



Complaint No. 1485 of 2023

HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint No.:	1485 of 2023
Date of Filing:	06.07.2023
Date of First Hearing:	09.08.2023
Date of Decision:	27.02.2026

Mr. Suresh Singh Chauhan S/o Sh. Banwari Singh
R/o Village Neola, Jhajjar-124109

...COMPLAINANT

VERSUS

B.M. Gupta Developers Pvt. Ltd.
Room No.2, 1st floor, 5948 and 5949,
Basti Harphool Singh, Sadar Thana,
Delhi-110006.

...RESPONDENT

CORAM: **Sh. Chander Shekhar** **Member**

Hearing: **8th**

Present: - Mr. Aman Kumar, Proxy for Mr. Sandeep Goyat,
Advocate, for the Complainant.
Mr. Suresh Singh Chauhan, Complainant through VC.
Mr. Kamaljeet Dahiya, Advocate, for the Respondent
through VC.

ORDER:

The present complaint has been filed on 06.07.2023 by the complainant under Section 31 of the Real Estate (Regulation and

Development) Act, 2016 (for short Act of 2016) read with Rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 for violation or contravention of the provisions of the Act of 2016 or the Rules and Regulations made thereunder, wherein it is inter-alia prescribed that the promoter shall be responsible to fulfil all the obligations, responsibilities and functions towards the allottee as per the terms agreed between them.

A. UNIT AND PROJECT RELATED DETAILS

2. The particulars of the project, the details of sale consideration, the amount paid by the complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following table:

S.No.	Particulars	Details
1.	Name of the project	Elegant Height, Sec-26, Gadhi Bolni Road, Rewari, Haryana
2.	RERA registered/not registered	Registered vide Registration No. 241-2017 dated 26.09.2017
3.	Details of Unit	Apartment No. 1204, 12th Floor, Tower no.06
4.	Date of Allotment	05.12.2019
5.	Date of Agreement for Sale	05.12.2019
6.	Total Sale Consideration	₹46,00,000/-
7.	Amount Paid by the Complainant	Not mentioned in the Complaint

8.	Offer of Possession	Possession already taken as per pleadings
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B. FACTS OF THE COMPLAINT

3. Facts of the complaint are that the complainant was allotted a 2 BHK residential apartment bearing no. 1204 on the 12th Floor in the project "Elegant Height", Sector-26, Rewari, Haryana, developed by BMG Developers Pvt. Ltd. The Flat Buyer's Agreement was executed on 05.12.2019 and the total sale consideration of the apartment was fixed as ₹46,00,000/-. At the time of booking and execution of the agreement, the respondent represented that the project would include essential amenities such as proper sewerage, internal roads, street lights, water supply, electricity infrastructure and other mandatory facilities in accordance with applicable rules. As per Clause 1 of the agreement, the sale price included one open car parking space and power backup up to 1 KVA for the 2 BHK flat. The complainant has duly complied with all contractual obligations and has paid the entire sale consideration, including EDC and IDC charges, stamp duty, registration expenses and other incidental charges, leaving no outstanding amount payable.

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4. Despite receipt of the full consideration and repeated personal visits, written representations, emails and registered correspondence over a period exceeding three years, the respondent has failed to issue a specific

allotment letter for the open car parking, including details such as parking number, location, size and layout plan. The respondent is allegedly insisting upon execution of the sale deed without furnishing a draft of conveyance deed in advance and without incorporating agreed terms relating to parking and other facilities, thereby acting contrary to the Flat Buyer's Agreement.

5. The respondent unilaterally reduced the electricity load of the flat to 1 KW without prior notice or consent of the complainant. Although the agreement clearly stipulates that power backup up to 1 KVA is included in the sale price and the additional load beyond 1 KVA is chargeable separately. The complainant contended that such reduction of basic amenities and withholding of agreed facilities amount to deficiency in service, unfair trade practice and violation of statutory obligations under the Real Estate (Regulation and Development) Act, 2016 and the Haryana RERA Rules.

6. The complainant, having fulfilled all terms and conditions of the agreement, seeks directions from the Authority for execution of the conveyance deed with incorporation of agreed terms, allotment and handing over of the included open car parking, restoration and enhancement of electricity load as per contractual provisions, completion of promised amenities, and grant of appropriate compensation for mental agony, financial hardship and prolonged delay caused by the respondent's acts and omissions.

