

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

Complaint no.	:	6100 of 2022
Date of complaint	:	07.09.2022
Date of decision	:	15.07.2025

Our Homes Welfare Association

**R/o:** Village Gadoli Khurd, Sector 37, Gurugram  
Versus**Complainant**

M/s Apex Buildwell Pvt Ltd.

**Registered office at:** 14A/36, WEA Karol Bagh,  
New Delhi-110053**Respondent****Coram:**

Sh. Arun Kumar

Sh. Ashok Sangwan

**Chairperson  
Member****APPEARANCE:**

Mr. Sukhbir Yadav (Advocate)

Mr. Akash Yadav(Advocate)

**Complainant  
Respondent****ORDER**

1. The present complaint has been filed by the complainant association 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. Facts of the complaint:**

2. The complainant has made the following submissions in the complaint:
  - a. That the Complainant is a Residents Welfare Association named as Our Homes Welfare Association Phase-2, is a registered society under the

Industries and Societies Act, hereinafter referred as "the Complainant". The Complainant vide its minutes of meetings has authorized Sh. Ravi N. Vats, Vishal Kapoor to sign, file affidavit, appear, withdraw the present complaint on behalf of the Complainant. The society herein above mentioned be referred to as the "Complainant" for the present Complaint.

- b. That the Complainant is an allottee within the meaning of Section 2 (d) of The Real Estate (Regulation and Development) Act, 2016. The Respondent Company, Apex Buildwell Pvt. Ltd is a limited company incorporated under the Companies Act, 1956 and is inter alia engaged in the business of providing real estate services.
- c. That somewhere around in 2013, the Respondent advertised about its new affordable group housing project namely "Our Homes" (hereinafter called as the "project") located in Village Gadouli Khurd, Sector 37 C, Tehsil and District, Gurgaon. The Respondent painted a rosy picture of the project in their advertisement making tall claims and representing that the project aims at providing world class amenities and infrastructure.
- d. That the Complainants based on the features as disclosed in the brochure published by Respondent, booked units as per their convenience in the affordable group housing project namely "Our Homes" located in Village Gadouli Khurd, Sector 37 C, Tehsil and District, Gurgaon. It is pertinent to mention here that the respondent in the said Brochure promised to develop new affordable group housing project namely "Our Homes" located in Village Gadouli Khurd, Sector 37 C, Tehsil and District, Gurgaon, with unique features like 24x7 Security and maintenance Services, easy accessibility, 24x7 Internal Security having access-controlled entry and exits with Proper boundary wall around the

periphery, in-premise maintenance services, 24x7 Power Backup, Landscaped Greens, Exclusive Recreational Facility, Community Shopping, Healthcare Centre, Early learning Centre, etc.

- e. That the residents of the Complainant society booked the units in the said project and further the Respondent allotted the units to the respective members of the society. The members of the Complainant society executed builder buyer agreement with the Respondent which consist of terms and conditions and other details of the project. The members of the Complainant society made timely payments to the Respondent as per their payment plan and as and when demanded from the Respondent but the construction of the project got delayed. The Complainant members approached the Respondents several time to enquire about the handing over of possession of the unit as the project was delayed due to the reasons best known to the Respondent. However, the Respondent despite knowing the fact that the project has been delayed inordinately, kept on demanding the payment as per the payment schedule. The Complainants being genuine Homebuyers made payment of the sale consideration as per demands raised by the Respondent with a hope that the project would be handed over to the complainant within the time limit prescribes as per Builder buyer Agreement but to its contrary, the project was completed with the delay of approx. 2 years. The said delay in handing over the possession of the units caused mental agony and financial hardship upon the complainants.
- f. That after several requests from the Complainant regarding delay in handing over the possession of the said flat; the Respondent after a delay of about 2 years from the due date of possession as agreed between the Complainants/ apartment owners and Respondent, offered



the possession and subsequently the complainant being in need of Accommodation took the possession of the said flat despite having found several irregularities at the time of offer of possession. It is submitted that throughout this period the Complainants along with the other apartment owners regularly and repeatedly followed up with the representatives of the Respondent and enquired about the status of the project. However, the representatives of the Respondent on every occasion made false assurances that the possession of the Flat would be delivered as per schedule and kept on prolonging the matter unjustifiably without any cogent reason.

