BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no.:	**2294 of 2025**
Date of decision:	**14.11.2025**

Kewal Krishan Sethi, Varun Sethi
And Rohan Sethi
R/o: - M-323 2nd Floor Orchid Island,
Sector 51, Gurugram, Haryana-122001 — **Complainant**

Versus

M/s Orchid Infrastructure Developers Private Limited
Regd. Office At: - Level-II Global Arcade Mehrauli-Gurugram Road, Gurugram, Haryana-122002 — **Respondent 1**

M/s Perfect Facilities Management Private Limited
Regd. Office At: - Level-II Global Arcade Mehrauli-Gurugram Road, Gurugram, Haryana-122002 — **Respondent 2**

CORAM:

Shri Arun Kumar — **Chairman**

APPEARANCE:

Shri Dhruv Lamba	**Complainant**
Shri JK Dang	**Respondent**

ORDER

1. The present complaint has been filed by the complainant/allottee 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. Project and unit related details

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

S. No.	Particulars	Details
1.	Name of the project	Orchid Island, Sector-51, Gurugram, Haryana
2.	Nature of project	Residential colony
3.	DTPC License no.	53 to 60 on dated 31.12.1994 and 9 to 24 on dated 20.11.1995
4.	Allotment Letter	30.11.2009 [Page 40 of complaint]
5.	Agreement to sale	02.02.2010 [Page 44 of complaint]
6.	Endorsement letter	17.11.2011 [on page 64 of complaint]
7.	Unit no.	M-323 on 2nd floor , [Page 40 complaint]
8.	Unit area admeasuring	1618 sq. ft. [Page 40 of complaint]
9.	Occupation certificate	28.12.2012 [on page 85 of complaint]
10.	Offer of possession	19.01.2013 [on page 86 of complaint]
11.	Delivery of possession	04.07.2013 [on page 95 of complaint]
12.	Maintenance services agreement	17.11.2011 [on page 274 of reply]

B. Facts of the complaint

3. The complainant has made the following submissions in the complaint: -

I. That Mr. Kewal Krishan Sethi, Mr. Varun Sethi and Mr. Rohan Sethi are law-abiding citizens and consumers who have been cheated by the malpractices adopted by the Respondents and are stated to be a builder. The complainants are middle-class persons having a dream of their own house for their family and in the pursuance of the same approached the respondent's company.

II. That the respondent no. 1 namely M/s Orchid Infrastructure Developers Pvt. Ltd. is a company, incorporated under the provisions of the Companies Act, 1956 and having its registered office at 11th Floor, Level-II, Global Arcade, Mehrauli- Gurugram Road, Gurugram, Haryana-122002 IN.

III. That the respondent no. 2 namely M/s Perfect Facilities Management Private Limited is a company, incorporated under the provisions of the Companies Act, 1956 and having its registered office at 11th Floor, Level-II, Global Arcade, Mehrauli Gurugram Road, Gurugram, Haryana-122002 IN

IV. That as per section 2(d) of the Real Estate (Regulation and Development) Act, 2016, the complainants fall under the category of "allottee(s)" and has rights and obligations under the Act.

V. That as per Sec 2(zk) of the Real Estate (Regulation and Development) Act, 2016, the respondents falls under the category of "promoter" and are bound by the duties and obligations mentioned in the said act, and are under the territorial jurisdiction of this Authority.

VI. That the building plans in respect of Plot no. M-323, Mayfield Garden, Gurugram were approved by the concerned Department vide Memo

bearing no. 5317 dated 20.11.2009.

VII. That vide provisional allotment letter dated 30.11.2009, one Mr. Puneet Gandhi was allotted a duly constructed residential unit bearing no. "M-323 on second floor" having super area admeasuring 1618 sq. ft. in the residential project namely "Orchid Island" situated at Sector 51, Distt. Gurgaon, Haryana against the sale consideration of Rs. 52,05,311/-.

VIII. That subsequently, a buyer's agreement was executed between the original allottee namely Mr. Puneet Gandhi and the respondent no. 1 i.e., M/s Orchid Infrastructure Developers Pvt. Ltd. wherein the Promoter Respondent no. I had allotted a Residential Second floor over a Residential plot bearing no. M-323 to the original allottee. Thus, upon the execution of the buyer's agreement, the terms and conditions of the buyer's agreement are binding on both the parties.

IX. That the complainants herein made a request to the respondent no.1 to issue nomination/endorsement in their favour in pursuance of agreement to sell executed between the complainants herein and the original allottee. That on 17.11.2011, the present complainants had stepped into the shoes of the original allottee and vide letter dated 17.11.2011 it was communicated that from now onwards the floor buyer's agreement, Allotment letter and the 15 payment receipts to the tune of Rs. 30,76,606/- shall stand in the name of the present complainants. Thus, by virtue of endorsement dated 17.11.2011, the complainants have stepped into the shoes of the original allottee and the endorsement by the developer on the transfer documents clearly implies its acceptance of the complainants as allottees. Further on this very day i.e., on 17.11.2011, the respondent got the maintenance service agreement executed by the complainants.

