

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

Complaint no.: 945 of 2024
Date of filing of complaint: 22.03.2024
Date of decision: 20.05.2025

1. Mr. Sitanshu Ranjan Kar
2. Mrs. Esther Sakunthala Kar

Both RR/o: - C-604, Tower-C, Chintels Paradiso, Sector-109, Gurugram

Complainants

Versus

1. M/s Chintels India Private Limited
2. Prashant Solomon
3. Ashok Solomon.

All having Regd. Office :- A-11, Kailash Colony, New Delhi- 110048

Corporate Office at: -Chintels Corporate Park, Near Chintels Chowk, Sector-114, Gurugram- 122017

Respondents**CORAM:**

Shri Arun Kumar
Shri Vijay Kumar Goyal
Shri Ashok Sangwan

Chairman
Member
Member

APPEARANCE:

Sh. Vivek Tanwer (Advocate)
Sh. Garvit Gupta (Advocate)

Complainants
Respondent

ORDER

1. This 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 details

2. The particulars of unit, 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	"Chintels Paradiso" situated in Sector-109, Gurugram
2.	Nature of the project	Residential Group Housing Colony
3.	DTCP license no.	1. 251 of 2007 dated 02.11.2007 Valid up to 01.11.2017 2. 09 of 2008 dated 17.01.2008 Valid up to 16.01.2018
4.	Name of licensee	Chintel Exports Pvt. Ltd.
5.	RERA Registered/ not registered	Not registered
6.	Allotment letter	24.02.2012 [Page no. 72 of complaint]
7.	Builder buyer agreement	03.05.2012 [Page no. 74 of complaint]
8.	Unit no.	C-604, 6 th floor, Tower- C [Page 77 of complaint]
9.	Unit admeasuring	3150 sq. ft. (super area) (Page 104 of the complaint)
10.	Possession clause	11.
12.	Due date of possession	
13.	Sale Consideration	Rs.1,68,58,275/- [Page no. 104 of complaint]
14.	Amount paid by the complainant	Rs.1,68,58,275/- [Page no. 104 of complaint]

15.	Occupation certificate	20.06.2017
16.	Possession letter	12.05.2018 [Page no. 135 of complaint]
17.	Conveyance deed executed on	05.07.2018 [Page no. 146 of complaint]

B. Fact of the complaint

3. The complainants have made the following submissions: -

- I. That the respondent initiated the development of the project as a residential group housing bearing license no. 251 of 2007 and 09 of 2008 dated 02.11.2007 and 17.01.2008, respectively, granted under the Haryana Development and Regulation of Urban Areas Act, 1976 by the Department of Town and Country Planning, (DTCP) Government of Haryana, and the combined zoning plan of the project area measuring 12.306 acres was approved vide office letter dated 27.07.2010. The building plan for the combined area of 12.306 acres was approved on 01.03.2011 by DTCP. The project comprised of 9 towers, nursery school, shopping complex, EWS, children's play area, club house, badminton and basketball courts, Gym, etc., and all were spread over 12.306 acres of land in Sector - 109 at Gurugram. The project was being developed in two phases: (i) Phase - I, comprising of five (5) towers being Tower D, E, F, G and H; and (ii) Phase - II comprising of four (4) towers being Tower A, B, C and J. Regarding the project, the respondent/developer had floated brochure making tall and bold claims regarding the 'Best Construction Practises' and American project management supervising the construction of buildings in the project adhering to NBC and ISI standards for the structural safety of the buildings for 50-75 years.

- II. That the complainants vide application form dated 22.12.2011, applied for the allotment of a residential unit bearing no. C-604, having a super area of 3150 sq. feet for a total consideration of Rs.1,51,96,750/- (exclusive of taxes and additional charges) payable in a construction linked manner. Pursuant to the application form, respondent provisionally allotted the said unit in favour of the complainants vide allotment letter dated 24.02.2012. Thereafter, the parties executed the apartment buyer's agreement dated 03.05.2012 in respect of the unit. That the buyer's agreement was a single sided document, which the respondent made the complainants to execute given respondent's better bargaining/financial position. Needless to mention that certain clauses of the buyer's agreement are against the provisions of Act, 2016 and Rules of 2017 formulated thereunder as well as the public policy of our country.
- III. That as per the buyer's agreement, the respondent was liable to give possession of the unit, complete in all respects and without any structural defects, within 36 + 6 months from 03.05.2012. Regardless, the stipulated time frame, the respondent secured occupation certificate by playing a fraud upon the authorities for phase-I in 2016 and possession was offered in 2017 whereas, the occupation certificate for phase-II was granted on 20.06.2017 and the possession was offered in 2018. Thus, after gross delay of over two years, the respondent offered NOC for possession of the said unit to the complainants vide communication dated 27.04.2018. Accordingly, vide possession letter dated 12.05.2018, the respondent handed over the possession of the unit to the complainants. Thereafter, in terms of the provision of the Haryana Apartment Ownership Act, 1983, a deed of apartment dated 03.07.2018 along with a conveyance deed bearing no. 5231 dated 05.07.2018 was

