

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

Complaint no. :	2948 of 2021
Date of complaint :	02.08.2021
Order Pronounce On:	11.03.2025

Ashok Kumar Mehra & Sons
R/o: A-5, West End Colony, New Delhi

Complainant**Versus**

1. M/s Ardee Infrastructure Pvt. Ltd.
Address: Gopal Das Bhawan, 28 Barakhamba Road, New Delhi-110001
2. M/s Ardee Mall Maintenance Services Pvt. Ltd.
Office at: Ardee Mall, Ardee City, Sector 52, Gurugram

Respondents**Coram:**

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

Chairperson
Member
Member

APPEARANCE:

Sh. Ishaan Dang (Advocate)
Sh. Venket Rao (Advocate)

Complainant
Respondents

ORDER

1. The present complaint has been filed by the complainants/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).
- A. Facts of the complaint:**
2. The complainant has made the following submissions in the complaint:

- a. The Karta of the complainant was also shown the residential project known as Ardee City spread over area measuring about hundred acres of which the shopping mall "Plaza Gardenia" was a part. In fact, all the representations referred to above had been made by Mr. Ashok Verma and Mrs. Meenakshi Verma to induce the Karta of the complainant to invest in the project.
- b. That relying upon the representations made by Mr. Ashok Verma and Mrs. Meenakshi Verma the complainant through its Karta had agreed to purchase area measuring 30,000 square feet located on 1st floor of the shopping mall known as Plaza Gardenia along with 30 car parking spaces. The Karta of the complainant was called upon by Mr. Ashok Verma and Mrs. Meenakshi Verma to issues cheques in favour of M/s Ardee Infrastructure Private Limited towards payment of sale consideration amount.
- c. The total sale consideration amount had been settled at Rs. 90 Lacs and the same had been paid by the complainant to the Respondent Number 1 in the following manner: -

Sr.No.	Date	Bank	Cheque no.	Amount (₹)
1.	21.03.2003	Punjab & Sind Bank	482880	20,00,000/-
2.	21.03.2003	IDBI Bank	220926	9,40,000/-
3.	29.03.2003	Punjab & Sind Bank	482241	20,00,000/-
4.	10.04.2003	Punjab & Sind Bank	482242	20,00,000/-

5.	06.05.2003	Punjab & Sind Bank	482243	18,60,000/-
6.	21.05.2003	Punjab & Sind Bank	482245	20,00,000/-
Total	90,00,000/-			

- d. That so far as documentation for the transaction is concerned, Mr. Ashok Verma had assured the Karta of the complainant that he would get the same drafted and completed. It had been repeatedly assured by Mr. Ashok Verma to the Karta of the complainant that the complainant ought not to worry on any score. Accordingly, agreement dated 11th of March 2003 was executed by the complainant through its Karta. It is pertinent to mention that the entire sale consideration amount had been paid by the complainant to the Respondent Number 1 within a period of approximately 3 months from the date of signing of the aforesaid agreement. At the time signatures of the Karta of the complainant were obtained on agreement dated 11th of March 2003 by Mr. Ashok Verma, the last page of the said agreement was left blank. However, since Mr. Ashok Kumar Mehra, the Karta of the complainant reposed complete faith in Mr. Ashok Verma, he had proceeded to append his signatures to the aforesaid contract. That actually, after about 2 weeks of signing of the aforesaid agreement by the Karta of the complainant, Mr. Ashok Verma had handed over the said agreement to the complainant through its Karta. The agreement dated 11th of March 2003 had been placed in the bank locker by the Karta of the complainant for safekeeping without examining the contents of the agreement. Even otherwise the

- Karta of the complainant had got no reason to suspect that the project would not be completed within the promised period.
- e. That after about 2 years of signing of agreement dated 11th of March 2003, the Karta of the complainant while visiting Gurgaon decided to have a look at the project site of shopping mall known as Plaza Gardenia. The inspection of the project site revealed that the construction carried at the spot was grossly inadequate and highly delayed. Under these circumstances the Karta of the complainant had contacted Mr. Ashok Verma and had acquired from him the reasons for the tremendous delay in execution of the project. Mr. Ashok Verma had assured the complainant that the construction work was proceeding at a sluggish pace on account of shortage of labour in Gurgaon. Mr. Ashok Verma had assured the Karta of the complainant that the construction of the project would be marginally delayed. At the same time it was represented by Mr. Ashok Verma that corrective steps were being taken by the Respondent Number 1 to ensure timely delivery of the Shopping Mall including the unit agreed to be sold to the complainant. Even till that stage it was represented to the Karta of the complainant by Mr. Ashok Verma that every conceivable attempt would be made to complete the project within the stipulated period of 30 months.
- f. That with effect from 3rd of March 2005 the 2 daughters of Mr. Ashok Verma, namely Ms. Shefali Verma and Ms. Shibani Verma were appointed as additional directors of the Respondent Number 1. The 2 ladies indicated above started to actively participate in the functioning/business of the Respondent Number 1. It is

pertinent to mention that to the best of the knowledge of the complainant Ms. Shibani Verma still continues to be the director of the Respondent Number 1. That in the month of January 2006, the Karta of the complainant once again went to the site and was completely shocked and dismayed to notice that no progress whatsoever had been done on the spot so far as construction of the shopping mall was concerned. Furthermore, the construction work of the shopping mall had been totally abandoned at the spot by the Respondent Number 1. The complainant through its Karta had immediately contacted Ms. Shefali Verma and had fixed a meeting with her at the site office of shopping mall at Gurgaon.

