

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

Order Reserved on : 25.03.2025
Order pronounced on : 06.05.2025

1. Shri Sanjeev Sharma
 2. Ms. Shailika Sharma
- Both R/o:** - House No. 2659, Sector- 37C, Chandigarh-160036.

Complainants

Versus

1. M/s Orchid Infrastructure Developers Private Limited
 2. M/s Perfect Facilities Management Private Limited
- Office at:** - Global Arcade, Second Floor, Mehrauli Gurugram Road, Gurugram- 122002, Haryana.

Respondents

CORAM:

Shri Arun Kumar
Shri Vijay Kumar Goyal
Shri Ashok Sangwan

Chairman
Member
Member

APPEARANCE:

Shri Abhay Jain (Advocate)
Shri J K Dang (Advocate)

Complainants
Respondents

ORDER

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

A. Unit and project related details

2. 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. No.	Particulars	Details
1.	Name and location of the project	"Orchid Island", Sector 51, Gurugram
2.	Nature of the project	Residential Colony
3.	Unit no.	M-456, Ground Floor (plot admeasuring 290 sq. yds.) (As per page no. 46 of the complaint)
4.	Unit area admeasuring	1510 sq. ft. (super area) (As per page no. 46 of the complaint) 1642 sq. ft. (super area) (As per addendum to offer of possession letter at page 74 of complaint)
5.	Date of execution of buyer's agreement	02.02.2010 (As per page no. 44 of the complaint)
6.	Possession Clause	28. Possession a) Time of handing over of possession <i>... The developer proposes to handover the possession of the floor within a period of thirty months from the date of signing of floor buyers' agreement. The flat allottee agrees and understands that the developer shall be entitled for grace of 180 days, after the expiry of thirty months, for applying and obtaining of occupation certificate...</i> <i>[Emphasis supplied]</i>
7.	Due date of possession	02.02.2013 (Note: The due date is calculated from the date of execution of buyer's agreement including grace period being unconditional)
8.	Endorsement in favour of complainants	06.06.2012 (As per page no. 69 of the complaint)
9.	Sale Consideration	Rs.67,93,201/- (As per page no. 49 of the complaint)
10.	Amount paid by complainants	Rs.77,59,627/- (As per SOA dated 06.08.2013 at page no. 78 of the complaint)

11.	Occupation certificate	28.12.2012 (As per page no. 308 of the reply)
12.	Offer of possession	01.07.2013 (As per page no. 71 of the complaint)
13.	Addendum to Offer of possession (Due to increase in super area)	30.07.2013 (As per page no. 74 of the complaint)
14.	Physical possession	07.10.2013 (As per page no. 81 of the complaint)
15.	Letter for execution of conveyance deed (by respondent no.1)	11.02.2015 (As per page no. 314 of the reply)
16.	Request letter from complainants for execution of conveyance deed.	16.03.2019 (As per page no. 88-89 of the complaint)
17.	Request through email from complainants for execution of conveyance deed.	14.07.2021 (As per page no. 91 of the complaint)
18.	Maintenance service agreement (between complainants, respondent no.1 and 2)	06.06.2012 (As per page no. 264 of the reply)
19.	MOU (between Orchid Island Residents Welfare Association, respondent no.1 and 2)	20.06.2018 (As per page no. 316 of the reply)
20.	Bills for maintenance (raised by respondent no.2)	For the financial years 2013-14, 2014-15 & 2015-16 (As per page no. 3221-323 of the reply)
21.	Appointment of the auditor (by respondent no.2)	24.03.2017 (As per page no. 326 of the reply)

B. Facts of the complaint

3. The complainants have made the following submission: -

- I. That based on the licence, the respondent no. 1 collected a huge amount from gullible and naïve buyers including the original allottees and the

