

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

**Date of decision: 08.04.2025**

<b>NAME OF THE BUILDER</b>		<b>Chavan Rishi Resorts Private Limited</b>	
<b>PROJECT NAME</b>		<b>"Mittal's Royale Orchards", situated in Dhani Shankar Wali, Revenue Estate of Bhorakalan, Tehsil Faruk Nagar, Gurugram, Haryana</b>	
<b>S. No.</b>	<b>Case No.</b>	<b>Case title</b>	<b>Appearance</b>
1.	CR/4261/2022	Rajeev Narang Vs. M/s Chavan Rishi Resorts Private Limited	Adv. Harshit Batra (Complainant)  Adv. Vandana Oberoi along with Sh. R.C Gosai AR (Respondent)
2.	CR/4158/2022	Ramesh Kaushik and Ritu Kaushik Vs. M/s Chavan Rishi Resorts Private Limited	Adv. Harshit Batra (Complainants)  Adv. Vandana Oberoi along with Sh. R.C Gosai AR (Respondent)

**CORAM:**

Shri Arun Kumar

Shri Ashok Sangwan

**Chairman**

**Member**

**ORDER**

- This order shall dispose of both the complaints titled 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") for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all its obligations,

responsibilities and functions to the allottees as per the agreement for sale executed inter se parties.

2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, "Mittal's Royale Orchards", situated in Dhani Shankar Wali, Revenue Estate of Bhora kalan, Tehsil Faruk Nagar, Gurugram, Haryana being developed by the respondent/promoter i.e., M/s Chavan Rishi Resorts Private Limited. The terms and conditions of the buyer's agreements, fulcrum of the issue involved in all these cases pertains to failure on the part of the promoter to deliver timely possession of the units in question thus seeking delayed possession charges and others.
3. The details of the complaints, unit no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount, and relief sought are given in the table below:

<b>Project Name and Location</b>	"Mittal's Royal Orchards" situated in Dhani Shankar Wali, Revenue Estate of Bhora kalan, Tehsil Faruk Nagar, Gurugram.
<b>Project area</b>	21.62 acres
<b>Nature of the project</b>	Residential Plotted Colony
<b>DTCP license no. and other details</b>	Not available
<b>RERA Registered/ not registered</b>	Not registered
<b>Occupation certificate</b>	Information not provided either of the parties
<b>Possession clause as per buyer's agreement</b>	<p><b>16. POSSESSION</b></p> <p><i>(a) That the seller undertakes to deliver possession of the constructed unit along with the land underneath as specified herein above within a period of 18 months approx. from the execution of this Agreement subject to force majeure clause, all payments being timely made and discharge of all other liabilities, by the Buyer in terms of this agreement.</i></p> <p>(Emphasis supplied)</p>

S. No.	Complaint no., Case title, Date of filing of complaint and reply status	Unit no. and size	Allotment letter and Agreement to sell executed between the parties	Due date of possession	Total sale consideration and Total amount paid by the complainant in Rs.	Sale deed cum registry
1.	CR/4261/2022 Rajeev Narang Vs. M/s Chavan Rishi Resorts Private Limited  <b>DOF:</b> 16.06.2022 <b>RR:</b> 19.09.2022	<b>B-34, Mittal's Royale Orchards</b>  457.08 sq.yds. (carpet area)  [Page 45 of compliant]	<b>BBA</b> <b>04.07.2005</b>  [Page 42 of compliant]	<b>04.01.2007</b>  [Note: due date of possession calculated from the date of execution of buyer's agreement i.e., 04.07.2005]	<b>TC:</b> <b>40,55,400/-</b>  <b>AP:</b> <b>40,55,400/-</b>  [As alleged by the complainant at page 28 of the complaint]	<b>06.06.2012</b>  (Page no. 61 of complaint)
2.	CR/4158/2022 Ramesh Kaushik and Ritu Kaushik Vs. M/s Ocean Seven Buildtech Private Limited  <b>DOF:</b> 16.06.2022 <b>RR:</b> 19.09.2022	<b>B-08, Mittal's Royale Orchards</b>  457.08 sq.yds. (carpet area)  [Page 49 of compliant]	<b>AL</b> <b>06.10.2016</b> [Page 49 of compliant]  Date of execution of agreement to sale cum ready to move in Villa buyer's agreement <b>06.10.2016</b> [Page 51 of compliant]	<b>N.A</b>	<b>TC:</b> <b>1,00,00,000/-</b>  <b>AP:</b> <b>1,00,00,000/-</b>  [As alleged by the complainant at page 28B of the complaint]	<b>01.12.2016</b>  (Page no. 61 of complaint)

**Note: In the table referred above certain abbreviations have been used. They are elaborated as follows:**

Abbreviation	Full form
DOF	Date of filing of complaint
RR	Reply received by the respondent
TC	Total consideration
AP	Amount paid by the allottee(s)
BBA	Builder Buyer's Agreement
AL	Allotment Letter
OOP	Offer of possession
UHL	Unit Handover Letter

