

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

Complaint no.: 5843 of 2024
Date of filing: 28.11.2024
Date of order: 07.04.2026

Neelam Yadav
Anil Yadav
R/o 340/3, Prem Nagar, Gurugram
Haryana

Complainants

Versus

M/s Orris Infrastructure Private Limited
Regd. Office at: RZ-D-5, Mahavir Enclave,
South West Delhi, New Delhi-110045

Respondent

CORAM:
Shri Arun Kumar

Chairman

APPEARANCE:
Sukhbir Yadav (Advocate)
Charu Rustagi (Advocate)

Complainants
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 provision of the Act or the Rules and regulations made thereunder or to the allottees 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:

S. N.	Particulars	Details
1.	Name and location of the project	"Carnation Residency" situated at Sector-85, Gurugram.
2.	Project area	29.068 Acres
3.	Nature of Project	Group Housing Colony
4.	DTCP license no. and validity status	39 of 2009 dated 24.07.2009 99 of 2011 dated 17.11.2011
5.	Name of Licensee	M/s Orris Infrastructure Private Limited
6.	RERA registered/ not registered and validity status	Un-registered
7.	Unit no.	103, 1 st floor, Tower-3H. (As mentioned in BBA at page 54 of complaint) 103, 1 st Floor, Tower-B1 (As mentioned in Final statement of account dated 11.10.2017 at page 96 of complaint, also as mentioned in Final statement of account dated 28.08.205 at page 107 of reply)
8.	Unit Admeasuring	1350 sq. ft. [super area] (As mentioned in BBA at page 54 of complaint) 1475 sq. ft. [Revised super area] [As per the letter dated 11.10.2017 for area revision at page 95 of complaint] (As mentioned in Final statement of account dated 11.10.2017 at page 96 of complaint, also as mentioned in Final statement of account dated 28.08.205 at page 107 of reply)
9.	Date of booking	17.07.2010 (As per page no. 41-46 of the complaint)
10.	Allotment Letter	10.08.2010 (As per page no. 47 of the complaint)

11.	Date of start of construction	21.10.2010 (As mentioned in demand letter dated 22.11.2010 at page 69 of complaint)
12.	Buyer's Agreement	25.10.2010 (As per page no. 50-68 of the complaint)
13.	Date of sanction of plans	Not provided
14.	Possession Clause as per buyer's agreement	10.1 Schedule for possession of the said apartment. The company based on its present plans and estimates and subject to all just exceptions, contemplates to complete construction of the said building/ said apartment within the period of 36 months plus grace period of 6 months from the date of execution of apartment buyer agreement by the company or sanction of plans or commencement of construction, whichever is later... [Emphasis Supplied] (As per page no. 58 of the complaint)
15.	Due date of possession	25.04.2014 [25.10.2013 + 6 months] [Note: The due date is calculated 36 months form the date of execution of buyer's agreement, as date of commencement of construction and sanction of plans are not available, 6 months of grace period is allowed being unconditional]
16.	Total sale consideration	Rs.41,58,300/- [For 1350 sq. ft.] [As per the letter dated 11.10.2017 for area revision at page 95 of complaint] Rs.45,15,550/- [For 1475 sq. ft.] [As per the letter dated 11.10.2017 for area revision at page 95 of complaint]

17.	Amount paid	Rs.51,44,726/- (As alleged at page no.30 of complaint)	
18.	Tripartite Agreement [w.r.t Loan of Rs.30,00,000/-] B/w Allottee, Promoter & Punjab National Bank	05.01.2011 (As per page no. 98-101 of reply)	
19.	Occupancy certificate	07.10.2014 [For Tower-A1, A2, B1, B2 & EWS] (As per page no.102-103 of reply) And 06.04.2017 [For Tower-3D, 3E, 3F, 3G, 3H & EWS Tower-1] (as per TCP, Haryana Website)	
20.	Credit note given by the respondent [Total amounting to Rs.2,61,440/-]	Rs.40,190/- [For VAT Charges] (As per page 99 of complaint)	Rs.2,21,250/- [For Electricity Installation charges] (As per page 100 of complaint)
21.	Undertaking-Cum-Indemnity for occupation and use	13.11.2017 (As per page no. 110-113 of reply)	
22.	Possession letter [of unit no. 1033 1 st floor in Tower-B1]	07.12.2017 (As per page no. 114 of reply)	
23.	Acceptance of possession [of unit no. 1033 1 st floor in Tower-B1]	07.12.2017 (As per page no. 115 of reply)	
24.	Lease Deed w.r.t Maintenance B/w Allottee, Promoter & M/s Saffron Infradevelopers Private Limited	08.12.2017 (As per page no. 117-130 of reply)	
25.	NOC from the Punjab National Bank	14.12.2023 (As per page 103 of complaint)	
26.	Request by complainant [w.r.t registration of conveyance deed]	05.07.2024, 30.07.2024 (As per page 104 & 105-106 of complaint)	

27.	Response by the respondent to the requests of complainant	01.08.2024 (As per page 110-111 of complaint)
28.	NOC by M/s Saffron Infradevelopers Private Limited	06.08.2024 (As per page 109 of complaint)
29.	Undertaking of complainant	06.08.2024 (As per page 110-113 of complaint)
30.	Request by complainant [w.r.t registration of conveyance deed]	06.10.2024 (As per page 115 of complaint)

B. Facts of the complaint:

3. The complainants have made the following submissions: -

- I. That That in July 2010, the complainant (Anil Yadav) received a marketing call from a real estate agent namely 'Automation Private Limited' for booking in the residential project being developed by the respondent in the name of "Carnation Residency", situated in Sector – 85, Gurugram. The real estate agent showed a rosy picture of the project and allured the complainants through lucrative advertisements. The complainants along with the agent visited the project site and there they met the official staff of the respondent. The respondent party announced the said project in the year 2010 which was to consist of a variety of floor plans ranging from 2 BHK Units to 4 BHK units, and several facilities and amenities. The respondent further portrayed that the project is a world-class residential project, it is among the finest properties available around. The project is smartly constructed, and all the units are ready to move. Flats are the various types of units available, each of which has been created to provide total satisfaction.
- II. That being relied on representation & assurances of the respondent and the real estate agent, the complainants vide an application for booking dated 17.07.2010 booked an apartment/unit bearing no. 103 on 1st floor in tower-3H in the project "Carnation Residency" situated in Sector-85,

Gurugram measuring 1350 Sq. Ft. for a total sale consideration of Rs. 41,58,300/- under the construction linked payment plan. The complainants made a payment of Rs. 3,00,000/- through cheque bearing No. 296869 dated 17.07.2010 against the booking amount. The respondent acknowledged the said payment vide acknowledgment dated 20.07.2010.