- complainants from 2009 to 2013 and handed over the floor to the complainants on 07.10.2013.
- II. That the respondent no. 1, namely, Orchid Infrastructure Developers Private Limited appointed the respondent no. 2, Perfect Facilities Management Private Limited as the maintenance agency without consulting the complainants and any other buyers.
 - III. That the respondent no. 2 got an audit done by M/s AAGN & Associates (Chartered Accountants) fraudulently, illegally and unlawfully for the financial years 2013 14, 2014-15 and 2015-16. After the completion of the audit, M/s AAGN & Associates (Chartered Accountants) issued a letter dated 13.07.2017 to the respondent no. 2, wherein the bogus calculation of extra maintenance charges for financial years 2013 to 2016 was summarised. This delay shows the malafide and deceitful intention of the respondent no. 2.
 - IV. That based on the illegal and fraudulent audit report, the respondent no. 2, between December, 2017 to March, 2018, raised back dated bogus and enhanced maintenance invoices of August, 2017 to recover the previous arrears of maintenance which pertains to years 2013-2014, 2014-2015 and 2015-2016. These bills were generated with prices in effect from retrospective date which in itself is a sham. The respondents are still forcing the complainants to pay the illegal bills of arrears of maintenance charges, in order to get the conveyance deed of the floor executed.
 - V. That on 09.02.2018, the association of the said project namely, Orchid Island Residents Welfare Association wrote a letter to respondents no. 1&2 requesting for revoke/cancel/withdraw/waive-off the extra maintenance charges imposed on the complainants and other buyers unlawfully, fraudulently and illegally. Further, the association demanded from the respondents to transfer the interest free maintenance security (IFMS) amount, deposited by the complainants and other buyers into the account of the association. Furthermore, the association demanded the execution of

conveyance deeds in favour of the complainants and other buyers respectively, but it has not been done till date. Till date, no action has been taken by the respondents.

- VI. That on 04.08.2017, the respondent no. 2, raised fraudulent and illegal outstanding dues in the maintenance amount dating back to financial years 2013 to 2016, claiming the retrospective effect on the increment of the maintenance charges, totalling to Rs.1,85,041/- in attempt to coerce the complainants to pay undue extra monies, holding the execution of conveyance deed as ransom.
- VII. That the respondent no. 1 has not yet made efforts to execute a conveyance deed of the floor till date. The respondent no. 1 has wilfully cheated the complainants by demanding and collecting money, all payable amounts including the maintenance charges and yet did not execute the conveyance deed in favour of the complainants till date.
- VIII. That the genesis of the present complaint lies in the gross indifference, refusal and failure of the various obligations on the part of the respondents. Firstly, enticing various customers including the complainants to spend their hard earned money in the purchase of the floor in the project 'Orchid Island', by promising to comply with all the requisite duties, functions and obligations of the respondents, but afterwards, not fulfilling their commitments. Secondly, the respondents have raised a number of illegal, unlawful and fraud bills and have collected huge amount from the complainants and other buyers illegally, unlawfully and fraudulently. Thirdly, the respondent no. 1 had failed to get the conveyance deed of the floor executed in favour of the complainants till date, even after a lapse of more than ten (10) years and two (2) months from the date of physical handover.
- IX. That the complainants have paid, as and when demanded by the respondents, a total sum of Rs.77,63,153/- as total consideration till

06.08.2013. The physical possession of the floor was handed over to the complainants on 07.10.2013. Despite receiving all payable amounts from the complainants, the respondent no. 1 has failed to get the conveyance deed of the floor executed till date even after numerous requests. At present, the complainants are being treated as tenants of their own floor by the respondents.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s):
- i. Direct the respondents to withdraw/rectify/cancel/revoke/waive-off the enhanced amount of extra maintenance charges of Rs.1,85,041/- for the financial years 2013-2014, 2014-2015 & 2015-2016 imposed on the complainants by the respondent no.2 illegally, unlawfully and fraudulently.
 - ii. Direct the respondent to transfer the interest free maintenance security (IFMS) amounting to Rs.1,23,150/-, deposited by the complainants at the time of buying the said floor no. M-456 at ground floor, into the account of Orchid Island Resident Welfare Association, as the RWA has already taken over the maintenance of Orchid Island on 01.04.2018.
 - iii. Direct the respondent no.1 to get the legitimate and lawful conveyance deed of the floor no. M-456 executed in favour of the complainants.
 - iv. Direct the respondent no.1 to refund the VAT charges amounting to Rs.77,315/- collected from the complainants illegally, unlawfully and fraudulently on 08.12.2016 along with prescribed rate of interest.
 - v. Direct the respondent to pay legal expenses of Rs.1,00,000/- incurred by the complainants.
5. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondents.