- g. That the Complainants had purchased the flat with intention that after purchase, their family will live in own flat having all facilities as promised at the time of booking of the units in the project. It was promised by the respondent at the time of receiving payment for the flat that the possession of fully constructed flat along with the likes of Basement and Surface Parking, Landscaped lawns, EWS etc. as shown in Brochure at the time of sale, would be handed over to the complainant as soon as construction work is complete i.e. by 2017 but there was an inordinate delay in handing over the possession of the Flats.
- h. That the Complainant while inspecting the Flat, after taking the possession, came to know that the respondent had left doing plaster in the entire shaft area resulting into which the bricks in the shaft area are visible and seepage also making the particular area very weak. The Complainant had requested the Respondents and its employees several time but they always responded in vernacular "itne me flat mil gaya wo kam hai kya".
- i. That it is the statutory obligation to install fire equipment's in societies as per guidelines issued by the fire department of the State. But the



respondents have miserably failed to provide the basic statutory requirement to the residents of the society. Firefighting equipment was found to be defunct, fire hydrants were not even connected to fire line, alarm panelling were not connected to electrical power supply, fire extinguishers were not serviced in spite of fact promotor having NOC from fire department and DTCP. Complaint was lodged with CM Window on 09.12.2020 No-CMOFF/N/2020/091757. The residents of the society are living at risk and any mis-happening could happen at any point of time. Subsequently, the respondents have failed to provide emergency fire stairs in their project which would cause a serious hazard to the life and limb of the complainants and other allottee in case of any mis-happening in the project. However, the Complainant on various occasions raised their concern regarding the same but the Respondent failed to comply with the requests of the Complainants.

- j. That all the allottees in the project having been granted temporary(commercial) of 100KW connection of electricity instead of domestic connection due to which the complainants along with the members of the society are forced to pay higher price of electricity per unit. It is further to note that in the said project the sanction load of the electricity is 100 KW which is insufficient for providing electricity to all the residence of the society and that too in both phase of the project. It is further to note that the complainant along with other residence of the society have already paid full amount in advance on account of electricity charges at the time of purchase of their respective units. But the Respondent clearly failed to provide separate connection of electricity to the allottees of the society in both the phases of Project. It has come into the knowledge of the Complainant that the Respondent has failed to submit the bank guarantee amounting to Rs. 3,21,55,731/-

crore if supplied from 11Kv line from sector 9 to the to Apex premises as an interim time gap arrangement (page 22 para-e) concerned department for 33KV/11KV electricity load as per HERC/Review application no. 01 of 2022 dated 28.03.2022 despite having been specific direction from the Electricity Regulatory Authority.

- k. That the said project having around 700 flats but the sewerage treatment plant as installed in the project is not sufficient to treat the sewerage disposal. The complainants have time and again requested the respondents to upgrade the sewerage treatment plant but nothing substantial has been done on the part of the respondents. The respondents in order to hide its irregularities started illegally and unlawfully disposing the untreated sewage waste in open areas adjacent to the said project. The untreated sewage waste is resulting in health hazards and further causing life threat to the residence of the society and the respondents despite being aware of the circumstances created due to discharge of untreated sewage waste due to less capacity of sewage treatment plant have not taken any action. The Respondents have flouted all the rules and regulation issued by the concerned department regarding the treatment of sewage waste. The Respondent has clearly failed to adhere the conditions imposed by Hon'ble National Green Tribunal to ensure the treatment of sewage waste by establishing Sewerage Treatment Plant having adequate capacity. Further promotor has illegally bypassed the STP pipeline on 23rd April 2022 without taking prior permission from the concerned authorities and the same act is a clear violation of the rules and regulations.
- l. That the project in question is having several structure defects due to poor construction quality and use of disproportionate construction material in the construction of the project and further poor



workmanship. The Complainant also filed a Complaint on CM Window dated 11.02.2021 No-CMOFF/N/2021/012888 regarding the same but no action has been taken by the concerned department. The quality of bad construction was visible soon after of the occupation certificate of the project as the exterior plaster of the project started falling off and resulting into big holes and cracks in the walls. It is further to note that due to use of poor quality of construction material the plaster on the areas wherein the drainage and sewer pipes are passing through, the plaster has started falling off inside of the bedrooms of the residence due to which the residences of the society had to get the plaster done all over again. In some of the flats, the seepage problem is persistence in the wooden wardrobes and the same is causing huge loss to the residence of the society. The Complainant further submits that there is an inadequate drainage facility in the said project and in the rainy season, the first floor residents of all the towers had to suffer most as the draining system in the balcony gets completely failed due to less capacity draining pipes in 1st floor balconies as drainage/sewer pipes are passing from these balconies. It is further to note that water gets overflow/backflow from the draining system in the balcony area which caused a heavy waterlogging in the rooms and the balcony.