**Relief Sought by the complainant:-**

1. That the project to come within the jurisdiction of the Authority as within the controlled area of Gurugram district and as per notification No. 1/92/2017-1TCP dated 14.12.2017 issued by the Department of Town and Country Planning.
2. To declare the project to be ongoing and direct the respondent to register the project under section 3 of the Act;
3. To grant delayed possession charges from the due date i.e., 04.07.2006 till 05.06.2012 at the prescribed rate of interest;
4. To declare the maintenance charges unjustified and unlawful and recall the same;
5. Recall the interest of 24% levied on the demands raised by the respondent towards maintenance, water, etc.;
6. To declare the maintenance agreement null and void;
7. Direct the respondent to handover the rights of the common areas of the association of allottees;
8. Direct the respondent to procure all the necessary licenses/approvals /permissions from the competent authorities;
9. Direct the respondent to complete the remaining obligations of the development in the project;
10. Direct DTCP to take cognizance of the project and check the pre-requisite approvals including the building plans, villa plans, electrification plans, occupancy certificate, etc.
11. To impose punishment/penalty under section 59 of the Act;
12. To grant leave to approach the Adjudicating officer under section 71 and 72 of the Act;
13. Grant any other relief as this Authority deems fit in the peculiar facts and circumstances of the present complaint.

4. 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/4261/2022** titled as **Rajeev Narang Vs. M/s Chavan Rishi Resorts Private Limited** are being taken into consideration for determining the rights of the allottee(s).

**A. Project and unit related details**

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

**CR/4261/2022 titled as Rajeev Narang Vs. M/s Chavan Rishi Resorts Private Limited.**

S. No.	Particulars	Details
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1.	Name of the project	"Mittal's Royal Orchards" situated in Dhani Shankar Wali, Revenue Estate of Bhora kalan, Tehsil Faruk Nagar, Gurugram
2.	Nature of the project	Residential Plotted Colony
3.	DTCP License no.	Not on record
4.	HRERA registered/ not registered	Non registration
5.	Completion certificate granted on	Not provided either of the parties
6.	Unit no.	B-34, Mittal's Royale Orchards [Page 45 of compliant]
7.	Unit measuring (super area)	457.08 Sq. Yds. [Page 45 of compliant]
8.	Date of execution of buyer's agreement	04.07.2005 [Page no. 42 of complaint]
9.	Possession clause	<b>16. POSSESSION</b> <i>(a) That the seller undertakes to deliver possession of the constructed unit along with the land underneath as specified herein above within a period of 18 months approx. from the execution of this Agreement subject to force majeure clause, all payments being timely made and discharge of all other liabilities, by the Buyer in terms of this agreement.</i> (Emphasis supplied) [Page 50 of complaint]
10.	Due date of possession	04.01.2007 [Note: due date of possession calculated from the date of execution of buyer's agreement]
11.	Total consideration	Rs.40,55,400/- (As alleged by the complainant at page 28 of the complaint)
12.	Total amount paid by the complainant	Rs.40,55,400/- (As alleged by the complainant at page 28 of the complaint)
13.	Sale deed cum registry	06.06.2012 [Page 61 of complaint]

**B. Facts of the complaint**

6. The complainant has made the following submissions in the complaint: -



- I. That the respondent, through its marketing tactics and gimmicks, advertised the Project as luxurious, "*independent villas*", "*boon for those who cherish independence and relish privacy*". The project promised to have various facilities like club with a swimming pool, fitness center and multi-cuisine restaurant, a secured complex with a boundary wall, convenient shopping and cafeteria, an efficient sewerage system, etc. The complainant was enticed by such advertisements and tall claims were made with respect to the project by the respondent.
- II. That the complainant was further informed that the said land on which the project was built, did not come within the declared controlled area vide notification no. is CCP(NCR)/KMP/CAG/(b)/2005/1307 dated 05.08.2005. The respondent assured, represented, and warranted the complainant that the construction of the project has been legally done. The respondent informed the complainant that a detailed survey was conducted in 2005 by Town & Planning Gurugram Department to ascertain the latest position with regard to the structures already existing in the area declared as controlled area. The respondent communicated to the complainant that the survey report duly showed that the structures/constructions had already been completed on the said land along with the purpose of the land development before the declaration of the controlled area vide the said notification. The respondent further assured to complete the remaining developments in the project. Relying upon the assurances, representations and warranties of the respondent, the complainant booked a Villa B-34 super area 2402 sq. ft. through an application form dated 06.03.2005.
- III. Consequently, a buyer's agreement dated 04.07.2005 was entered into both the parties. The agreement, in its preamble, ascertained that the land did

not come within the controlled area as per the said notification, as per the 2005 survey by Town and Planning Gurgaon Department.