6. The respondents have contested the complaint on the following grounds: -

- I. That the present complaint is not maintainable in law or on facts. The provisions of the Act, 2016 are not applicable to the project in question. The occupation certificate in respect of the apartment in question was issued as far back as on 28.12.2012 i.e., well before the Act and notification of the Rules 2017. Thus, the provisions of the Act and the Rules are not applicable to the unit in question and consequently, this Authority does not have the jurisdiction to entertain and decide the present complaint. The present complaint is liable to be dismissed on this ground alone.
- II. That furthermore, the project "Orchid Island", comprises of low rise buildings constructed on separate plots of different sizes. Each low rise building comprises of ground, first and second floors and each constructed floor has been allotted/sold as an independent unit. The occupation certificates in respect of the constructed buildings in the project were issued by the competent authority during the period from December 2012 to February 2013, i.e., well before the coming into force of the Act.
- III. That the provisions of the Act are not applicable to the project in question. The project is not an ongoing project under Rule 2(1)(o)(ii) of the Rules, 2017, and hence does not require registration. Since the provisions of the Act and Rules are not applicable to the project in question, the present complaint is not maintainable in law and the same is liable to be dismissed.
- IV. That the present complaint is even otherwise not maintainable under the Act. Section 31 of the Act contemplates institution of complaints against promoters, allottees or real estate agents. Respondent no 2 is neither the promoter nor an allottee or a real estate agent. Respondent no. 2 is the erstwhile maintenance agency that was providing maintenance services to the colony, Orchid Island, Sector 51, Gurgaon, where the unit allotted to the complainants is situated. Respondent no. 2, which was providing maintenance services to the project until 01.04.2018, is neither a promoter, real estate agent or an allottee in the project and hence no complaint be filed

against the respondent no. 2 under the Act. Respondent no. 2 is liable to be deleted from the array of parties.

- V. That from a perusal of the relief sought by the complainants, it is evident that the relief that has been claimed by the complainants against respondent no. 2 herein pertains to demand for arrears of maintenance charges and transfer of IFMS amount to the Orchid Island Residents Welfare Association. That a complaint filed by the Orchid Island Residents Welfare Association being complaint no 2298 of 2018, seeking similar reliefs was dismissed by the Authority.
- VI. That vide its said order dated 26.03.2019, this Authority has held that with regard to the enhancement in maintenance charges, the audit report for the financial years 2013-2014, 2014-2015 and 2015-2016, cannot be challenged before the Authority and that the matter is already sub judice before the Civil Court in the civil suit filed by the Orchid Island Residents Welfare Association. It was further held by this Authority that the decision in the civil matter ought to be awaited and once such decision is rendered the parties ought to approach the Adjudicating officer for its implementation.
- VII. That the civil suit filed by the association has been dismissed by the Hon'ble Court of Shri Anterpreet Singh , Civil Judge, Gurugram, vide this judgement and order dated 15.10.2019, passed in the civil suit titled as *Orchid Island Residents Welfare Association Vs Orchid Infrastructure and Developers Private Limited and others.* It is submitted that the Hon'ble Court, while taking into consideration the report of the independent auditor, duly held that the maintenance agency i.e., respondent no. 2 herein had been properly maintaining its books of account and auditing its expenditure and that respondent no. 2 had not imposed any enhanced costs upon the residents. The Orchid Island Residents Welfare Association instituted an appeal against the said judgement and order dated 15.10.2019 referred to above. The said

appeal has also been dismissed by the Hon'ble Court of Shri Tarun Singhal, Addl. District Judge, Gurugram.