X. That after receiving occupation certificate from the District Town Planner, Gurugram on 28.12.2012, the respondent no. i sent an offer of possession of the subject unit on 19.01.2013 wherein the area of the subject unit was arbitrarily increased from 1618 sq. ft. to 1745 sq. ft. which in turn increased the sale consideration from Rs. 52,05,312/- to Rs. 56,26,523/-, Also, it is a matter of fact and record that in the said offer of possession, the Maintenance charges were mentioned as Rs. 1.25/- per sq. ft

XI. That after the arbitrary increase in demand qua the unlawful increase in area of the subject unit, strong protests were made by the allottees in the office of the respondent no. I which forced them to issue a fresh offer of possession. The respondent sent a letter dated 09.03.2013 in continuation of letter dated 19.01.2013 titled as "offer of possession" whereby the area of the subject unit was decreased from 1745 sq. ft. to 1667 sq. ft. and the sale consideration was decreased to Rs. 53,62,951/-. However, it was still more than what has been agreed inter se parties vide allotment letter and buyer's agreement. Also, it is a matter of fact and record that in the statement of account annexed with the said letter dated 09.03.2013, the advance maintenance charges were mentioned as Rs. 1.25/- per sq. ft. It is also matter of record that vide said letter dated 09.03.2013, the respondent raised demand of Rs. 10,31,639/- payable by the complainant.

XII. That in pursuance of the demand raised by the respondent vide letter dated 09.03.2013, the complainants herein made payment of ₹10,24,615/- and 244,039/- and the respondent no.1 issued receipt dated 28.06.2013 and 29.06.2013 respectively acknowledging the said payment by the complainants. It is pertinent to mention here that the

complainants herein have paid 244,039/- on account of delayed interest on account of delay in payment of final demand. It is of grave importance to mention here that the aforesaid sum of 244,039/- was paid against the interest for the delayed payment w.r.t. the last demand whereas the respondent no. I was itself on default by raising illegal demands. The complainants herein made payment 27,024/- to the respondent no.2 towards the advance maintenance charges as demanded vide letter dated 09.03.2013 and the same was acknowledged by the respondent no.2 vide receipt dated 29.06.2013.

XIII. That after making the payments as demanded by the respondent no.1, a letter of delivery of possession of the subject unit was issued to the complainants on 04.07.2013 whereby the complainants agreed having received the physical possession of the subject unit. Subsequently on 05.07.2013, a clearance certificate acknowledging that all necessary formalities related to possession of the subject unit has been completed was issued by the respondent no. 1.

XIV. That respondent no.1 appointed M/s Perfect Facilities Management Services Pvt. Ltd. i.e., respondent no.2 for maintenance of the society and a tripartite maintenance agreement was executed inter se respondents and the present complainants. It is pertinent to mention here that after taking possession of the subject unit, the complainant-allottees being law- abiding citizens were paying all maintenance and other charges including but not limited to water, electricity, security etc. regularly as and when demanded by the respondents. All of a sudden, without any justifiable reason at its own whims and fancies, the respondent no. 2 revised and increased the maintenance charges on the basis of an audit conducted by M/s AAGN & Associates for FY 2013-14, 2014-15 and 2015-

16. Subsequently, on 04.08.2017, respondent no. 2 issued three invalid and unlawful supplementary invoices and demanded Rs. 1,00,287/-, Rs. 85,921/- and Rs. 35,959/- for FY 2013-14, 2014-15 and 2015-16 respectively.

XV. That it is pertinent to mention here that the aforesaid invoices dated 04.08.2017 are backdated bills and the said bills were handed over to the lane guard for delivery to the complainants only on 26.01.2018. The delivery of back dated bills for such an exorbitant amount is totally arbitrary and shows mala fide intention of the respondent no.2 to extort funds from the complainants. In this regard, the complainants wrote a letter to the respondents addressing the said grievances, however, the respondents turned deaf ears to the legitimate demands of the complainants.

XVI. That thereafter, the complainants sent a letter dated 30.01.2018 to the respondents to withdraw the bogus bills dated 04.08.2017 and grabbing of IFMS deposited by the complainants to the respondent no. 1. However, the respondents did not respond to the concerns of the complainants and choose to remain silent and turned deaf ears to the legitimate demands of the complainants.

