

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

Date of decision: - 16.05.2025

NAME OF THE BUILDER		Bright Buildtech Private Limited	
PROJECT NAME		"Woodview Residencies" at sector 89 and 90, Gurugram Haryana	
S. No.	Case No.	Case title	Appearance
1.	CR/745/2023	Deepak Batra VS Bright Buildtech Private Limited & ACE Mega Structures Private Limited & Orris Infrastructures Private Limited	Adv. Bhirgu Dhami (Complainant) Adv. Nitin Harsh Jain (Respondent for R1 & R2) Adv. Charu Rustagi (Respondent for R3)
2.	CR/746/2023	Deepak Batra VS Bright Buildtech Private Limited & ACE Mega Structures Private Limited & Orris Infrastructures Private Limited	Adv. Bhirgu Dhami (Complainant) Adv. Nitin Harsh Jain (Respondent for R1 & R2) Adv. Charu Rustagi (Respondent for R3)
3.	CR/748/2023	Deepak Batra VS Bright Buildtech Private Limited & ACE Mega Structures Private Limited & Orris Infrastructures Private Limited	Adv. Bhirgu Dhami (Complainant) Adv. Nitin Harsh Jain (Respondent for R1 & R2) Adv. Charu Rustagi (Respondent for R3)
4.	CR/762/2023	Deepak Batra VS Bright Buildtech Private Limited & ACE Mega Structures Private Limited & Orris Infrastructures Private Limited	Adv. Bhirgu Dhami (Complainant) Adv. Nitin Harsh Jain (Respondent for R1 & R2) Adv. Charu Rustagi (Respondent for R3)
5.	CR/773/2023	Deepak Batra VS Bright Buildtech Private Limited & ACE Mega Structures Private Limited & Orris Infrastructures Private Limited	Adv. Bhirgu Dhami (Complainant) Adv. Nitin Harsh Jain (Respondent for R1 & R2) Adv. Charu Rustagi

			(Respondent for R3)
6.	CR/791/2023	Deepak Batra VS Bright Buildtech Private Limited & ACE Mega Structures Private Limited & Orris Infrastructures Private Limited	Adv. Bhirgu Dhami (Complainant) Adv. Nitin Harsh Jain (Respondent for R1 & R2) Adv. Charu Rustagi (Respondent for R3)
7.	CR/797/2023	Deepak Batra VS Bright Buildtech Private Limited & ACE Mega Structures Private Limited & Orris Infrastructures Private Limited	Adv. Bhirgu Dhami (Complainant) Adv. Nitin Harsh Jain (Respondent for R1 & R2) Adv. Charu Rustagi (Respondent for R3)
8.	CR/4906/2023	Deepak Batra VS Bright Buildtech Private Limited & ACE Mega Structures Private Limited & Orris Infrastructures Private Limited	Adv. Bhirgu Dhami (Complainant) Adv. Nitin Harsh Jain (Respondent for R1 & R2) Adv. Charu Rustagi (Respondent for R3)
9.	CR/3698/2023	Deepak Batra VS Bright Buildtech Private Limited & ACE Mega Structures Private Limited & Orris Infrastructures Private Limited	Adv. Bhirgu Dhami (Complainant) Adv. Nitin Harsh Jain (Respondent for R1 & R2) Adv. Charu Rustagi (Respondent for R3)

CORAM:

Shri Ashok Sangwan

Member
ORDER

- The order shall dispose off all the complaints titled as above filed before this authority under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "the rules"). Since the core issues emanating from them are similar in nature and the complainant(s) in

the above referred matters are allottees of the projects, "Woodview Residencies" at sector 89 and 90, Gurugram being developed by the same respondent- promoter i.e. Bright Build tech Private Limited. The terms and conditions of the builder buyer's agreements that had been executed between the parties *inter se* are also similar. The fulcrum of the issue involved in all these cases pertains to failure on the part of the respondent/promoter not to handover the physical possession as per the terms of the builder buyer's agreement, seeking refund along with interest.

- The details of the complaints, reply status, unit no., date of allotment letter, date of agreement, due date of possession, offer of possession and relief sought are given in the table below:

5. Possession of Dwelling Unit							
5.1 Subject to Clause 5.2 and subject to the Buyer making timely payments, the Company shall endeavour to complete the construction of the Building Block in which the Dwelling Unit is situated within 36 months with a grace period of 6 months from the date of issuance of Allotment Letter provided that all amounts due and payable by the Buyer has been paid to the Company in timely manner. The Company shall be entitled to reasonable extension of time for the possession of the Dwelling Unit in the event of any default or negligence attributable the Buyer's fulfilment of terms & conditions of this Agreement.							
Completion certificate/Occupation certificate not received till date.							
Sr. No	Complaint No./Date of filing/Reply status	Unit/shop no. and area	Date of execution of builder buyer's agreement	Due date of possession	Total sale consideration	Amount Paid by the complainant/ Offer of possession	Relief sought
1.	CR/745/2023 DOF: - 15.03.2023 RR: - 17.11.2023	C81-UGF 1415 sq. ft. + 1083 sq. ft. (terrace/basement) Total area= 2498 sq. ft.	19.04.2017	04.09.2020	Rs. 1,26,41,762/-	Rs. 1,22,94,407/- Not offered	Refund along with interest.