VIII. That the complaint is barred by limitation.

IX. That moreover, the complainants have deliberately failed to disclose to this Authority that the OIRWA/the Association, has already filed a complaint before the Hon'ble National Consumer Disputes Redressal Commission (NCDRC) seeking the following reliefs :

- Direct opposite party no. 1 to transfer the entire IFMS deposit of Rs.11.92 Crore to the Orchid Island Residents Welfare Association along with 18% interest from 01.04.2018 till date of actual payment.
- Direct opposite party no. 1 to execute conveyance deeds in favour of respective floor owners.
- Direct opposite party no. 1 to refund the amount illegally collected in the name of increase in super area and plot area to respective floor owners.
- Award compensation to the tune of Rs.20 lacks to the complainant society for the harassment caused to the floor owners.
- Pass any other order in favour of the complainant-society as this Hon'ble Commission may deem fit in the interests of justice.

X. That the complainants and other allottees of the project are filing successive litigation before various fora/Hon'ble Courts while failing to disclose existing litigation, so as to try and obtain favorable orders from such Fora. To the best of the respondent's knowledge, the Complainants are also a member of the association and has deliberately failed to disclose in the complaint as regards whether the complainants are members of the association or not.

XI. That the complainants have not come before this Authority with clean hands and has concealed vital and material facts from this Authority. The real and true facts are as under.

XII. That the complainants purchased unit no 456, located on the ground floor, situated in Orchid Island, Sector 51, Gurgaon, from the original allottees, Prem Prakash Srivastava and Madhu Srivastava. The floor buyer's agreement dated 02.02. 2010 executed by the original allottees. The same was endorsed in favour of the complainants on 06.06.2012, upon the complainants

agreeing and undertaking, inter alia, to be bound by the terms and conditions of the said floor buyer's agreement. Also, the maintenance and services agreement was executed between the parties herein on 06.06.2012.

- XIII. That the construction of the unit was completed and occupation certificate in respect thereof was received on 28.12.2012. Offer of possession of the unit was made on 01.07.2013. Addendum to the offer of possession was made vide letter dated 30.07.2013. After the balance payment was made by the complainants, possession of the unit was taken by the complainants on 07.10.2013.
- XIV. That by letter dated 11.02.2015, the complainants were informed about the formalities to be completed for registration of conveyance deed in their favour. However, for reasons best known to the complainants, the complainants have failed to come forward to have the conveyance deed registered in their favour till date.
- XV. That as has been submitted in the preceding paras, respondent no. 2 has been providing maintenance services to the complex from the year 2013, till 01.04.2018 when the complex was handed over to the association, upon terms and conditions which were formalised through the execution of a memorandum of understanding dated 20.06.2018.
- XVI. That till such time that respondent no. 2 was undertaking maintenance of the complex, maintenance charges were agreed to be paid by the complainants in accordance with the floor buyer's agreement, and the maintenance and services agreement, executed by the complainants. Monthly bills towards maintenance charges were being raised by respondent no 2 and duly paid by the complainants.
- XVII. That in the initial period, the maintenance costs were subsidised by the respondents by charging for maintenance services and facilities at the rate of Rs.1.25/- per month which was subsequently raised to Rs.1.90/- per sq. ft. Furthermore, all the buyers including the complainants were fully conscious

and aware that the indicative maintenance charges were subject to final reconciliation post audit of the maintenance expenses for the year and that differential maintenance charges would have to be paid by the buyers.

- XVIII. That the monthly maintenance charges were to be computed and payable by the complainants, in the manner set out in clauses 3 and 4 of the maintenance and services agreement. Clause 3A(vi) of the said agreement specifically provides that at the end of each financial year, respondent no 2 would get audited the annual statement of income and expenditure and statement of assets and liabilities as on the last date of the financial year related to the maintenance of the complex and the expenses incurred would form the basis of estimate for billing in the subsequent financial year. In case of any surplus/deficit arising at the end of the financial year after the audit, the same was to be adjusted in the bills raised in the subsequent financial year in a manner such that the amount shall be refunded/recovered from the subsequent bills to the complainants.
- XIX. That in the beginning, due to low occupancy in the project, maintenance services were being charged at an extremely nominal rate by respondent no 2, which was also heavily subsidised by the Developer in order to facilitate residents. It was specifically agreed between respondent no. 1&2 and the residents that maintenance charges would be worked out on the basis of actual expenses incurred by respondent no. 2 in providing such facilities and that the difference between the maintenance charges as billed on an ad hoc basis and actual maintenance charges payable by the residents, would be payable by the residents after ascertaining the amounts payable.
- XX. That an audit of the accounts of respondent no. 2 for the years 2013-2014, 2014-2015 and 2015-2016 was carried out by various chartered accountants appointed by respondent no. 2. The said reports were shared with the association and it was proposed to raise differential maintenance bills