- g. That during the course of the meeting the Karta of the complainant had confronted Ms. Shefali Verma and had called upon her to give cogent or plausible explanation with regard to suspension of construction work of the shopping mall. Instead of behaving in a rational manner, Ms. Shefali Verma conveyed her displeasure to the Karta of the complainant. Ms. Shefali Verma stated that in case the Karta of the complainant continued to create an uproar with regard to suspension of construction work, he would not end up getting anything in the project. In fact, Ms. Shefali Verma tried her level best to intimidate the Karta of the complainant. She bluntly conveyed to the Karta of the complainant that it would be incumbent upon the complainant to surrender part of the area subject matter of agreement dated 11th of March 2003 to the Respondent Number 1. That the aforesaid request made by Ms. Shefali Verma was absolutely unjust and illegal and contrary to contractual covenants contained in agreement dated

11th of March 2003. Accordingly, the Karta of the complainant had voiced his concern and disappointment with regard to attitude and behaviour of Ms. Shefali Verma to her father, namely Mr. Ashok Verma. Upon hearing the grievances of the Karta of the complainant, Mr. Ashok Verma had adopted an apologetic tone but had steadfastly maintained that in case the surrender of part of the area was not made, the parties would have no option but to commence litigation.

- h. That Mr. Ashok Verma had further conveyed to the Karta of the complainant that the funds realised by the Respondent Number 1 from sale of the surrender the area would be much higher and would ensure completion of the project. Mr. Ashok Verma had further unreasonably insisted that the payment of the surrendered area would be made by the Respondent Number 1 to the complainant in instalments. Mr. Ashok Verma had even offered to adequately compensate the complainant. So far as the complainant is concerned, it did not wish to generate unwarranted controversy or to create an unsavoury situation.
- i. That under these compelling circumstances, the complainant had no option but to surrender area measuring 14393 square feet forming part of the total area measuring 30,000 square feet subject matter of agreement dated 11th of March 2003 in favour of the Respondent Number 1. The said surrender was made by the complainant in favour of the Respondent Number 1 by virtue of 4 surrender deeds got prepared by the Respondent Number 1 in the following manner.

- Area measuring 8333 square feet vide surrender deed dated 3rd of April 2006 on payment of consideration amounting to ₹29,16,550/- by the Respondent Number 1 to the complainant.
 - Area measuring 1515 square feet vide surrender deed dated 21st of April 2006 on payment of consideration amounting to ₹5,30,250/- by the Respondent Number 1 to the complainant.
 - Area measuring 3030 square feet vide surrender deed dated 8th of May 2006 on payment of consideration amounting to ₹10,60,500/- by the Respondent Number 1 to the complainant.
 - Area measuring 1515 square feet vide surrender deed dated 21st of June 2006 on payment of consideration amounting to ₹5,30,250/- by the Respondent Number 1 to the complainant.
- j. That in this manner retail/commercial area measuring 15607 square feet located on 1st floor of shopping mall known as Plaza Gardenia forming part of Ardee City and subject matter of agreement dated 11th of March 2003 was still retained as unsold by the complainant with itself. It is pertinent to mention that the entire sale consideration amount in respect of the aforesaid area had already been paid by the complainant to the Respondent Number 1. It is pertinent to mention that orally Mr. Ashok Verma had even conveyed to the Karta of the complainant that return on investment at the rate of Rs. 25/- per square feet per month would be paid to the complainant but the same was not done.
- k. That the Respondent Number 1 did not pay return on investment at the rate of Rs. 25/- per square feet per month to the

complainant, and also failed to deliver physical possession of the aforesaid retail/commercial area measuring 15607 square feet. Under these circumstances, the complainant was left with no option but to institute suit for specific performance titled "Ashok Kumar Mehra & Sons (HUF) Versus M/s Ardee Infrastructure Pvt. Ltd." against Respondent no.1 in respect of area measuring 15607 sq. feet located on first floor of Shopping Mall known as 'Plaza Gardenia' forming part of Ardee City, Gurgaon along with 30 car parking's and all rights appurtenant thereto including but not confined to proportionate, indivisible and impartible ownership rights in the land underneath. That during the pendency of aforesaid litigation, matter had been compromised between complainant and Respondent no.1. In fact, the suit had been filed by the complainant on 21st October 2015. The Respondent no.1 had adopted every conceivable tactic to delay the decision of the said case so as to dissuade the complainant from continuing to prosecute the aforesaid suit.