executed between the parties and registered at Sub-Registrar Office, Gurugram, and Haryana. Even certain clauses of these deeds are against the provisions of the Act and Rules formulated thereunder as well as the public policy of our country.

- IV. That the complainants, for purchasing the unit, have not only exhausted their entire life savings, but also availed a home loan for a sum of Rs.60,00,000/- from State Bank of India, wherein they have borne an interest of Rs.32,02,316/- for purchasing the said unit. The complainants have also borne an additional cost of Rs.5,89,500/- as stamp duty towards the registration of the unit. Further, in order to make the unit habitable for the complainants and their family, the complainants spent an additional amount of Rs.20,37,203/- towards renovation and woodwork after duly securing permission from the facility and operations manager of the project. At the time of booking of the unit, the market rate of the said unit was Rs.4,320/ sq. feet. and the present market rate for units in the adjoining projects are Rs.13,000/sq. feet, thus the respondent is also liable to pay a compensation of the difference in amount being Rs.2,73,42,000/- (Rs.8,680/- x 3150 sq. feet), towards the inflation of the unit's rate as per the current market rate.

Structural Defects

- V. At this stage, the complainants seek liberty to highlight the following relevant provision of the Rules, 2017 which are germane for effective adjudication of the present Complaint. Since in the year 2019, the complainants started experiencing defects in the unit, such as chip in the floor tile, cracks in the walls and no running water in kitchen and guest bathroom and the same was communicated to the respondent vide email dated 11.09.2019 to which the respondent never acted upon. Such

defects were nothing compared to the actual structural defects which came to light and were faced by the complainants since 2021 thereby putting the safety of unit in jeopardy as well as their lives. Within 2-3 years of the possession of the unit, the complainants noticed cracks in their unit and tower. The said cracks were instantly reported to the respondent for the first time along with the picture by the complainants on 04.04.2021 to which the respondent had assured to look into the matter and take corrective measures.

- VI. In 2021, long cracks were exponentially occurring at the outer walls of 6th and 7th floor of the Tower-C and in the ceiling of the unit's balcony, which raised an alarm concerning the lives and safety of the complainants. Thus, once again on 28.09.2022 they reached out to the Respondent and demanded instant repairs of the same. Notably, all these endeavors and requests made by the complaints fell on the deaf ears of the Respondent and they did not take any corrective measures.

Events of structural deficiency in the project

- VII. That the phase – I allottees took possession of their respective units in 2017 and from the very initial years of taking possession they observed certain structural issues in their respective flats, such as cracks in ceilings and balconies, poor installation of floor tiles, deflection in balconies, damp patches etc. Several emails were sent by the allottees of the respective buildings and the RWA to the respondent in this regard. However, the Respondent failed to take any effective action despite numerous requests thereby putting the lives of hundreds of allottees at risk. On 21.07.2021, a portion of the ceiling fell in front of the lift lobby of the fourth floor in Tower H. Even though there was no casualty, a young

child narrowly escaped from the incident site. Even then the respondent took no corrective measures to deal with such grave structural defects.