- IV. That the claim of the respondent of the land not being within the controlled area is false and only an attempt to escape from fulfilling the obligations of obtaining the necessary approvals for the project. That due to the non-existence of the pre-requisite approvals in the project that the government services cannot be availed by the residents. That the complainant has been cheated by the *malafide* and unlawful activities of the respondent and has been gravely affected, agonised and mentally harassed by the respondent.
- V. That as a result of not taking any licence/approval/permissions, no occupation certificate, completion certificate, fire NOC, environmental clearance, etc. were ever obtained by the respondent. That without having such approvals, the public services would not be available to the residents of the project. An allottee in the project namely Sushil Kumar Jain was rejected new water connection by the Public Health Engineering Department Haryana noting that "no connection can be permitted because the area is unapproved".
- Arbitrary, one-sided agreement:**
- VI. It is pertinent to note that the complainant was made to execute the one sided, unilateral and arbitrary agreement. In order to highlight the conduct of the respondent. In fact, in continuation of the *malafide* activities, the respondent has reserved 18% interest in case of delay payments by the allottee in clause 29 but does not have any provision for payment of interest to the allottee in case of delayed possession. This is highly arbitrary and cannot, under any circumstance, whatsoever, be accepted.
- VII. That by making the agreement contingent and subject to the maintenance agreement and the sale deed, which were also unilaterally drafted, taking



away all the rights of the complainants and leaving the complainants at the mercy of the respondent, the malafide conduct of the respondent is ex facie evident.

- VIII. That the complainant contested agreeing to such clauses however, were coerced into executing the agreement upon respondent contending to forfeit the amounts already paid by the complainant. Being pressured by the respondent and having no other alternative after having given their hard-earned money, the complainant had no other option but to sign on the dotted lines. To the utter shock and surprise of the complainant, upon consequent execution of the sale deed dated 05.06.2012, similar clauses were incorporated in the sale deed.

**Indefinitely delayed delivery of possession without any interest/compensation:**

- IX. It is a matter of fact that the respondent was bound to deliver the possession of the unit within 12 months from the execution of the Agreement, as evident from clause 16(a) of the agreement. Accordingly, the due date of possession of the unit was 04.07.2006, however, the possession of the unit was not given until 2012 with the execution of the sale deed on 05.06.2012. It is also a matter of record that a one-sided indemnity cum undertaking was coercively executed by the respondent after the execution of the sale deed, on 22.06.2012.
- X. Despite having promised to deliver the possession in time, the respondent miserably failed in doing so. As noted above, there were gross inequality in the payment of interest as well. All these malafide and arbitrary actions cannot be gone unnoticed. The complainant's right of delayed possession charges cannot be abridged under any circumstances, whatsoever. It is a settled position of law that the execution of conveyance deed does not bar the allottee from claiming the delayed possession charges.





- XI. That furthermore, it is also settled that the execution of pre-RERA agreement does not bar the claim of the allottee and hence, the same should be rightly allowed from 04.07.2006 to 05.06.2012.

**Execution of Unlawful maintenance agreement, maintenance charges being taken with a profit motive, and retainment of common areas:**

- XII. That thereafter, the complainant was made to enter into a maintenance agreement dated 22.06.2012, which is highly unlawful, one-sided and illegal. At the outset, it must be noted that the maintenance agreement was executed between M/s Chavan Rishi Resorts Pvt.Ltd. and Rajeev Narang or M/s Chavan Rishi Resorts Pvt. Ltd., at Delhi. That using "or" is not determinative of the specific parties to a contract, here, the maintenance agreement. Moreover, even though absolute right and title over the Villa had been transferred to the complainant by virtue of execution of sale deed, yet Rajeev Narang, and M/s Chavan Rishi Resorts Pvt. Ltd., at Delhi were jointly and severally referred to as "owners" in the maintenance agreement. That after having sold the Villa, there exists no right of the respondent over the Villa and to retain the same is highly illegal.
- XIII. That all such clauses are highly one-sided, illegal, arbitrary, and liable to be struck off. Firstly, it must be known that maintenance charges cannot be levied with a profit motive and it completely refutes the purpose of charging the same. Moreover, the respondent demanded the payment of one year of maintenance in advance @ Rs.5,000/- per month equal to Rs.60,000/- at the time of signing the maintenance agreement and also interest free maintenance security at the time of sale deed of Rs.60,000/- which are exorbitantly high. In regards to the said charges being taken on a profit motive, as mentioned in clause 5 of the maintenance agreement, in a litigation before the DTCP, Haryana.



- XIV. That taking such exorbitant amounts under the head of maintaining the services and the Project, and gaining profit from the same is highly unlawful and cannot be allowed, under any circumstances, whatsoever. That the respondent, under section 11(d) of the Act, is responsible for providing and maintaining the essential services on reasonable charges till the taking over of the maintenance of the project by the association of the allottees. Moreover, it should further be noted that under section 17 of the Act, the common area has to be transferred to the association of the allottees or the competent authority including the undivided proportionate title in the common areas to the association of the allottees at the time of executing the conveyance deed, meaning thereby, each unit holder has also a proportionate share in the common area. The respondent has miserably failed in transferring the common areas to the association of allottees.