2.	CR/746/ 2023 DOF: - 15.03.20 23 RR: - 17.11.20 23	C80-UGF 1415 sq. ft. + 1083 sq. ft. (terrace/b asement) Total area= 2498 sq. ft. 239.20 sq. yard	19.04.2 017	04.09.20 20	Rs. 1,26,41,762 /-	Rs. 71,29,368/ - Not offered	Refund along with interest.
3.	CR/748/ 2023 DOF: - 15.03.20 23 RR: - 17.11.20 23	C86- Second floor 1415 sq. ft. + 325 sq. ft. (terrace/b asement) Total area= 1740 sq. ft. 239.20 sq. yard	19.04.2 017	04.09.20 20	Rs. 94,61,112/-	Rs. 92,53,864/ - Not offered	Refund along with interest.
4.	CR/762/ 2023 DOF: - 15.03.20 23 RR: - 17.11.20 23	C81- Second floor 1415 sq. ft. + 325 sq. ft. (terrace/b asement) Total area= 1740 sq. ft. 239.20 sq. yard	19.04.2 017	04.09.20 20	Rs. 1,02,49,862 /-	Rs. 1,00,36,89 4/- Not offered	Refund along with interest.
5.	CR/773/ 2023	C82-UGF Total area= 2498 sq. ft. 239.20 sq. yard	19.04.2 017	04.09.20 20	Rs. 1,16,63,512 /-	Rs. 1,12,23,25 0/- Not offered	Refund along with interest.
6.	CR/791/ 2023	C166-UGF Total area= 2498 sq. ft.	19.04.2 017	04.09.20 20	Rs. 1,33,46,102 /-	Rs. 1,31,04,39 9/-	Refund along with interest.



	DOF: - 15.03.20 23 RR: - 17.11.20 23	239.20 sq. yard					Not offered	
7.	CR/797/ 2023 DOF: - 16.03.20 23 RR: - 01.12.20 23	C167- Second floor Total area= 1740 sq. ft. 239.20 sq. yard	19.04.2 017	04.09.20 20	Rs. 99,81,687/-	Rs. 98,52,526/ - Not offered	Refund along with interest.	
8.	CR/4906 /2023 DOF: - 31.10.20 23 RR: - 04. 03.2024	C83-SF, C, 2nd Floor, in pocket -2 Total area= 1740 sq. ft. 239.20 sq. yard	19.04.2 017	04.09.20 20	Rs. 1,02,49,862 /-	Rs. 1,00,36,89 4/- Not offered	Refund along with interest.	
9.	CR/3698 /2023 DOF: - 24.08.20 23 RR: - 07.03.20 24	C87- Second floor 1415 sq. ft. + 325 sq. ft. (terrace/b asement) Total area= 1740 sq. ft.	19.04.2 017	04.09.20 20	Rs. 1,02,49,862 /-	Rs. 45,04,447/ - Not offered	Refund along with interest.	

3. The facts of all the complaints filed by the complainant(s)/allottee(s) are similar. Out of the above-mentioned case, the particulars of lead case **CR/745/2023** titled as **Deepak Batra VS Bright Buildtech Private Limited & ACE Mega Structures Private Limited & Orris Infrastructures Private Limited** are being taken into consideration for determining the rights of the allottee(s).

A. Unit and project related details

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

S. N.	Particulars	Details
1.	Name and location of the project	"Woodview Residencies" at sector 89 and 90, Gurgaon, Haryana
2.	Nature of the project	Residential Plotted Colony
3.	Project area	114.506 acres
4.	Rera registered or not	Registered Vide no. 34 of 2020 issued on 06.10.2020 upto 15.07.2023
5.	DTCP License no.	59 of 2013 dated 16.07.2013 valid upto 15.07.2021
6.	Name of Licensee	Orris Land & Housing Pvt. Ltd. and 42 others
7.	Fully Furnished Floor/ Unit No.	C81-UGF (page no. 24 of complaint)
8.	Unit area admeasuring	1415 sq. ft. + 1083 sq. ft. (terrace/basement) Total area= 2498 sq. ft. (page no. 24 of complaint)
9.	Allotment Letter	04.03.2017 (page no. 22 of complaint)
10.	Date of builder buyer agreement	19.04.2017 (Page no. 21 of complaint)
11.	Possession clause	5. Possession of Dwelling Unit