1. That in order to avoid protracted litigation, the complainant had succumbed to the dilatory tactics adopted by the respondent number 1/its office bearers and had compromised the matter. In fact, the respondent number 1/its office bearers have exploited their dominant position and had compelled the complainant to enter into a compromise which was completely biased in favour of respondent no.1. The complainant had made payment of entire sale consideration in respect of area in question way back in the year 2003 to respondent no.1. The complainant had been compelled to give up all its claims pertaining to delay in delivery

of possession of area in question. The complainant was also pressurized to pay a substantial sum of ₹42,50,000/-. That the respondent number 1/its office bearers had claimed that the said amount of ₹42,50,000/- was required to be paid for upgradation of infrastructural facilities in the shopping mall. The complainant had no option but to make payment of the aforesaid amount vide cheque bearing Number 210057 dated 11th of September 2018 drawn on Punjab National Bank, Mid-Corporate Branch, A - 9, Connaught Place, New Delhi. In fact, the complainant during the course of talks which had culminated in the execution of the aforesaid compromise had categorically expressed its objection to the unreasonable demand referred to above.

- m. That office bearers of Respondent Number 1 had been actively involved in mounting undue and unwarranted pressure on the complainant to compromise the matter. In fact, Respondent Number 1/its office bearers had persistently conveyed to the complainant that the payment of the aforesaid amount would be a one-time payment towards all charges required to be paid towards occupation/use/utilisation of the area referred to above. Since, complainant wanted to end the litigation, it had acceded to the unreasonable request of the Respondent Number 1/its office bearers. On this account substantial payment referred to above had been made by the complainant.
- n. That relying on the representations made by respondent number 1/its office bearers, the complainant had executed compromise which had been filed in the aforesaid litigation. The aforesaid one-sided compromise had been executed by the complainant merely

to purchase peace and to put an end to litigation. The intention of respondent number 1 to cheat and defraud the complainant is evident from the fact that after more than 15 years of execution of the agreement dated 11th of March, 2003, respondent number 1/its office bearers had unilaterally communicated to the complainant that an unjustified loading ratio for the purpose of calculation of super area i.e. 56.95:43.05% or 57.7:43.92% would be applicable to the commercial units being sold in favour of the complainant by respondent number 1. It was further communicated to the complainant by respondent number 1/its office bearers that the aforesaid loading ratio would be uniformly applicable in the project. In fact, the aforesaid representations had been made by respondent number 1/its office bearers to cheat and defraud the complainant and to cause wrongful loss to it and to obtain gain for respondent number 1.

- o. That the complainant was utterly shocked and dismayed when it subsequently found that the complainant had been duped into entering into the aforesaid compromise. In terms of compromise referred to above various obligations were required to be performed by Respondent Number 1. It was specifically mentioned in Clause 2 of aforesaid compromise that Respondent Number 1 would proceed to execute and register six conveyance deeds in respect of area subject matter of litigation in favour of complainant within a period of three months from the date of execution of the compromise. Judgment and decree dated 27th of November 2018 had been passed by the honourable court of Mr.

Manish Kumar, Civil Judge, Gurugram. Compromise referred to above had been made part of decree sheet.

- p. That Respondent Number 1/its official bearers insisted that maintenance agreement be further executed by the complainant in respect of Commercial Units agreed to be purchased by the complainant. The covenants incorporated in the maintenance agreement were absolutely biased and one-sided. However, it was insisted by the respondents that they were completely inflexible with regard to making of any amendments/modifications in the terms and conditions incorporated in the maintenance agreement. In order to inspire the confidence of the complainant, it had been indicated by the respondents to the complainant that the draft of the maintenance agreement had been drawn up for the entire mall and the same would be required to be executed by all occupants of the mall. It was unilaterally incorporated by the respondents in the said agreement that maintenance charges at the rate of Rs. 30/- would be liable to be paid by the complainant from 1st of March 2018. Respondent Number 1 insisted and prevailed upon the complainant to execute maintenance agreement. The aforesaid maintenance agreement contained highly unjust, unfair and biased terms and conditions. Since the Respondent Number 1 was in a dominant position and the conveyance deeds in respect of the commercial units had not been executed and registered, the Respondent had no option but to execute Maintenance Agreement dated 5th of January, 2019 in respect of area measuring 15607 square feet. It was mentioned in the aforesaid Maintenance Agreement that a highly inflated and

exorbitant amount of maintenance charges at the rate of Rs.30/- per square feet would be liable to be paid by the complainant to the Respondents. However, it is pertinent to mention that it had been explicitly and categorically communicated and assured by the Respondents/their office bearers to the complainant that the loading factor of 43% for computation of super area and maintenance charges at the rate of Rs.30/- per square feet would be uniformly applicable to all commercial units' owners/occupants of commercial units in the project.