**Wrongful demand of exorbitant maintenance charges and harassment of the complainants:**

- XV. That initially, the complainant paid the maintenance charges, upon being coerced by the respondent. However, despite the same, the services were not being maintained and the respondent continued to unlawfully and wrongfully demand the maintenance charges. That the respondent levied a high rate of interest of 24% upon non-payment of the maintenance charges, as is evident from the demand letter for maintenance dated 06.03.2020 and 12.03.2021. The complainant visited the office of the respondent with regard to the exorbitant amount charged by the respondent but no satisfactory answer was given by the respondent and instead, the respondent continued to demand monies illegally and arbitrarily. That owing to the clear fraudulent activity of *taking exorbitant maintenance charges and **not providing or maintaining any services*** in the project, the complainant restrained from making the payments against the same, upon

which, not only did the respondent levied a high rate of interest of 24%, as noted above, but also stooped downed to the extent of publicly harassing the complainant *by issuing notice boards for 'defaulters'*.

**Not providing the essential services and taking of additional, unlawful and exorbitant charges – Maintenance charges cannot be charged:**

- XVI. At the outset, it is to be noted that the right to access to the Villa from the main gate is an essential and one of the primary services that had to be provided by the respondent/builder, however, from the very beginning and till date, the main gate of the project is closed by the respondent, due to reasons best known to them. That the complainant has time and again requested the respondent to open the main gate and make the access to the villa, however, all such requests fell on deaf ears of the respondent, and to date, the main gates are not accessible, and hence, the right to the way of the complainant is being gravely hampered.
- XVII. That even after charging such exorbitantly high prices, no maintenance has been provided by the respondent. In fact, additional prices are being demanded from the complainant, unlawfully and illegally. It is a matter of fact that no resort/club has been made by the respondent, till date and hence, accordingly, no amount towards club membership can be laid in such an instance. This is also evident of the deficiency in providing/rendering services and malafide behaviour.
- XVIII. That one of the unique selling points of the project, as had been maintained by the respondent was the club which was showcased to encapsulate one of the best recreational facilities within. Furthermore, it needs to be noted that EDC/IDC are included within the sale price itself and cannot be charged separately by the complainant. Water charges are a part of charges towards essential services, which are also inclusive within the sale price, however, have been separately charged. It needs to be noted that EDC/IDC takes



within its ambit the charge for water supply, electrical works etc. and hence, the same cannot be charged separately.

- XIX. Over and above all of the same, it needs to be categorically seen that despite the payment being made by the complainant, no essential services have been provided. The complainant was made to take possession of the Villa upon being assured by the respondent that the remaining works shall be completed and all the services shall be adequately provided by the respondent, however, to utter shock of the complainant, no adequate maintenance has been provided and inhabitable possession of the unit has been given to the complainant.

**Non-availability of water since the taking of possession despite water charges being paid**

- XX. The complainant has been promised water connection and for that a hefty sum of Rs.50,000/- has been taken from the complainant against water connection charges, as was demanded under clause 5 of the agreement. However, no water line has been laid by the respondent and only underground water is being provided. There is no availability of potable water in the project, which is leading to serious health concerns to a number of allottees and residents of the project. In addition to this illegal and *malafide* conduct, the respondent started demanding monthly water charges, which were categorically refuted by the complainants upon various personal visits.

**Absence of Street Light**

- XXI. The street light is only at the beginning and at the end of the stretch of the project leaving area around the unit and the project on a whole, pitch dark. This inadvertently requires the permanent switch-on of the veranda light of the complainant. It needs to be noted that while there is a street light bottom slab in front of the unit, however, the pole has not been constructed and

there is no bulk and electric connection. Very recently, only a temporary provision has been laid by the Respondent; even this temporary light does not work leaving the entire stretch of area dark.

- XXII. That without solving or addressing the concerns of the complainant, the issue was unilaterally closed by the Builder, further showcasing its *malafide* conduct. The complainant has visited the office of the respondent regarding the same issue but no satisfactory answer has been received by the respondent.

**Insufficient Power back up**

- XXIII. The power backup is of 64KVA is available in the project which under no circumstance is sufficient for the entire project including residential complex and club/common area facilities. The respondent has been deficient in providing the services to the complainants from the very beginning. This malafide conduct of the respondent should be categorically highlighted. The conduct of the respondent has been highly illegal. It has always caused great discomfort, harassment, trauma and financial disability. The complainant had visited the office of the respondent on multiple occasions addressing the issues related to the unit by the respondent failed to give a satisfactory answer to the complainant each time.