XVII. That in response to the concerns raised by the complainants vide letter dated 30.01.2018, respondent no.2 vide letter dated 03.02.2018 stated that the said invoices dated 04.08.2017 have been correctly raised and the invoices have been raised to recover only the differential amount which have been found due as per the audit report dated 13.07.2017. Respondent no.2 had carried out an audit of accounts of the company and bills were raised because of the higher cost of maintenance to the company. The respondent no.2/maintenance company has not given a

full audit report to the complainants and only the first page of the report was given along with bills. Moreover, it apparent from the conduct of the respondent no.2 that the back dated demands were raised from the allottees only to grab huge amount from the allottees prior to the handover of maintenance to the concerned RWA. It is learnt from the reliable sources that the audit firm has calculated the maintenance cost on only about 200 floors. However, the same should have been calculated on all 1172 floors which the respondent no. I had already sold. The cost of respondent no.1 sold out floors was also calculated on about 200 occupied floors.

XVIII. That the complainants herein vide email dated 18.03.2018 again put forth the major two grievances they had been facing. Firstly, regarding payment of bogus back dated maintenance bills for a period of three years i.e., 2013 till 2016 and secondly non-execution of conveyance deed without payment of forged bills and pressing the allottees to sign affidavits and undertaking in its favour.

XIX. That on 31.03.2018, the maintenance of the society was handed over to the Orchid Island Residents Welfare Association (hereinafter in short referred as "OIRWA"). That Respondent no.2 maintained the society w.e.f. July 2013 till 31.03.2018 and thereafter, the respondent no.2 handed over the maintenance of the society to OIRWA on 31.03.2018. That the complainants herein have paid all the maintenance bills to Respondent no.2 as and when they were raised by Respondent no.2. Moreover, there are no dues on behalf of the complainants on any account, thus, the complainants have fulfilled all their legal obligations.

XX. That furthermore, it is pertinent to mention here that the respondents had also collected IFMS to the tune of Rs. 1,25,025/- from gullible, naïve

complainants and have used the amount for their own personal benefits. The said amount shall have been transferred to Orchid Island Resident Welfare Association after the Association took charge of maintenance of the subject project. However, the respondents have failed in fulfilling their lawful obligations and responsibilities since the IFMS amount has not yet been transferred to the Orchid Island Resident Welfare Association despite repeated appeals and requests. That the issue regarding the IFMS has already been decided by the authority in complaint bearing no. CR/4031/2019 titled as Varun Gupta Vs. Emaar MGF Land Ltd. wherein it was held that the promoter may be allowed to collect a reasonable amount from the allottees under the head "IFMS". Further in CR/4617/2022 titled as Bhrihu Nagpal Versus M/s Varali Properties Limited, the Authority directed the respondents/promoter to handover the amount of IFMS collected by it along with the interest accrued on that amount coupled with all the details regarding the IFMS amount and the interest accrued thereon to the association of the allottees within 3 months from the date of the order. further, clause 11 of the annexure A to the Rules provide for maintenance of the project. It states that "the promoter shall be responsible to provide and maintain essential services in the project till the taking over of the maintenance of the project by the association of the allottees". Furthermore, clause 1.8(ii) of the same Annexure provides that "the promoter shall hand over the common areas to the association of allottees". This means that once the project has been completed, the duty of maintenance of the project vests with association which further implies that the association gets vested with the power to collect funds from the resident of a project. Not only this, by virtue of these provisions, the promoter ipso facto becomes liable

to transfer the amount which remains in the IFMS account to the association of allottees. However, the respondents herein have also failed to transfer the interest free maintenance deposit collected from the allottees at the rate of rs.50 per sq. ft. of super area to the association i.e., OIRWA till date.

XXI. That the complainants vide letter dated 26.04.2019, requested Respondent no. I to execute and register the conveyance deed in their favour in respect of the subject unit. It is pertinent to mention here that the complainants have been in possession of the subject unit since July, 2013 and had been regularly insisting the respondent no.1 to execute the conveyance deed executed. In terms of section 17 of the Act of 2016, the respondent is liable to execute the conveyance deed within three months of issuance of occupancy certificate including handing over of the common areas to either association of allottees or to the local authority and the same is

XXII. However, the respondent has deliberately failed to execute the same for the reasons best known to it. The respondent promoter is contractually and legally obligated to execute the conveyance deed upon receipt of the occupation certificate from the competent authority. Now, the respondent is delaying and denying the execution of conveyance deed in view of bogus back dated maintenance bills of so-called arrears of maintenance which is completely against the law since all the obligations on the part of the allottees as regards to the buyer's agreement stands fulfilled. Thus, inter-mingling of these bogus bills of so-called "arrears of maintenance" with the execution of conveyance deed is another deliberate attempt on the part of the respondent to unnecessarily delay the execution of conveyance deed. Moreover, non-payment of charges on

account of maintenance of the project cannot be a ground or reason to put on hold the execution of conveyance deed in favour of the allottee. Unfortunately, despite repeated follow ups in this regard, the respondent has failed to execute the conveyance deed till date and has failed to upkeep its contractual and legal obligations.