C. RELIEF SOUGHT

7. The complainant in his complaint has sought the following reliefs:-

i. To direct the respondent vide interim order for execution of the conveyance deed and provide exclusive open car parking.

ii. Inquiry should be marked to check and verify the fact of not providing the free car parking and not extending the power backup over and above 1 KVA in the project.

iii. To direct the respondent to restore the connection of electricity supplied by DHBVNL with immediate effect as the builder has reduced the electricity load only 1 KVA from the supply by the DHBVNL, as the supply of electricity is basic amenity and respondent be directed not to interrupt into the direct electricity supply by the DHBVNL.

iv. To direct the respondent to enhance the load of power back upto 3 KVA with immediate effect and with the additional charges as mentioned in the Agreement.

v. To direct the respondent to pay suitable damages for causing wrongful loss as complainant has invested his hard

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earned money three years back in the said project which is still and lacking basic facilities.

vi. Any other relief which this Hon'ble Authority deems fit in the present facts and circumstances may also be granted to the complainant for which he is found entitled.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

Learned counsel for the respondent filed a detailed reply on 13.08.2024 pleading therein:

8. The respondent respectfully submits that the present complaint is not maintainable either on facts or in law and is liable to be dismissed at the threshold. The complainant has wrongly invoked the jurisdiction of this Hon'ble Authority by seeking reliefs of refund and compensation, which, under Sections 71 and 72 of the Real Estate (Regulation and Development) Act, 2016, fall exclusively within the domain of the Adjudicating Officer and not the Real Estate Regulatory Authority.

9. It is submitted that the project is complete and possession has already been offered; therefore, the prayer for refund is baseless and untenable. Further, the complaint suffers from non-joinder of a necessary party, as the primary Allottee, Mrs. Sangita Kumari, has not been impleaded, whereas the present complainant is only a Co-Allottee. Any relief, particularly

execution of conveyance deed, cannot legally be granted in the absence of the primary Allottee, rendering the complaint defective and not maintainable.

10. On merits, the respondent denies all allegations of deficiency in service or unfair trade practice. As per the Agreement for Sale, the apartment was sold "*along with parking (if applicable),*" which does not confer ownership or exclusive rights over any specific open car parking space. Open parking areas form part of the common areas meant for shared use by all residents and the complainant's interpretation of "exclusive use" as ownership or reserved allotment is misconceived.

11. Similarly, the Agreement clearly provides power backup up to 1 KVA only, which has been duly complied with by the respondent. There has been no unauthorized reduction of electricity load or interference with power supply. The complainant had taken possession in 2021 and began residing in the unit, yet he has delayed execution of the conveyance deed despite repeated requests, thereby breaching his obligation under Section 19(11) of the RERA Act to participate in registration. The present complaint is stated to be an afterthought and an attempt to impose demands beyond the contractual terms. In view of the above legal and factual position, the complaint is devoid of merit, beyond jurisdiction insofar as compensation is claimed and deserves dismissal.

E. REPLICATION FILED BY THE COMPLAINANT

12. The complainant has filed replication on 12.12.2025, whereby it is submitted that the Agreement for Sale was executed between the complainant and the respondent and therefore this Hon'ble Authority has proper jurisdiction to entertain the present complaint.

13. The complainant, being a co-allottee and husband of the primary allottee, has full legal rights to initiate proceedings against the respondent. There is no provision in the agreement stating that the respondent is discharged from liability merely because the primary allottee has not filed the complaint. The respondent remains fully bound by the terms and conditions of the Agreement for Sale.

14. The complainant further submits that as per the agreement, he is entitled to power backup as agreed and also to enhancement of load upon payment of additional charges. The respondent has illegally and arbitrarily reduced the electricity load without any prior notice or consent, thereby disturbing the basic electricity supply, which is an essential amenity. The complainant has complied with all terms and conditions of the agreement and has not committed any breach. It is the respondent who has violated the agreement by reducing the electricity load and failing to provide agreed facilities, causing harassment and humiliation to the complainant and his family.

15. The complainant states that the grounds taken in the complaint are genuine, lawful and supported by record. The complainant denies all allegations, objections and statements made in the reply filed by the respondent, being false and incorrect. The complainant has locus standi to file the present complaint as there is clear violation of the provisions of the RERA Act and the Agreement for Sale.

16. It is therefore prayed that an enquiry be conducted regarding non-provision of free car parking and non-extension of power backup beyond 1 KVA and the respondent be directed to restore and ensure continuous electricity supply from DIIBVN, enhance power backup up to 3 KVA on payment of applicable charges as per agreement, execute the conveyance deed, provide exclusive open car parking and pay suitable compensation for the loss and harassment caused to the complainant along with any other relief deemed fit under the RERA Act and Rules.

F. ARGUMENTS OF THE COMPLAINANT AND THE RESPONDENT

17. During oral arguments, learned counsels appearing on behalf of both parties reiterated the submissions/arguments as already submitted in their complaint, reply and replication respectively.

G. ISSUES FOR ADJUDICATION

18. Whether the complainant is entitled to get a conveyance deed executed in his favour in terms of Section 18 of RERA Act, 2016?