**Absence of Sewage Treatment Plant and temporary and unhygienic sewage disposal**

- XXIV. The respondent was responsible to create a complete sewage system and sewerage treatment as under clause 3 of the maintenance agreement. However, it never created a setup of the sewerage treatment plant and a proper hygienic system of sewerage disposal. The current system of sewerage disposal is a temporary system which cannot not in any circumstance, whatsoever, be considered as proper sewerage system of the





project/society. The sewerage flows from individual villas firstly to a small pit (just outside every villa) and thereafter directly to 5 underground tanks and is collected in the underground tanks. Once the waste/sewerage (which gets collected) reaches a certain permissible level in the said underground tanks, the same is removed/cleaned by machines/duly authorised agency. The said underground tanks are not connected any further with any pipes, etc. whatsoever and the waste/sewerage generated from/of the villas gets collected in the said underground tanks only and is thereafter removed by machines/authorised agency. Under no circumstance whatsoever, can this process be considered as a proper sewerage system.

**Loose electrical wiring causing safety concerns**

- XXV. That within the premises of the project, there exists loose electrical poles and wires which have been installed only on certain electrical meters. The wires are precariously hanging loose against trees, walls etc. Moreover, there is no connection from the distribution boxes to the individual villas. The respondent has not made any connections to individual Villa. Even though the payments for electricity charges are to be directly made to DHBVN, practically, only electric meters are put up by electricity department on the electricity poles from where separate electric wires/cable have to be installed. With the loose wiring in place, it extremely unsafe which is specifically enhanced with the presence of children around.

**No boundary wall**

- XXVI. The project is extremely unsafe which is also to be noted by the fact that the under-construction c block has no boulder wall and is enclosed by barbed wires. It must be categorically noted that the presence of barbed wires in a residential society is extremely unsafe, specifically with the presence of children around. That after having executed the sale deed, the complainant got to know about the fraud and the absolute *malafide* acts done by the



respondent. That the field book from the DTCP Survey shows the map of the project within the controlled area. That the respondent, acting in utter malafide, assured, represented and warranted the complainant that the project does not fall within the controlled area vide the said notification, as was also confirmed in the agreement. However, in complete disregard to the same, it must be noted that the respondent had wilfully concealed material information and communicated wrong information in order to get the wrongfully sell the villa. That relying on the respondent, the complainant has been defrauded and has suffered grave harm and mental agony thereto.

- XXVII. That the wrongs committed by the respondent are not few, it also came to the knowledge of the complainant that the development of the land has been done on agricultural land without having any land conversion approval from the competent revenue authority. A number of complaints have been made by a number of allottees in the consumer forum and to the Chief Minister. Time and again the complainant has suffered at the hands of the respondent. The project is still uncompleted and the respondent, unlike its promise of giving "*independent villas*" has gravely failed to do so. There exists no independent existence of the complainant as the complainant is barred from enjoying the peaceful possession of their villa and the common areas. Even after having transferred the Villa to the complainant, the complainant has been suffering from the *malafide*, unlawful and illegal conduct of the respondent. Hence, in light of the extreme adversities being suffered by the complainant and in the light of justice and equity, such conduct should be rightly taken note of by the Authority. That in the light of the above mentioned, it is finally submitted that the complainant has exhausted all the available remedies and has arrived to this forum for



justice. Hence, the reliefs, interim and final, sought under this complaint may be rightly granted.

**C. Relief sought by the complainant: -**

7. The complainant has sought following relief(s):
- I. That the project to come within the jurisdiction of the Authority as within the controlled area of Gurugram district and as per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by the Department of Town and Country Planning.
  - II. To declare the project to be ongoing and direct the respondent to register the project under section 3 of the Act;
  - III. To grant delayed possession charges from the due date i.e., 04.07.2006 till 05.06.2012 at the prescribed rate of interest;
  - IV. To declare the maintenance charges unjustified and unlawful and recall the same;
  - V. Recall the interest of 24% levied on the demands raised by the respondent towards maintenance, water, etc.;
  - VI. To declare the maintenance agreement null and void;
  - VII. Direct the respondent to handover the rights of the common areas of the association of allottees;
  - VIII. Direct the respondent to procure all the necessary licenses/approvals /permissions from the competent Authorities;
  - IX. Direct the respondent to complete the remaining obligations of the development in the project;
  - X. Direct DTCP to take cognizance of the project and check the pre-requisite approvals including the building plans, villa plans, electrification plans, occupancy certificate, etc.
  - XI. To impose punishment/penalty under section 59 of the Act;
  - XII. To grant leave to approach the Adjudicating officer under section 71 and 72 of the Act;
  - XIII. Grant any other relief as this Authority deems fit in the peculiar facts and circumstances of the present complaint.
8. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the act to plead guilty or not to plead guilty.