XXIII. That in reply to the aforesaid letter dated 26.04.2019, the respondent no. 1 vide letter dated 05.06.2019 requested the complainant to pay the statutory dues i.e., outstanding VAT and other taxes and interest thereon as applicable on the date of recovery as well as other outstanding dues upon the subject unit. Further the respondent stated that the conveyance deed will be executed after settlement of all the dues. Since, the occupation certificate in respect of the subject unit has already been obtained from the concerned competent authority and after clearing all the dues in terms of the buyer's agreement, the physical possession was handed over to the complainants on 04.07.2013. Hence, it is obligatory on the part of the respondent to get the conveyance deed executed in favour of the complainants as per the mandate contained in section 17 of the Act. Moreover, non-payment of backdated maintenance charges cannot be a ground or reason to put on hold the execution of conveyance deed in favour of the complainants. Further, it is most humbly prayed that as the entire consideration as per the buyer's agreement were paid by the complainants in June, 2013 and it is the respondents who have refused to execute the conveyance deed in favour of the complainants, thus, the respondents shall be directed to bear the difference in the stamp duty charges which were payable in the year 2013 which have now been increased by the State Government as on date.

XXIV. That Vide letter dated 20.12.2023, the complainants herein resigned for

the membership of the OIRWA and the same was accepted by the concerned official of the Association.

XXV. That to corroborate the reliefs sought by the complainant vide the present complaint, the complainant relies upon the order dated 18.04.2023 passed by the Authority in CR/1121/2018 wherein the respondent-builder was directed to execute the conveyance deed of the allotted unit in the favour of the complainant within a period of three months from the date of this order on payment of stamp duty and registration charges as applicable.

XXVI. Hence, in view of the above statutory provisions under section 17 of the Act, the respondent/builder is directed to get the conveyance deed of the subject unit registered in favour of the complainant within three months from the date of this order on payment of requisite stamp duty and registration fees/charges as applicable. Further, only administrative charges of upto Rs. 15,000/- can be charges by the promoter-developer for any such expenses which it may have incurred for facilitating the said transfer as has been fixed by the DTP office in this regard vide circular dated 02.04.2018."

XXVII. That despite running from pillar to post, the respondents are not executing conveyance deed of the subject unit in the name of the present complainants and hence the complainants are left with no other option but to approach this Authority. Hence, the respondent has mercilessly failed to honour its contractual and lawful obligations by not executing the conveyance deed in favour of the complainants till date

XXVIII. That the complainants being aggrieved person is filing the present complaint under section 31 with this Authority for the violation/contravention of various provisions of the Act of 2016 and

Rules of 2017. It is a matter of fact that it is the failure of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement dated 02.02.2010 to execute the conveyance deed within the stipulated period.

XXIX. Hence, the respondent has failed to fulfil its obligations as contained in section 11(4)(a) read with section 17 of the Act of 2016 which states that "the promoter 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". It is a matter of fact that the respondent has failed to execute the conveyance deed in respect of the subject unit despite receiving the entire sale consideration as per the floor buyer's agreement and as per the provisions of section 17 of the Act of 2016. Further, it is most humbly prayed that the respondent be directed to bear the difference in the stamp duty charges which were payable in the year 2013 which have now been increased by the State Government as on date. Also, it is most humbly prayed from this Authority that the respondents shall be directed to not charge any maintenance charges as raised by invoices dated 04.08.2017 for the year 2013 till 2016 as the same are backdated and illegal. Further, it is most humbly prayed before this Authority to direct the respondent to handover the amount of IFMS collected by it along with the interest accrued on that amount coupled with all the details regarding the IFMS amount and the interest accrued thereon to the association of the allottees within 3 months as the

maintenance has already been handed over to the Association i.e. OIRWA, on 31.0.2018.

XXX. That due to the acts of the respondents and the deceitful intent as evident from the facts outlined above, the complainants have been unnecessarily harassed mentally as well as financially, and therefore the opposite party is liable to compensate the complainants on account of the aforesaid unfair trade practice. Without prejudice to the above, the complainants reserves the right to file a complaint before the Adjudicating Officer for compensation.

C. Relief sought by the complainant: -

4. The complainant has sought following relief(s):

I. Direct the respondent to execute the conveyance deed in respect of the subject unit as per section 11(4)(a) read with section 17 of the Act;

II. The respondent shall be directed to bear the difference in the stamp duty charges which were payable in the year 2013 which have now been increased by the State Government as on date;

III. To direct the respondent to handover the amount of IFMS collected by it along with the interest accrued on that amount coupled with all the details regarding the IFMS amount and the interest accrued thereon to the association of the allottees within 3 months as the maintenance has already been handed over to the Association i.e. OIRWA, on 31.0.2018.