- III. That on 10.08.2010, the respondent party issued an allotment letter in favour of the complainants, and in the said letter the respondent confirmed the allotment of unit no. 103 on the 1st floor in tower-3h in the project "Carnation Residency" situated in Sector-85, Gurugram measuring 1350 sq. ft. On 11.08.2010, the respondent party issued a demand letter and raised a demand of Rs. 3,61,500/-. Subsequently, the complainants made a payment of Rs. 3,61,500/- through cheque bearing No. 200702 dated 19.08.2010, and the respondent acknowledged the said transaction vide receipt dated 21.08.2010. On 25.10.2010, a pre-printed, arbitrary, unilateral, and ex-facie BBA was executed inter se the respondents and the complainants. As per the possession clause of the said BBA i.e., Clause 10.1, the respondent was obligated to give possession of the unit within 36 months from the date of execution of the BBA or from the date of commencement of construction, whichever is later. The construction was commenced on 21.10.2010 and the BBA was executed on 25.10.2010, hence, the due date of possession comes out to 25.10.2013. The total sale consideration of the allotted unit as per clause 1.2 of the BBA is Rs. 41,58,300/-.
- IV. That from November 2010 to August 2013, the respondent issued a series of demand letters, to which the complainants responded by making payments in accordance with the demanded amounts and payment plan opted by them. Consequently, the respondent party issued payment

receipts for the transactions made by the complainants in response to the said demand letters.

- V. That on 11.10.2017, the complainants received a letter from the respondent, wherein it was stated that the area of the complainants' unit had been revised from 1350 sq. ft. to 1475 sq. ft. without any justification or prior intimation, resulting in an increase in the total consideration value. The tower allocation for the complainants' unit had been unilaterally changed from Tower 3H to Tower B1. The respondent justified this change by stating that tower 3h to tower b1 is only nomenclature.
- VI. Thereafter, on 11.10.2017, the respondent issued a statement of account, which revealed that the complainants had paid an aggregate amount of Rs. 38,24,855/- by October 2017, representing more than 86% of the total consideration for the unit. The due date for possession expired in 2013. Nonetheless, the respondent failed to deliver possession on time and did not provide any delayed possession charges to the complainants, despite the significant delay. On the same day i.e., 11.10.2017, the respondent also informed the complainants about obtaining of Occupancy Certificate vide letter dated 11.10.2017. The respondent party also asked the complainant to submit an indemnity cum undertaking in order to take physical possession of their unit. The contents of the indemnity cum undertaking are one-sided and in favor of the respondent only, however, the complainants had no alternative therefore, under the compelling circumstances and protest, the complainants had to submit the said undertaking to the respondent for taking the possession of their unit.
- VII. That it is noteworthy that the complainants diligently made all payments towards their unit's installments, adhering to the payment plan and responding promptly to the respondent's demand letters. Consequently,

on 14.11.2017, the respondent issued two credit notes in favor of the complainants:

- Rs. 40,190/- towards VAT charges.
- Rs. 2,21,250/- towards Electricity Installation charges.

- VIII. That after receiving the indemnity cum undertaking from the complainants, the respondent party issued the possession letter to the complainants on 07.12.2017 for unit no. 103 on the 1st floor in tower-b1 in the project "carnation residency" situated in Sector-85, Gurugram measuring 1350 sq. Ft., and the said possession letter was accepted by the complainants vide acceptance of possession letter dated 07.12.2017. Till 14.11.2017, the complainants have paid Rs. 51,44,726/- .
- IX. That the complainants had secured a home loan of Rs. 30,00,000/- from Punjab National Bank, sanctioned on 30.12.2020. Upon completing repayment, the bank issued a No Dues Certificate on 14.12.2023, confirming that the loan had been fully settled. It is pertinent to mention here that the complainants have paid Rs. 15,95,153/- interest on said loan.
- X. That the respondent party had given the physical possession of the unit to the complainants, however, did not execute the conveyance deed for their unit. The complainants requested the respondent for the execution of the conveyance deed for their unit and followed up from December 2017 and visited the Gurgaon office and site office of the respondent but all went in vain. Thereafter, the complainants again requested for the execution of the conveyance deed, vide letter dated 5.07.2024 following a letter dated 30.07.2024, but both letters met with the silence of the respondent. Thereafter, on 01.08.2024, the respondent shared an email and letter with the complainants and asked them to provide one more indemnity cum undertaking at their office for registration of the conveyance deed. On

06.08.2024, the respondent also issued a No Dues Certificate in favor of the complainants and confirmed that the respondent has received full and final payment from the complainants against the unit in question and no dues whatsoever are remaining to be paid by the complainants. The complainants executed again an indemnity cum undertaking on 06.08.2024, as required by the respondent for the conveyance deed, under protest and duress. The respondent created coercive circumstances, leaving the complainants with no alternative but to execute the indemnity cum undertaking, which they did reluctantly, reserving their rights. Notably, despite executing the indemnity cum undertaking on 06.08.2024, the respondent failed to register and execute the conveyance deed for the complainants' unit. On 18.09.2024, the complainant (Anil Yadav) sent an email to the respondent, highlighting that on 06.08.2024, the complainants visited the respondent's office with all requisite documents demanded for conveyance deed execution. The respondent unjustifiably refused to accept the documents, citing flimsy excuses. The email urged the respondent to promptly execute the conveyance deed, implying malicious intent behind the delay.