- m. That the Respondent is duty bound, as per the regulations by the government concerned, to install solar system on every tower of the project although hot water pipelines do exist in every kitchen in every floor but the respondent clearly failed to install the same. The solar panels were not installed at the time of obtaining occupation certificate of the project. The said act shows the malafide intentions of the Respondent. However, at the time of booking of the said unit, it was assured by the Respondent that the entire project would be having





proper solar system but to its contrary, there is no provision of solar panel in 16 towers of phase 2 of the project.

- n. That the basement of the project is having seepage and rainwater leakage issue and during the rainy season, the walls, beams, columns start leaking rain water and the same is causing a threat of short circuit and electrocution to the residents of the society. It is further to note that the entire basement is not having adequate working drainage system and, in a situation, where heavy rain falls, the basement gets flooded and residence of the society will have to arrange for pumps in order to drain the water out from the basement.
- o. That on 19th July 2021, during the rain just for an hour, the entire basement of the project in question got flooded with rainwater, resulting into stoppage of all 16 towers lift for whole day and night caused a serious threat to the residence of the society. It is further to note that in these towers having 11 floors and many elderly and infirm residences, faced lots of problems and were on mercy of God. Some of the residences have also filed a complaint with regard to the same before Chief Minister on CM window but no action has been taken so far from the said portal.
- p. That the complainants have filed a complaint before the DTP, Gurgaon (planning) regarding the poor construction quality and deficiency in structure of the project and wherein in the reply to the said complaint the respondent has said that in case of any deficiencies will found at site/ project, the same will be remove within 15 working days but till date, all the irregularities / deficiencies as it is and nothing substantial has been done in order to rectify the deficiency in the aid project. The complainant also filed a complaint before officer in charge police station sector 10A with regard to the huge blast and subsequently outbreak of



fire in the basement of the said project. The Complainant further submits that after the said fire incident in the Project, the residents of the society filed a complaint on CM Window dated 29.04.2022 No-CMOFF/N/2022/046889 before the nodal officer, Fire Department, Gurugram upon which an inspection was made by the officials on 22.06.2022 but to the utter shock of the complainant and other residents of the Society, the officials gave no objection to the Respondent; However, after 2/3 days of the inspection, some of the residents went into the basement and found that equipment's were not installed in the basement of the project at many places and fire boxes were spray painted. Further fire extinguishers in accommodation were already in red zone and other were near the margin although they were serviced only a month back after fire episode when all extinguishers were expired. The Complaint dated 08.07.2022 bearing No-CMOFF/N/2022/077963 regarding the said incident was also lodged on CM Window but no action has been taken regarding the same. The Complainant further submits that there is no fire staff available in the entire project to deal with the situation of fire. The same situation persists with the Security Guards also as for 16 towers in the project there are only two guards available. The said reduction has been done by the Respondent 3 months back.

- q. That as per the guidelines of the government of Haryana, every residential project shall have flats exclusively for economical weaker section of society but the respondent builder in order to gain monetary benefit changed the internal lay out of the EWS flats and further selling the said EWS at a higher price by making 2 BHK- 3BHK flats to the buyers. The said act of the respondents of selling the EWS flats to the



non-eligible buyers at higher rates is an illegal act and is a clear violation of Haryana Apartment Ownership Act and other acts.

- r. That the Respondent on vide intimation letter dated 24.03.2022, informed the Complainants regarding increase in the maintenance charges from Rs. 2.50 to Rs.3.50 of the Project. The said increase was illegal and arbitrary as the same was done within the period of three years from the date of obtaining occupation certificate of the said project. The Complainant also raised objections to the arbitrary and illegal increase of the maintenance charges and that too without obtaining permission from the Complainant but to no avail.
- s. That the Complainants have filed several Complaints before various departments and authorities, but till date no action has been taken by the said authorities in order to ensure the statutory compliances, the Complainants are society registered under the societies Act have filed the present complaint for seeking directions to the Respondent to comply with Builder Buyer Agreement and further to ensure the fulfilment of his obligations.
- t. That the complainant time and again approached the respondents to resolve the grievances as mentioned above before the respondent but till date neither the written assurance nor resolution of those grievances have been provided by the respondents. It is further to note that the statutory compliances like fire NOC, DTCP NOC and Environmental NOC have been obtained but without compliance of rules/regulations by the respondents resulting into an invitation of some life-threatening instances. To add the misery of the Complainant's and other residents of the Society, on 28.04.2022, fire broke in the premises of the project and due to which the complainants had to call fire fighters in order to keep the control room the fire outbreak. The negligence on the part of the

respondent can be substantiated from the fact that the fire equipment's installed at the premises of the project were expired and not in working condition.

