

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

Complaint no.	:	4897 of 2022
Date of filing:		12.07.2022
Date of decision	:	22.04.2025

NBCC HEIGHT RWA Regd. Address: NBCC Heights Sector-89 Gurugram	Complainant
Versus	
M/s NBCC India Limited. Regd. office: NBCC Bhawan Lodhi road New Delhi- 110003	Respondent

CORAM:

Shri Arun Kumar
Shri Vijay Kumar Goyal
Shri Ashok Sangwan

Chairperson
Member
Member

APPEARANCE:

Sh. Randhir Singh (Advocate)
Sh. Ray Vikram Nath (Advocate)

Complainant
Respondent

ORDER

- The present complaint has been filed by the complainants/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 provisions of the Act or the Rules and regulations made there under 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.	Project name and location	NBCC Hights RWA, Sector-89
2.	Project area	11.300 acres
3.	Nature of project	Group Housing Colony
4.	RERA registered/not registered	Not Registered
5.	DTPC license no. & validity status	License No. 04 of 2009 dated 13.02.2009
6.	Name of licensee	National Building Corporation Limited
7.	Total no. of towers in the project	10 Towers, EWS, Community HALL, Shopping complex and Nursery School
8.	Occupation certificate	19.07.2017 (Page 37 of the complaint)
9.	NBCC Heights RWA Complainant herein through Sh. Randhir Singh Redhu and Dr. Kulbir Singh	Registered vide No. HR-18-2018-03437 dated 25.09.2018 under the Haryana Registration and Regulation of Societies Act 2012
10.	Approval of firefighting scheme	06.05.2022
11.	Environment clearance	10.08.2012

B. Facts of the complaint

3. The complainants have made the following submissions in the complaint:

- a. That the complainant NBCC Heights RWA is an apartment owners' association duly registered under the Haryana registration and regulation of societies act, 2012 having its registered office at NBCC heights, sector-89, Gurugram, Haryana.
- b. That NHRWA authorized Sh. Randhir Singh Redhu, president and Dr. Kulbir Singh, joint secretary of the association vide resolution dated 03/07/2022 empowered by GBM held on 07.05.2022, who are fully acquainted with the facts of the case and as such are competent enough to file the present complaint and is further authorized to do all acts, deeds and things, which are necessary for the prosecution of the present complaint.
- c. That NBCC (I) Ltd. has developed a residential project "NBCC Heights" at sector-89, Gurugram under the dtcp license no. 4 of 2009 dated 13th february 2009 file no. LC 1751 dated 19-07-2009.
- d. That NHRWA has been authorized by general body to proceed legally against NBCC for various issues like non completion of remaining work of the project (deficiencies) as per sanctioned plan and specification of Haryana building codes 2017, construction quality, non-handing over of common amenities and transfer of IFMS and take legal action of course to make NBCC responsible and legally bound to carryout remaining work of the project in a time bond manner without any further delay.
- e. That the NHRAW had sent letter dated 09-11-2018 to NBCC raising 40 points issue of the project, and also had several joint meetings with NBCC project officials since 2016 but works are still uncompleted. it is also submitted that the complainant over the last four years has discovered/uncovered umpteen violations of the Haryana development & regulation of urban areas act and Haryana apartment ownership act 1983 & 1987.

- f. That the complainant has since been chasing the respondents to address project deficiencies though without success being committed by the respondents herein with impunity violations have put the complainant and indeed the other allottees at a severe disadvantage.
- g. That the complainant seeks redress for the grievances resulting from the violation of the act before this authority, fully reserving its right to pursue other remedies before other tribunals/courts/adjudicating authorities as the case may be.
- h. That even after more than four and half years of obtaining the occupation certificate on 19th July 2017, the builder has neither registered project nor secured the completion certificate of the subject project. This violates, the mandate of the section 11(b) of the act, and also section 3.
- i. That key findings of the deficiencies are reproduced below:
 - i. That there are structural and workmanship defects appeared in underground columns and beams.
 - ii. That substandard concrete flooring of underground basement has become rough as the concrete broken apart.
 - iii. That the boundary wall near EWS side collapsed two years back that become security threat to the residents. not yet reconstructed. also portion of boundary wall about 60m has tilted outside.
 - iv. That there are seepage-leakage issues in underground through rainwater drains and expansion joints.
 - v. That there are seepage-leakage from overhead water tanks and need to be given water proofing.
 - vi. That there are issues of substandard outside plaster which have fallen down/peeled off at higher floors, seepage from roof terraces and underground water supply pipelines are unwrapped and rusted.