- q. That on 12th of January 2019 the Respondent Number 1/its office bearers had delivered the physical possession of property situated on First Floor of Ardee Mall bearing unit Number 1 (left side) and unit Number 2 (right side) allegedly having total saleable area measuring 15607 square feet. The Respondent Number 1/its office bearers had cleverly obtained the signatures of the complainant on a plan on 12th of January 2019, which did not contain any dimensions. It is now transpired that the intention of the respondents from the very inception was to cheat and defraud the complainant and to hoodwink it. Letter dated 5th of January 2019 had been issued by the Respondent Number 1/its office bearers with regard to delivery of possession. The plan referred to above which did not contain any dimensions was part of the aforesaid letter.
- r. That another letter dated 5th of January 2019 had been issued by Respondent Number 1 wherein it was falsely mentioned that the complainant was completely satisfied in all respects with regard to delivery of physical possession. Since, the complainant wanted

to put an end to the entire episode, the complainant had proceeded to append its signatures on the aforesaid letter. The said letter does not create any right whatsoever in favour of the Respondents and the same was obtained from the complainant by the Respondents by taking undue advantage of their dominant position. That it is pertinent to mention that the aforesaid compromise had been executed between the parties and had been filed in the honourable court on 27th of November 2018. However, the Respondent Number 1/its office bearers without any right or justification, illegally, deliberately and wilfully refrained from executing and proceeding to register 6 conveyance deeds in respect of area subject matter of litigation mentioned hereinbefore. There was absolutely no cogent or plausible explanation available to the Respondent Number 1/its office bearers in terms of which, they could have refrained from complying with its obligations arising out of aforesaid compromise.

- s. That the Respondent Number 1/its office bearers had brazenly violated the terms and conditions of compromise and had shown utmost disdain and disregard towards the majesty of the honourable court. Consequently, the complainant had proceeded to file the present execution petition titled "Ashok Kumar Mehra & Sons (HUF) Vs. M/s Ardee Infrastructure Pvt. Ltd." That after filing of execution petition referred to above, the respondent number 1/its office bearers had proceeded to execute and register the following conveyance deeds in respect of commercial units mentioned hereinafter in favour of the complainant.

Sno.	Conveyance deed date	details
1.	13.12.2019	Shop Number 21 located on First admeasuring 2601.14 square feet along with 2 car parking spaces.
2.	13.12.2019	Shop Number 22 located on First admeasuring 2601.14 square feet along with 2 car parking spaces.
3.	13.12.2019	Shop Number 23 located on First Floor admeasuring 2601.14 square feet along with 2 car parking spaces.
4.	13.12.2019	Shop Number 24 located on First Floor admeasuring 1931.51 sq. ft. along with 3 car parking spaces.
5.	13.12.2019	Shop Number 25 located on First admeasuring 2935.89 square feet along with 3 car parking spaces
6.	13.12.2019	Shop Number 26 located on First Floor admeasuring 2936.18 square feet along with 8 car parking spaces.

- t. That it had been specifically agreed between the Respondents and the complainant and had also been explicitly incorporated in the compromise referred to above in furtherance of which Judgment and decree dated 27th of November 2018 had been passed that the respondents would provide facilities that is adequate, air-conditioning, adequate electricity load as per requirements of the occupants, gas, water and wastewater line, opening for exhaust and opening for fresh air in all the 6 units referred to above. That the Respondents had illegally started demanding common area maintenance charges and electricity charges in respect of the 6 shops from the very inception. The complainant over the last several years has been repeatedly requesting the Respondents to supply it the complete details pertaining to computation of super area of the units referred to above as had been promised by the

complainant. During the course of visits made by the complainant to the mall, it was revealed to the complainant that varying amounts of maintenance charges were being realised by Respondent Number 2 in collusion with Respondent Number 1 from different occupants of the mall. The complainant also came to know that different parameters for computation of loading factor had been selectively and capriciously deployed by the Respondents while dealing with different occupants in the same mall.

- u. That the complainant diligently pursued the matter with the respondents but the respondents were not at all forthcoming to reveal any details to the complainant. The complainant repeatedly urged the respondents to supply to it copies of other leases executed and got registered by them in favour of other occupants of the mall. It was time and again come indicated by the complainant to the respondents that it was the legal right of the complainant to seek disclosure of computation of super area as well as details of fixation of maintenance charges and realisation of the same from different tenants. The respondents had become completely hostile and arrogant in dealing with the complainant.

B. Relief sought by the complainant:

- 3. The complainant has sought following relief(s).
 - a. That the respondents may kindly be directed to provide justification for determination of loading factor/quantification of super area of all commercial units forming part of "Ardee Mall", situated in Ardee City, Sector-52, Wazirabad, Gurugram.

- b. That the respondents may very kindly be directed to apply the same yardstick for determination of loading factor/quantification of super area of all commercial units forming part of "Ardee Mall", situated in Ardee City, Sector-52, Wazirabad, Gurugram and after doing the same to allot duly constructed commercial space on the same floor in the aforesaid shopping mall to make up the deficiency in space allotted/sold to the complainant without payment of any additional amount.
- c. The respondents were very kindly be directed to transfer valid and marketable title in respect of the aforesaid deficient space pursuant to its quantification without payment of any additional amount by registration of conveyance deed(s).
- d. The respondents may also very kindly be directed to pay the rent/revenue realized by them along with interest at the rate of 18% per annum from leasing of the space deficiently conveyed to the complainant.
- e. The said amount may kindly be directed to be paid for the period commencing from date of registration of conveyance deed till delivery of physical possession of the said deficient area during the course of present proceedings.
- f. That the respondents may very kindly be directed to provide complete details of fixation of maintenance charges for different commercial units located in "Ardee Mall", situated in Ardee City, Sector-52, Wazirabad, Gurugram. The fair quantum of maintenance charges may very kindly be determined by the Honorable Adjudicating Officer and the respondents may very kindly be directed to demand and realize maintenance charges at

the uniform rate from all commercial units located in "Ardee Mall", situated in Ardee City, Sector-52, Wazirabad, Gurugram. The excess amount, illegally realized by the Respondents from the complainant in respect of area measuring 15607 sq. feet located on first floor of shopping mall known as 'Plaza Gardenia' forming part of Ardee City, Gurgaon very kindly be directed to be refunded to the complainant along with interest as per provisions of the Real Estate (Regulation and Development) Act, 2016.