- XI. Thereafter, on 06.10.2024, the complainants sent a follow-up letter to the respondent, reiterating their request for registration of the conveyance deed for their unit. To facilitate the execution of the conveyance deed the complainants submitted all the requisite documents such as indemnity cum undertaking, No dues certificate, and two cheques bearing No. 000543 and 000544 of Rs. 2,38,600/- and 20,005/- as demanded by the respondent along with the said letter. These documents and payments demonstrate the complainants' prompt fulfillment of obligations, refuting any claims of default.
- XII. That the complainants left no stone unturned to get the conveyance deed executed for their unit, however, the respondent even after receipt of

indemnity cum undertaking from the complainants did not execute the conveyance deed for the complainants' unit hereby violating section 17 of the Act. It is crucial to emphasize that the respondent has failed to execute and register any document, such as a conveyance deed, that would establish the complainants' lawful legal right to their unit. In the absence of a registered conveyance deed, the complainants cannot establish legal ownership. Consequently, the respondent is legally obligated to execute and register the conveyance deed for the complainants' unit. The respondent's refusal to do so raises questions, and the motivations behind this omission are known only to the respondent.

- XIII. That the respondent, in its reply, has stated that it is unable to execute the conveyance deed due to a dispute with the land owner. However, it is respectfully submitted that the complainants have no privity of contractor legal relationship whatsoever with the land owner, nor were they party to any agreement/contract between the respondent and the land owner. The BBA was entered into exclusively between the complainants and the respondent, which clearly imposes on the respondent the obligation to execute and register the conveyance deed in favour of the complainants upon fulfilment of all contractual and statutory conditions. The complainants fully complied with all payment obligations and formalities demanded by the respondent, and therefore cannot be made to suffer due to any dispute that the respondent might have with a third party (i.e., the land owner). The respondent's attempt to shift its statutory and contractual responsibility onto the complainants based on an unrelated dispute is untenable, unjust, and contrary to settled legal principles, including the doctrine of privity of contract.
- XIV. Ritten submissions have been filed by the complainants. The same have been taken on record and perused further.

C. Relief sought by the complainants:

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

- a. Direct the respondent to get the conveyance deed executed and registered for their unit.
- b. Direct the respondent to pay delayed possession interest @ prescribed rate from the due date of possession till the actual date of possession.
- c. To get an order in favor by declaring the indemnity cum undertaking submitted by the complainants under protest void and restraining the respondent from asking indemnity/ undertaking for possession of the flat (as language/ contents of undertaking indemnity/ undertaking format are contrary to law and against the principle of natural justice.

D. Reply by the respondent:

5. The respondent has contested the complaint on the following grounds:

- I. That in the present case, vide application dated 20.07.2010, the complainants approached the respondent for the booking of a unit in the project launched by the respondent, namely, Carnation Residency, located at Sector-85, Gurugram, Haryana for which the complainants made the payment of the booking amount of Rs. 3,00,000/- and on 10.08.2010 the complainants were issued with an allotment letter for the unit no. 103, tower 3h, 1st floor, 3bhk admeasuring super area of 1350 sq. ft.
- II. That subsequently, the complainants and the respondent entered into apartment buyers agreement dated 25.10.2010, wherein as per clause 10.1 of the aba, the respondent was supposed to hand over the possession within a period of 36 months from the date of the execution of the apartment buyer agreement by the company or sanction of plans or commencement of construction whichever is later subject to reasons mentioned in clause (11.1), (11.2), (11.3) and clause (38).
- III. That clause 10.2 and 10.3 of the ABA specifically highlights the timelines to take the possession of the unit in question after receipt of the OC shall be 30 days and if the allottee fails to take the possession

within the timelines, there shall be holding charges imposed upon the allottee @ Rs. 5/- per sq. ft. of the super area plus common area maintenance charges. Clause 13 further mentions the execution of the conveyance deed and failure to execute the conveyance deed will solely make the allottee responsible.

- IV. That the complainants, the respondent and the Punjab National Bank executed a tripartite agreement dated 05.01.2011 in lieu of the unit in question and the respondent also issued no-objection letter dated 11.02.2011 in favour of the bank in order to permit the bank to mortgage the loan in favour of the complainants.
- V. That the respondent obtained the OC for the unit of the complainants on 07.10.2014 and for the remaining towers of the project in question on 03.06.2015. that it is submitted that since the entire project was complete, the respondent made a fresh allotment in favour of the complainant thereby allotting Unit No. 103, Tower B1, admeasuring 1475 sq. ft. excluding the maintenance amount which was to be paid to the maintenance agency directly by the complainant and offered the possession of the unit in question to the complainant.
- VI. That the complainants despite acknowledging that the OC has been received and the possession was also offered, did not approach the respondent to take over the possession of the unit timely, so the respondent again issued the offer of possession letter dated 11.10.2017 upon which the complainants executed the undertaking-cum-indemnity bond dated 13.11.2017 and thereafter the complainants took the handover of the possession of the unit in question on 07.12.2017. Subsequent to taking the handover of the unit, the complainants, the respondent and the Maintenance Agency executed the Tripartite Maintenance Agreement dated 08.12.2017.

- VII. That immediately after taking the possession of the unit and execution of the maintenance agreement, the complainants had put the unit in question on lease/ rent and have been attaining the benefit of commercial gains, which was against the undertaking given by the complainants at the time of taking the possession of the unit.
- VIII. That since the respondent had fulfilled all its obligations even towards BE wherein some consideration was to be paid to BE in lieu of the Collaboration Agreement, and due to multiple on-going litigations, which led to some understanding being made between the respondent and BE due to which BE agreed to get the execution of the conveyance deed in favour of the complainants executed due to which the complainants were called for execution of certain documents vide letter dated 01.08.2024 so that the conveyance deed could take place immediately since without BE, the conveyance deed could not happen as BE wrote the letter to the office of the sub-registrar on 25.01.2017.
- IX. That in the intervening period when the construction and development was under progress there were various instances and scenarios when the development and construction works had to be put on hold due to reasons beyond the control of the Respondent. It is submitted that the parties have agreed that if the delay is on account of force majeure conditions, the respondent shall not be liable for performing its obligations. The project got delayed and proposed possession timelines could not be completed on account of following reasons among others as stated below:
- a. In the year, 2012 on the directions of the Hon'ble Supreme Court of India, the mining activities of minor minerals (which includes sand) were regulated. The Hon'ble Supreme Court directed framing of Modern Mineral Concession Rules. Reference in this regard may be had to the judgment of *"Deepak Kumar v.*