**D. Reply by the respondent**

9. The respondent is contesting the complaint on the following grounds:
- i. That at the outset, respondent humbly submits that each and every averment and contention, as made raised in the complaint, unless

specifically admitted, be taken to have been categorically denied by respondent and may be read as travesty of facts. That the complaint filed by the Complainants before this Authority, besides being misconceived and erroneous, is untenable in the eyes of law. The complainants have misdirected themselves in filing the above captioned complaint before this Authority is the relief's being claimed by the complainants, besides being illegal, misconceived and erroneous, cannot be said to even fall within the realm of jurisdiction of this Authority.

- ii. That the complaint is not maintainable or tenable under the eyes of law as the complainants have not approached the Authority with clean hands and have not disclosed the true and material facts relating to this case of complaint. The complainants thus, have approached the Authority with unclean hands and has suppressed and concealed the material facts and proceedings which have direct bearing on the very maintainability of purported complaint and if there had been disclosure of these material facts and proceedings the question of entertaining the present complaint would have not arisen in view of the case law titled as S.P. Chengalvaraya Naidu Vs. Jagan Nath reported in 1994 (1) SCC Page 1 in which the Hon'ble Apex Court of the land opined that non-disclosure of material facts and documents amounts to a fraud on not only the opposite party but also upon the Authority and subsequently the same view was taken by even Hon'ble National Commission in case titled as Tata Motors Vs. Baba Huzoor Maharaj bearing RP No.2562 of 2012 decided on 25.09.2013.
- iii. That without admitting or acknowledging the truth or legality of the allegations advanced by the complainants and without prejudice to the contentions of the respondent, it is respectfully submitted that the provisions of the Act are not retrospective in nature. The provisions of the



Act cannot undo or modify the terms of an agreement duly executed prior to coming into effect of the Act. It is further submitted that merely because the Act applies to ongoing projects which are registered with the Authority, the Act cannot be said to be operating retrospectively.

- iv. That the project originally situated was outside the controlled area, hence, no Govt. Approvals and sanctions were required, however after notification dated 05.08.2005, no construction work took place at that site when the said area comes under controlled area. Apart for this an inspection of the site conducted by the STP wherein they did not find any irregularity, wrongdoing and infirmity at the site while doing construction. That after duly inspected the site, the officials at the site issued a field book, which is duly signed and stamped. That the authority does not have jurisdiction to adjudicate upon the matters as the project of respondent not comes under the purview of RERA as the project had been completed in 2005 which is much before the enactment of the RERA and it is pertinent to mention here that respondent developed the said project after taking necessary approvals from various authority as provided by the law.
- v. The Act is intended to comply even with the ongoing real estate project. The expression "ongoing project" has been defined under Rule 2(o) of the Haryana Real Estate (Regulation and Development) Rules, 2017.
- vi. That in the case of "sultana Dalal vs. Asia group" Hon'ble Maharera observes and opinion that rera applies if the work is ongoing. While passing an order in the above said case, Sh. Gautam Chaterjee, the Maharera chairman, Noted, that there are two requisites for the applicability of section 3 ( registration), it appears to only those projects where construction work is ongoing and for which completion certificate has been issued. "in present case, the project work has been completed and the building occupied by the allottees





since 2012-2013 and thereafter the building is under a status quo. This cannot be treated as an ongoing project under the provision of section of the Act. Moreover the building has been occupied before the commencement of the Act, 2016 therefore no direction can be passed under the provisions of RERA act. Act. It is paramount to mention here that in the present case respondent had completed the construction work prior to 2005 and obtained field book on 23.10.2005 wherein officials like DTP, ATP, J.E and F.I/Patwari and has been clean chit to the project. It is pertinent to mention here that the whole inspection and enquiry conducted by the government officials much before the enactment of the Act, 2016.

- vii. That it is also worthwhile to mention here that the allegations having been levelled in this complaints are with regard to cheating and alluring which only can be decided by the Hon'ble Civil Court and in these scenario the Authority also lacks of jurisdiction. In this regard a civil suit filed by the respondent also pending sub division court Pataudi, wherein Hon'ble court has pleased to pass stay order against the complainant. It seems from the above submissions that complainant filed the present complaint just to counter blast of the suit filed by the respondent.
- viii. That the complainant filed another complaint through RWA against the respondent titles as "M/s Mittal Royal Orchards (RWA) versus Chavan Rishi resorts Pvt. Ltd." with the grievances of complainant that water treatment, sewerage treatment plant, common parking, common area, medical facility, boundary wall, electricity, power backup, mutation, iron gate, hand rail, bathroom mirrors, grass and trees, adequate street lights, provisions for garbage removal, street roads etc. were promised but have not been provided before the state commission Delhi which was decided on 17.03.2016.