- g. That the respondents may very kindly be directed to refund the marketing fees illegally and wrongfully realized by the respondents from the complainant at the rate of ₹2/- square foot, along with 18% interest.
- h. That the respondents may very kindly be directed to refund the amount of ₹42.50 lacs forcibly and illegally extracted from the complainant in the manner and circumstances highlighted above as a condition precedent unilaterally imposed by the respondent upon the complainant for obtaining the allotment, title and physical possession of area measuring 15607 sq. feet (Super Area) mall.
- i. That the respondents may kindly be directed to pay pendente lite interest and future interest at the rate of 18 % per annum to the complainant from the date of filing of the complaint till realization of the entire decretal amount.
- j. That the respondents may kindly be directed to pay an amount of ₹5,00,000/- as compensation towards the mental agony and harassment caused by it to the complainant.

- k. That the respondent may kindly be directed to pay ₹50,000/- as litigation expenses to the complainant.
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 no. 1.

5. The respondent no. 1 has contested the complaint on the following grounds:
- a. That in the year 2002, in one of its visits to Late Mr. Ashok Verma, (the erstwhile Director of the Respondent No.1) the Complainant came to know about the Commercial Project "Plaza Gardenia" now been renamed as "Ardee Mall" [hereinafter referred as the "Project"] being developed by the Respondent No. 1 in its licensed colony "Ardee City". The licensed colony is being developed by the Respondent No.1 and other Group Companies of the Respondent No.1. That the Complainant showed its interest to purchase Commercial Units in the Project, as an investment and specifically for generating rental income and asked for the brochure. The brochure was provided to him by the executive of Respondent no.1 and being impressed by the brochure, the Complainant requested a site visit which was also provided to him by the executives of the Respondent No.1. Thereafter, the Complainant through its Karta, being completely satisfied proceeded to buy the Commercial Space admeasuring 30,000 square feet located on the 1st floor of the shopping mall known as "Plaza Gardenia" along

with 30 cars parking space (hereinafter referred to as "Commercial Space").

- b. It is submitted that in view of the aforesaid transaction related to Commercial Space admeasuring 30,000 sq. ft. in the Project of the Respondent No.1, an Agreement for purchase of the Commercial Space (hereinafter referred to as "Agreement for Sale") was drafted and executed between the two parties on 11.03.2003. It is further submitted that the said Agreement for Sale was duly signed by the Complainant after carefully examining each clause of the said Agreement for Sale and understating and agreeing to the same.
- c. Thereafter, in the year 2006 the Complainant through its Karta approached the Respondent No.1 and expressed its desire and requested to surrender certain portion of the Commercial Space as was allotted to the Complainant in the Project. That accepting the request of the Complainant, the Respondent No.1 executed four (4) Surrender Deeds with the Complainant wherein the Complainant surrendered a total of 14393 sq. ft of the Commercial Space admeasuring 30,000 sq.ft. The consideration i.e the refund, in full and final settlement of the surrendered areas were also duly paid to the Complainant by the Respondent No.1 immediately upon signing of the Surrender Deeds.
- d. That the Complainant and the Respondent No.1 had already come to a compromise and the said Compromise dated 21.11.2018 was also filed and recorded in the Judgment and Decree dated 27.11.2018 of the Hon'ble Court of Sh. Manish Kumar, Civil Judge (Jr. Div), Gurugram. The Judgment and decree clearly mentioned

that a compromise has been arrived between the Parties and there is no transaction remained to be done.

- e. It is necessary to point out that as per the Compromise deed dated 21.11.2018 presented in the Hon'ble Civil Court, Gurugram the Complainant after being fully satisfied with the development of the units allotted to it has taken the physical possession of the said units.
- f. That it is significant to mention that the statement dated 27.11.2018 before the Hon'ble Court provides that there is no remaining due and both the parties are bound towards the terms and conditions mentioned in the Compromise Deed.
- g. It is further submitted that after the Compromise Decree of the Hon'ble Civil Court, Gurugram, a detailed report dated 17.12.2018 was filed by the Court Observer Shri. Rakesh Kapoor, Retd. District Judge in the Hon'ble High Court of Delhi in Civil Suit No. 1781/2014 regarding the handing over of the possession.
- h. That on 05.01.2019 the physical possession of the Commercial Space along with 20 parking slots was handed over to the Complainant and the Complainant had put in its signatures that it has taken over the physical possession. In fact, the Complainant has also given an undertaking dated 05.01.2019 that it has inspected the said premises to its complete satisfaction and confirms that the Commercial Space is complete in all respect and have no claim whatsoever as per the Agreement for Sale.
- i. It is further submitted that the Respondent had offered the physical possession of the space vide its letter dated 27.12.2017 to which the complainant had replied vide dated 06.01.2018

stating that only after its satisfaction to the delivery of physical possession of premises and transferring the title in respect of the area, the complainant shall withdraw the civil suit.