State of Haryana, (2012) 4 SCC 629". The competent authorities took substantial time in framing the rules and in the process the availability of building materials including sand which was an important raw material for development of the said Project became scarce in the NCR as well as areas around it. Further, Respondent was faced with certain other force majeure events including but not limited to non-availability of raw material due to various stay orders of Hon'ble Punjab & Haryana High Court and National Green Tribunal thereby stopping/regulating the mining activities, brick kilns, regulation of the construction and development activities by the judicial authorities in NCR on account of the environmental conditions, restrictions on usage of water, etc. It is pertinent to state that the National Green Tribunal in several cases related to Punjab and Haryana had stayed mining operations including in O.A No. 171/2013, wherein vide order dated 2.11.2015 mining activities by the newly allotted mining contracts by the state of Haryana was stayed on the Yamuna River bed. These orders inter-alia continued till the year 2018. Similar orders staying the mining operations were also passed by the Hon'ble High Court and the National Green Tribunal in Punjab and Uttar Pradesh as well. The stopping of mining activity not only made procurement of material difficult but also raised the prices of sand/gravel exponentially. It was almost 2 years that the scarcity as detailed above continued, despite which all efforts were made and materials were procured at 3-4 times the rate and the construction continued without shifting any extra burden to the customer.

- b. That during that time, a Writ petition was filed in the Hon'ble High Court of Punjab and Haryana titled as "Sunil Singh vs. Ministry of Environment & Forests Parayavaran" which was numbered as CWP-20032-2008 wherein the Hon'ble High Court pursuant to order dated 31 July 2012 imposed a blanket ban on the use of ground water in the region of Gurgaon and adjoining areas for the purposes of construction. That on passing of the abovementioned orders by the High Court the entire construction work in the Gurgaon region came to stand still as the water is one of the essential part for construction. That in light of the Order passed by the Hon'ble High Court the Respondent had to arrange and procure water from alternate sources which were far from the construction site. The arrangement of water from distant places required additional time and money which resulted in the alleged delay and further as per necessary requirements STP was required to be setup for the treatment of the procured water before the usage for construction which further resulted in the in alleged delay.
- c. Orders passed by Hon'ble High Court of Punjab and Haryana wherein the Hon'ble Court has restricted use of groundwater in construction activity and directed use of only treated water from available sewerage treatment plants. However, there was lack of number of sewage treatment plants which led to scarcity of water and further delayed the project. That in addition to this, labour rejected to work using the STP water over their health issues because of the pungent and foul smell coming from the STP water as the water from the S.T.P's of the State/Corporations had not undergone proper territory treatment as per prescribed norms.

- d. That on 19.02.2013 the office of the executive engineer, HUDA Division No. II, Gurgaon vide Memo No. 3008-3181 had issued instruction to all Developers to lift tertiary treated effluent for construction purpose for Sewerage Treatment plant Behrampur. Due to this instruction, the Respondent company faced the problem of water supply for a period of several months as adequate treated water was not available at Behrampur.
- X. That it is pertinent to note that the OC for the unit of the complainants was received on 07.10.2014 and possession was offered in August 2015 as well as October 2017 however the complainants took the possession of the unit in question only on 07.12.2017 without any explanation of the delay in taking the handover for possession and by that time, the BE, who has not been impleaded as the party to the present complaint had informed the office of the Sub-Registrar not to execute any conveyance deed, in complete violation of the collaboration agreement executed in 2007 and receiving the payments in terms of the said collaboration agreement from the respondent and the details of which are:

S. No.	Date	Particulars	Amount (Rs.)
1.	08.08.2011	Axis Bank A/c 056010200015303-Sec-14, Cheque No. 302460	4,68,449/-
2.	12.12.2011	Axis Bank A/c 056010200015303-Sec-14, Cheque No. 406358	7,58,829/-
3.	27.01.2012	Axis Bank A/c 056010200015303-Sec-14, Cheque No. 403564	3,73,063/-
4.	21.02.2012	Axis Bank A/c 056010200015303-Sec-14, Cheque No. 000488	2,73,063/-

- XI. That since the complainants have not impleaded BE as a party, the Hon'ble Authority kindly issue notice upon BE to appear before the

- Hon'ble Authority in order to execute the conveyance deed in favour of the complainants or direct the office of the sub-registrar to proceed with the conveyance deed in favour of the complainants.
- XII. In the present case, the complainants are seeking the relief of execution of the conveyance deed along with delay possession charges submitting that the possession has been delayed on the part of the respondent and nullity of the indemnity-cum-undertaking which was signed and executed wilfully by the complainants at the time of accepting possession. The said reliefs have been sought by the complainants at a very belated stage after a span of 10 years of time. The possession of the unit question was offered to the complainants on 28.08.2015 after receipt of the valid occupancy certificate, however the complainants took the handover of possession of their unit only in the year 2017. Since the OC and offer of possession was made before the enforcement of the Real Estate (Regulatory and Development) Act, 2015 and thus, the Hon'ble Regulatory Authority has no jurisdiction whatsoever to entertain such complaint and as such the complaint is liable to be rejected on this ground alone.
- XIII. That it is further submitted that the prayer for Delay Possession Charges/ Interest along with other reliefs is not maintainable before this Hon'ble Authority at such belated stage of 10 years when the complainants are already enjoying the benefit of putting their unit on lease/ rent.
- XIV. That since the present complaint is filed under Section 31 of the RERA Act, BE Automation Products Pvt Limited being a promoter should also be made a party to the present complaint so as to determine the liability for the alleged delay caused by numerous frivolous Litigation initiated by BE Automation Products Pvt Limited.

XV. That the Hon'ble Authority in complaint titled "BE Office Automation Products Private Limited vs M/s Orris Infrastructure Pvt. Ltd." Bearing CR-2465-2020 and CR-1217-2020, both decided on 16.05.2022 observed the following:

"2. HARERA Complaint No. CR/2465/2020:-

....V. Further, as per the record license no. 39 of 2009 which was issued in favour of B.E office Automation Products Private Limited and other landowners in collaboration with M/s Orris Infrastructure Limited has been renewed till 23.07.2024 by the DTCP vide memo no. LC-1750-Vol.-III Assrt. [MS] 2020.