		<p><i>5.1 Subject to Clause 5.2 and subject to the Buyer making timely payments, the Company shall endeavor to complete the construction of the Building Block in which the Dwelling Unit is situated within 36 months with a grace period of 6 months from the date of issuance of Allotment Letter provided that all amounts due and payable by the Buyer has been paid to the Company in timely manner. The Company shall be entitled to reasonable extension of time for the possession of the Dwelling Unit in the event of any default or negligence attributable the Buyer's fulfillment of terms & conditions of this Agreement.</i></p>
12.	Due date of possession	<p>04.09.2020</p> <p>(calculated from the date of allotment Letter including grace period of 6 months as it is unqualified)</p>
13.	Total consideration sale	<p>Rs. 1,26,41,762/-</p> <p>(as per payment plan on page no. 40 of complaint)</p>
14.	Amount paid by the complainant	<p>Rs. 1,22,94,407/-</p> <p>(as per BBA on page no. 26 of complaint)</p>
15.	Completion certificate/Occupation certificate	Not obtained
16.	Offer of possession	Not offered

B. Facts of the complaint

5. The complainants have pleaded the complaint on the following facts:

- i. That the respondent no. 1 had entered into an agreement dated 18.05.2013 with respondent no. 3 to acquire development right of

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50% in a parcel of land admeasuring 101.081 acres situated in the revenue estate of village Hayatpur, tehsil Gurugram and village Badha, falling under sector 89-90 under the master plan of Gurugram, demarcated for the purpose of construction and development of a residential plotted colony. The DTCP has granted license to develop and construct the said plotted colony vide license No. 59 of 2013 dated 16.07.2013.

- ii. That the representatives of the respondent no. 1 and 3c's company, sometimes in 2015, met the complainant, spoke very high on the reputation of the company and promised the delivery of the project on time and also handed over a brochure which contained all the facilities and features of the project.
- iii. That as per Sec 2(zk) of the Real Estate (Regulation and Development) Act, 2016, the Respondent falls under the category of "Promoter" and is bound by the duties and obligations mentioned in the said act and is under the territorial jurisdiction of this regulatory authority.
- iv. That in pursuant to the elaborate advertisements, assurances, representations, and promises made by respondent no. 1 and 3 in the brochure circulated by them about the timely completion of a premium project with impeccable facilities and believing the same to be correct and true, the complainant considered booking a fully finished dwelling unit.
- v. That vide an allotment letter dated 04.03.2017, the respondents, allotted the dwelling unit no. C - 81 - UGF having an approximate Super Area admeasuring 1,415 Sq. Ft. on Ground Floor, along with Basement/Terrace Area of 1,083 Sq. Ft. (Approx) on Plot No. C - 81, admeasuring 239.20 sq. yard (Plot Area) situated at "Woodview

Residences", Sector- 89 & 90, Gurugram. The total sale consideration of the booked unit was Rs. 01,26,41,762.13/-.

- vi. That the builder- buyer agreement dated 19.04.2017 was executed between the respondent no.1 and the complainant where the respondent no. 1 assigned all the rights and benefits in the name of the complainant. That according to the clause 4.2 of the builder buyer agreement, the complainant has paid a sum of Rs. 01,22,94,407/- towards the booking amount of the dwelling unit prior to execution of the agreement and had further agreed to pay the balance consideration in the time bound manner.
- vii. That further as per the "clause 5.1" of the builder-buyer agreement, the respondent no. 1 promised that the unit would be ready within 36 months plus 6 months of grace period, from the date of the allotment, the date of allotment in this case is 04.03.2017, thus as per this clause, the complainant had to get the possession of the unit on or before 04.03.2020.
- viii. That it is pertinent to mention that at the time when the complainant was hoping the work to be completed, the respondent no.1 got to know from its sources that the respondent no. 3 has been appointed as the "development manager" for development, construction, sales, and marketing of the said project and to deliver the apartments to the allottees of the project. It was also revealed that the respondent no.1 has been taken over by the respondent no. 3 and the project name had been changed after the change in the management of the company and the new project was under the name of "ACE Palm Floors" and that the project will take more time to complete from the date of the registration with RERA. The

complainant was in shock after this news and the arbitrary acts of the respondents.

- ix. That a bare perusal of clause 4 and particularly clause 4.9 of the builder buyer agreement would show that the builder buyer agreement was so one sided and in non-compliance to the model builder buyer agreement and the objective of the real estate regulatory act 2016 that the respondents have detailed only about the consequences of and only when the buyer will terminate the agreement or if fails to comply with the terms of the agreement or the payment plan whereas it's nowhere mentions any remedy available to the allottee in case of non-performance on the part of the respondents.
- x. That, the respondents are not only guilty of deficiency in services by not fulfilling their promises in due course of their services towards their helpless consumers but also for mental harassment to the complainant by misguiding and misrepresentation facts, which clearly tantamounts to fraudulent and unfair trade practices.
- xi. That the respondents have miserably failed to keep pace with the development of the project as the construction of the same since the date of start of excavation has been going on at snail's pace and the said project even till date is far from completion and the respondents have miserably failed to handover possession within the stipulated time. It is abundantly clear that the respondents have played fraud upon the complainant by unduly enriching itself with his hard earner money, with no response whatsoever thereafter and has cheated the allottee fraudulently and dishonestly with false promises.