- j. It is very important to bring to the notice of this Hon'ble Authority that in fact a detailed first floor area plan and the parking, with P-marking of the Complainant's area was duly executed with the letter of handing over of possession dated 05.01.2019. Further, the Complainant in the presence of its own architect hired by him has measured and examined the shop's areas and then only the Conveyance Deeds were executed and registered. Furthermore, it is pertinent to mention that the before the registration of Conveyance Deed, the calculation of saleable area was done by the architect hired by the Complainant and accordingly the saleable area was written in the Conveyance Deeds.
- k. That on 13.12.2019, after all the joint measurements, six (6) Conveyance Deed were signed and executed between the Complainant and Respondent No.1 pertaining to the Commercial Space admeasuring 15,607 sq. mts, which has also been duly recorded in the order dated 03.01.2020 of Hon'ble Justice Ms. Sumitra Kadian, Civil Judge, Gurugram in Execution Application No. 231 of 2019.
- l. In view of the above submissions, it is pertinent to mention that there is no basis for admissibility of the present Complaint. The Respondent No.1 Company has no ill intention towards the Complainant. It is significant to mention that there is no dishonest inducement or delivery of the property, misappropriation of property, etc. thus the Complaint should be dismissed in limini.

The Conveyance Deed was executed and later on confirmed before the various concerned authorities. The Present Complaint is the misuse of the process of law.

- m. It is evident from the above that no transaction is pending between the parties and possession of the space has been handed over and conveyance deed has already been executed. Even the property has been mutated by in MCG record and the complainant is paying the property tax and the matter has been closed from all angles. In view of this also, the present complaint is not maintainable and liable to be dismissed on this ground alone.
- n. That the Id. Authority has no jurisdiction over the Maintenance Agency as it does not fall within the meaning of "Promoter" under section 2(zk) of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred to as "RERA Act, 2016). The Id. Authority has jurisdiction to only act against the Promoter, Allottee or a Real Estate Agent.
- o. The 'Maintenance Agreement' executed between the Respondent No. 2 and the Complainant is not a 'Builder-Buyer Agreement' per se therefore any disputes arising out of the same are not tenable before this Hon'ble Authority. 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 between the Respondent No. 2 and the Complainant from the 'Maintenance Agreement'.
- p. That without prejudice, it is submitted that as per the Compromise Deed, the Complainant is bound to abide the terms and conditions

of the Maintenance Agreement dated 12.01.2019. The Maintenance Agreement has already been acted upon and complied with by the parties. The complainant initially paid the maintenance charges as per the agreement but later on stopped to pay for which Pre-Institution Application filed by the Respondent No. 2 is pending before the Patiala House Courts, New Delhi as per section 12A of the Commercial Court Act. The Respondent No. 2 is continuously demanding the due amount of maintenance charges but the complainant has failed to pay as per the maintenance agreement. It is further stated that the tenant of one shop/space of the Complainant is paying the maintenance @ Rs. 30/- per sq. ft. per month. It is pertinent to mention that it is specifically mentioned in the Maintenance Agreement dated 12.01.2019 that "the Owner binds himself to pay the Common Area Maintenance (CAM) Charges @ Rs. 30/- per sq. ft. per month". It is further submitted that as per the Clause 10 of the Maintenance Agreement in the event of the Owner/Occupant committing two consecutive defaults in paying the dues for whatsoever reason, the maintenance agency has the right to disconnect/disallow the use and enjoyment of the facilities until the charges and arrears are paid by the Owner/Occupant as per the demands raised by the maintenance agency. It is relevant to mention that it is a settled position of the law laid down by the Supreme Court that the parties are bound by the bilateral agreement and also no parties can go behind the Decree of the Court.

- q. It is submitted that the Respondent has already executed the order of the Hon'ble Civil Court, Gurugram and has complied with

its directions in totality. The Complainant cannot retract from the orders after the order has been acted upon and duly complied with by the Respondent.

- r. It is a well settled principle of law that once the terms and conditions of the Settlement/Compromise Deed has been agreed upon and further the terms and conditions have been executed, the same cannot be re-written or redraft. Therefore, by filing the present Complaint and not complying with the final order of the Hon'ble Civil Court, Gurugram may tantamount to contempt of court.
- s. It is also pertinent to note the tenants of the Complainant are vacating the shops rented out by the Complainant through its Karta and after the tenants move out from the shops the maintenance charges have to be paid by the Complainant, and in order to avoid the payment of Maintenance charges, the Complainant in the present Complaint is questioning the maintenance charges along with other baseless allegations. Furthermore, it is pertinent to mention that the relief for possession of the allotted units and the dispute regarding the maintenance charges are fully covered under the Compromise Deed filed in the Hon'ble Civil Court Gurugram.
- t. It is submitted that the Complainant has raised question regarding the loading factors and super areas of the shops is completely absurd, as the Complainant in the presence of its own architect hired by him has measured and examined the shop's areas and then only the sale deed was registered. Furthermore, it is pertinent to mention that the before the registration of sale deed,

the calculation of saleable area was done by the architect hired by the Complainant and accordingly the saleable area was written in the Conveyance Deeds.