VI.... As mentioned above the license no. 39 of 2009 which is renewed till 23.07.2024 belongs to B.E office Automation Products Private Limited in collaboration with M/s Orris Infrastructure Pvt. Ltd. Further, the applicant/complainant got the GPA cancelled vide registered document bearing no.4314 dated 27.08.2012 but the same has not been validated by any court of law. So, the GPA dated 22.10.2007 exists till date.....

VII. In view of the above, being the landowner licensee the applicant/complainant i.e. B.E office Automation Products Private Limited falls within the ambit of definition of "promoter" as provided under section 2(zk)(i) of the Real Estate (Regulation and Development) Act, 2016 and cannot be allowed wither away from his obligations as a promoter....."

XVI. That in addition to the grounds as mentioned above, the execution of the Conveyance Deed was also obstructed and is not possible even today due to on-going litigation filed by one of the Collaborator of land in the project, namely, BE Office who was the owner of only 5.8 Acres of land in the entire project. The unit of the complainants falls on the land which was originally owned by BE Office and since the validity of General Power of Attorney dated 22.10.2007 is in question, the execution of conveyance deed today is not permissible under law without presence of BE Office at the office of the Registrar.

XVII. That BE Office has indulged in frivolous litigation and put restraints in execution of the sale of apartments as well as conveyance deeds. BE

Office filed cases against the Company in each and every forum to create nuisance. The details of which are as narrated below:

a. That the land so aggregated for the above said project was contributed by a consortium of land-holders, who contributed around 19 Acres. That one BE Office had also approached the respondent with 5.8 Acres of land which was contiguous with the land already aggregated by the respondent and BE Office requested the respondent to make the said 5.8 Acres of land owned by BE a part of the land already aggregated by the Respondent, i.e. 19 Acres. Accordingly, a Collaboration Agreement dated 22.10.2007, which was executed between the Respondent and BE Office setting out the terms and conditions of the collaboration provided for the area entitlement of both the parties in the area to be developed on the 25.018 acres and the same was to be calculated on basis of saleable area attributable to 5.8 acres as contributed by BE Office. However, the land contributor i.e. BE Office indulged in frivolous litigation and put restraints in execution of the project and sale of apartments in the following manner:

b. That as per the clause 1b of the Collaboration Agreement, it was agreed between BE Office and the respondent that the total saleable area relating to the said land of 5.8 acres would be shared in the ratio of 1/3: 2/3, 1/3rd going to BE and 2/3rd going to the respondent. That simultaneous to the Collaboration Agreement, BE Office executed an irrevocable GPA in favour of the respondent for various purposes related to development of the said project which read as:

"To execute and get registered by appearing before Sub-Registrar Memorandum of Understanding, Agreements of Sale, Sale Deeds, lease

deeds, Gift deeds, Mortgage deeds, relinquishment deeds etc., or any other document which the attorney deems expedient and necessary in the wisdom to the extent of share of the collaborator(s)".

- c. That the said GPA was to be kept alive till the time the execution of the documents relatable to the share of the respondent and BE Office were executed and registered for which clause 13b of the Collaboration Agreement provided:

"13. That the owners to convey clear and unencumbered marketable title in favour of the prospective buyers. All the sale promotion activities including advertisements shall be conducted by the Developer(s) only. The owners also have agreed to execute the general power of attorney in favour of the nominee(s) of the Developer(s) to execute any required documents in favour of the buyers of the Developer(s) which shall be kept alive and will be irrevocable until transfer documents in favour of the entire land failing to the share of the Developer(s) and owners have been executed and registered. That the Developer shall be entitled to enter into any agreement/ collaboration agreement with any other Developer to develop the Residential project."

- d. That in January 2011, the respondent in pursuance of its contractual obligations, the respondent after obtaining licence no. 39 of 2009 from the DTCP on 24.07.2009, to set up a group housing residential colony, the respondent invited BE Office to identify the apartments that BE Office was interested to make part of its entitlement under the Collaboration Agreement with respect to the apartments and villas. Accordingly, the representatives of the respondent and BE Office met on January 24, 2011 and in pursuance of the same BE Office identified 82 apartments that would form part of BE Office's entitlement under the Collaboration Agreement.
- e. That soon after the respondent had acquired 4.5 Acres additional land by the virtue of which more flats could have been constructed and the DTCP gave additional license bearing no. 99 of 2011 on 17.11.2011 in lieu of the same and thus, development

of the said projects began. The Respondent requested BE Office to choose alternate 9 apartments, however, BE Office with ulterior motive, demanded its 1/3rd share from the additional land so acquired by the respondent and started indulging in frivolous litigation against the Respondent which resulted that on 22.08.2012, the GPA which executed on 22.10.2007 was also cancelled/ revoked by BE Office. That after the aforesaid Collaboration Agreement with BE Office in 2007, BE Office, by misrepresenting the Collaboration Agreement raised a claim that it was entitled to proportionate share in the construction on the additional land acquired by the respondent.

- f. That after the aforesaid event BE Office moved court and filed an application under section 9 of the Arbitration and Conciliation Act, 1996 before the L.d. Additional District and Sessions Judge, Gurgaon. The matter was heard and an order dated 20.11.2014 was passed by the L.d. ADJ.
- g. That the L.d. ADJ granted a blanket stay in favour of BE Office and against the Respondent, whereby the respondent was restrained from creating third party interest in respect of any apartments, villas and commercial areas till the matter could be decided finally by the Arbitrator. The respondent was also restrained from receiving any money in respect of sale of apartments, villas and commercial sites etc. or club membership charges or in any other form from any person.
- h. That the abovementioned stay order caused immense hardship to the Respondent as the restraint on alienation of the respondent's share of flats in the said project led to funds for the construction and development of the above projects getting held up as the Respondent could not alienate its interest in the said flats nor

could it collect money for flats already sold under construction linked plans and the pace of the construction slowed down considerably. That the above said order also led to a precarious cash flow position of the respondent. That selling of interest in the flats, prior to construction, to raise capital for construction and development is standard practice in the real estate sector.