H. OBSERVATIONS AND DECISION OF THE AUTHORITY

19. The Authority has gone through the rival contentions. In the light of the background of the matter as captured in this order and also the arguments submitted by both parties, the Authority observes as follows:

(i) With regard to objection raised by respondent as non-joinder of necessary parties, the Authority observes that the respondent has raised an objection that the complaint is liable to be dismissed for non-joinder of the primary allottee, namely the wife of the complainant, as the apartment having been jointly allotted in their names. In response to this objection, the complainant has contended that he is a co-allottee and the husband of the primary allottee and therefore, has full legal rights to initiate proceedings against the respondent. It is further contended by the complainant that there is no provision in the Agreement for Sale which provides that the respondent stands discharged from its liability merely because the primary allottee has not filed the complaint. According to the complainant, the respondent remains bound by the terms and conditions of the

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Agreement for Sale and the complaint at his instance alone is maintainable.

(ii) This Authority has considered the rival submissions. The relief sought in the present complaint is for execution and registration of a conveyance deed in respect of the subject unit. Such relief directly concerns proprietary rights and title in the unit. The complainant himself asserts that the allotment was made jointly in his name and in the name of his wife, describing her as the primary allottee. However, the wife has not been impleaded as a necessary party to the present proceedings. If the wife is indeed the primary allottee or a co-allottee, any direction with respect to conveyance would necessarily affect her legal and proprietary rights. In her absence, no effective and binding adjudication can be made. The issue is not whether the respondent is discharged from liability in the absence of the primary allottee. Rather, the issue is whether a substantive order affecting property rights can be passed without the presence of a person whose rights are directly involved. The principles of natural justice require that all necessary parties be arrayed before the Authority before such relief is granted.

(iii) Further, this Authority had, on earlier dates of hearing, granted opportunities to the complainant to place on

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record the duly executed and signed Builder Buyer Agreement, the allotment letter and the payment receipts or any documentary evidence demonstrating that he is a co-allottee of the subject unit. Builder Buyer Agreement placed on record by the complainant is admittedly unsigned and therefore does not constitute a concluded or enforceable agreement between the parties. An unsigned document has no evidentiary value for the purpose of determining contractual rights and obligations. Apart from the said unsigned BBA, the complainant has failed to produce the allotment letter, payment receipts, bank statements, possession letter or any documentary evidence demonstrating payment of consideration or recognition of his status as an allottee by the respondent. The Authority has already made it clear that only upon perusal of such documents only, it could determine whether the complainant falls within the definition of "allottee" under Section 2(d) of the Real Estate (Regulation and Development) Act, 2016. Despite such opportunities, the complainant has failed to produce a signed Agreement for Sale or any receipts, allotment letter or possession letter evidencing the rights of apartment in their name. Mere assertion of co-allottee status, unsupported by documentary evidence, is insufficient to establish locus standi of the complainant to file present complaint. The burden to establish

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entitlement squarely lies upon the person asserting such right and relief cannot be granted on the basis of incomplete or unproven documents. It is a settled principle of law that a party seeking equitable or discretionary relief must approach the adjudicatory Forum/Authority with clean hands and must place full and proper material before it. The Hon'ble Supreme Court in *Dalip Singh vs State Of U.P. & Ors on 3 December, 2009* has reiterated that a litigant who does not disclose complete and correct facts, or who withholds material documents, is not entitled to relief. The complainant, having failed to produce primary documents necessary to establish his status and claim, cannot seek a direction affecting valuable property rights. In the absence of reliable documentary evidence, this Authority is unable to accept the assertions made in the complaint.

(iv) Without such proof and in the absence of the alleged primary allottee as a party to the proceedings, this Authority cannot consider the present complainant as an allottee nor can it grant the consequential relief of execution of conveyance deed and other related reliefs. Accordingly, the complaint is held to be not maintainable for non-joinder of necessary parties and for failure of the complainant to establish his status as an allottee

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despite opportunities granted. The complaint is therefore dismissed with liberty to the complainant to file afresh.

20. The complainant is also seeking compensation on account of mental agony, torture, harassment caused for delay in possession, deficiency in services and cost escalation. It is observed that Hon'ble Supreme Court of India, in Civil Appeal Nos. 6745-6749 of 2027 titled as "*M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of U.P. & ors.*" (supra), has held that an allottee is entitled to claim compensation and litigation charges under Sections 12, 14, 18 and Section 19 of the RERA Act, 2016, which is to be decided by the learned Adjudicating Officer as per Section 71 and the quantum of compensation and litigation expense shall be adjudged by the learned Adjudicating Officer having due regard to the factors mentioned in Section 72 of the Act, 2016. The Adjudicating Officer has exclusive jurisdiction to deal with the complaints in respect of compensation and legal expenses. Therefore, the complainant is advised to approach the Adjudicating Officer for seeking the relief of litigation expenses.

21. Today the complainant apprised the Authority that he has not received the cost of ₹7000/- as imposed earlier. The Authority directs the respondent to pay the cost of ₹7000/- to the complainant within one week from today.

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22. **Dismissed** with liberty to file afresh. File be consigned to record room after uploading of order on the website of the Authority.


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(CHANDER SHEKHAR)
MEMBER

27.02.2026
Gaurav Saini
(Law Associate)