/invoices for the aforesaid period, i.e. 2013-2014, 2014-2015 and 2015-2016 on the basis of the aforesaid audit reports.

- XXI. That the association objected to the aforesaid audit reports and insisted upon an audit by an external auditor. In this regard, several meetings between the association and the association took place and the association put forward names of 4 chartered accountants firms to carry out an audit of the books of accounts of respondent no. 2 for the years 2013-2014, 2014-2015 and 2015-2016.
- XXII. That the respondents agreed to appoint the first name proposed by the association, i.e., M/s AAGN & Associates, D-32, East of Kailash, near M Cinema, New Delhi -110065, to audit the accounts of respondent no. 2, in order to determine the maintenance charges payable for the years 2013-2014, 2014-2015 and 2015-2016, and requested the Association to arrange for an introduction. The said C.A firm, M/s AAGN & Associates , was appointed to carry out the audit and the said firm submitted its report on 13.07.2017 whereby the maintenance charges for the year 2013-2014 was calculated to be Rs.7.08/- per sq. ft., Rs.4.89/- per sq. ft. for the year 2014-2015 and Rs.2.99/- for the year 2015-2016.
- XXIII. That on the basis of the audit report of the independent C A firm duly recommended by the association, respondent no. 2 raised invoices for payment of differential maintenance charges payable by all the residents of the complex, including the complainants. The report of the CA firm nominated by the association which has carried out the independent audit exercise was also shared with the association.
- XXIV. That the association had conveyed that it needed some time to discuss the matter with the other office bearers, residents etc. and promised to revert shortly on the issue. However, thereafter, on one pretext or the other, the association delayed the issue of payment of outstanding maintenance charges. That eventually, after waiting for almost 6 months, the bills were

dispatched to the residents in January/February 2018. Respondent nos. 1&2 had even offered a discount of 5% on the said bills as a gesture of good will, although under no legal obligation to do so.

- XXV. That however, instead of getting the residents to clear their outstanding arrears, the association has been addressing false and frivolous correspondence and even resorting to hooliganism once the association came to realise that it had no legitimate ground to refute the outstanding liabilities of the residents.
- XXVI. That shockingly, the president of the association had come to the residence of Mr. Dhruv Gupta, Director of respondent no. 1 on 14.09.2018 and demanded to meet him and when informed that Mr. Dhruv Gupta was not available and that he should meet Mr. Gupta in his office, the association president started shouting, threatening and abusing using filthy language. The president of the association also threatened to come again with a group of people and cause bodily harm and injury to Mr. Dhruv Gupta and his family members as well as destruction of his property unless his unlawful demands were met. Consequently, a police complaint was registered against the president of the association in the Tughlaq Road Police Station on 22.9.2018.
- XXVII. That the complainants as well as other residents of the complex are conscious and aware that the arrears of maintenance charges are due and payable by them as per the agreements executed by them and that there is no justification for their refusal to do so. The complainants have agreed and undertaken in terms of clause 29 of the buyer's agreement that the developer shall be entitled to register the conveyance deed only after receipt of all dues payable by the complainants under the buyer's agreement. In terms of clause 39 of the buyer's agreement, the complainants have agreed and undertaken to make payment of maintenance charges as may be demanded by the maintenance agency duly nominated by the respondent and for adjustment of unpaid maintenance dues against the maintenance security amount

deposited with the respondent. After settlement/adjustment of maintenance dues, the balance, if any, has been agreed to be transferred to the association when formed. The respondents have acted in accordance with the buyer's agreement and the maintenance agreement executed by the parties. The respondents crave leave of this Authority to refer to and rely upon various clauses of the said agreements at the time of addressing the arguments in the matter.