- i. That after the above said stay order was passed, the respondent took further legal steps and filed F.A.O. No. 9901 of 2014 (O&M) whereby it was brought to the notice of the Hon'ble Punjab and Haryana High Court that the Ld. ADJ had committed an illegality and misdirected itself in not referring to the minutes of the meeting dated 24.01.2011 whereby the share and number of flats of BE Office had already been identified and at best the injunction should have been limited to BE Office's share in the said project. That the Hon'ble High Court was pleased to vacate the stay by its order dated 08.12.2014 order and limit the injunction to BE Office's agreed share in the project.
- j. That thereafter the respondent made serious efforts, and in order to resolve the disputes, Hon'ble Mr. Justice Chandramauli Kumar Prasad (Retd.), a former judge of the Hon'ble Supreme Court of India was appointed as Sole Arbitrator to adjudicate and decide the dispute between the two parties by the Hon'ble Punjab and Haryana High Court vide order dated 30.01.2015.
- k. That the Hon'ble Arbitrator commenced the arbitral proceedings and the process was going on for the said arbitration at New Delhi. The arbitrator passed interim award dated 19.08.2015 whereby the respondents stand was upheld and the Respondent was permitted to deal with their own share i.e., 2/3 share in the project as relatable to the land contributed by BE Office.

- l. That in the meanwhile, BE filed a contempt petition, C.O.C.P. No. 1851 of 2015, alleging contempt of court of the Additional District Judge, Gurgaon by the respondent so as to delay the project and harass the respondent's Directors/officials.
- m. That the arbitration proceedings concluded with Final Award dated 12.12.2016 passed by the Ld. Single Arbitrator, Mr Justice Chandramauli Kumar Prasad (Retd.), whereby contentions of the respondent were upheld and the share of BE Office was restricted to the original 82 flats selected by it. That the above said award goes on to show that the respondent was subjected to constant and frivolous litigation by BE Office through the entire construction and development period which caused immense hardship to the respondent and resulted in loss of valuable time and resources which resulted in delay in completion of the said project. Even after the arbitral award was passed in the respondent favour, BE Office was not inclined to put an end to the frivolous litigation that it was pursuing against the respondent.
- n. That BE Office further moved an application dated 13.01.2017, before the Deputy- Commissioner-cum-Registrar to stop the conveyance deed of Project Carnation. That in compliance of the said order dated 12.12.2016, the respondent handed over the units with keys and shops to BE Office on 18.1.2017 and 09.02.2017 in the presence of Nayab Tehsildar which proceeding was also recorded. BE Office further approached the office of the Sub-Registrar, Manesar, District Gurgaon requesting and intimating the office of the Sub-Registrar to stop the execution of the Conveyance Deeds of the flats/ apartments/ shops in the project Carnation Residency, Sector-85, Gurgaon vide letter dated 25.01.2017.

o. That contesting parallelly, BE Office further filed a petition under section 9 of the Arbitration and Conciliation Act, 1996 against the Respondent in the Special Commercial Courts (Haryana) presided by Sh. R.P. Goyal, Additional District Judge Gurugram, in Arbitration Case No. 4 of 2017 who stating that the I.d. Single Arbitrator, Mr Justice Chandramauli Kumar Prasad (Retd.) has become *functus officio* after passing of the final award dated 12.12.2016, and therefore, admitted the petition of BE Office filed under section 9 of the Arbitration and Conciliation Act, 1996, thereby granting interim measures in favour of BE Office vide order dated 08.12.2017. the relevant portion of the order dated 08.12.2017 is narrated below for ready reference:

".....

7..... *The respondent has executed more than 111 sale deeds and he is in process of creating third party rights over the entire project as a result of which he would suffer an irreparable loss in case restraint order pertaining to an area measuring 50299.14 sq. ft. is not passed.....The respondent also be restrained from using GPA till allotting and handing over the possession of the share of the petitioner.*

20...*As per clause 35(a) of the collaboration Agreement, the respondent can make allotments of balance units to others, the details of which are given in Annexure A18. The respondent has no right to execute sale deed of any flat/ shop in the said colony prior to allotting and handing over possession of built up units as per share of the petitioner in terms of award dated 12.12.2016 to the petitioner.*

28....*If it is so, then it can be safely said that the petitioner is entitled to their reliefs as per Section 9 of the Arbitration & Conciliation Act. One thing is clear that the award is silent about electricity and other amenities. Therefore, the respondent is restrained from booking or allotting or creating third party rights in the deficient area in the flats as well as in commercial shops and other benefits which is required to be given to the petitioners as per para no. 15 of this order per award dated 12.12.2016."*

p. That, BE Office, upon the dismissal of its stay application on 20.03.2017, approached the Divisional Commissioner, Gurugram

by filing an application. That the Divisional Commissioner, Gurugram passed an extra-jurisdictional order staying the alienation of property in the said project vide order dated 28.03.2017 on an application made by BE Office dated 27.03.2017. Respondent challenged the said order before the Hon'ble Punjab and Haryana High Court in CWP No. 9075/2017 wherein vide order dated 01.05.2017, the said impugned order was stayed and later on 07.12.2017 was also vacated in lieu of conducting fresh inquiry. From the events as mentioned above, the only inference that can be drawn is that BE Office tried to create multiple hurdles in the way of the respondent completing its project on time through frivolous litigation. However, the respondent triumphed every time as can be seen from the fact that various judicial forums decided in favour of the respondent. That the respondent further submits that court proceedings certainly took a substantial amount of time during which the respondent was restrained qua even receiving the sale consideration/ selling the units in the project which resulted in delay. These kinds of delays are covered by and envisioned under Clauses 39 and 11.1, hence the respondent is entitled to reasonable extension of time for construction.

q. That in the meanwhile, the said C.O.C.P. No. 1851 of 2015 (Contempt Petition) as mentioned in paragraph (i) above was eventually dismissed by the Hon'ble High Court of Punjab and Haryana vide judgement dated 15.03.2017. However, it is pertinent to note that the respondent was kept under the constant threat of an adverse legal ruling if the contempt petition were to succeed which further put constraints on alienation of flats in the said project thereby depriving the respondent of valuable capital

which was needed to finish the ongoing development and construction of the said projects.