- VIII. In view of afore-stated serious structural deficiencies and the non-responsive approach of the Respondent, the Secretary of the Residents' Welfare Association ("RWA") raised the issue of structural safety as an agenda in a meeting held on 02.09.2020 with the respondent. Further, the RWA conducted a structural stability audit by 'Structure n Design' for Tower D and E. The findings of the said audit clearly stated that the buildings were unsafe for residential purpose. The findings of the report were brought to the notice of the respondent and even then, the respondent failed to take any action on the same.
- IX. That owing to the lackadaisical approach of the respondent, a fatal tragedy occurred in Tower-D of the project on 10.02.2022. An allottee of the unit no. D-603 was carrying out repair work, undertaken by the sub-contractor of the respondent, then suddenly the said unit caved-in, resulting in further collapse of the living room ceilings of unit nos. D-503, D-403, D-303, D-203 and D-103. Sorrowfully, the allottees of unit nos. D-203 (Mrs. Ekta Bharadwaj) and D-103 (Mrs. Sunita Srivastava) were the victim to such structural deficiency and building instability and they lost their lives.
- X. That on 13.02.2022, the District Town Planner (Enforcement), Gurugram took cognizance of the matter and vide Memo No. GN/DTP-E/2022/616 dated 13.02.2022 has filed an FIR No. 28 at Bajghera police station under Sections 120 B, 417, 420, 465, 467, 468 and 471 of the IPC along with Section 10 of the Haryana Development and Regulation of Urban Areas Act, 1975 against the Respondent and several others. In the said FIR, it was noted that the incident dated 10.02.2022 proves that the certificate

of structure engineer and proof consultant and work of the contractor is not credit worthy and is rather fraudulent for the concerned project and the same shall be investigated into. The respondent in the present case has obtained the occupation certificate/ completion certificate by playing a fraud upon the authority and such occupation certificate/ completion certificate are non-est in the eyes of law and hence, the possession offered on the basis of these documents is no possession in the eyes of law.

- XI. Further, in view of the incident dated 10.02.2022 at the project, the DTP vide letter dated 14.02.2022, appointed Indian Institute of Technology, Delhi, to provide their technical consultancy services for structural stability audit of the buildings in the project and the causes of the incidents. Thus, IIT was appointed to conduct the required tests and to send clear recommendations as to; whether these building structures are safe for habitation, and if not, whether reparable along with indications of the methodology to be adopted for such necessary repairs. The DTP vide order dated 24.02.2022 appointed a SIT Committee inter-alia to supervise the resettlement of families residing in Tower D and to supervise the shifting of the families in Towers E, F, G and H till the finalization of the audit given the fact that these towers were not safe for habitation.
- XII. That the IIT, vide its preliminary report dated 12.03.2022, submitted that the building structures given the age were deteriorating rapidly than usual rate. And in order to identify the root cause amongst issues related to structural design, material quality, and construction quality, a detailed structural audit of the structures of the Project be carried out. Accordingly, on 20.9.2022 the IIT submitted its first report regarding Tower D and subsequently on 25.10.2022. Acting upon the findings of the

IIT report on the unsafe structures of the project, the SIT committee released a report on 08.11.2022, wherein the committee recommended to the DC to direct the Respondent to immediately resettle all the residents/allottees of the Towers A, B, C, E, F, G, H, and J as these towers were not safe for habitation, thereby putting the lives of hundreds of the allottees in jeopardy.

Tower – C report on structural condition dated 26.06.2023

- XIII. The following are the recommendations from the IIT Delhi in its Structural Condition Report dated 26.06.2023 on the Tower – C of the Project. The Structural Report of Tower – C clearly indicates that compromises were made by the respondent by using low grade concrete and untreated water to construct the structures in the project in absolute violations of the provisions of the Haryana Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963 as well as the licenses granted to the respondent by the authorities. Thus, it is evident that the unit allotted in the project is unsafe for habitation as the appearances in case of corrosion are deceptive. Further, the repair of project's structure for safe usage is not technically and economically feasible. Accordingly, based on this report, the DTP vide Memo No. GN/OTP-E/11914/2023 dated 21.07.2023 communicated to the District Magistrate, Gurugram for assessment of the project followed by annual structural audit.
- XIV. That the respondent has miserably failed to develop the Project in accordance with the approvals granted, thereby compromising the structural stability of the building and making the building unsafe for habitation including tower-C. The respondent has used the same material and same processes/standards in the construction of Tower-C as

respondent did in Tower-D. Hence, the Tower-C is also unsafe for habitation and is bound to meet the same fate as Tower-D. Needless to state that the poor quality of construction of the buildings/towers of the project are uniform as the construction was done at the same time and the foundation for all the towers were laid at the same time. Thus, in no manner can the respondent wriggle out from the present liability of misrepresenting and playing a fraud upon the innocent complainants. It is only a matter of time in which the complainants Tower-C may also collapse thereby putting the lives of the complainants at grave risk.