- ix. That at this stage it would be just and proper to refer to certain provisions of the Rules, 2017. Thus, in view of the submissions made above, no relief much less as claimed can be granted to the complainant. It is reiterated at the risk of repetition that this is without prejudice the submission that in any event, the complaint, as filed, is not maintainable before this Authority. Further, without prejudice to the aforementioned, even if it was to be assumed though not admitting that the filing of the complaint is not without jurisdiction, even then the claim as it cannot be said to be maintainable and is liable to be rejected for the reasons as ensuing. The reliefs sought by the complainants appear to be on misconceived and erroneous basis. Hence, the complainants are estopped from raising the pleas, as raised in respect thereof, besides the said pleas being illegal, misconceived and erroneous.
- x. That apparently, the complaint filed by the complainants is sheer misuse and abuse process of law and the reliefs claimed as sought for, are liable to be dismissed. No relief much less any interim relief, as sought for, is liable to be granted to the complainants. The respondent reserves its right to file additional reply and documents, if required, assisting the Authority in deciding the present complaint at the later stage. No cause of action arose in favour of complainant ever as the complainant has not mentioned a single word regarding cause of action, hence the present complaint is liable to be dismissed with heavy cost.
10. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.
11. The complainant and respondent have filed the written submissions on 26.07.2024 and 12.03.2024 respectively which are taken on record and has been

considered by the authority while adjudicating upon the relief sought by the complainant.

**E. Jurisdiction of the authority**

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

**E.I Territorial jurisdiction**

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

**E.II Subject matter jurisdiction**

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

**Section 11**

\*\*\*\*

**(4) The promoter shall-**

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

**Section 34-Functions of the Authority:**

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

15. So, in view of the provisions of the Act quoted above, the authority has complete territorial and subject matter jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is

to be decided by the adjudicating officer if pursued by the complainant at a later stage.

**F. Findings on the relief sought by the complainant.**

- F.I** Direct the project to come within the jurisdiction of the Authority as within the controlled area of Gurugram district and as per notification no. 1/92/2017-ITCP dated 14.12.2017 issued by the DTP, Haryana.
- F.II** Declare the project to be on-going and direct the respondent to get it registered under the provisions of the Act, 2016
- F.III** Direct the respondent to procure all the necessary licenses/approvals/permissions from the competent authority.
- F.IV** Direct the respondent to complete the remaining obligations of the development in the project.
- F.V** Direct the DTCP to take cognizance of the project and check the pre-requisite approvals including building plans, villa plans, electrification plans, occupancy certificate, etc.
- F.VI** Impose penalty under section 59 of the Act, 2016.

16. The above-mentioned reliefs sought by the complainant are being taken together as the findings in one relief will definitely affect the result of the other relief and the same being interconnected.
17. On submissions made by both the parties and documents placed on record, it is observed that the project namely "Mittal's Royal Orchards" situated in Dhani Shankar Wali, Revenue Estate of Bhora kalan, Tehsil Faruk Nagar, Gurugram, Haryana which was originally situated outside the controlled area, hence, no Government approvals and sanctions were required, however after notification dated 05.08.2005, no further construction work took place at that site when the said area was covered under the preview of controlled area. Thereafter DTCP, Haryana constituted a team for the survey of that land, comprising concerned Patwari, Junior Engineer, Assistant Town Planner and District Town Planner. After inspecting the land brought under controlled area, including the land on which the project has been erected, said officials issued a field book and found no irregularity. Further, a C.M Window complaint had also been sent to DTCP, STP Gurugram for taking necessary action but department after thoroughly conducting investigation sent back the complaint with remarks "no action on

behalf of department is required in this matter". DTP(E) did not find any irregularity or infirmity in the project. The relevant portion of the said report is reproduced below for ready reference:

*"DTP Gurugram ATR Report: - The controlled area of the village Bhora Kalan was declared on 05.08.2005 and during declaration on controlled area, a field book was prepared regarding existing construction in the area at the time of declaration of controlled area. It is submitted that the construction of 100 villas mentioned in the complaint has been checked and vis-à-vis the filed book prepared during the declaration of controlled area and found that the villa mentioned in the complaint exist in the filed book prepared during declaration of controlled area i.e., 05.08.2005, meaning thereby that the villas were constructed before declaration of controlled area i.e., 05.08.2005."*

18. In view of the above facts, the Authority determines the project of respondent does not come under the purview of the proviso to section 3 of the Act of 2016 as the project had been situated outside the controlled area which was completed in the year 2005 i.e., much before the enactment of the Act of 2016. The NOC of the above said project was obtained by the respondent on 13.09.1997 vide memo no. 6332. Therefore, the Authority is of the view, that the respondent had developed the said project after taking then relevant applicable clearances from the concerned authority as provided by the law. In view of the same, the Authority cannot deliberate on the above mentioned reliefs.
- F.VII To grant delayed possession charges from the due date i.e., 04.07.2006 till 05.06.2012 at the prescribed rate of interest;
  - F.VIII To declare the maintenance charges unjustified and unlawful and recall the same.
  - F.IX Recall the interest of 24% levied on the demands raised by the respondent towards maintenance, water, etc.
  - F.X To declare the maintenance agreement null and void.
  - F.XI Direct the respondent to handover the rights of the common areas of association of allottees.
  - F.XII Grant leave to approach the Hon'ble Adjudicating officer under section 71 & 72 of the Act, 2016.
19. On consideration of the documents available on record, the Authority observes that the complainant was allotted a plot bearing no. B-34, Mittal's Royale Orchards, admeasuring 457.08 sq. yards, in project of the respondent named