- r. That subsequent to dismissal of the C.O.C.P. No. 1851 of 2015, BE Office had filed objection/ application under Section 34 of Arbitration & Conciliation Act, 1996 for setting aside/ modifying the Arbitral Award dated 12.12.2016, wherein vide judgment dated 16.05.2018 in Arbitration No. 60, Ms. Alka Malik, ADJ-Cum-Presiding Judge, Special Commercial Court, Gurugram observed:

"...CONCLUSION:

37. Simultaneously, the petitioner was required to execute an irrevocable GPA as per Clause-11 of the Collaboration Agreement and on the same day i.e. October 22nd, 2007, the GPA was executed in favour of respondent for various purpose incidental to development of group housing colony. Clause 10 of the GPA gave right to the respondent to execute and get registered sale deed, lease deed etc.

39. Some dispute cropped up between the parties and petitioner executed a deed of cancellation dated 27th August, 2012 whereby the irrevocable power of attorney dated 22nd October, 2007 was cancelled. Thereafter, both the parties filed applications under section 9 of the Act before learned ADJ for an ad interim relief. The matter was heard and by a common order dated 20th November, 2014 passed by learned ADJ, Gurugram, it was ordered that till final adjudication by the Arbitrator, respondent shall be restrained from creating any third party interest in respect of apartments, villas, commercial area etc. and they were further restrained from receiving any money in respect of any sale of apartment, villa, commercial space etc.

44. From perusal of the Collaboration Agreement dated 22nd of October 2017, it is evident that as per term 11, the owner was required to execute an irrevocable GPA simultaneous to signing of this agreement in favour of the developer for obtaining permission for change of land used, procuring licence for getting sanctioned site plan and for obtaining all such approval as may be required to be obtained from any authority for the purpose of raising construction and for the dealing with sale of constructed/unconstructed developed or undeveloped portion of the residential project.

45. It is thus crystal clear from the collaboration agreement itself which is the foundation of claim of the petitioner that power of attorney was irrevocable. Subsequent, revocation of the same by the petitioner was

thus, nowhere justified. It is also pertinent to mention here that collaboration agreement is foundation of the claim of the parties to this contest. Since as per the terms of collaboration agreement, this GPA was irrevocable, subsequent revocation thereof by the petitioner is nowhere justified in the given facts.....Such like conduct of the petitioner itself goes to show that he is habitual of raising the dispute over which he has no right and then is withdrawing the same. This conduct itself goes to establish that there was no force in the contentions of the petitioner and findings of learned Arbitrator that revocation of the power of attorney is nonest and bad in law, is perfectly legal and valid."

- s. That BF: Office moved an application before Ms. Alka Malik, ADJ-Cum-Presiding Judge, Special Commercial Court, Gurugram in Execution No. 46/ 05.07.2018 seeking to injunct respondent from using the GPA. The relevant portion of the order dated 13.02.2019 is reproduced below:

"....

4. *it is further urged that since January 2017, Judgment Debtor has executed 250 sale deeds on the basis of aforesaid General Power of Attorney. All these sale deeds have been executed prior to offering of possession of Decree Holder's complete area and thus, are illegal. Therefore, the use of aforesaid General Power of Attorney is not in accordance with the collaboration agreement.*

6. *...the final award was passed on 12.12.2016 and in terms of final award, the Decree Holder was held entitled to 82 apartments mentioned in Minutes of meeting dated 24.01.2011.*

7. *...an application was moved by the Decree Holder before Deputy Commissioner, Gurugram and Decree Holder had proceeded to obtain possession of aforesaid 82 apartments from Judgment Debtor on 18.01.2017 and 09.02.2017. Physical possession of aforesaid apartments had been delivered to the Decree Holder to the complete satisfaction.....*

8. *...Thereafter, a complaint was filed by Decree Holder on 13.01.2017 before Deputy Commissioner, Gurugram, wherein he obtained an ex-parte restraint order against Judgment Debtor by concealing the material facts. Subsequently this order was vacated by Deputy Commissioner, Gurugram on 20.02.2017 based n the report given by SDO (Civil) Gurugram. Thereafter, on 27.03.2017 Decree Holder moved an application before Divisional Commissioner, Gurugram and sought stay in respect of registration of apartments forming part of project till such time the litigation between the parties was conclusively decided. The Divisional Commissioner directed that no property or part of the*

same be alienated.....Thereafter Decree Holder cleverly obtained an order dated 08122017 in a petition under Section 9 of Arbitration Act whereby Judgment Debtor has been restrained from creating third party rights in respect of area which has been alleged by the Decree Holder to have been allotted less to him. Said order is also under challenge before Hon'ble High Court. All these facts clearly reveal that Decree Holder has been dragging the Judgment Debtor in frivolous protracted multifarious litigations. In fact, Decree Holder has already succeeded in obtaining physical possession of the apartments which was legitimately liable to be allocated to it in conformity with collaboration agreement.

9. In fact validity of General Power of Attorney dated 22/10/2007 has been upheld by the Arbitrator and this application has been filed for gross misuse of process of law.

26. From the entire given facts of the case as well as from the plea raised by the respondent/ judgment debtor that Decree Holder has been unnecessarily threatening the Judgment Debtor by dragging it upto litigation, this Court is of the opinion that there is no merit in the present application moved by the Decree Holder. Prima facie claim of Decree Holder by handing it keys of 82 flats and 2 shops has been satisfied in the light of the award. Claim qua any area if left, can be adjudicated in this execution."

- t. That Ms. Alka Malik, ADJ-Cum-Presiding Judge, Special Commercial Court, Gurugram in Execution No. 46/ 05.07.2018 vide order dated 09.03.2022 passed an order in the Executing Court which was challenged by the respondent before the Hon'ble High Court of Punjab and Haryana in CR No. 1273/ 2022 (O&M), which was decided on 12.09.2022 rejecting the revision petition filed by the respondent herein and observing:

".....