Miscellaneous problems faced by the complainants

XV. That apart from the structural defects, the Complainants are also facing issues such as:

- The complainants unit being located just a few meters from the Tower-D, wherein activities of demolition will take place followed by re-construction work, makes the unit unfit for peaceful habitation as represented in the brochure and by the representatives of the respondent at the time of booking the unit;
- Further, the respondent has barricaded the Central Park, half of the play area, half basement, children's play area, badminton and basketball courts inter-alia, several common areas in the guise of ensuring the safety of the residents and even barricaded half the approach road without the consent of the allottees in absolute violation of the provision under Section 14 (2) (ii) of the Act and other laws of the land. Interestingly, the Respondent is till date compelling the allottees inter-alia the Complainants to pay the entire CAM charges without any proportionate reduction in the same despite the reduction in common area against the ABA and laws of the land;
- Importantly, after the IIT Report, the Complainants are unable to carry out any repair works in their Unit as the same shall hinder the monitoring process of the rate of corrosion, thus in such a situation, the Complainants are compelled to reside in such unsafe structure without carrying out any repair work; and

- Complainants are living in constant mental and emotional stress after the unfortunate incident of 10.02.2022, followed by IIT Report declaring the Complainants' Tower-C unsafe for habitat.
- Whenever the Complainants are pointing out Respondent's illegal conduct/ steps taken in the garb of safety of allottees while inter-alia illegally barricading the common areas in the garb of redevelopment, Respondent's staff and representatives are not only misbehaving with the Complainants but also extending them life threats of physical injury, thereby creating deep fear for the safety of their lives in their minds. The Complainants reserve their right to initiate appropriate legal proceedings against the Respondents, both civil and criminal in this regard.

XVI. From the aforesaid, it is clear that the respondent despite being well aware of the poor and subpar quality of material causing the structural defects, offered possession of the units in the project to the allottees including the present complainants. At this juncture, it is noteworthy to highlight that the grave structural defects in the project are a matter of common knowledge. This Authority has acknowledged that the units situated in the project are unsafe for habitat owing to structural defects.

XVII. In these peculiar circumstances, wherein repeated requests, and representations for curing structural defects have been made by the complainants, the respondent has failed to carry out the necessary timely repairs of the unit. Now the Tower-c is rendered inhabitable as reported by IIT Delhi and the same is extremely unsafe for residential purposes, thereby putting the lives of the complainants at risk. It is to be noted that that the complainants are respected senior citizens of the society who have only after relying upon the brochure of the project and the advertisements made and the representation of the respondent, opted to book a unit in the project. Thereafter, the complainants paid a huge consideration amount in a timely manner as per the opted payment plan by inter - alia availing home loan from SBI Bank towards the Unit, which

was supposed to be inherently structural stable and safe for habitation. However, the respondent has played a fraud upon the complainants by fraudulently allotting a defective unit in the project. The respondent has also grossly violated the agreed terms of the buyer's agreement and the provisions of the Act, 2016 and other laws of the land. Under these circumstances, the complainants without prejudice to their rights and contentions inter-alia seek refund of the amount paid from 22.12.2011 date of actual payment with interest @18% p.a. from 22.12.2011 till the date of actual payment.

- XVIII. Thus, considering the foregoing, the complainants having left with no other option, on 12.02.2024, served a legal notice upon the respondents. That the respondents responded to the said legal notice vide reply dated 17.02.2023. It is submitted that a holistic reading of the reply received from the respondents amounts to admission to the extent that the project in question is structurally deficient and it is within their knowledge.
- XIX. In light of the aforesaid, it may be pertinent to refer to the relevant provisions of the Act, under which the remedy of the complainants' lies. The following provisions of the Act deals with the situation wherein, (i) the promoter deceives the allottees to buy poor constructed units by making false statements/advertisements and misrepresentations; and (ii) allottee intends to withdraw due to the failure of the developer to deliver to an allottee possession of the unit, which is safe and habitable in accordance with the terms of the agreement and the section of 12, 14(3), 18(1) and (3), and 19(4) of the Act of 2016. Thus, by the law of the land and the definition as described under the Act, the Complainants are entitled to receive interest @18% p.a. on the refund and other compensation as sought in the present complaint.