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 is contesting the complaint on the following grounds:

A. That the present complaint is not maintainable in law or on facts. The provisions of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the 'Act') are not applicable to the project in question. The occupation certificate in respect of the apartment in question was issued as far back as on 28.12.2012 i.e well before the Act and notification of the Haryana Real Estate Regulation and Development Rules 2017. Thus, the provisions of the Act and the Rules are not applicable to the unit in question and consequently, this Hon'ble Authority does not have the jurisdiction to entertain and decide the present complaint. The present complaint is liable to be dismissed on this ground alone.

B. That furthermore, the project "Orchid Island", comprises of low rise buildings constructed on separate plots of different sizes. Each low rise building comprises of ground, first and second floors and each constructed floor has been allotted/sold as an independent unit. The occupation certificates in respect of the constructed buildings in the project were issued by the competent authority during the period from December 2012 to February 2013, i.e well before the coming into force of the Act .

C. That thus, it is submitted that the provisions of the Act are not applicable to the project in question. The project is not an ongoing project under Rule 2(1)(o)(ii) of the Haryana Real Estate (Regulation and Development) Rules, 2017, (hereinafter referred to as "the Rules") and hence does not require registration. Since the provisions of the Act and Rules are not applicable to the project in question, the present complaint is not maintainable in law and the same is liable to be dismissed.

D. That the present complaint is even otherwise not maintainable under the Act. Section 31 of the Act contemplates institution of complaints against promoters, allottees or real estate agents. Respondent no 2 is neither the promoter nor an allottee or a real estate agent. Respondent no 2 is the erstwhile maintenance agency that was providing maintenance services to the colony, Orchid Island, Sector 51, Gurgaon, where the unit allotted to the complainants is situated. Respondent no 2, which was providing maintenance services to the project until 1.4.2018, is neither a promoter, real estate agent or an allottee in the project and hence no complaint be filed against respondent no 2 under the Act. Respondent no 2 is liable to be deleted from the array of parties.

E. That from a perusal of the relief sought by the complainants, it is evident that the relief that has been claimed by the complainants against respondent no 2 herein pertains to transfer of IFMS amount to the orchid island residents welfare association. It is pertinent to mention herein that a complaint filed by the orchid island residents welfare association being complaint no 2298/2018 , seeking similar reliefs was dismissed by the Authority vide order dated 26.03.2019.

F. That vide its said order dated 26.03.2019 , this Authority has held that with regard to the enhancement in maintenance charges, the audit report for the financial years 2013-14, 2014-15 and 2015-16 cannot be challenged before the Authority and that the matter is already sub judice before the civil court in the civil suit filed by the orchid island residents welfare association. It was further held by this Authority that the decision in the civil matter ought to be awaited and once such decision is rendered the parties ought to approach the adjudicating officer for its implementation.

G. That it is submitted that the civil suit filed by the association has been dismissed by the Hon'ble Court of Shri Anterpreet Singh , Civil Judge, Gurugram, vide his judgement and order dated 15 October 2019, passed in the civil suit titled orchid island residents welfare association vs orchid infrastructure and developers private limited and others it is submitted that the Hon'ble Court, while taking into consideration the report of the independent auditor, duly held that the maintenance agency i.e. respondent no 2 herein had been properly maintaining its books of account and auditing its expenditure and that respondent no 2 had not imposed any enhanced costs upon the residents. The Orchid Island Residents Welfare Association instituted an appeal against the said judgement and order dated 15 October 2019 referred to above. The said appeal has also been dismissed by the Hon'ble Court of Shri Tarun Singhal, Addl District Judge, Gurugram.

H. It is evident from the reliefs claimed in the complaint before the NCDRC that the issue pertaining to transfer of IFMS amount to the Association as well as execution of conveyance deeds is already sub judice before the NCDRC. The association has also filed a writ petition , CWP 14030 of 2018 before the Hon'ble Punjab and Haryana High Court, wherein the association has prayed for transfer of title in favour of respective floor owners.

I. That it is respectfully submitted that the complainants and other allottees of the project are filing successive litigation before various Courts while failing to disclose existing litigation, to try and obtain favorable orders from such Fora.

J. That it is pertinent to mention herein that the complainants have claimed in para no 23 of the complaint that the complainants have

resigned from the association on 23.12.2023 and that their "resignation" has been accepted by the association. Assuming, without in any manner admitting the allegations made by the complainants to be true, it is respectfully submitted that if the complainants are no longer members of the association, the complainants have no locus standi to seek any relief pertaining to transfer of IFMS amount to the association. To the best of the respondent's knowledge, the complainants continue to be members of the association but have devised a ploy so as to try and avoid the judgment and orders passed in proceedings where the association is a party, although the complainants were admittedly members of the association, when such judgments and orders were passed by the Hon'ble Courts. Such conduct is reprehensible and deserves to be deprecated by this Authority. The present complaint is liable to be dismissed on this ground alone.