Learned Additional District Judge, Gurugram, vide impugned order dated 09.03.2022 proceeded to decide the execution application while holding that allocation of 82 apartments and 2 shops in the Group Housing Colony, does not satisfy entitlement of the respondent to area of 141357 sq. ft., as determined by the learned Arbitrator. Therefore, respondent was held entitled to 44 more flats out of the list as available on record so as to make good the deficit of area measuring 50365.49 sq. ft. saleable area Present petitioner is also directed to make good the deficit of area measuring 214.85 sq. ft., in respect of commercial and shopping area. Following directions were issued to the petitioner-JD:-

"(i) JD is directed to allot and deliver possession of 44 flats out of the list of flats available at page no.243 in favour of DH forthwith so as make good the deficit of area measuring 50365.49 sq.ft. Till the time, it is so done, restraint order in respect of remaining two flat nos., 1206, tower 2A and 1302, Tower D5 shall continue;

(ii) JD is directed to make good the deficit of area measuring 214.85 sq. ft., in respect of commercial and shopping area forthwith;

(iii) JD is directed to allot and deliver possession of 2 villas in favour of DH forthwith;

(iv) JD is directed to release amount of Rs.1,32,00,000/- in favour of DH in respect of sale consideration of EWS Flats with immediate effect;

(v) JD is directed to render accounts qua sale of 5 flats on or before next date fixed in this case;

(vi) JD is directed to allot and deliver possession of 185 parking bays in favour of DH with immediate effect; and

(vii) JD is directed to execute all necessary documents pertaining to area of DH's entitlement as per award without any delay."

Aggrieved therefrom, present revision petition has been filed.

.....

- u. Learned counsel further submits that respondent in its objection under Section 34 of the Arbitration Act raised the specific question of saleable area etc., but admittedly respondent confined its claim only to four of the points therein viz (i) cancellation of GPA dated 22.10.2007, (ii) respondent's claim for damages for delay in offering of possession of petitioner's share in the area, (iii) decision of the arbitrator whereby respondent's claim for share in the colony has been declined and (iv) the remarks in the award regarding club membership to be expunged. Respondent did not choose to agitate qua the others grounds

Learned Executing Court in the given factual matrix has proceeded for executing of the award as it is and in case of an error therein, the remedy in such a situation clearly lies elsewhere. It is not open for the learned Executing Court to go beyond the decree in any manner.

Learned counsel for the petitioner is unable to point out any illegality, infirmity or perversity in impugned order dated 09.03.2022, passed by the learned Additional District Judge-cum- Presiding Judge, Exclusive

*Commercial Court at Gurugram, which calls for interference by this Court in exercise of revisional jurisdiction.
No other argument has been raised.
Revision petition is accordingly dismissed."*

Revision petition is accordingly dismissed."

- v. That BE Office moved before the Hon'ble High Court of Punjab and Haryana at Chandigarh again in a Contempt Petition against the respondent for the contempt of not complying with the directions/ order passed by Special Commercial Courts (Haryana) presided by Sh. R.P. Goyal, Additional District Judge Gurugram on 08.12.2017, bearing COCP No. 362 of 2021 which was disposed by the Hon'ble High Court on 18.07.2023, since the Respondent had approached the Hon'ble Supreme Court of India vide SLP (C) Diary No. 30973 of 2022 challenging the order dated 12.09.2022, passed by the Hon'ble High Court of Punjab and Haryana in CR No. 1273/ 2022 (O&M) and the matter is sub-judice before the Hon'ble Supreme Court of India wherein the Hon'ble Supreme Court of India vide order dated 15.12.2022 has granted stay upon the execution proceedings which includes stay upon the execution of the Conveyance Deed by using the GPA dated 22.10.2007 executed by BE Office in favour of the respondent.
- w. That from the facts as narrated above it becomes quite evident that the BE Office Automation Products Pvt Limited is also responsible for the delay in the execution of the conveyance deed on account of various frivolous litigation initiated by the same. That it is also pertinent to mention here that BE Automation Products Pvt Limited falls under the definition of promoter being one of the landowner and is equally responsible for any delay. That the respondent would also like to point out that this Hon'ble

Authority has already taken a consistent view that Landowners falls within the definition of the Promoter and are held to be the persons who causes to construct such project as defined under Section 2 (zk) of the Act and the same view has to be followed by the Doctrine of Precedents.

XVIII. Written submissions have been filed by the respondent. The same have been taken on record and perused further.

6. 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 based on these undisputed documents and submission made by the complainant.

E. Jurisdiction of the Authority:

7. 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

8. 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

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

Section 11(4)(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 allottee as per the

agreement for sale, or to the association of allottee, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottee, or the common areas to the association of allottee 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 promoter, the allottee and the real estate agents under this Act and the rules and regulations made thereunder.

10. 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. Maintainability of complaint:

11. The present complaint pertains to the real estate project "Carnation Residency", situated in at Sector-85, Gurugram, Haryana. It is an admitted and undisputed position on record that the competent authority had granted the occupation certificate dated 07.10.2014 and 06.04.2017 in respect of the said project and the complainant paid an amount of Rs.51,44,726/- to the respondent, for purchase of a unit no. 103 at first floor admeasuring 1350 sq. ft. in the said project. 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.

12. 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, 2016. 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;

13. Further Rule 2(1)(o)(ii) of the Rules, 2017, also defines the on-going project. The relevant portion of the section is reproduced below: -

(o) "on going project" means a project for which a license was issued for the development under the Haryana Development and Regulation of Urban Area Act, 1975 on or before the 1st May, 2017 and where development works were yet to be completed on the said date, but does not include:

(i) any project for which after completion of development works, an application under Rule 16 of the Haryana Development and Regulation of Urban Area Rules, 1976 or under sub code 4.10 of the Haryana Building Code 2017, as the case may be, is made to the Competent Authority on or before publication of these rules and

(ii) that part of any project for which part completion/completion, occupation certificate or part thereof has been granted on or before publication of these rules.

14. 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.

15. 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."

16. 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.

17. 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."

18. 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.
19. When the aforesaid principles are applied to the facts of the present case, it becomes evident that the project in question had already attained occupation to the extent certified prior to the commencement of the Act. The occupation certificate dated 07.10.2014 and 06.04.2017, 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.
20. 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.
21. 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 "on-going project" within the meaning of Section 3 of the Act, 2016 as well as Rule 2(1)(o) of the Rules, 2017. The absence of this foundational fact renders the

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

22. 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.

23. In view of the foregoing reasons, the Authority finds no merit in the present complaint and the same is accordingly dismissed, being not maintainable. Pending applications, if any, also stand disposed of.

24. File be consigned to registry.



Arun Kumar
(Chairman)

Haryana Real Estate Regulatory Authority,
Gurugram

Dated: 07.04.2026