XXVIII. That from the facts and circumstances set out in the preceding paras, it is evident that there is no default or lapse on the part of the respondents. The demands for arrears of maintenance charges have been made in accordance with the agreements executed by the complainants. It is evident from the entire sequence of events, that no illegality can be attributed to the respondents. The allegations levelled by the complainants are totally baseless. The present complaint has been filed at the behest of the Association so as to cause undue harassment and nuisance to the respondents as well as with the view to evade legal and binding contractual obligations of the complainants. Thus, it is most respectfully submitted that the present complaint deserves to be dismissed at the very threshold.

7. 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.
8. The complainants and respondent have filed the written submissions on 10.10.2024 and 29.10.2024 respectively which are taken on record and have been considered by the authority while adjudicating upon the relief sought by the complainants.

E. Jurisdiction of the Authority

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

E. I Territorial jurisdiction

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

E. II Subject matter jurisdiction

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

Section 11(4)(a)

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

Section 34-Functions of the Authority:

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

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

F. Findings regarding relief sought by the complainants.

- G. I** Direct the respondents to withdraw/rectify/cancel/revoke/waive-off the enhanced amount of extra maintenance charges of Rs.1,85,041/- for the financial years 2013-14, 2014-15 & 2015-16 imposed on the complainants by the respondent no. 2 illegally, unlawfully and fraudulently.
- G.II** Direct the respondents to transfer the interest free maintenance security (IFMS) amounting Rs.1,23,150/-, deposited by the complainants at the time of buying the said floor no. M-456 at ground floor, into the account of Orchid Island Residents Welfare Association, as the RWA has already taken over the maintenance of Orchid Island on 01.04.2018.

G.III Direct the respondent no. 1 to return/refund the VAT Charges amounting Rs.77,315/- collected from the complainants illegally, unlawfully and fraudulently on 08.12.2016, along with prescribed rate of interest.

13. On 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.
14. On the basis of the documents and submission made by both the parties, the Authority observes that the complainants purchased unit no. M-456, located on the ground floor, situated in Orchid Island, Sector 51, Gurgaon, from the original allottees, Prem Prakash Srivastava and Madhu Srivastava. The floor buyer's agreement dated 02.02.2010 executed between the original allottees respondent no. 1 herein. The same was endorsed in favour of the complainants on 06.06.2012, upon the complainants agreeing and undertaking, inter alia, to be bound by the terms and conditions of the said floor buyer's agreement. Also, the maintenance and services agreement was executed between the parties herein on 06.06.2012. As per clause 28(a) of the buyer's agreement dated 02.02.2010, the possession of the subject unit was to be offered to the complainant on or before 02.02.2013. In the present complaint, the occupation certificate was received from the competent authority on 28.12.2012 and possession of the unit was offered to the complainants herein vide offer of possession letter dated 01.07.2013. Further, the physical possession of the unit was handed over to the complainants herein vide physical possession letter dated 07.10.2013.
15. Further, during proceeding dated 10.12.2024, the counsel for the complainants stated that the primary relief of the complainant is execution of conveyance deed of the allotted unit. On the other hand, the counsel for the respondent stated that the complaint is not maintainable as the occupation certificate of the project has been obtained by the respondent on 28.12.2012 and the complainants take the physical possession on 07.10.2013. He further stated that a complaint bearing no. 2298 of 2018 titled as Orchid Island Residents Welfare Association Vs. Orchid

Infrastructure Developer Private Limited seeking similar relief was dismissed by this Authority on 26.03.2019.