K. That the complainants have not come before this Authority with clean hands and has concealed vital and material facts from this Authority. The real and true facts are as under.

L. That the complainants have purchased the unit being first floor, plot no m 323 , situated in Orchid Island, Sector 51, Gurgaon, from the original allottee, Shri Puneet Gandhi. The allotment was transferred in favour of the complainants upon the complainants, inter alia, agreeing and undertaking to be bound by the buyer's agreement dated 02.02.2010, which was endorsed in favour of the complainants. Maintenance and services agreement dated 17.11.2011 was willingly and consciously executed by the complainants with the respondents.

M. That construction of the unit was completed and occupation certificate in respect thereof was received on 28.12.2012. Possession of the unit

was offered to the complainants on 19.01.2013. Possession of the unit was handed over to the complainants on 04.07.2013.

N. That by letter dated 11.02.2015 and 05.03.2019, the complainants were informed about the formalities to be completed for registration of conveyance deed in their favour. However, for reasons best known to the complainants, the complainants have failed to come forward to have the conveyance deed registered in their favour till date.

O. That as has been submitted in the preceding paras, respondent no 2 has been providing maintenance services to the complex from the year 2013, till 1.4.2018 when the complex was handed over to the association ,upon terms and conditions which were formalised through the execution of a memorandum of understanding dated 20.6.2018.

P. That till such time that respondent no 2 was undertaking maintenance of the complex, maintenance charges were agreed to be paid by the complainants in accordance with the floor buyer's agreement, and the maintenance and services agreement, executed by the complainants. Monthly bills towards maintenance charges were being raised by respondent no 2 and duly paid by the complainants.

Q. That it is pertinent to mention herein that in the initial period, the maintenance costs were subsidised by the respondents by charging for maintenance services and facilities at the rate of Rs 1.25 /- per month which was subsequently raised to Rs 1.90/- per sq ft. Furthermore, all the buyers including the complainants were fully conscious and aware that the indicative maintenance charges were subject to final reconciliation post audit of the maintenance expenses for the year and that differential maintenance charges would have to be paid by the buyers.

R. That the monthly maintenance charges were to be computed and payable by the complainants, in the manner set out in clauses 3 and 4 of the maintenance and services agreement. Clause 3A(vi) of the said agreement specifically provides that at the end of each financial year, respondent no 2 would get audited the annual statement of income and expenditure and statement of assets and liabilities as on the last date of the financial year related to the maintenance of the complex and the expenses incurred would form the basis of estimate for billing in the subsequent financial year . In case of any surplus/deficit arising at the end of the financial year after the audit, the same was to be adjusted in the bills raised in the subsequent financial year in a manner such that the amount shall be recovered from the subsequent bills to the complainants.

S. That in the beginning, due to low occupancy in the project, maintenance services were being charged at an extremely nominal rate by respondent no 2, which was also heavily subsidised by the developer in order to facilitate residents. It was specifically agreed between respondent no 1, respondent no 2 and the residents that maintenance charges would be worked out on the basis of actual expenses incurred by respondent no 2 in providing such facilities and that the difference between the maintenance charges as billed on an ad hoc basis and actual maintenance charges payable by the residents, would be payable by the residents after ascertaining the amounts payable.

T. That the association objected to the aforesaid audit reports and insisted upon an audit by an external auditor. In this regard, several meetings between the association and the association took place and the association put forward names of 4 chartered accountants firms to

carry out an audit of the books of accounts of Respondent no 2 for the years 2013-14, 2014-15 and 2015-16.

U. That the said C.A Firm, M/s AAGN & Associates , was appointed to carry out the audit and the said firm submitted its report on 13.7.2017 whereby the maintenance charges for the year 2013-2014 was calculated to be Rs 7.08 per sq ft;, Rs 4.89 per sq ft for the year 2014-15 and Rs 2.99 for the year 2015-16.

V. That on the basis of the audit report of the independent C. A Firm duly recommended by the association, respondent no 2 raised invoices for payment of differential maintenance charges payable by all the residents of the complex , including the complainants. The report of the C.A. Firm nominated by the association which has carried out the independent audit exercise was also shared with the association.

W. That the association had conveyed that it needed some time to discuss the matter with the other office bearers, residents etc and promised to revert shortly on the issue. However, thereafter, on one pretext or the other , the association delayed the issue of payment of outstanding maintenance charges.

X. That eventually, after waiting for almost 6 months, the bills were dispatched to the residents in january /february 2018. Respondents no 1 and 2 had even offered a discount of 5% on the said bills as a gesture of good will, although under no legal obligation to do so.