- xii. That the complainant herein is constrained and left with no option but to cancel the allotment of the said unit i.e. unit no. C - 81 - UGF having an approximate super area admeasuring 1415 sq. ft. on ground floor, along with basement/terrace area of 1083 sq. ft. on plot no. C - 81, admeasuring 239.20 sq. yard (plot area) situated at "woodview residences", Sector- 89 & 90, Gurugram. Further, the complainant is seeking and entitled to full refund of the deposited amounts including but not limited to all the payments made in lieu of the said unit/flat, as per the terms and conditions of the builder-buyer agreement executed by the respondents and even otherwise are entitled to the same along with applicable interest in terms of the real estate (regulation and development) act, 2016 and its applicable rules. further, the complainant herein reserves his right(s) to add/ supplement/ amend/ change/ alter any submission(s) made herein in the complaint and further, reserve the right to produce additional document(s) or submissions, as and when necessary or directed by this hon'ble tribunal and to take up its claim for compensation before the adjudication officer.
- xiii. It is submitted that the right of the allottee to seek refund along with interest and compensation has become absolute in terms of the law laid down by the Hon'ble supreme court when like in the present case the respondents have failed to offer possession of the said units within the strict timelines prescribed in the builder buyer agreement.
- xiv. That the present complaint sets out the various deficiencies in services, unfair and/or restrictive trade practices adopted by the respondents. The modus operandi adopted by the respondents, from the respondent's point of view may be unique ✓

and innovative but from the allottee's point of view, the strategies used to achieve its objective, invariably bears the irrefutable stamp of impunity and total lack of accountability and transparency, as well as breach of contract and duping of the allottees by taking his hard-earned money with no intention to offer possession within stipulate time.

- xv. That, the complainant further declares that the matter regarding which this complaint has been made is not actively pending before any court of law or any other authority or any other tribunal.

C. Relief sought by the complainant:

6. The complainant has sought the following reliefs:

- i. Direct the respondents to refund the entire amount paid by the complainant with interest as per RERA Act.

D. Reply by the respondents no. 1 & 2.

7. The respondents have contested the complaint on the following grounds:

- i. That the present complaint has been filed without any cause of action, since the earlier complaint on similar set of facts and grounds has already been dismissed by this authority vide order dated 31.08.2022 passed in complaint no. 5187 of 2019 titled as "Deepak Batra vs. Bright Buildtech Pvt. Ltd. & Ors.". It is respectfully submitted that the present Complaint is hit by principle of 'res-judicata' and is therefore not maintainable.
- ii. The other reasons for which the present complaint is not maintainable is that the complainant has approached this authority with unclean hands by not disclosing about dismissal of the previous complaint which was filed on the similar set of facts, grounds, and cause of action. Thus, on this ground of concealment

of material fact itself, the present complaint under reply is liable to be dismissed with costs. Admittedly, the complainant herein took no curative steps to either seek re-call or setting aside of the order whereby the earlier complaint was dismissed by this authority.

- iii. The Respondent No. 1 (Bright Buildtech Pvt. Ltd.) is developing the project namely 'Woodview Residences' (now known as "ACE Palm Floors") on its share in the project land measuring 101.081 acres situated at revenue estate of village Hayatpur, Sector-89 and 90, Gurugram (hereinafter referred to as 'Said Project'). It is pertinent to mention that the Respondent No.1 has appointed the Respondent No. 2 (M/s. Ace Mega Structures Private Limited ("Ace") as 'Development Manager' for development, construction, sales and marketing of the Project vide 'Development Management Agreement' dated 23.05.2019 only with the objective of ensuring expeditious development of the Project and to provide professionally proficient customer-care interaction.
- iv. The role and responsibility of respondent no. 2 is restricted to managing and supervising the construction and development of the said project and to ensure timely completion. The status of respondent no. 2 is purely that of a service provider who shall receive a fee as consideration for providing project management and development services to the respondent no. 1.
- v. Upon submission of the application form for allotment of the Unit, the Complainant was allotted Flat No. C-81, Upper Ground Floor at the basic sale price plus EDC, IDC charges plus club members fee plus interest free maintenance security totalling to Rs. 1,26,41,762.13/- It is noteworthy to mention that the apart from the application for allotment of the abovementioned 'Unit', the

complainant also made applications for allotment of eight (8) separate 'units' in the same project being developed by the respondent no.1, as such total nine (9) units were allotted in favour of the complainant in the said project for which the complainant herein has filed separate additional eight (8) complaints other than the present complaint before this authority which are also pending adjudication. Details of the all the pending complaints as filed by the complainant herein are as under:

Sr. no.	Complaint title	Complaint no.	Unit allotted	Date of execution of 'BBA'
1.	Deepak Batra vs. Bright Buildtech Pvt. Ltd.	CRN-745-2023	C-81, UGF	19.04.2017
2.	Deepak Batra vs. Bright Buildtech Pvt. Ltd.	CRN-746-2023	C-80, UGF	19.04.2017
3.	Deepak Batra vs. Bright Buildtech Pvt. Ltd.	CRN-748-2023	C-86, SF	19.04.2017
4.	Deepak Batra vs. Bright Buildtech Pvt. Ltd.	CRN-762-2023	C-81, SF	19.04.2017
5	Deepak Batra vs. Bright Buildtech Pvt. Ltd.	CRN-773-2023	C-82, UGF	19.04.2017
6	Deepak Batra vs. Bright Buildtech Pvt. Ltd.	CRN-791-2023	C-166, UGF	19.04.2017
7	Deepak Batra vs. Bright Buildtech Pvt. Ltd.	CRN-797-2023	C-167, SF	19.04.2017
8	Deepak Batra vs. Bright Buildtech Pvt. Ltd.	CRN-3698-2023	C-87-SF	19.04.2017
9	Deepak Batra vs. Bright Buildtech Pvt. Ltd.	CRN-4906-2023	C-83, SF	19.04.2017

- vi. It is pertinent to mention that at the time of submission of the application for allotment, the respondent no.1 had sent provisional allotment letter dated 04.03.2017 to the complaint which contained the details of the payment plan and the particulars of the unit allotted to the complaint in the said project. It is pertinent to mention that as per payment plan opted, the Complainant had paid an amount of 1,22,94,407.79/- and accordingly, the Respondent No. 1 had issued payment acknowledgment receipt. Thereafter, a builder buyer agreement was executed between the complainant and the respondent on 19.04.2017, as per which the possession of the 'dwelling unit' to be given in terms of clause 5.1 & 5.2 of the said agreement.
- vii. It is pertinent to mention here that the reasons for delay in Project are stoppage of construction activities in NCR region by the orders of Court, non-availability of construction material and labour, implementation of nationwide 'lockdown' to contain the spread of 'Covid-19', etc. Moreover, all these situations and adverse conditions is 'force majeure' circumstance which is beyond the control of the Answering Respondents.
- viii. Due to the exponential increase in the cases of 'Covid-19', the Central Govt. had imposed nationwide 'lockdown' w.e.f. 25.03.2020 which has been extended till 30.06.2020, resultantly, the same has caused serious impact on the economy posing difficult challenges for everyone. It is pertinent to mention that prior, to this unprecedented situation of pandemic 'Covid-19', the Respondent No.1 along with the development manager had been carrying out the construction of the Project at full pace and was expecting to deliver the Units to the Buyers by the end of year 2020, however,



due to the sudden outbreak of the pandemic and closure of economic activities, the Answering Respondents had to stop the construction work during the 'lockdown', as such, amid this difficult situation of 'force majeure' the Respondent No. 1 is not in a position to adhere to the arbitrary demands of the Complainant for cancellation of the allotment and refund of the monies along with interest due the reasons mentioned hereinabove.

ix. Other than the above reasons, the delay in handing over the possession of the Dwelling Unit/ apartment has been caused due to various reasons which were beyond the control of the Answering Respondents. Following important aspects are relevant which are submitted for the kind consideration of this Authority;

- Non-booking of all apartments seriously affected the construction:
- Other various challenges being faced by the Respondent No.1: The following various problems which are beyond the control of the Respondent No.1 seriously affected the construction;
 - Lack of adequate sources of finance;
 - Shortage of labour;
 - Rising manpower and material costs;
 - Approvals and procedural difficulties.

In addition to the aforesaid challenges the following factors also played major role in delaying the offer of possession;

- There was extreme shortage of water in the region which affected the construction works;
- There was shortage of bricks due to restrictions imposed by Ministry of Environment and Forest on bricks kiln;

- Unexpected sudden declaration of demonetization policy by the Central Government, affected the construction works of the Respondent in a serious way for many months. Non-availability of cash-in-hand affected the availability of labours;
 - Recession in economy also resulted in availability of labour and raw materials becoming scarce;
 - There was shortage of labour due to implementation of social schemes like National Rural Employment Guarantee Act (NREGA) and Jawaharlal Nehru Urban Renewal Mission (JNNURM);
 - Direction by the Hon'ble National Green Tribunal & Environmental authorities to stop the construction activities for some time on regular intervals to reduce air pollution in NCR region.
- x. That in view of the above facts and circumstances the demands of the Complainant for refund of the amount along with exorbitant compensation is baseless and the same cannot be allowed under any situation as it will jeopardise the situation of the whole project. It is respectfully submitted that if such prayers are allowed, the same will materially affect the construction works at site, which will affect the interests of all the other allottees who have booked flats in the said Project. It is relevant to point out herein that at present the Answering Respondents is focusing on the completion and delivery of the said Project. The monies received from the allottees have been utilized in the construction activity and thus there is no justification in the demand for refund.
- xi. It is reiterated that the construction at site was never stopped and hence, there is no basis of such allegations, as made in the Complaint. It is submitted that whenever the construction activity has stopped at the project site, it is due to the above-said reasons ✓

of 'force-majeure' which are beyond the control of the Answering Respondents, therefore, the demands of the Complainant shall not be entertained. It is submitted herein that the Answering Respondents are attempting to make best efforts to complete the construction works and to give possession of the 'Unit' to the allottees as soon as possible.