- vii. That there are nonstructural defects in flats and allottees are being forced to take possession of defective flats particular substantive base of tiles flooring and unskilled workmanship in laying of tiles in some of the flats need to be replaced/repaired.
- viii. That the air ventilation system in basement parking still not functional.
- ix. That the connection of sewer to the municipal line needs to be done.
- x. That there are defects in firefighting system need to be completed on priority.
- xi. That swimming pool needs to be made functional.
- xii. That 33 KVA electricity connection not provided.
- xiii. That consent to operate sewage treatment plant, NOC from chief electrical inspector and department of environment not renewed.
- xiv. That the builder collected @ Rs. 2/per Sq. ft common area maintenance charges from the oct 2019 to april 2020 but no account provided to the allottees need to refund the unspent amount to the NHRWA.
- xv. That solar water heating system is of substandard and nonfunctional need to be replaced with approved make.
- j. That NHRWA took over the operational maintenance of common area services w.e.f. 1st. april 2020 and made the payment to the maintenance workers for the month of april 2020. However, NBCC (I) collected the maintenance charges for the month of april 2020. NBCC neither reimbursed the expenditure made by NHRWA nor transferred the maintenance charge collected for the month of april 2020 to NHRWA.
- k. That common amenities/facilities as mentioned in clause 3 (f) of "Haryana apartment owners act 1983 and in para iii(b) 2 of deed of declaration such as swimming pool, convenient shopping and nursery school which are not counted in F.A.R. has not yet been handed over to NHRWA. infect promoter has sold nursery school and convenient

shopping outlets to the private owners. Given the above it is imperative that convenient shopping and nursery school buildings are to be handed over to association of apartment owners in accordance with the mandate under section 11(4)(a) and 14(f) of the Act.

- l. That the promoters are running a mammoth outstanding of approximately Rs. 20 lacs towards unpaid cam for unsold flats from may 2020 to date of possession of the respective flats. It is the obligation of the promoters under section 11 (4)(g) to do all repairs and maintenance for the uncomplete project and to pay all outgoings towards it. Noncompliance warrants penal action against the promoters under section 61 of the act.
- m. That some of the parking slots are not conforming to the Haryana building code 2017 in size and accessibility need allotment of appropriate parking slots to the flat owners.
- n. That promoter has collected @ Rs. 50/- per square feet from every flat owner towards interest free maintenance security (IFMS) which corpus as on date stood at Rs. 4,75,51,500/- promoter has failed to account for this money till date. the complainant made request dated 30.05.2021 for the refund to NHRWA.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s).
 - a. Direct the respondent that entire IFMS deposit along with interest @, the authority deemed feet accrued thereon w.e.f. 1st may 2020 (the date of handing over of common area maintenance to owners' association) is handed over to a duly elected body of apartment owners till date of payment it.
 - b. Direct the respondent to cancel the allotment of common facilities and hand over all the common area facilities/amenities of the project

such as covenant shopping and nursery school to flat owners association.

- c. To order the respondent for third party structural audit from a reputed govt. agency as per clause 10.2.4 of memo misc-2339-(HIBC)-loose- 11/7/9/2022- 2tcp dated 27-06-2022 Haryana building code 2017.
- d. To order the respondent to reconstruct the tilted and collapsed boundary wall on priority.
- e. Direct the respondent to submit deed of declaration of common amenities duly vetted by the authority.
- f. To order the respondents to complete pending works to the satisfaction of this authority in a time bound manner and obtain completion certificate from the competent authorities.
- g. To order the respondents to deposit their share of common area maintenance charges of all the flats due from 1st may 2020 to the date of possession of the respective flat.
- h. To order the respondents to handover all the inventories of the common area structure as defined in clause 3 of HAOA 1983 to the owner's association.
- i. To order the respondents to transfer the common area maintenance collected from the allottees for the month of April 2020.
- j. To order the respondent to transfer unspent amount of cam for the period of April 2019 to May 2020.
- k. To order the respondent to allot parking space conforming to Haryana building code 2017 where allotted parking spaces are smaller in size or have accessibility problem.
- l. To order the respondent to replace faulty solar water heating system.

m. Order the respondent to get renewed consent to operate sewage treatment plant, NOC from chief electrical inspector and department of environment.

5. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the act to plead guilty or not to plead guilty.

D. Reply by the Respondent.

6. The respondent has contested the complaint on the following grounds.

- a. That there are certain crucial facts that are pertinent to be brought to the kind notice of the learned authority, for proper adjudication of the instant matter, which has been stated hereunder.
- b. That it is pertinent to mention here that the respondent vide its letter dated 08.03.2022 has already requested the complainant to submit a declaration to the respondent certifying that the "complainant has taken over the complete management and maintenance of the common areas and facilities of the complex from the respondent", duly verified by the site office/executing division of the project with the details of all equipment and inventories post which the respondent shall initiate the process for releasing of the interest-free maintenance security (IFMS). but to date, no declaration/document has been received by the respondent.
- c. That it is pertinent to mention here that after the judgement of the Hon'ble Supreme Court in M/s Newtech Promoters vs State of UP on 11 November 2021. It has been made clear that the expression ongoing project means a project where the development work is going on and for which the completion certificate has not been issued but "excludes the projects where the common area and facilities have been handed over to the association of the residents' for maintenance".

- d. That, all the development work has been completed and the sale of sixty per cent of the apartment/house/plots have been executed.
- e. That the handover of the unit/flats and even the handing over of the maintenance services to RWA has been done on 27.04.2020. the copy of handing over and taking over note of maintenance services.
- f. That it is pertinent to mention here the respondent has always been very diligent and has been taking quick action to resolve the grievances of the unit holders of NBCC Heights, Sector 89, Gurugram.
- g. That respondent has always been very diligent and quick to resolve even the smallest issues of its residents in order to facilitate their serene living at NBCC Heights. It is further stated that there has been no such violation as alleged by the complainant and the respondent has always complied with all the prevalent rules and regulations.
- h. That complainant is well aware of the reasons attributable to non-receipt of completion certificate till date, which are beyond the preview and control of NBCC viz obtaining of 33KVA electric line which is to be provided by state electricity board etc. NBCC is constantly persuading with the concerned authority to do the needful at the earliest and have further invested more than Rs. 3.0 Crore in anticipation of getting the electric feeder from the state electricity Board (DHBVN).
- i. That maintaining the flooring of the underground basement etc. is a part of routine maintenance work, since the complainant has taken over the maintenance of the project, consequently, it needs to be carried out by the complainant on a regular basis.
- j. That the contract for the reconstruction of the boundary wall has already been given in december 2021 and thereafter the contractor had also mobilised the required machinery and manpower. However,



the alleged owners of adjacent property protested that their land has been encroached and stopped the work on this context.

- k. That the issues such as falling plaster, seepage from roof terraces, and rusting of pipelines are a matter of natural wear and tear and respondent has already handed over the common area maintenance to the complainant. The issues alleged are purely a part of routine maintenance that is to be carried out by the complainant itself and the respondent is in no way liable for such maintenance.
- l. That there are no such defects as alleged by the Complainant, further the allottees are taking possession of the flats of their own free will, without any coercion and only after their satisfaction. Also, it is pertinent to mention here that since the handover of the flats and the common area maintenance is done, the Hon'ble Haryana Real Estate Regulatory Authority (HRERA) is not the right forum for the disposal of the alleged issue.
- m. That that the complainant is well aware that the internal sewer line has already been laid and is functional. However, the municipal sewer line is outside the premises of the respondent and is to be provided by the state government. It is further stated that the respondent has already paid the requisite EDC/IDC fee to the Haryana Government for the same purpose.
- n. That there is no such defect in the firefighting system and the complainant is well aware that the fire NOC is extended and the same has been given to the Complainant.
- o. That the 33KVA electric line is to be provided by the state electricity board (DHBVN) and is beyond the control of the Respondent.
- p. That the renewal of the consent to operate the sewage treatment plant, NOC lies with the complainant as the maintenance of the project is

✓

under the purview of the complainant itself. It is however further stated that the respondent on its goodwill and to facilitate the residents, has already initiated the process to obtain CTO.