Y. That however, instead of getting the residents to clear their outstanding arrears, the association has been addressing false and frivolous correspondence and even resorting to hooliganism once the association came to realise that it had no legitimate ground to refute the outstanding liabilities of the residents.

Z. That shockingly, the President of the Association had come to the residence of Mr Dhruv Gupta, Director of Respondent no 1 on 14.9.2018 and demanded to meet him and when informed that Mr Dhruv Gupta was not available and that he should meet Mr Gupta in his office, the Association President started shouting , threatening and abusing using filthly language. The president of the association also threatened to come again with a group of people and cause bodily harm and injury to Mr Dhruv Gupta and his family members as well as destruction of his property unless his unlawful demands were met. Consequently, a police complaint was registered against the president of the association in the Tughlaq Road Police Station on 22.9.2018.

AA. That the complainants as well as other residents of the complex are conscious and aware that the arrears of maintenance charges are due and payable by them as per the agreements executed by them and that there is no justification for their refusal to do so. The complainants have agreed and undertaken in terms of clause 29 of the buyer's agreement that the developer shall be entitled to register the conveyance deed only after receipt of all dues payable by the complainants under the buyer's agreement. In terms of clause 39 of the buyer's agreement, the complainants have agreed and undertaken to make payment of maintenance charges as may be demanded by the maintenance agency duly nominated by the respondent and for adjustment of unpaid maintenance dues against the maintenance security amount deposited with the respondent. After settlement/adjustment of maintenance dues, the balance, if any , has been agreed to be transferred to the Association when formed. The respondents have acted in accordance with the buyer's agreement and the maintenance agreement executed

by the parties. The Respondents crave leave of this Authority to refer to and rely upon various clauses of the said Agreements at the time of addressing the arguments in the matter.

BB. That from the facts and circumstances set out in the preceding paras, it is evident that there is no default or lapse on the part of the respondents. The demands for arrears of maintenance charges have been made in accordance with the agreements executed by the complainants. It is evident from the entire sequence of events, that no illegality can be attributed to the respondents. The allegations levelled by the complainants are totally baseless. The present complaint has been filed at the behest of the association so as to cause undue harassment and nuisance to the respondents as well as with the view to evade legal and binding contractual obligations of the complainants.Thus, it is most respectfully submitted that the present complaint deserves to be dismissed at the very threshold.

7. 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 submission made by the complainant.

E. Jurisdiction of the authority

8. 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 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.*

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 complainant 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. 2021-2022 (1) RCR (Civil), 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.

F. Findings on the relief sought by the complainant

F.I Direct the respondent to execute the conveyance deed in respect of the subject unit as per section 11(4)(a) read with section 17 of the Act;

F.II The respondent shall be directed to bear the difference in the stamp duty charges which were payable in the year 2013 which have now been increased by the State Government as on date;

F.III To direct the respondent to handover the amount of IFMS collected by it along with the interest accrued on that amount coupled with all the details regarding the IFMS amount and the interest accrued thereon to the association of the allottees within 3 months as the maintenance has already been handed over to the Association i.e. OIRWA, on 31.0.2018.

14. The above-mentioned reliefs sought by the complainant are being taken together, as the findings in one relief will necessarily affect the outcome of the others and the same being interconnected.

15. The present complaint pertains to the real estate project "Orchid Island", situated in Sector-51, Gurugram, Haryana. It is an admitted and undisputed position on record that the competent authority had granted the occupation certificate dated 28.12.2012 in respect of the said project and possession of the unit was offered on 19.01.2013 and subsequently delivered on 04.07.2013. At the very threshold, this Authority is required to examine whether the statutory conditions necessary for assumption of jurisdiction are satisfied. Jurisdiction under the Act is not automatic, nor does it arise merely from the filing of a complaint. The Authority is a creation of statute and derives its powers strictly from the legislative mandate. It is, therefore, incumbent upon this Authority to first ascertain the existence of jurisdictional facts, without which the exercise of adjudicatory power would be impermissible in law.

16. The Real Estate (Regulation and Development) Act, 2016 is a regulatory statute designed to govern a specific class of real estate projects identified by the legislature. The applicability of the Act is circumscribed by Section 3, which mandates compulsory registration of real estate projects with the Regulatory Authority. However, the legislature has, in its wisdom, expressly excluded certain categories of projects from the operation of the Act. Section 3(2)(b) categorically provides that no registration shall be required where the promoter has received a completion certificate for a real estate project prior to the commencement of the Act. The relevant portion of the section is reproduced below :-

3. Prior registration of real estate project with Real Estate Regulatory Authority.-

(2) Notwithstanding anything contained in sub-section (1), no registration of the real estate project shall be required

(b) where the promoter has received completion certificate for a real estate project prior to commencement of this Act;

17. This exclusion is neither incidental nor ancillary; it is a substantive legislative determination forming an integral part of the statutory scheme. The statutory framework thus makes it abundantly clear that the Act is not intended to operate retrospectively so as to reopen completed transactions or subject concluded projects to a new regulatory regime. The jurisdiction of the Authority is, therefore, confined only to such projects as fall squarely within the definition and scope prescribed by Section 3 of the Act.

