

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

**Complaint no.:** 2385 of 2021  
**Date of complaint:** 23.06.2021  
**Date of order:** 27.01.2026

1. Bharat Jain
2. Sudesh Jain

**R/O:** - Flat no.133, Pocket-G, Maharaja  
Agrasen Marg, Near Gurudwara, Sarita Vihar,  
Delhi-110076.

**Complainants**

Versus

M/s Gupta Promoters Pvt. Ltd.

**Regd. Office:** Unit No.1110, Tower-C, 11<sup>th</sup>  
floor, Unitech Business Zone, Nirwana  
Country, Sector-50, Golf Course Extension  
Road, South City2, Gurugram.

**Respondent**

**CORAM:**

Shri Arun Kumar  
Shri Phool Singh Saini

**Chairman**  
Member

**APPEARANCE:**

Bharat Jain (complainant in person)  
with Shri Utpal Trehan (advocate)  
Ms. Shambhavi (Advocate)

Complainants

Respondent

**ORDER**

1. The present complaint has been filed by the complainant/allottees under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act

wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the Rules and regulations made thereunder or to the allottee 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:

Sr. No.	Particulars	Details
1.	Name of the project	GPL Eden Heights, Sector 70 Gurugram
2.	Nature of the project	Residential
3.	DTCP license no.	236 of 2007 dated 22.10.2007 (as per the OC dated 01.08.2014 page 20 of reply)
4.	Registered/not registered	Not registered
5.	Unit no.	A-401, 4 <sup>th</sup> floor, Block A (page 40 of complaint)
6.	Unit admeasuring	2845 sq. ft. Super area (page 40 of complaint)
7.	Date of execution of buyer's agreement	20.02.2009 (page 38 of complaint)
8.	Possession clause	19(a) <i>That the construction of the Flat is likely to be completed within a period of three &amp; a half years of commencement of construction of the particular block in which the Flat is located or receipt of sanction of Building Plans and approvals of all concerned authorities including the Fire Service Department, Civil Aviation Department, Pollution/ Environment Control Department etc. as may be required for commencing and carrying on construction whichever is later subject to force majeure, restraints or restrictions from any Courts / Authorities, non-availability of Steel and / or Cement or other building</i>

		<i>materials, or water supply or electric power or slow down strike or due to a dispute with the construction agency employed by the Company, non availability of services to be provided by Haryana Urban Development Authority (HUDA) or any other Competent Authority or non-payment of timely installments by the Flat Allottee(S), Civil commotion or by reasons of war, or enemy action, or earthquake or any act of God..... (Emphasis Supplied)</i> (page 48 of complaint)
9.	Due date of possession	-
10.	sale consideration	BSP: Rs.73,25,875/- (page 40 of complaint)
11.	Total amount paid by the complainant	Rs.1,04,57,751/- (as alleged by complainant page 12 of complaint)
12.	Occupation Certificate	01.08.2014 (page 19 of reply)
13.	Offer of possession	19.08.2014 (page 21 of reply)

**B. Facts of the complaint:**

3. The complainants have made the following submissions: -

- I. That the representatives of the respondent made utterly false representations and thereby induced the Complainants to book a flat in their project "GPL Eden Heights" located at Sector 70, Gurgaon Manesar Urban Complex, Village Badshahpur, Tehsil & District Gurgaon, Haryana by showcasing a fancy brochure which depicted that the project will be developed and constructed as state of the art and one of its kind with all modern amenities and facilities.
- II. That the first complainants were induced to sign a pre-printed Application for allotment dated 15.11.2007 for the allotment of an apartment in the Project. According to the application for allotment, the promoter assured to

handover the possession of the flat unit within 24 months from the date of allotment.

- III. The complainants paid the first instalment towards the apartment booked by them on 20.12.2007. That the respondent allotted a flat bearing no. 401, Block 'A' having super area of 2,845 sq. ft. to the complainants vide a letter of provisional allotment dated 02.07.2008. It is from this date that the due date of possession (of 24 months) was to be calculated. Therefore, due date of possession is 02.07.2010.
- IV. That the respondent made umpteen representations regarding quality of construction and timely delivery of the flats in the project. The complainants on the basis of aforesaid assurances were induced to sign a pre-printed flat buyer agreement for the aforesaid flat dated 20.02.2009. The first complainant added his mother and signed the flat buyer agreement under his letter dated 21.04.2009 communicating non-acceptance of certain clauses without separate explicit written agreement on the same. However, a number of clauses were changed in the agreement which are egregious, and completely lop-sided and arbitrary, without prior notice to the complainant.
- V. That the complainants have paid a total sum of Rs.1,04,57,751/- towards the aforesaid residential flat in the project from the year 2007 to 2018, as and when demanded by the respondent.
- VI. The complainants have been coerced into paying the unjust demands over charged by the respondent in respect of EDC/IDC, additional charges, VAT, preferred location charges, club charges, service tax, GST and parking charges, all of which are built into the basic price of the apartment. In addition, the complainants were coerced into paying a standard IFMS whereas several others paid 0-50% of the IFMS. Further, no parking slot has been allotted to the complainants vide the aforementioned possession letter.