16. Though, the complainant is claiming to withdraw/rectify/waive-off the maintenance charges of Rs.1,85,041/-, to transfer the IFMS amount of Rs.1,23,150/- to the RWA and to refund the VAT charges to the tune of Rs.77,315/-. Admittedly, in the present complaint, the physical possession of the subject unit was taken by the complainants/allottees on 07.10.2013 and the present complaint has been filed by complainants on 18.01.2024, which is beyond the limitation of 3 years.
17. There has been complete inaction on the part of the complainant for a period of more than ten years till the present complaint was filed in January, 2024. The complainant remained dormant of their rights for more than ten years they didn't approach any forum to avail their rights. There has been such a long unexplained delay in pursuing the matter. One such principle is that delay and laches are sufficient to defeat the apparent rights of a person. In fact, it is not that there is any period of limitation for the authority to exercise their powers under the section 37 read with section 35 of the Act nor it is that there can never be a case where the authority cannot interfere in a manner after a passage of a certain length of time but it would be a sound and wise exercise of discretion for the authority to refuse to exercise the principle of natural justice provided under section 38(2) of the Act in case of persons who do not approach expeditiously for the relief and who stand by and allow things to happen and then approach the court to put forward stale claims. Even equality has to be claimed at the right juncture and not on expiry of reasonable time.
18. 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. Only those persons, who are watchful and careful of using his/her rights, are entitled to the benefit of law.

19. In the light of the above stated facts and applying aforesaid principles, the Authority is of the view that the present complaint wherein seeking delay interest on total amount paid, is not maintainable after such a long period of time as the law is not meant for those who are dormant over their rights. It is a principle of natural justice 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 the light of above, the said relief is declined being not maintainable as barred by limitation at this stage.

F.IV Direct the respondent no. 1 to get the legitimate and lawful conveyance deed of the floor no. M-456 executed in favour of the complainants.

20. The complainant is seeking the relief for the registration of conveyance deed in accordance with section 17 of the Act of 2016. The respondent/promoter has obtained the occupation certificate on 28.12.2012 thereafter, the respondent offer the possession on 01.07.2013. The complainant had taken the physical possession of the unit on 07.10.2013. Whereas the possession was offered by the respondent/promoter obtaining the occupancy certificate as per clause 29(b) of the buyer's agreement, the respondent shall prepare and execute along with allottee(s) a conveyance deed to convey the title of the said apartment in favor of the allottee but only after receiving full payment of total price of the apartment and the relevant clause of the agreement is reproduced for ready reference: -

"29. Procedure for taking possession

a).

b). Upon receiving an intimation in writing from the DEVELOPER THE FLOOR ALLOTTEE(S) shall within 30 days, take possession of the said FLOOR from the DEVELOPER by executing necessary indemnities, undertakings, and such other documentation as the DEVELOPER may prescribe and the DEVELOPER shall, after satisfactory execution of such documents and payment by the FLOOR ALLOTTEE(S) of all the dues under this Agreement including principal costs, interest, penalties, payment towards stamp duty and registration charges etc. permit the FLOOR ALLOTTEE(S) to occupy THE FLOOR, on the terms and conditions contained in this Agreement. If the FLOOR ALLOTTEE(S) fails to take possession of THE FLOOR as aforesaid within the time

limit prescribed by the DEVELOPER in its notice, then the said FLOOR shall lie at the risk, responsibility and cost of the FLOOR ALLOTTEE(S) in relation to all the outgoing cess, taxes, levies etc. and the DEVELOPER shall have no liability or concern thereof and further that the DEVELOPER shall also be entitled to holding charges as provided under clause 31.

Subject to the FLOOR ALLOTTEE(S) making all payments under this Agreement, the DEVELOPER shall prepare and execute along with THE FLOOR ALLOTTEE(S) a Conveyance Deed to convey the title of the said FLOOR in favour of FLOOR ALLOTTEE(S) but after payment of stamp duty, registration charges, incidental expenses for registration, legal expenses for registration and all other dues as set forth in this Agreement or as demanded by the DEVELOPER from time to time prior to the execution of the Conveyance Deed. The Parties agree that after the FLOOR ALLOTTEE(S) have provided all the details, documents as provided in the written notice as stated in this clause and/or other documents required for the purpose of registration of the Conveyance Deed, the DEVELOPER shall make all reasonable efforts to get the Conveyance Deed registered within a reasonable time. The FLOOR ALLOTTEE(S) agrees and undertakes to make himself/herself available for the purpose of registration on the date(s) as informed by the DEVELOPERS.

