which were premature and after the respondent filed the application for dismissal of the complaint, the complainant without filing reply to the said application had amended his reliefs without giving any reasons whatsoever.
- iv. That the amended reliefs as inter alia sought by the complainant vide separate application are not maintainable and the same may kindly be dismissed. It is submitted that the complainant had sought for amendment for at least 7 reliefs without giving any reasons whatsoever. It is not even a case of the complainant that there is a change in circumstances of the case and hence the alternate reliefs may be given, however, the complainant has changed the entire complaint into a different direction for no reasons mentioned. It is thus, submitted that the application for amending the reliefs of the complainant may kindly be dismissed.

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

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

E. Jurisdiction of the authority

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

E. I Territorial jurisdiction

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

E. II Subject matter jurisdiction

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

Section 11

.....

(4) The promoter shall-

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

Section 34-Functions of the Authority:

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

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

F. Findings on the relief sought by the complainants

F. I Direct the respondent to pay delay possession charge alongwith prescribed rate of interest.

13. In the present complaint, the complainant-association is seeking delay possession charges under section 18(1) of the Act, 2016 through various allottees but have not provided any details as to any individual agreement and other documents therefore the relief under section 18(1) cannot be adjudicated.

14. The Act of 2016 makes it clear that only the individual buyer can approach RERA with a complaint related to delayed possession, and any compensation claim by filing the complaint under section 31 before the Authority. Thus, in such a scenario, no case for delay possession charges would be made out by the association.

F.II Direct the respondent to replace the door frame from MS ANGLE to wooden door frames.

F.III Direct the respondent to replace the internal wall from Ash bricks to 90mm RCC thick internal wall and 150 thick mm RCC external wall.

F.IV Direct the respondent to provide sliding door in the balcony as promoter is fixing doors to MS ANGLE.

F.V Direct the respondent to provide the parking as per the amendment in the affordable housing policy.

F.VI Direct the respondent to provide RCC Chajja On the top floor of the building.

F.VII Direct the respondent to use good material in constructing the project as there are cracks in the newly constructed flats.

F.VIII Direct the respondent to do the construction of the project as per the specification given in the drawing in the approved plan

15. The above-mentioned reliefs no. F.II, F.III, F.IV, F.V , F.VI, F.VII and F.VIII as sought by the complainant is being taken together as the findings in one relief will definitely affect the result of the other reliefs and these reliefs are interconnected.
16. An application for dismissal of the complaint was filed by the respondent on 21.03.2023 stating that the complaint is not maintainable being pre-mature as it is filed prior to the date of completion of construction of the project as per registration certificate date of completion was 31.07.2023 (including 6 months extension due to COVID-19 outbreak as per notification dated 26.05.2020).
17. Reply to the said application was filed by the complainant on 16.01.2024 wherein it submitted that the members of complainant association being buyers through a BBA were assured that the delivery of possession of their respective units by 31.01.2023. However, till date not even proper 50% work is completed by the respondent. The construction of the project is at a very slow pace and the respondent would not be able to finish the project before 9 to 10 months. That when the complainants have paid more than 85% of the total sale

cracks in newly constructed flats points directly to defective workmanship and poor material quality, which is actionable under Section 14(3) of RERA. Additionally, if the promoter fails to follow the approved building plans or layout, including structural specifications before valid offer of possession, it shall amount to a violation of the sanctioned plan, entitling the complainant to relief.

20. Therefore, the complainant-association may approach the Adjudicating officer for the above-mentioned reliefs and compensation.

G. Directions of the Authority:


21. Hence, in view of the factual as well as legal positions detailed above, the complaint filed by the complainant seeking above reliefs against the respondents is decided in terms of paras 13 to 20 above. Ordered accordingly

22. Complaint stands disposed of.

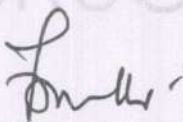
23. File be consigned to registry.



(Ashok Sangwan)
Member



(Vijay Kumar Goyal)
Member



(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

27.05.2025