**C. Relief sought by the complainants:**

4. The complainants have sought following relief(s):

- I. Direct the respondent award delay interest for every month of delay on the amount deposited by the complainants i.e. Rs.1,04,57,751/- along with interest @ 18% p.a.
- II. Direct the respondent to provide the schedule of construction and also to rectify the breaches with regard to extra super area, extra EDC/IDC charges, wrongfully charging of covered parking slots, wrongfully charging VAT, failing to transfer benefit of GST input tax credit, PLC as well as for wrongfully inflating the super area.
- III. Direct the respondent to refund an amount of Rs 521,204/-charged towards additional charges, being arbitrary, illegal and against the fundamentals of the said Agreement, along with interest @ 18% per annum till date of refund.
- IV. Direct the respondent to refund an amount of Rs. 4,00,00/-charged towards covered parking slots, being arbitrary, illegal and against the fundamentals of the said Agreement, along with interest @ 18% per annum till date of refund.
- V. Direct the respondent to refund an amount of Rs. 2,84,500/-charged towards Interest Free Maintenance Security ("IFMS") deposit, being arbitrary, illegal and against the fundamentals of the said Agreement, along with interest @ 18% per annum till date of refund.
- VI. Direct the respondent to refund an amount of Rs. 3,21,485/-charged towards excess amount of EDC./ IDC, being arbitrary, illegal and against the fundamentals of the said Agreement, along with interest @ 18% per annum till date of refund.
- VII. Direct the respondent to refund (a) an amount of Rs. 1,51,000/-charged towards VAT liability which the complainants are being burdened with, being arbitrary, illegal and against the fundamentals of the said Agreement (b) VAT benefit availed by the respondent under the VAT amnesty scheme, along with interest @ 18% per annum till date of refund.
- VIII. Direct the respondent to refund the difference in cost of the said flat due to reduction in super area due to reduced share of common area on account of increase in number of flats and other changes through the revised building plan over the original building plan.
- IX. Direct the respondent to refund an amount of Rs. 71,309/-charged towards Service Tax liability which the complainants are being burdened with, being arbitrary, illegal and against the fundamentals of the said agreement, along with interest @ 18% per annum till date of refund.
- X. Direct the respondent to refund the GST input credit claimed against the Maintenance Charges charged to the complainant from 01.07.2017, along with interest @ 18% per annum till date of refund.



- XI. Direct the respondent to refund an amount of Rs. 104,578/- being TDS @1% of the total sum Rs 1,04,57,751/- to be deposited under section 194-IA of the Income-tax Act 1961 which the complainants are being burdened with, being arbitrary, illegal and against the fundamentals of the said agreement, along with interest @ 18% per annum till date of refund.
  - XII. Direct the respondent to register conveyance of title to the said apartment in line with the terms of the License 236 Of 2007 issued on 22.10.2007 under Section 3 and 24 of The Haryana Development & Regulation of Urban Areas Act 1975 and in accordance with Annexure A read with Rule 8 of the Real Estate (Regulation and Development) Rules 2017.
  - XIII. Direct the respondent / promoter to pay an amount of Rs. 500,000/- to the complainants for extreme mental torture, distress and pain caused to them and towards cost of litigation.
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: -
- i. That the respondent has developed a RESIDENTIAL Group Housing Complex called "**GPL Eden Heights**" on a piece of land admeasuring 10.90 Acres, situated at Village Badshahpur, Tehsil & District, Gurgaon, Haryana.
  - ii. That the complainants on their own free will and volition had approached the respondent for allotment of Unit in said Project and initially submitted Application Form for booking the dwelling unit in the said Project in Mr Bharat Jain and his mother, Mrs Sudhesh Jain's name. Subsequently, the complainants herein were allotted Unit No. A-1401, however, the complainant no. 1 requested for change of the allotment made, to which the respondent being a customer oriented company agreed and allotted unit no. 401, 4<sup>th</sup> Floor, Tower-A, admeasuring super area of 2845 sq. ft. vide provisional allotment letter dated 02.07.2008.
  - iii. Thereafter, the complainants after being explained the amenities of the said project along with payment plan and contents of Flat Buyer's Agreement in

vernacular, out of their own free will and volition, signed and executed the Flat Buyer's Agreement.