18. The constitutional validity of this legislative classification and the scope of the Act have been examined in depth by the Hon'ble Supreme Court in Pioneer Urban Land and Infrastructure Ltd. v. Union of India. The Hon'ble Supreme Court has authoritatively held as under:

"The Real Estate (Regulation and Development) Act, 2016 is a prospective legislation and applies only to those real estate projects which are brought within its fold by the legislature."

"Parliament has consciously made a distinction between ongoing projects and completed projects, and has deliberately excluded the latter from the purview of the Act."

"Such exclusion is founded on an intelligible differentia and forms an integral part of the statutory scheme."

"The Act cannot be interpreted in a manner so as to retrospectively apply its provisions to projects which had already been completed in accordance with law prior to its commencement."

"Courts and authorities are bound to give effect to the legislative classification and cannot, by interpretative process, expand the

scope of the Act beyond what the legislature has expressly provided."

19. The above pronouncement lays down, in unequivocal terms, that the Act is prospective in nature and that completed projects constitute a distinct and excluded class. The exclusion is founded on intelligible differentia and bears a rational nexus with the object of the legislation. The Hon'ble Supreme Court has further cautioned that neither courts nor statutory authorities can, by interpretative ingenuity, enlarge the scope of the Act so as to bring within its fold projects which the legislature has consciously kept outside. This declaration of law binds this Authority and admits of no deviation.

20. The jurisdictional limits of the Authority have been further elucidated by the Hon'ble Supreme Court in Newtech Promoters and Developers Private Limited v. State of Uttar Pradesh and Others. In the said judgment, the Hon'ble Supreme Court has delineated the contours of jurisdiction under the Act in the following terms:

"The Real Estate Regulatory Authority is a creature of statute and can exercise only such powers as are expressly conferred upon it by the Act."

"The existence of an 'ongoing project' is a jurisdictional fact which must be established before the Authority can assume jurisdiction under the Act."

"If the project is not an ongoing project within the meaning of Section 3 of the Act, the Regulatory Authority would have no jurisdiction to entertain a complaint in respect thereof."

"Jurisdiction cannot be conferred upon the Authority by consent of parties, nor can it be assumed on considerations of equity or hardship."

"When the statute clearly defines the limits of jurisdiction, neither the Authority nor the Courts can travel beyond the same by interpretative exercise."

21. This judgment reinforces the principle that jurisdiction under the Act is conditional and not plenary. The existence of an "ongoing project" is not a mere procedural formality but a foundational jurisdictional fact. In the absence of such a fact, the Authority lacks competence to entertain, adjudicate, or grant relief. The Hon'ble Supreme Court has further clarified that jurisdiction cannot be assumed on sympathetic considerations, nor can it be conferred by consent, or waiver of parties. The limits of jurisdiction, once statutorily defined, are binding and inviolable.

22. When the aforesaid principles are applied to the facts of the present case, it becomes evident that the project in question had already attained completion to the extent certified prior to the commencement of the Act. The completion certificate dated 28.12.2012, which predates the coming into force of the Act on 01.05.2017, conclusively demonstrates that the project, to that extent, stood completed in accordance with law. Such completion brings the project squarely within the exclusion contemplated under Section 3(2)(b) of the Act.

23. Once the statutory exclusion is attracted, the project ceases to be an "ongoing project" for the purposes of the Act. In such circumstances, this Authority cannot, by interpretative expansion or equitable reasoning, assume jurisdiction where none exists. To do so would amount to rewriting the statute and transgressing the limits of authority conferred by Parliament.

24. In view of the statutory scheme, and in light of the binding law declared by the Hon'ble Supreme Court, this Authority holds that the present project does not satisfy the jurisdictional pre-condition of being an "ongoing project" within the meaning of Section 3 of the Act. The absence of this

foundational fact renders the present complaint outside the purview of the Act and beyond the jurisdiction of this Authority.

25. Accordingly, the complaint is held to be not maintainable under the Real Estate (Regulation and Development) Act, 2016, for want of jurisdiction, and is liable to be dismissed on this ground alone.

26. In view of the foregoing reasons, the Authority finds no merit in the present complaint and the same is accordingly dismissed. Pending applications, if any, also stand disposed of.

27. File be consigned to registry.

Dated: 14.11.2025

Arun Kumar
Chairman
Haryana Real Estate Regulatory Authority, Gurugram