- u. It is submitted that as far as the loading factor is concerned, the loading factor in Ardee City Mall is about 55:45, but since the Complainant through its Karta is a habitual litigant and in order to resolve the dispute between the parties the Respondent Company has increased the loading factor of the Complainant, which is 57:43. Thus, the Complainant is getting an extra area which it is not entitled to. It is relevant to mention that the site of the shops mentioning the detailed area were signed and agreed between both the parties on 10.01.2018.
- v. It is submitted that as per the legal proposition is concerned, the Complainant and the Respondent are bound by the terms and conditions of the Agreement/Compromise Deed/Conveyance Deeds. It is submitted that once parties enter into a contract then every word stated therein has to be given due meaning which reveals rights and obligations between the parties that no part of the agreement or words used therein could be said to be redundant.
- w. That a perusal of the submissions made herein clearly concludes that the Complainant herein is not an "Allottee/ Consumer". That the Complainant is simply an investor who had booked the Commercial Space in the Project of the Respondent for investment opportunities and specifically for generating rental income. That in the lights of the said facts and circumstances it can be concluded beyond any reasonable doubt that the Complainant herein is not

a 'Consumer or Allottee', that the relationship between the Complainant and the Respondent is not that of a "Builder-buyer".

- x. It is further submitted that none of the reliefs as prayed for by the Complainant are sustainable before this Ld. Authority and in the eyes of law. Hence, the complaint is liable to be dismissed with imposition of exemplary cost for wasting the precious time and resources of the Ld. Authority. That the present complaint is an utter abuse of the process of law, and hence deserves to be dismissed.

D. Reply by Respondent no. 2

6. The respondent no.2 has contested the complaint on the following grounds:
- a. It is humbly submitted that Respondent No. 2 does not fall within the meaning of "Promoter" under section 2 of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred to as "RERA Act, 2016). That the present Complaint and the reliefs sought thereunder are maintainable before this Hon'ble Authority only if the Respondent No.2 is squarely covered within the meaning of the definition of a "Promoter", whereas Respondent No. 2 is simply a Maintenance Agency.
 - b. It is clear from a bare perusal of the aforementioned provision that Respondent No. 2 does not fall within the meaning of "Promoter" under Section 2(zk) of the RERA Act, 2016. That the sole agenda of the Complainant in arraying the Respondent No. 2 as party is to agonize the Respondent No. 2 and gain wrongful monies. It is pertinent to note that the RERA Act, 2016 was enacted solely for the adjudication of disputes of a Builder-Buyer



nature. The Respondent No. 2 by no stretch of imagination falls under the meaning of "Promoter" under the said RERA Act, 2016. Further for adjudication of the present dispute a 'Builder-Buyer' relationship is not established between the Complainant and the Respondent No. 2.

- c. That the Complainant has wrongly arrayed the Respondent No. 2 in the present Complaint. It is pertinent to note that in the entire Complaint the Complainant has failed to raise any allegations against the Respondent No. 2 elaborately or with cogent evidences. Further, it is noteworthy in the Prayer-Clause the Complainant has not sought any relief against the Respondent No. 2 per se. That the accusations raised against the Complainant are hollow and baseless. That the Respondent No. 2 is fit to be removed from the array of parties at the very outset.
- d. The 'Maintenance Agreement' executed between the Respondent No. 2 and the Complainant is not a 'Builder-Buyer Agreement' per se therefore any disputes arising out of the same are not tenable before this Hon'ble Authority. 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 between the Respondent No. 2 and the Complainant from the 'Maintenance Agreement'. That the present Complaint in respect of the Respondent No. 2 is not maintainable before the Ld. Authority.
- e. That for reasons aforementioned the present Complaint is not an outcome of a "Builder-Buyer" dispute between the parties. That

the relationship between the Complainant and the Respondent No. 2 is strictly arising out of the Maintenance Agreement between the parties. That the Respondent No. 2 is not a "Promoter" within the meaning of the RERA Act, 2016. The answering Respondent has not violated any terms of the Maintenance Agreement and more importantly the provisions of the RERA Act, 2016 per se Section 12, 14, 18 or 19. Furthermore, the present Complaint filed by the Complainant is under Rule 29 of the HRERA Rules, that the allegations being raised by the Complainant against Respondent No. 2 are not within the purview of Rule 29. Hence the present Complaint, is not maintainable by any means whatsoever.

- f. That it is a matter of fact that the Complainant executed the Maintenance Agreement with the Respondent No. 2 out of his complete free will and with a clear conscience after going through the terms therein thoroughly. That the Complainant is simply raising afterthought and vexatious grounds against the Respondent No. 2 at this belated stage with an ulterior motive to gain wrongful monies from the Respondent No. 2 and to evade its obligation to pay the pending dues.
7. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of those undisputed documents and submissions made by the complainants.
8. 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.