- u. The Complainant left with no efficacious remedy, craves leave to file this complaint against the Respondent. In spite of fact that all payments made as per promotor's instruction and documents submitted, no conveyance deeds carried out. Complaint sent to promotor dated 29.04.2022.

**B. Relief sought by the complainant:**

- 3. The complainant association has sought the following reliefs:
  - a. Direct the respondent to make proper arrangement for firefighting system as per guidelines of the state of Haryana and FIRE Act and further to renew/refill the equipment's.
  - b. Direct the respondent to upgrade the sewage treatment plant having adequate capacity and further to direct the respondent not to discharge the sewerage untreated water in the open area adjacent to the project.
  - c. Direct the third party to ensure the structural audit of the said project as the project is not habitable and dangerous due to use of poor construction quality.
  - d. Direct the respondent to rectify the structural defects within a time framed manner and before obtaining of completion certificate of the project.
  - e. Direct the respondent to deposit bank guarantee as ordered by HERC regarding the electricity load.
  - f. Direct the respondent to install solar panels as per rules and regulations considering the builder wire agreement.
  - g. Direct the respondent to install rainwater harvesting system in the project.



- h. Director responding to execute the conveyance deeds of all the residents.

**C. Reply by the respondent.**

4. The respondent has contested the complaint on the following grounds:
- a. At the very outset, it is submitted that the present complaint is not maintainable as the Complainant has failed to produce any document to show its establishment and existence as a registered society, as claimed in para 1 of the complaint. In fact, in para 1 of the complaint, the Complainant avers that – “Our Homes Welfare Association Phase-2, is a registered society under the Industries and Societies Act...”. However, there exists no state or central legislation by the name of Industries and Societies Act and the registration of the Complainant as well as the veracity of its assertion is highly questionable. In that light, the present complaint is directly hit by the definition of “association of allottees” as per Rule 2(1)(c) of the (as mentioned in the explanation to Section 31 of the Real Estate (Regulation and Development) Act, 2016 (“RERA Act”)) which includes only an association/ entity ‘registered under any law for the time being in force’. Hence, the present complaint cannot be maintained by the current complainant under Section 31 of the RERA Act. Even otherwise, it is submitted that a legal proceeding cannot be maintained by a non-legal, non-juristic entity.
  - b. The present complaint also ought to be dismissed as the same is not validly instituted as the signatory therein, purportedly signing on behalf of the Complainant, has not been validly authorized to institute the present complaint. In fact, the Complainant has failed to produce any proof of delegation of authority in the nature of a resolution or authority letter in favour of the signatory authorizing the latter to sign, verify and

institute the complaint before this Hon'ble Authority. Hence, the present complaint is not maintainable.

- c. From the above-produced, it is evident that only an "aggrieved person" can file complaints under Section 31, and such "aggrieved person" includes "associations of allottees". The Complainant claims to have filed the Complaint as an "association of allottees" in terms of Section 31 of the RERA Act. However, the Complainant has failed to appraise the Hon'ble Authority of the material fact that the Complainant that most allottees of the Project have are not part of the Complainant body and a few members of the said body are even non-allottees. In fact, even the President of the Complainant is a non-allottee. In other words, all the members of the Complainant are not allottees of the Project, thereby failing to fulfil the mandatory requirement under the explanation to Section 31 of the RERA Act. Hence, the Complainant has filed the Complaint before the Hon'ble Authority without any locus and the same is liable to be dismissed on this ground alone. It is also reiterated that the Complainant even otherwise does not fall within the definition of "association of allottees" as elaborated in Para B of the Preliminary Objections above.
- d. The present complaint ought to be dismissed at the threshold as the relief sought therein are not capable of being granted by this Hon'ble Authority as they travel beyond the four walls of the ABA executed between the Respondent and the members of the Complainant.
- e. It is further submitted that the members of the Complainant have entered into the ABA with the Respondent with open eyes and are bound by the same. Nevertheless, the reliefs claimed by the Complainant find no reference in either the ABA or any relevant law. It may be noted that neither Clause 6 of the ABA, which lists the rights of the allottees,



nor any other provision listing the obligations of the Respondent empowers the Complainant to claim the reliefs so claimed in the Complaint.