"Mittal's Royal Orchards" situated in Dhani Shankar Wali, Revenue Estate of Bhora kalan, Tehsil Faruk Nagar, Gurugram. A buyer's agreement was also executed between the parties on 04.07.2005 regarding the said plot. As per clause 16 of the buyer's agreement dated 04.07.2005, the possession of the said plot was to be handed over to the complainant on or before 04.01.2007. The conveyance deed of the subject plot was executed between the parties herein on 06.06.2012.

20. The complainant is seeking the relief of delayed possession charges, to recall the maintenance charges and others relief from the respondent while the respondent on the other hand pleaded that the present complaint is not maintainable as the complainant has conveyance deed executed on 06.06.2012. The Authority is of the view that the transaction between the complainant and the respondent stands concluded upon the execution of the conveyance deed and the complainant has filed the present complaint after a long delay on 16.06.2022 i.e., lapsed of 10 years, and 10 days (3662 days) of the execution of conveyance deed cum sale deed. Thus, the claim of the complainant is not maintainable. Both the parties through their respective counsels advanced submissions with regard to the maintainability of the complaint on the ground of the limitation.
21. After the unit was allotted to the complainant on 04.07.2005, a buyer's agreement in this regard was executed on the same day i.e., 04.07.2005. Though the possession of the unit was to be offered on or before 04.01.2007 after completion of the project. In the present complaint, conveyance deed cum sale deed was executed in favour of the complainant i.e., 06.06.2012. So, limitation if any, for a cause of action would accrue to the complainant w.e.f. 06.06.2012. As far as the issue of limitation is concerned, the Authority is cognizant of the view that the law of limitation does not strictly apply to the Real Estate Regulation and

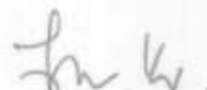
Development Authority Act of 2016. However, the Authority under section 38 of the Act of 2016, is to be guided by the principle of natural justice. It is universally accepted maxim and the law assists those who are vigilant, not those who sleep over their rights. Therefore, to avoid opportunistic and frivolous litigation a reasonable period of time needs to be arrived at for a litigant to agitate his right. This Authority of the view that three years is a reasonable time period for a litigant to initiate litigation to press his rights under normal circumstances.

22. In the present matter the cause of action arose on 06.06.2012 when the registry cum sale deed executed by the respondent in favour of the complainant. The complainant has filed the present complaint on 16.06.2022 which is 10 years and 10 days from the date of cause of action.
23. In CR no. 4158 of 2022, the cause of action arose on 01.12.2016 when the registry cum sale deed executed by the respondent in favour of the complainant. The complainant has filed the present complaint on 16.06.2022 which is 6 years 5 months and 4 days from the date of cause of action.
24. No doubt, one of the purposes behind the enactment of the Act was to protect the interest of consumers. However, this cannot be stretched to an extent that basic principles of jurisprudence are to be ignored and are given a go by especially when the complainant/allottees have already availed aforesaid benefits before execution of conveyance deed.
25. Further, as observed in the landmark case i.e. ***B.L. Sreedhar and Ors. V. K.M. Munireddy and Ors. [AIR 2003 SC 578]*** the Hon'ble Supreme Court held that "Law assists those who are vigilant and not those who sleep over their rights." Law will not assist those who are careless of their rights. In order to claim one's right, one must be watchful of his rights. Only those persons, who are watchful and careful of using their rights, are entitled to the benefit of law.

26. The Authority observes that the liabilities between the allottee and the promoter come to an end after the execution of the conveyance deed except for the statutory rights under the Act of 2016. The complainant could have asked for the claim before the conveyance deed got executed between the parties. Clause 40 of the sale deed dated 05.06.2012, is also relevant and reproduced hereunder for ready reference:

*40. The VANDEE(S) shall have no further and additional claim against the VENDOR as to any item of work, material, quality of work, and installations in the said dwelling unit or on any other ground whatsoever and the said claim, if any hereby stands waived. All such complaints and defects, if any, were got removed by the VENDEE(S) from the VENDOR prior to taking over the possession of the said dwelling unit."*

27. It is a well established principle that nobody's right should be prejudiced for the sake of other's right, when a person remained dormant for such an unreasonable period of time without any just cause. In light of the above, the complaint is not maintainable and the same is hereby dismissed.
28. Complaint as well as applications, if any, stand disposed off accordingly.
29. File be consigned to registry.

  
(Ashok Sangwan)  
Member  
(Arun Kumar)  
Chairman

Haryana Real Estate Regulatory Authority, Gurugram  
Dated: 08.04.2025