- xii. The demand of the Complainant to demand exorbitant amount in the form of compensation is baseless and jeopardise the whole project. It is submitted that if there is any delay in handing over the possession, the delay compensation shall be given to the Complainant in the manner provided in the Buyer Agreement under Clause 5.10 of the Buyer Agreement. It is reiterated herein that there is no *intentional* delay at present and hence, the concern of the Complainant is unwarranted and premature at this stage.
- xiii. It is noteworthy to mention that the project of the Respondent No.1 is almost nearing the stage of completion. It is submitted that Respondent No.1 has launched 420 numbers of independent floors to be constructed on 140 plots. Out of the 258 floors / units were sold by the Company till date.
- xiv. It is submitted that the instant Complaint is not maintainable keeping in view the facts, circumstances and law relating thereto. It is further submitted that the Complainant has failed to produce any evidence or specific averments worth its salt to prove its claims. Moreover, there is no quantification of claims as sought for by the Complainant under Prayer Clause, therefore, the instant Complaint is liable to be dismissed at the threshold.

E. Reply by the respondent no. 3.

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

- i. That it is reiterated that the issue so raised in this complaint are not only baseless but also demonstrates an attempt to arm twist the answering respondent into succumbing to the pressure so created by the complainant in filing this complaint before this Forum and seeking the reliefs which the complainant is not entitled to as against the answering respondent, ie Respondent No. 3.
- ii. That as per the documents annexed by the complainant, he was allotted a plot bearing plot no. C-81-UGF, Ground Floor, admeasuring total area of 2498 sq. yards (herein referred to as the 'unit') in the project 'Ace Palm Floors' (herein referred to as the 'Project') which was erstwhile known as 'Woodview Residencies'.
- iii. That it is pertinent to note that as per the records/ documents annexed by the complainant, the Buyers Agreement was executed only between the respondent no. 1 and the complainant dated 19.04.2017 wherein the signatories to the said Agreement are also the respondent no. 1 and the complainant.
- iv. That it is pertinent to note that the answering respondent has no knowledge of any document ever being executed or any payment made by the complainant or any allotment ever made in the name of the complainant since the complainant is the customer of the Respondent No. 1 and 2 and the answering respondent is completely unaware about the details/ transactions between the complainant and the respondent nos 1 and 2.
- v. That therefore, it is pertinent to note at this stage that it is a self-admitted fact by the complainant that the complainant had invested in a project which is in the name of Ace Palm Floors launched by the respondent no. 1, for which the Respondent No. 2

was appointed as the 'Development Manager' for development, construction, sales and marketing of the said project.

- vi. That it is submitted that the complainant has been unable to establish or prove any kind of relationship to exist between the complainant and the Respondent No. 3 and the complainant is just arm twisting the facts to drag the answering respondent into the present frivolous litigation.
- vii. That when the possession was not delivered, the complainant has filed the present false, fabricated and frivolous complaint against the Answering Respondent, ie, Respondent No. 3 in order to harass the respondent no. 3 despite acknowledging and admitting that the complainant had booked the unit in question with the Respondent No. 1, Respondent No. 2 and Lotus Greens (who has not been made party to the present complaint).
- viii. That through the definition of "allottee" as enshrined under section 2 (d) of the Real Estate (Regulation & Development) Act, 2016, it is crystal clear that the complainant is not the allottee in relationship with the respondent no.3 as neither the unit in question was allotted by respondent no. 3, nor the respondent no. 3 executed any Buyers Agreement or any other document, nor the respondent no. 3 accepted the payment, if any, made by the complainant towards the unit in question.
- ix. That in the present case in hand, the Respondent No. 1 and Respondent No.2 are the promoter in question who has issued the various documents on record such as the Buyers Agreement, the Allotment Letters, Demand Letters, Payment Receipts due to which the complainant falls in the category of the being an allottee and the present case does not involve Respondent No. 3 anywhere.