- iv. That the respondent after completing the said Project applied for issuance of the Occupation Certificate with the DTCP, Haryana and DTCP, Haryana after being satisfied with the construction and other amenities provided by the respondent, issued occupation certificate on 01.08.2014 in favour of the respondent. The respondent after receiving the occupation certificate, started handing over the possession of the units to the respective allottees. The said residential complex consists of 542 units and, as on date, almost all the units have been sold and possession given to the allottees and most of the units are occupied and residents are residing peacefully therein.
- v. That the complainants herein were offered the possession of the said unit vide offer of possession letter dated 19.08.2014 however, the complainants without any justifiable reason and basis kept on heaping one or the other allegations on the respondent. The queries of the complainant were duly responded however, the complainant always kept on heaping one or the other allegations on the respondent and took the possession of the said unit after exactly five years i.e. on 19.08.2019.
- vi. That the complaint is not maintainable as the said project is not an ongoing project. Thus, the project is neither registered with this Authority nor comes under the purview of the Authority.
- vii. That the Government of Haryana vide notification No. MISC-107(A)/ED(R)/1/55/2016-ITCP dated 28<sup>th</sup> April, 2017 has defined ongoing project in section 2 (o) of the Haryana Real Estate (Regulation and Development) Rules, 2017.
- viii. That DTCP, Haryana vide Memo No. ZP-304/SD(BS)/2014/16972 dated 01.08.2014 has already issued Occupancy Certificate against the Tower-1 nomenclature as Tower-A i.e. where the Unit of the Complainant is situated.

Thus, the bare perusal of Section 2 (o) of Haryana Real Estate (Regulation and Development) Rules, 2017 makes it ample clear that the said Project does not come under the purview of this Authority and the complaint needs to be dismissed at threshold on this ground alone.

- ix. That the complainants have failed to produce any evidence or specific averments worth its salt to prove its claims. Moreover, there is no justification or grounds of claims as sought for by the complainants under the Prayer Clause, therefore, the instant complaint is liable to be dismissed at the threshold.
- x. That the complainants have filed the captioned frivolous complaint with false averments, only with a malafide intention to make illegal enrichment at the cost of the respondent. Since the captioned complaint is filed without any cause of action, the same is liable to be dismissed at the outset.
- xi. That the complainants have *prayed for reliefs which otherwise have to be claimed in a suit for possession and damages, after paying appropriate court fee.* That in order to avoid the payment of court fee, the Complainants have raised a dispute of a civil nature, which requires elaborate evidence to be led and which cannot be adjudicated upon under the summary jurisdiction of this Authority. In this view of the matter, the complaint is liable to be dismissed with costs.

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 the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submissions 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, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram District. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

**E.II Subject matter jurisdiction**

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

*Section 11..... (4) 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 complainant at a later stage.

**F. Relief sought by the complainants.**

**F.I Direct the respondent award delay interest for every month of delay on the amount deposited by the complainants i.e. Rs.1,04,57,751/- along with interest @ 18% p.a.;**

**F.II Direct the respondent to provide the schedule of construction and also to rectify the breaches with regard to extra super area, extra EDC/IDC charges, wrongfully charging of covered parking slots, wrongfully charging VAT, failing to transfer benefit of GST input tax credit, PLC as well as for wrongfully inflating the super area.**

- F.III Direct the respondent to refund an amount of Rs 521,204/-charged towards additional charges, being arbitrary, illegal and against the fundamentals of the said agreement, along with interest @ 18% per annum till date of refund.**
- F.IV Direct the respondent to refund an amount of Rs. 4,00,00/-charged towards covered parking slots, being arbitrary, illegal and against the fundamentals of the said agreement, along with interest @ 18% per annum till date of refund.**
- F.V Direct the respondent to refund an amount of Rs. 2,84,500/-charged towards Interest Free Maintenance Security ("IFMS") deposit, being arbitrary, illegal and against the fundamentals of the said agreement, along with interest @ 18% per annum till date of refund.**
- F.VI Direct the respondent to refund an amount of Rs. 3,21,485/-charged towards excess amount of EDC./ IDC, being arbitrary, illegal and against the fundamentals of the said agreement, along with interest @ 18% per annum till date of refund.**
- F.VII Direct the respondent to refund (a) an amount of Rs. 1,51,000/-charged towards VAT liability which the complainants are being burdened with, being arbitrary, illegal and against the fundamentals of the said agreement (b) VAT benefit availed by the respondent under the VAT amnesty scheme, along with interest @ 18% per annum till date of refund.**
- F.VIII Direct the respondent to refund the difference in cost of the said flat due to reduction in super area due to reduced share of common area on account of increase in number of flats and other changes through the revised building plan over the original building plan.**
- F.IX Direct the respondent to refund an amount of Rs. 71,309/-charged towards Service Tax liability which the complainants are being burdened with, being arbitrary, illegal and against the fundamentals of the said Agreement, along with interest @ 18% per annum till date of refund;**
- F.X. Direct the respondent to refund the GST input credit claimed against the Maintenance Charges charged to the complainant from 01.07.2017, along with interest @ 18% per annum till date of refund;**
- F.XI. Direct the respondent to refund an amount of Rs. 104,578/-being TDS @1% of the total sum Rs 1,04,57,751/- to be deposited under section 194-IA of the Income-tax Act 1961 which the complainants are being burdened with, being arbitrary, illegal and against the fundamentals of the said Agreement, along with interest @ 18% per annum till date of refund;**