XX. That the structural strength and stability of the Tower-C has been compromised by the presence of excess chloride resulting in rapid corrosion and deterioration of the tower/building and the units therein. At this stage, it is to be noted that the project premises fall under a Seismic Zone IV which is highly vulnerable to earthquakes and residing in such a structurally unsafe unit is a matter of grave concern and puts the lives of the complainants at grave risk.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s):
 - I. Direct the respondent to refund the entire amount of Rs.1,68,58,275/- along with interest @ 18% per annum from the date of respective payments till actual payment to the complainants in terms of apartment buyer's agreement dated 03.05.2012.
 - II. Direct the respondent to pay the difference to Rs.2,73,42,000/- to pay the complainants towards the difference in the inflation rate of the unit from 2011 till filing of the present complaint.
 - III. Direct the respondent to pay Rs.32,03,316/- along with interest @ 18% per annum from the date of respective payments till actual payment to the complainants paid by them as interest towards the SBI home loan availed for purchasing the unit;
 - IV. Direct the respondent to pay Rs.5,89,500/- along with interest @ 18% per annum from the date of respective payments till actual payment to the complainants towards the stamp duty/registration cost of the unit.
 - V. Direct the respondent to pay Rs.20,37,203/- to the complainants to the renovation work done by the unit.
 - VI. Direct the respondent to pay Rs.50,00,000/- to the complainants towards the mental agony;
 - VII. Direct the respondent to pay Rs.1,00,000/- to the complainants towards the litigation cost.
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 contested the complaint on the following grounds. The submission made therein, in brief is as under: -

Instant complaint barred by section 14(3) of the Act

- i. That the complainant no. 1 was offered possession of the unit by way of letter dated 29.06.2017. In light thereof the structural defect (if any) ought to have been raised within 5 (five) years from the date of offer of possession as per section 14(3) of the Act, which period expired on 29.06.2023. Till date no grievance has been raised by the complainants in respect of any 'structural defect' as provided under the Act.
- ii. That clause 27 of the buyer's agreement provides the manner and form of notices which would be deemed as proper notice in respect of matters related to the buyer's agreement. Admittedly, no correspondence was ever carried out by the complainants on the address provided by the respondents to the complainants to raise its grievance under the buyer's agreement.
- iii. That in light of the foregoing facts, it is most humbly submitted that the claim of the Complainants is barred under section 14(3) of the Act, 2016.

Instant complaint barred in light of clause 15 of the buyer's agreement

- iv. That clause 15 of the ABA reads thus:

"15. Force Majeure Events:

The Company shall not be held liable or responsible for non-performing any of its obligations or undertakings provided in this Agreement if such performance is prevented, delayed or hindered by Force Majeure Events' such as non-availability of or inadequate supply of steel and/or cement or other building materials, or water or electric power or labour, slow down, strike or due to dispute with the construction agency employed by the company, lock-out or civil commotion, war or enemy action or by reason of earthquake, major fire, act of God, terrorist action or by reason of change of law, act, notification, prohibitory order, rule of Government and/or any

other public or competent authority or due to delay in the grant of completion/occupancy certificate by any competent authority or if competent authority refuses, delays, withholds, denies the grant of necessary approvals of the said Apartment/Building for any amenities, facilities intended to be created therein or if any matters, issues relating to such approvals, permissions, notice by the competent authority become subject matter of any suit/writ/litigation before a competent court or for any reason beyond the control of the Company, In such event, the Company shall not be liable for any compensation or damages in any manner whatsoever."

(Emphasis Supplied)

- v. That a perusal of the above-quoted clause of the mutually agreed buyer's agreement would reveal that no claim against the respondent no. 1 would be maintainable where the same related to building materials and/or relating to the issues between the respondent No. 1 and its construction agency, i.e., M/s Bhayana Builders Pvt. Ltd., which as per the charge sheet filed by the CBI is responsible for the lapses in Phase-I of the project.
- vi. That in light of the foregoing facts, it is most humbly submitted that the claim of the complainants is barred by clause 15 of the buyer's agreement.
- No privity of contract between the respondent nos. 2 & 3 and the complainants**
- vii. That it is most humbly submitted, admittedly, the ABA came to be executed between the Complainants and the Respondent No. 1 only.
- viii. That it is inconceivable that the complainants have sought relief against the respondent nos. 2 and 3 under the complaint, without specifying their role in the alleged grievances raised by the complainants. Instead without specifying exact facts and events that reveal assign the role of each of the said respondents, an omnibus statement has been made by the complainants against all respondents to seek relief under the complaint.

ix. That in light of the foregoing facts, it is most humbly submitted that *ex-facie* the instant complaint is non-maintainable qua the respondent no. 2 and 3

7. Copies of all the relevant documents have been filed and placed on the record. The authenticity is not in dispute. Hence, the complaint can be decided on the basis of those undisputed documents as well as written submissions made by both the parties.