- x. That it is submitted that at the inception when the project 'Woodview Residencies' was launched, the respondent no. 3 in collaboration with the Respondent No. 1 wherein both the Respondent No. 3 and 1 had equal developmental rights equivalent to 50%. It is noteworthy that after the inception of RERA, when the RERA registration became mandatory, the Respondent No. 1 got its project area registered under the name and style of 'Ace Palm Floors', ie the project in question, bearing RERA registration no. RERA-GRG-PROJ-388-2019. It is further submitted that the said fact can be verified from the demand letters and the RERA registration certificate which bears the same account details of the respondent no. 1. That further, the Respondent No. 3 got its project registered with RERA in the name and style of 'Woodview Residencies' and also obtained RERA Registration Certificate for the same bearing no. RERA-GRG-PROJ-640-2020.
- xi. Thus, it is clear from the above that the complainant is neither the customer of the answering respondent, ie, Respondent No. 3 nor the complainant has made any payment to the respondent no. 3 nor any communication, Agreement has been exchanged between the complainant and the respondent no. 3 which could imply that the Respondent No. 3 holds any liability or accountability towards the complainant.
- xii. That from the facts as narrated above, the present Complaint is liable to dismissed on the account of mis-joinder of parties wherein the respondent no. 3 has been wrongly impleaded as the party to the present complaint and the complainant is not entitled to any reliefs as claimed herein by this Authority.



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

F. Jurisdiction of the authority

10. The Authority observed that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

F.I. Territorial jurisdiction

11. 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.

F.II. Subject matter jurisdiction

12. 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;

13. 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.

14. Further, the Authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the **Hon'ble Apex Court in Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (Supra) and reiterated in case of M/s Sana Realtors Private Limited & other Vs Union of India & others** SLP (Civil) No. 13005 of 2020 decided on 12.05.2022 wherein it has been laid down as under:

"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. If the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."

15. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the cases mentioned above, the Authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

G. Findings on the objections raised by the respondents:

G.I. Objection regarding force majeure conditions

16. The respondent/promoters have raised the contention that the construction of the tower in which the unit of the complainant is situated, has been delayed due to force majeure circumstances such as delay on part of the developer M/s. Ace Mega Structures Private Limited, shortage of labour, implementation of various social schemes by Government of India, demonetisation, lockdown due to covid-19 various orders passed by NGT, weather conditions in Gurugram and non-payment of instalment by different allottees of the project. But all the pleas advanced in this regard are devoid of merit. The plea advanced that the developer has failed to handover the possession of project on time as per 'development management agreement' entered between them on dated 23.05.2019. It is observed the plea advanced cannot be taken as the complainant was never a party to said contract and thus, there was no privity of contract. Further, the respondent has taken a plea that there was a delay in construction of the project on account of NGT orders, orders by EPCA, orders by Hon'ble Supreme Court of India, etc but did not particularly specify for which period such orders has been made operative. The events such as Hon'ble Supreme Court of India to curb pollution in NCR, various orders passed by NGT, EPCA were for a shorter duration of time. Thus, the promoter-respondent cannot be given any leniency on based of aforesaid reasons and plea taken by respondent is devoid of merits.
17. The respondents also took a plea that the construction at the project site was delayed due to covid-19 outbreak. in the instant complaint, the due date of handing over of possession comes out to be 04.09.2020 and grace period of 6 months on account of force majeure has already been granted in this regard and thus, no period over and above grace period of 6 months can be given to the respondents-builders.

G.II. Objection with regard to mis joinder of respondent no. 3 in the complaint.

18. While filing the complaint the complainant sought relief against M/s Orris Infrastructure Private Limited and Bright Buildtech Private Limited being the developers of the project. On failure to fulfil their liability to complete the project by the due date, the complainant approached the authority seeking relief of refund the amount received against the allotted unit. It is not disputed that the allotment of the unit in favour of the complainant was made by the respondent no. 1 and the buyer's agreement with regard to the allotted unit was executed between the complainant and respondent no. 1. Even after allotment and buyer's agreement, demands for various payments were raised against the allotted unit by respondent no. 1 only. Thus, it shows that there is no privity of contract between respondent no. 3 and the complainant and as such the plea of the respondent no. 3 is valid and thus, would be justified to delete his name from array of party.

H. Findings on the relief sought by the complainant.**H.I Direct the respondents to refund the entire amount paid by the complainant with interest as per RERA Act.**

19. In the present complaint, the complainant intends to withdraw from the project and are seeking refund of the amount paid by them in respect of subject unit along with interest. Sec. 18(1) of the Act is reproduced below for ready reference:

"Section 18: - Return of amount and compensation

18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building. -

(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or

(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,

he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."

20. Clause 5 of the BBA dated 19.04.2017 provides for the handing over of possession and is reproduced below for the reference:

"5. POSSESSION OF DWELLING UNIT

5.1 "...The company shall endeavour to complete the construction of the Building Block in which the Dwelling Unit is situated **within 36 months with the grace period of 6 (six) months from the date of issuance Allotment Letter** provided that all amounts due and payable by the Buyer has been paid to the Company in timely manner. The Company shall be entitled to reasonable extension of time for the possession of the Dwelling Unit in the event of any default or negligence attributed to the Buyer's fulfillment of terms & conditions of this Agreement."