**F.XII. Direct the respondent to register conveyance of title to the said apartment in line with the terms of the License 236 Of 2007 issued on 22.10.2007 under Section 3 and 24 of The Haryana Development & Regulation of Urban Areas Act 1975 and in accordance with Annexure A read with Rule 8 of the Real Estate (Regulation and Development) Rules 2017.**

**F.XIII. Direct the respondent / promoter to pay an amount of Rs. 500,000/- to the Complainants for extreme mental torture, distress and pain caused to them and towards cost of litigation.**

13. The present matter was disposed of by the Authority on 30.09.2021. Further, the complainant filed an appeal against said order vide appeal no. 663 of 2021 which was disposed of vide order dated 10.12.2024 wherein the Hon'ble Appellate Tribunal remitted the matter back to the Authority for afresh decision. The relevant part of the said order is reiterated below:

5. *"On perusal of the order, we do not intend to express any opinion on the merits thereof in view of rival contentions. However, it would be in the interest of justice if a detailed order is passed by the Authority in order to satisfy the requirements of law and factual aspects are also taken into consideration."*

6. *"In these circumstances, we set aside the impugned order and remit the matter to the Authority below for decision afresh after affording opportunity of hearing to both the parties."*

14. The complainants submit that they were allotted a flat bearing No. 401, Block 'A', measuring 2,845 sq. ft., vide letter dated 02.07.2008. Relying upon repeated assurances regarding quality construction and timely delivery, the complainants signed flat buyer agreement dated 20.02.2009. The complainants have paid a total sum of Rs. 1,04,57,751/- from 2007 to 2018 as demanded. They were further coerced into paying excessive and unjustified charges towards EDC/IDC, additional charges, VAT, preferred location charges, club charges, service tax, GST, parking charges, and IFMS, even though such components were built into the basic sale price and no parking slot was ultimately allotted to them.

15. On the contrary, the respondent states that the complainants were allotted unit No. A-1401, but upon the request of complainant no. 1, the respondent agreed to

change the allotment and allotted Unit No. 401, 4th Floor, Tower-A, admeasuring 2845 sq. ft., vide provisional allotment letter dated 02.07.2008. After being duly informed about the project amenities, payment plan, and contents of the Flat buyer's agreement in vernacular, the complainants executed the byer agreement. Upon completion of the project, the respondent obtained the occupation certificate from DTCP, Haryana on 01.08.2014 and thereafter offered possession to the complainants on 19.08.2014.

16. The respondent further states that the complaint is not maintainable as the project is not an ongoing project under the Haryana Real Estate (Regulation and Development) Rules, 2017, and is therefore outside the jurisdiction of the Authority.
17. After consideration of all the facts and circumstances, Authority is of view that the RERA Act, 2016, is primarily intended to regulate ongoing and future real estate projects and does not operate retrospectively so as to govern projects that stood completed prior to its enforcement. Section 3 of the Act mandates registration of real estate projects only where such projects fall within the scope of the Act, while expressly exempting projects for which a completion certificate or occupation certificate has been received before the commencement of the Act or the notified State Rules.
18. It is important to note that the developer obtained the occupation certificate on 01.08.2014 before the state rules were fully implemented or before the registration deadline. The subject unit in question do not fall within the definition of an "Ongoing Project" as contemplated under Rule 2(1)(o) of the Rules. Under Rule 2(1)(o), if a developer applied for or received an OC for the entire project prior to the notification of the rules, the project is not considered an "Ongoing Project." If the project isn't "Ongoing," the developer is not legally mandated to register the project with RERA. Since the construction stood completed and the occupation certificate was duly obtained long before the

commencement of RERA, the project cannot be considered as an “ongoing project” under the Rules. In light of the above, the complaint is not maintainable being barred by limitation and the same is hereby dismissed.

19. In view of the above facts and the clear mandate of the RERA Act 2016, the complaint filed by the complainant is barred by limitation and is not maintainable.
20. Complaint stands disposed of.
21. File be consigned to registry.



Phool Singh Saini  
**Member**



Arun Kumar  
**Chairman**

Haryana Real Estate Regulatory Authority, Gurugram

**Dated: 27.01.2026**

**HARERA**  
**GURUGRAM**