E. Jurisdiction of the authority

8. The respondent has raised a preliminary submission/objection the authority has no jurisdiction to entertain the present complaint. The objection of the respondent regarding rejection of complaint on ground of jurisdiction stands rejected. 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

9. 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

10. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottees 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.

11. 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.
12. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in *Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. 2020-2021 (1) RCR (C), 357* and reiterated in case of *M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022*, wherein it has been laid down as under:

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

compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."

13. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the cases mentioned above, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.
- E. **Findings on the relief sought by the complainants**
- E.I Direct the respondent to refund the entire amount of Rs.1,68,58,275/- along with interest @ 18% per annum from the date of respective payments till actual payment to the complainants in terms of apartment buyer's agreement dated 03.05.2012.
 - E.II Direct the respondent to pay the difference to Rs.2,73,42,000/- to pay the complainants towards the difference in the inflation rate of the unit from 2011 till filing of the present complaint.
 - E.III Direct the respondent to pay Rs.32,03,316/- along with interest @ 18% per annum from the date of respective payments till actual payment to the complainants paid by them as interest towards the SBI home loan availed for purchasing the unit
 - E.IV Direct the respondent to pay Rs.5,89,500/- along with interest @ 18% per annum from the date of respective payments till actual payment to the complainants towards the stamp duty/registration cost of the unit.
 - E.V Direct the respondent to pay Rs.20,37,203/- to the complainants to the renovation work done by the unit.
 - E.VI Direct the respondent to pay Rs.50,00,000/- to the complainants towards the mental agony;
 - E.VII Direct the respondent to pay Rs.1,00,000/- to the complainants towards the litigation cost.
14. On bare perusal of the documents available on record the Authority observes that the complainants were allotted a unit bearing no. C-604, 6th floor, in Tower- C, of the project of the respondent company namely, "Chintels Paradiso" situated in Sector- 109, Gurugram vide allotment letter dated 24.02.2012. An apartment buyer's agreement was executed between the parties herein regarding the subject unit on 03.05.2012. As per clause 11 of the buyer's agreement, the respondent company was under an obligation to

handover the possession within 36 months with a grace period of 6 months from the date of start of actual construction of a particular tower/building. The due date of possession is calculated from the date of execution of apartment buyer's agreement dated 03.05.2012. Therefore, the due date of possession comes out to be 03.11.2015 including 6 months grace period. The respondent/promoter has obtained the occupation certificate from the competent authority on 20.06.2017 and the physical possession of the unit was handed over to the complainants/allottees vide possession letter dated 12.05.2018. Also, the conveyance deed of the subject unit was executed between the complainant and the respondent/promoter on 05.07.2018.

15. At this later stage, the complainants wish to withdraw from the project owing to the substandard quality of material used for construction of building in which unit of the complainants is situated. Such a use of inferior materials by the respondent, have culminated in grave structural deficiencies adversely affecting the stability and safety of the project. Substantiating the same, Prof. S. Bishnoi, Prof. D.R. Sahoo and Prof. V. Matsagar Department of Civil Engineering of the Indian Institute of Technology, Delhi (IIT Delhi) prepared a report on structural condition of the project 'Chintels Paradiso' situated at Sector 109, Gurugram (Tower-C). The findings of the said audit, highlighting significant structural inadequacies, were submitted to the District Town Planner (Enforcement), Gurugram, on 26.06.2023. Para 7 of the report on structural condition of Chintels Paradiso Sector 109, Gurugram (Tower-C) is reproduced herein ready reference:-

After perusal of the IIT Delhi report, citizen complaints, statements and records provided by various stakeholders, the committee is of the following opinions-

1. *As per IIT Delhi report, **the structure of Tower B and Tower C are safe for habitation at present, but due to high chloride content in the concrete throughout the structure, the structure will deteriorate in a pattern***

unbecoming of a stable RCC structure. Therefore, the committee recommends the following:

- a. The structure of Tower B and Tower C shall be assessed, in light of the findings of IIT, Delhi, by another agency, preferably **CBRI to suggest rehabilitation measures** so that the effect of corrosion could be counterbalanced and the structure could be saved from any further structural damage. If this is feasible, then the builder shall be mandated to follow the instructions of such agency and get the outcome certified from it.
 - b. If the conclusion of the agency as stated above remains same that of IIT, Delhi, i.e., the building is safe at present, but is bound to deteriorate due to high chloride content in concrete and it is not technically feasible to rehabilitate it, then the builder shall do the annual structure audit of Tower B and Tower C every January through one of the four empaneled Structure Audit Consultants. This structure audit report shall be shared by the Builder with RWA as well as DTP office. In case of adverse structure audit report, the builder shall compensate the owners in the same way as of other towers which have been declared unsafe for habitation. In the meantime, the builder as well as residents shall not undertake any structural repair without the permission of the Administration.
2. The committee is of the opinion that **both the construction agency and developer failed to ensure quality construction**. Timely intervention such as testing of concrete and use of material which does not have chloride content beyond prescribed limit could have been vital in ensuring the required structural safety of this tower.

16. Further, the relief of refund cannot be sought by the complainants at such a belated stage wherein occupation certificate was obtained by the respondent on 20.06.2017. Thereafter, peaceful possession of the unit was also taken over by the complainants on 12.05.2018 without any protest. It is pertinent to mention that the conveyance deed had also been executed between the parties on 05.07.2018.
17. Moreover, clause 2 of the conveyance deed dated 05.07.2018, specifically mention that the construction of the said unit was as per the agreed specifications and to the satisfaction of the complainants/vendee and that the complainants/vendee shall not raise any claim whatsoever against the respondent/vendor in respect of any defects or deficiency in construction, quality of the material used. Clause 2 of the conveyance deed dated

05.07.2018 is therefore relevant and reproduced herein for ready reference:-

*That the VENDOR has handed over the vacant and physical possession of the property mentioned above to the Vendee with all its rights, and privileges so far held and enjoyed by the Vendor to hold and enjoy the same forever free from all encumbrances whatsoever. The Vendee acknowledges that Vendee has taken over of possession of the said property and has further confirmed that all the fixtures, fittings are in order and **further confirms and acknowledges that the construction of the said flat is as per agreed specifications and is to the satisfaction of the Vendee and that the Vendee shall not raise any claim whatsoever against the Vendor in respect of any defects or deficiency in construction, quality of the material used or on account of any delay, etc.***

18. The Authority observes that the title of the above property allotted to the complainants has been duly transferred to the complainants through the above conveyance deed. In view of the above, no case for refund is made out under the provisions of the Section 18 of the Act, 2016 as the same can only be invoked in case the promoter fails to complete or is unable to give possession of an apartment or building in accordance with the terms of agreement of sale or, as the case may be, duly completed by the date specified therein. Nor is there any defect in title for which the complainants can be compensated. However, it is relevant to refer to Section 11(4) (a) read with Section 14(3) of the Act, 2016 in the present matter which state as under:

11(4) (a) shall 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:

Provided that the responsibility of the promoter, with respect to the structural defect or any other defect for such period as is referred to in sub-section (3) of section 14, shall continue even after the conveyance deed of all the apartments, plots or buildings, as the case may be, to the allottees are executed.

"Section 14: Adherence to sanctioned plans and project specifications by the promoter

- (1)
(2)
(3) *In case any structural defect or any other defect in workmanship, quality or provision of services or any other obligations of the promoter as per the agreement for sale relating to such development is brought to the notice of the promoter within a period of five years by the allottee from the date of handing over possession, it shall be the duty of the promoter to rectify such defects without further charge, within thirty days, and in the event of promoter's failure to rectify such defects within such time, the aggrieved allottees shall be entitled to receive appropriate compensation in the manner as provided under this Act."*

19. In light of the above, the promoter is liable for structural defect or any other defect even after execution of conveyance deed for such period as prescribed under sub-section (3) of section 14 of the Act 2016. Therefore, though the relief of refund is not maintainable before the Authority, but the complainants are at liberty to approach the Adjudicating Officer in terms of Section 14(3) of the Act, 2016.

Order accordingly.

Complaint as well as applications, if any, stand disposed off accordingly.

File be consigned to registry.

(Ashok Sangwan)
Member

(Vijay Kumar Goyal)
Member

(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 20.05.2025