21. **Admissibility of grace period:** The promoter has proposed to hand over the possession of the apartment within a period of 36 months with the grace period of 6 (six) months from the date of issuance allotment letter. The period of 36 months expired on 04.03.2020. Since in the present matter the BBA incorporates unqualified reason for grace period /extended period of 6 months in the possession clause accordingly, the grace period of 6 months is allowed to the promoter being unqualified. Therefore, the due date of possession comes out to be 04.09.2020.
22. **Admissibility of refund along with prescribed rate of interest:** The complainant is seeking refund the amount paid by it along with interest prescribed rate of interest. However, the allottee intends to withdraw from the project and is seeking refund of the amount paid by him in

respect of the subject unit with interest at prescribed rate as provided under rule 15 of the rules. Rule 15 has been reproduced as under:

Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]

(1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.

Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.

23. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.
24. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 16.05.2025 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.
25. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.

Explanation. —For the purpose of this clause—

- (i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*
- (ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest*

payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"

26. In the present case, the complainant booked a unit with the respondents in its project "Woodview Residences" now known as "ACE Palm Floors" situated in Sector-89 and 90, Gurugram, Haryana. The complainant was allotted a unit bearing no. C81-UGF, admeasuring 2498 sq. ft. vide allotment letter dated 04.03.2017 and subsequently, builder buyer agreement was executed between the parties on 19.04.2017. As per possession clause 5.1 of buyer's agreement which states that the company shall endeavour to complete the construction of the building block in which the dwelling unit is situated within 36 months with the grace period of 6 (six) months from the date of issuance allotment Letter. The Allotment letter was issued on 04.03.2017, therefore due date comes out to be 04.09.2020.
27. It is pertinent to mention over here that even after a passage of more than 5 years neither the occupation certificate has been obtained by the competent authority nor the offer of possession of the allotted unit has been made to the allottee by the respondent/promoter. The Authority is of the view that the allottee cannot be expected to wait endlessly for taking possession of the unit which is allotted to them and for which they have paid a considerable amount of money towards the sale consideration. Further, the Authority observes that there is no document placed on record from which it can be ascertained that whether the respondents have applied for occupation certificate/part occupation certificate or what is the status of construction of the project. In view of the above-mentioned facts, the allottee intends to withdraw from the project and are well within the right to do the same in view of section 18(1) of the Act, 2016.

28. Moreover, the occupation certificate/completion certificate of the project where the unit is situated has still not been obtained by the respondents /promoter. The authority is of the view that the allottee cannot be expected to wait endlessly for taking possession of the allotted unit and for which he has paid a considerable amount towards the sale consideration and as observed by Hon'ble Supreme Court of India in ***Ireo Grace Realtech Pvt. Ltd. Vs. Abhishek Khanna & Ors., civil appeal no. 5785 of 2019, decided on 11.01.2021.***

".... The occupation certificate is not available even as on date, which clearly amounts to deficiency of service. The allottees cannot be made to wait indefinitely for possession of the apartments allotted to them, nor can they be bound to take the apartments in Phase 1 of the project....."

29. The Hon'ble Supreme Court of India in the cases of ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (supra)*** reiterated in case of ***M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020*** decided on 12.05.2022. observed as under:

"25. The unqualified right of the allottee to seek refund referred Under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed."

30. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottees as per agreement for ✓

sale under section 11(4)(a). The promoter has failed to complete or is unable to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. Accordingly, the promoter is liable to pay the allottee, as he wish to withdraw from the project, without prejudice to any other remedy available, to return the amount received in respect of the unit with interest at such rate as may be prescribed.

31. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondents no. 1 and 2 are established. As such, the complainant is entitled to refund of the entire amount paid by him at the prescribed rate of interest i.e., @ 11.10% p.a. (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

I. Directions of the authority

32. Hence, the Authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations casted upon the promoter as per the functions entrusted to the authority under section 34(f) of the Act:
- i. The respondents no. 1 and 2 are directed to refund the amount of Rs.1,22,94,407/- paid by the complainant along with prescribed rate of interest @ 11.10% p.a. as prescribed under section 18 (1) of the Act, 2016 read with rule 15 of the rules from the date of each payment till the date of realization.

✓

- ii. A period of 90 days is given to the respondents no. 1 and 2 to comply with the directions given in this order and failing which legal consequences would follow.
 - iii. The respondents no. 1 and 2 are further directed not to create any third-party rights against the subject unit before full realization of the paid-up amount along with interest thereon to the complainants and even if, any transfer is initiated with respect to subject unit, the receivables shall be first utilized for clearing dues of complainants-allottees.
33. This decision shall mutatis mutandis apply to cases mentioned in para 2 of this order wherein details of paid-up amount is mentioned in each of the complaints.
34. Complaints as well as applications, if any, stands disposed off accordingly.
35. File be consigned to registry.

Ashok Sangwan
(Member)

Haryana Real Estate Regulatory
Authority, Gurugram
Dated: 16.05.2025