- q. That any data pertaining to the said period (October 2019 to April 2020) has not been provided by the complainant, hence the reconciliation of the maintenance accounts with M/s NBCC Services Ltd (M/s NSL), which was engaged as a third-party vendor for the common area maintenance of the Project, could not be done. In this regard various letters and emails were written to the complainant.
- r. That the solar water heating system has been already provided by the respondent as per the requirement to the complainant in working condition and now it is the responsibility of the complainant to maintain the same.
- s. That that multiple communications have been done by the respondent for the reconciliation of the maintenance-related accounts and requests have been made to the complainant for sharing the necessary inputs but there has been no response from the complainant, due to which the reconciliation of the maintenance accounts has not happened till date.
- t. That no such clause exists either in the Deed of Declaration or Haryana Apartment Owners Act 1983 in relation to the handover of the shopping centre and nursery school to the Complainant.
- u. That a payment of an amount of Rs. 22,07,617/- was made to the Complainant by the Respondent under a onetime settlement of maintenance charges till Dec-2020 vide NBCC letter no. NBCC/REM/2020/1701 dated 04.02.2021 and the same was confirmed by the Respondent vide letter dated 09.02.2021. The Complainant is claiming the wrong amount for which the Respondent

is not liable to pay. However, the respondent is paying to the complainant on regular basis as per the bills being provided by the complainant. The previous bill provided by the complainant for the period from January -22 to march 22 for an amount of Rs. 6,47,740/- has been paid to the complainant on 11.05.2022. The current bill for the period from April 2022 to June 2022 has been received on 03.08.2022 from the complainant vide letter dated 28.07.2022, the payment w.r.t the same has been made to complainant on 11.10.2022.

- v. That the parking slots provided are conforming to the prevailing rules & regulations of the Haryana State Government. However, any discrepancy in size & inaccessibility is being taken care of at the site with the individuals.
 - w. That respondent vide its letter no NBCC/REM/2022/4102 dated 08.03.2022 had requested the Complainant to submit a declaration to the Respondent certifying that "RWA has taken over the complete management and maintenance of the common areas and facilities of the complex from NBCC", duly verified by the site office/executing division of the project with the details of all equipment& inventories post which NBCC RE Division shall initiate the process for releasing for corpus fund. But till date no declaration/document has been received by NBCC RE Division.
 - x. That it is further stated that no interest is payable on the account of the corpus fund as it is an "Interest-Free Maintenance Security (IFMS)".
7. All other averments made in the complaint were denied in toto.
8. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority

9. The authority has complete territorial and 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, Haryana the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. In the present case, the project in question is situated within the planning area of Gurugram district. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

E.II Subject-matter jurisdiction

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

Section 11

.....

(4) The promoter shall-

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

Section 34-Functions of the Authority:

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

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



decided by the adjudicating officer if pursued by the complainants at a later stage.

F. Findings on the relief sought by the complainants.

F. I. Direct the respondent to refund interest free maintenance Security (IFMS) along with interest.

13. The respondent in its written argument stated that the NBCC has released an amount of Rs. 3,53,47,655/- to the RWA on 12.09.2024 after the adjustment of Rs. 1,22,03,853/- on account of IFMS maintenance charges, water, electricity charges as per the clause of application as agreed by the RWA. In view of the above submissions, no further relief is made out.

G.II. Direct the respondent to cancel the allotment of common facilities and handover the shopping complex and nursery school to the RWA.

14. The respondent stated that there is no specific clause within either the Deed of Declaration or the Haryana Apartment Owners Act, 1983 that addresses or requires the handover of the shopping center and nursery school to the complainant. Hence, there is no legal obligation exists to transfer possession or control of these facilities. In view of the above submission, no relief is made out in this regard.

G.III. To order the respondent for a third party structural audit of the Project.

15. It is admitted by both the parties that the respondent had already initiated the process of engagement of CBRI Roorkee to assess the said issue. A team of experts from CBRI had already visited the premises of the project in the presence of complainant and many other residents in April 2022. However, the Haryana Government intervened in the matter and initiated the process for structural Audit from shortlisted agencies by them. Also. Deputy Commissioner, Gurugram has proposed that charges for the same will be borne in the ration of 50-50% by RWA and builder (NBCC) respectively. Required documents have been submitted to the DTCP, Haryana. Now, the matter of structural Audit is being taken up by the Haryana Government

directly. On failure of the rectification of structural defects, the association may seek reliefs in terms of Section 14 of the Act of 2016 from the Adjudicating officer.

G.IV. To order the respondent to reconstruct the tiled and collapsed boundary wall.