E. Findings on the relief sought by the complainants.

9. Before adjudicating upon the relief sought by the complainant it is relevant to throw light upon the detailed facts of the case. The complainants have executed the buyer agreement on 11.03.2003 and had agreed to purchase area measuring 30,000/- sq. ft. located on 1st floor of the shopping mall known as "Plaza Gardenia" along with 30 car parking. The complainant further surrendered the area measuring 14393 sq. ft. and left with 15607 sq. ft. and the amount of the said surrendered area was returned to the complainant as stated by complainant but the return on investment was not paid to him. Thereafter, they filed a suit for specific performance against respondent in civil court in respect of the said area on 21.10.2015 subsequently the suit came to compromise and the same was brought on record on 21.11.2018. Clause 2 of compromise dated 21.11.2018 can be read as under:

"that on request of the plaintiff, the defendant has agreed to execute 6 conveyance deeds in respect of above area in favor of the plaintiff within a period of 3 months....."

10. Consequently, complainant filed execution petition on 21.08.2019 (page no. 123 of complaint) titled as **"Ashok kumar Mehra and ors. Vs. M/s Ardee Infrastructure Pvt. Ltd."** and as per order dated 21.11.2018 respondent duly executed 6 conveyance deeds in favour of complainants. The units were also differently leased out.

11. Clause 11 of conveyance deeds dated 13.12.2019 states as under:

".....In case of any terms and/or condition of the said commercial flat buyer agreement dated 11.03.2003 and compromise deed dated 21.11.2018 referred in the beginning is at variance with the terms and conditions contained in the conveyance deed in that case the terms and conditions of this deed shall prevail"

12. The counsel for the respondent states that the complainant and respondent no. 1 has already come to a compromise dated 21.11.2018 and there is no transaction remained to be done between them as recorded in the order & decree dated 27.11.2018 and hence, the above complaint is not maintainable before this Authority. Moreover, the complainants have approached this Authority by filing present complaint after execution of conveyance deed as well as amicable settlement reached between the parties without any external influence and conditions of above settlement cannot be re-initiated by any as has been held before Hon'ble Supreme Court in **Wapcos Ltd. V/s Salma Dam Joint Venture & Anr.** The relevant para is produced below for the ready reference:

"36.Even otherwise we feel that once the parties have arrived at a settlement in respect of any dispute or difference arising under a contract and that dispute or the difference is amicably settled by way of a final settlement by and between the parties, unless that settlement is set aside in proper proceedings, it cannot lie in the mouth of one of the parties to the settlement to spurn it on the ground that it was a mistake and proceed to invoke the arbitration clause. If this is permitted the sanctity of the contract, the settlement also being a contract, would be wholly lost and it would be open to one party to take the benefit under the settlement and then to question the same on the ground of mistake without having the settlement set aside. In the circumstances, we think that in the instant case since the dispute or difference was finally settled and payments were made as for the settlement, it was not open to the respondent unilaterally to treat the settlement as non-est and to proceed to invoke the arbitration clause."

13. The Authority observes that it is not disputed that prior to filing of the present complaint before the Authority on 02.08.2021, the complainants had already filed a civil suit for specific performance in the civil court bearing no. 2803 of 2015. To settle the said matter, the

parties entered into a compromise deed on 21.11.2018 reduced the same into writing which led to the said complaint being disposed of on 27.11.2018 in the terms of the settlement. Thereafter, an execution petition was filed by the complainant in the executing court for execution of the consented decree dated 27.11.2018. The said execution petition was dismissed as withdrawn vide order dated 03.01.2020. It is also not disputed that the in pursuance of the compromise deed dated 21.11.2018, the complainants and the respondent no. 1 executed the conveyance deeds for the units in question. It is also brought to the notice of the Authority that before execution of the conveyance deeds, the complainant has signed a detailed maintenance agreement dated 05.01.2019 with the respondent at its own volition and was expected to exercise due diligence, especially after the past history of the matter. Moreover, the subject of maintenance agreements signed inter-se parties does not lie in the jurisdiction of this Authority.

14. The Authority notes that the issues raised in the current complaint have already been resolved and conclusively closed through the compromise deed dated November 21, 2018. Additionally, the Authority lacks jurisdiction over the maintenance agency, as it does not meet the definition of a 'promoter'. Furthermore, maintenance charges are governed by the maintenance agreement executed between the parties, which is not classified as an 'agreement for sale'. Therefore, any disputes arising from this agreement are not within the Authority's purview and should be addressed in a civil court.
15. In view of the above, this Authority does not find the reliefs sought by the complainant maintainable under the provisions of the Act, 2016 & hence declined since, the parties have already preferred a civil suit for

specific performance & conveyance deed has also been executed inter-se parties in terms of settlement arrived thereto. Also, the parties may approach competent court of law for any dispute per se.

16. Furthermore, the Authority notes that the aforementioned project remains unregistered with the Authority. Consequently, proceedings in respect of the said non-registration shall be initiated independently by the Planning Cell of the Authority. Additionally, the respondent is obligated to transfer possession of the common areas to the association of allottees, in terms of section 11(4)(a) read with section 17(1) of the Act, 2016.
17. File be consigned to registry.



(Ashok Sangwan)
Member



(Arun Kumar)
Chairperson



(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 11.03.2025

HARERA
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