- f. Additionally, it may not be out of place to mention here that the members Complainant while entering into the ABA have accepted and are bound by each and every clause of the ABA, including clause 3(c) which exonerates the liability and responsibility of the Respondent, post taking over of possession by the allottees. Since the members of the Complainant have already taken over possession of the apartments under the Project and have not made any objections/reservations at the time of taking such possession, they are estopped by the ABA from claiming the reliefs sought by way of the Complaint.
- g. The present complaint ought to be dismissed at the threshold as the reliefs sought therein are not capable of being granted by this Hon'ble Authority in view of the specific powers of this Hon'ble Authority as circumscribed by the RERA Act. Under the RERA Act, complaints can be entertained by the Hon'ble Authority only under Section 31. The said provision empowers the Hon'ble Authority to issue directions or impose penalty only with regard to any contravention of the obligation cast upon the Respondent under the RERA Act or the ABA executed between the parties. However, the Complainant has neither identified any provision of the RERA Act nor any provision of the ABA which has been alleged to have been contravened by the Respondent.
- h. Further, the issues presented by the Complainant such as poor construction quality, compliance with building plan, etc. and the corresponding reliefs sought from the Hon'ble Authority, such as installation of solar panels, rainwater harvesting system as per the building plan, etc., fall within the jurisdiction of the Directorate of Town



and Country Planning ("DTCP"), and are not actionable by this Hon'ble Authority. Hence, the Hon'ble Authority would be stepping outside its jurisdiction if it were to entertain the reliefs sought in the Complaint.

- i. It may be pertinent to note here that it is trite law that the other powers of the Hon'ble Authority under RERA Act such as the powers and functions under Sections 32, 34, 35, 36, 37 are merely administrative functions, and they cannot be triggered/relied upon to avail a judicial remedy under Section 31. It is further submitted that most members of the Complainant entity have already filed individual complaints against the Respondent with respect to the same subject matter, i.e., the Project, which are presently pending before the Hon'ble Authority. Hence, in order to avoid multiplicity of proceedings, it is in the best interests of all parties that the Complaint be dismissed since the complaints filed by the members of the Complainant against the Respondent are presently sub-judice before the Hon'ble Authority.
- j. Furthermore, the Complaint may outrightly be dismissed for want of clarity since the Complainant has neither attached the total list of members of the Complainant, nor any details of the allottees have been given and in the absence of the same, the Complaint ought not to be allowed to stand.

5. 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 those undisputed documents and submissions made by the complainants.

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

**D.I. Direct the respondent to make proper arrangement for firefighting system as per guidelines of the state of Haryana and FIRE Act and further to renew/refill the equipment's.**

**D.II. Direct the third party to ensure the structural audit of the said project as the project is not habitable and dangerous due to use of poor construction quality.**

6. The Authority observes that the OC for the said project has been granted on 29.11.2019 & 24.02.2020 from the competent authority. It is the duty of the promoter to obtain all requisite approvals from the concerned departments before handing over the maintenance of the project to the RWA as obligated under section 11(4)(a) & 17(2) of the Act, 2016.

**D.III. Direct the respondent to upgrade the sewage treatment plant having adequate capacity and further to direct the respondent not to discharge the sewerage untreated water in the open area adjacent to the project.**

7. The above issue relates to the state pollution control board/ environment department and the complainant may approach relevant agencies in relation to the same. However, the respondent is liable to complete the project as per approved layout/building plans and service plans and estimates approved by the competent Authority. The complainant may approach the competent Authority in case of any grievance pertaining to such issues.

**D.IV. Direct the respondent to rectify the structural defects within a time framed manner and before obtaining of completion certificate of the project.**

8. The respondent is directed to rectify the defects pointed out by the complainant association within a period of 30 days from the date of this order failing which the complainant association may approach Adjudicating officer of this Authority for compensation.

**D.V. Direct the respondent to deposit bank guarantee as ordered by HERC regarding the electricity load.**

**D.VI. Direct the respondent to install solar panels as per rules and regulations considering the builder wire agreement.**

**D.VII. Direct the respondent to install rainwater harvesting system in the project.**

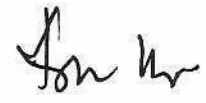
9. The above issue relates to the HREC & DTCP and the complainant may approach relevant agencies in relation to the same.

**D.VIII. Director responding to execute the conveyance deeds of all the residents.**



10. In accordance with Section 17 of the Act, 2016, the respondent is directed to execute the conveyance deed of each apartment in favour of respective allottees and handover the possession of the common areas to the association of allottees.
11. Ordered accordingly.
12. Complaint as well as applications, if any, stands disposed of accordingly.
13. File be consigned to registry.

  
**(Ashok Sangwan)**  
Member

  
**(Arun Kumar)**  
Chairperson

Haryana Real Estate Regulatory Authority, Gurugram

**Dated: 15.07.2025**