16. The complainant took a plea that the boundary wall near EWS side collapsed two years back and that become security threat to the residents. On the contrary, the respondent promoter stated that the boundary collapsed due to some work carried on by the owner of the adjacent property on his own premises and not due to any quality issue or fault on part of the respondent. It further states that neither any monetary nor any other support has been provided by the complainant for the re-construction of the wall since the maintenance of the project is the responsibility of the complainant, yet the respondent on its own reconstructed collapsed and tilted boundary wall as a goodwill for the benefit and comfort of its residents. In view of the submissions, the above said relief become redundant as the collapsed and tilted boundary wall has already been reconstructed.

G.V. Direct the respondent to submit the deed of declaration of common entities.

17. The respondent stated that the deed of declaration has already been submitted to the Department of Town and Country Planning, Haryana by the respondent. Therefore, the above said relief become redundant.

G.VI. To order the respondents to complete pending works to the satisfaction of the authority in a time bound manner and obtain completion certificate from the competent authority.

18. As per matter on record, NBCC vide letter dated 05.03.2019 has already applied completion certificate as all the work regarding the project has been completed. Hence, no relief is made out in this regard.

G.VII. To order the respondent to deposit common Area Maintenance charges from May 1st 2020 till the handover.

G.VIII To direct the respondent to transfer the CAM charges for the month of April 2020.

G.IX To order the respondent to transfer the unspent CAM amount for the period of April 2019 to May 2020.

19. The above mentioned reliefs no.G.VII, G.VIII & G.IX as sought by the complainant is being taken together as the findings in one relief will definitely affect the result of the other reliefs and these reliefs are interconnected.
20. The respondent-promoter stated that all the payments with regard to the CAM charges have been made to the RWA and no further payment is to be made. It further stated that a payment of an amount of Rs. 22,07,617/- was made to the complainant by respondent under a onetime settlement of maintenance charges till December 2020. The respondent was paying the complainant on a regular basis as per the bills being provided by the complainant. It is important to note that after due reconciliation with the RWA the outstanding amount of Rs. 7,33,799/- was paid to RWA on 14.08.2023 and the matter is resolved as on date. In view of the above submissions, the above said reliefs become redundant as the matter with regard to the CAM charges has already been resolved between the parties.

G.X To order the respondent to handover all the common area inventories.

21. It is admitted by both the parties that, NBCC has already handed over the common area maintenance and inventories on 27.04.2020. Thus, no relief is allowed in this regard.

G.XI To order the respondent to replace the faulty solar water heating system.

22. The respondent in its written argument stated that the solar water heating system has been already provided by the respondent to the complainant-association in working condition and now it is the responsibility of the complainant to maintain the same.

23. Since, the equipment has already been handed over to the complainant-association, it is for them to take-up further operation and maintenance of the system.

G.XII To order the respondent to get renewed consent to operate the sewage treatment plant, NOC from the electrical Inspector and department of environment.

24. It has come to the knowledge of the Authority that the renewed consent to operate has been obtained from HSPCB and handed over the same to RWA on 10.04.2024. NBCC has also obtained NOC from electrical inspector and same has been handed over to RWA on 22.08.2024. Further action in this regard is required to be taken by the RWA.

G.XIII Compliance with the obligations under the rules of the Haryana Apartment Owner Association.

G.XIV Direct the respondent to allot parking space conforming with Haryana Building Code 2017

25. The above-mentioned reliefs no. G. XIII & G. XIV as sought by the complainant is being taken together as the findings in one relief will definitely affect the result of the other reliefs and these reliefs are interconnected.
26. The respondent stated that they have completed the project as per the sanctioned plan and specifications of Haryana Building Codes and Haryana Apartment Ownership Act, 1983.
27. It is important to note that the above said relief was not pressed by the complainant counsel during the arguments in the course of hearing. Also the complainant failed to provide or describe any information related to the above mentioned relief sought. The authority is of the view that the complainant counsel does not intend to peruse the relief sought by the complainant. Hence, the authority has not returned any findings with regard to the above mentioned reliefs.

H. Directions of the Authority:



28. Hence, in view of the factual as well as legal positions detailed above, the complaint filed by the complainant seeking above reliefs against the respondents is decided in terms of paras 13 to 27 above. Ordered accordingly.
29. Complaint stands disposed of.
30. File be consigned to registry.

(Ashok Sangwan)
Member

V.I. 3
(Vijay Kumar Goyal)
Member

(Arun Kumar)
Chairperson

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 22.04.2025

HARERA
GURUGRAM