If the FLOOR ALLOTTEE(S) is in default of any of the payments as afore stated, then the FLOOR ALLOTTEE(S) authorises the DEVELOPER to withhold registration of the Conveyance Deed in his/ her favour till full and final settlement of all dues to the DEVELOPER is made by THE FLOOR ALLOTTEE(S). The FLOOR ALLOTTEE(S) undertakes to execute Conveyance Deed within the time stipulated by the DEVELOPER in its written notice failing which the FLOOR ALLOTTEE(S) authorizes the DEVELOPER to cancel the allotment and terminate this Agreement in terms of Clause 38 of this Agreement and to forfeit out of the amounts paid by him/her the EARNEST MONEY, processing fee, brokerage charges, holding charges, interest on delayed payment, any interest paid, due or payable, any other amount of a non-refundable nature and to refund the balance amount deposited by the FLOOR ALLOTTEE(S) without any interest in the manner prescribed in Clause 38 herein below.

The FLOOR ALLOTTEE(S) shall be solely responsible and liable for compliance with the provisions of Indian Stamp Act, 1899 (or any modification thereof) including any actions taken or penalties imposed by the Competent Authorities). The FLOOR ALLOTTEE(S) further undertakes to indemnify and keep harmless the DEVELOPER against all claims, demands, actions, proceedings, losses, damages, recoveries, judgments, costs, charges and expenses which may be made or brought or commenced against the DEVELOPER, for stamp duty in respect of THE FLOOR".

21. It is to be further noted that section 11(4)(f) provides for the obligation of respondent/promoter to execute a registered conveyance deed of the unit along with the undivided proportionate share in common areas to the association of the allottees or competent authority as the case may be as provided under section 17 of the Act of 2016 and shall get the conveyance deed done after obtaining of occupation certificate.

22. As far as the relief of transfer of title is concerned the same can be clearly said to be the statutory right of the allottee as section 17(1) of the Act provide for transfer of title and the same is reproduced below:

"Section 17: Transfer of title.

17(1). The promoter shall execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of the allottees or the competent authority, as the case may be, and hand over the physical possession of the plot, apartment of building, as the case may be, to the allottees and the common areas to the association of the allottees or the competent authority, as the case may be, in a real estate project, and the other title documents pertaining thereto within specified period as per sanctioned plans as provided under the local laws:

Provided that, in the absence of any local law, conveyance deed in favour of the allottee or the association of the allottees or the competent authority, as the case may be, under this section shall be carried out by the promoter within three months from date of issue of occupancy certificate."

23. As OC of the unit has been obtained from the competent authority on 28.12.2012, therefore, there is no reason to withheld the execution of conveyance deed which can be executed with respect to the unit. Accordingly, the Authority directs the respondent/promoter to execute the conveyance deed in favour of the complainants after payment of requisite stamp duty charges and administrative charges up to Rs.15,000/- as fixed by the local administration, if any, within 90 days from the date of this order.

G.VII Direct the respondent to pay legal expenses of Rs.1,00,000/- incurred by the complainants.

24. The complainants are also seeking relief w.r.t. cost of litigation/compensation. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as ***M/s Newtech Promoters and Developers Pvt. Ltd. Vs. State of UP & Ors.*** (supra) has held that an allottee is entitled to claim compensation & litigation charges under sections 12,14,18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses.

H. Directions of the authority: -

25. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the functions entrusted to the authority under sec 34(f) of the Act: -
- The respondent/promoter is directed to execute the conveyance deed in favor of the complainant/allottee within 3 months as per section 17 of the Act, upon payment of requisite stamp duty charges and administrative charges as per norms of the state government.
 - The respondent/promoter is directed not to charge anything which is not a part of the revised payment plan as agreed between the parties.
26. Complaint as well as applications, if any, stand disposed off accordingly.
27. File be consigned to the registry.

(Ashok Sangwan)
Member

v.l
(Vijay Kumar Goyal)
Member

(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 06.05.2025