

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

Complaint no.	:	5563 of 2024
First date of hearing	:	27.02.2025
Date of decision	:	27.01.2026

M/s India Infoline Housing Finance Ltd.

R/o - Plot no. 98, Udyog Vihar, Phase IV, Gurugram

Complainant

Versus

1. M/s Sare Gurugram Pvt. Ltd. & Anr.

Registered Office: KGK, Dhoot, M.G. Road, Gurugram, Haryana-122001.

Respondent no.1

2. M/s Dhoot Infrastructure Projects Limited.

Registered Office: 904-907, Time Tower, M.G. Road, Sector-28, Gurugram, Haryana.

Respondent no.2

3. M/s KGK Realty India Limited.

Registered Office: 3rd floor, KGK Tower-II, Dattapada Road Nagar near Ekta Bhoomi Gardens, Borivali (East), Mumbai, Maharashtra-400066.

Respondent no.3

CORAM:

Shri Arun Kumar

Shri Phool Singh Saini

**Chairman
Member**

APPEARANCE:

Sh. Sukhbir Yadav (Advocate)

Complainant

Sh. Shubham Mishra (Advocate)

Respondents

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 thereunder or to the allottee as per the agreement for sale executed *inter se*.

A. Project and unit related details.

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

S.N.	Particulars	Details
1.	Name of the project	"Green Par C-II", Sector 92, Gurugram
2.	Nature of project	Group Housing Colony
3.	RERA Registered/ Not Registered	Registered 110 of 2023 dated 04.12.2023 valid up-to 31.12.2030.
4.	DTPC License no.	44 of 2009 dated 14.08.2009 valid up-to 13.08.2024. 68 of 2011 dated 21.07.2011 valid up-to 29.07.2015
5.	Allotment letter	23.09.2016 (page 87 of complaint)
6.	Unit no.	T07-tower T07, 20 th floor [page 37 of complaint]
7.	BBA executed between the M/s Ramprastha Sare Realty Pvt. Ltd. & Sonika Gupta (original allottee)	26.09.2012
8.	Tripartite agreement between the following parties: 1. Sonika Gupta 2. M/s Ramprastha Sare Realty Ltd. 3. India Infoline Housing Finance Limited/ India Infoline Finance Limited	29.09.2016 (page 91 of complaint)
9.	Unit measuring	1712 Sq. Ft. (super area) [page 37 of complaint]
10.	Possession clause	The company shall endeavour to offer possession of the said flat within a period of 36 months from the date of sanction of building plans and receipt of all other approvals required for start of construction and subject to



		<p>timely payment by the allottee towards the basic sale price and other charges, as demanded in terms of this agreement. The time frame for possession provided hereinabove is tentative and shall be subject to force majeure and timely and prompt payment of all installments and completion of formalities required and the timely receipt of all approvals from the concerned authorities. The company shall be entitled to six months additional period in the event there is a delay in handing over possession. However, in case of delay beyond a period of six months and such delay is attributable to the company, the company shall be liable to pay compensation @ Rs.5.00 (Rs. Five) per sq.ft. per month of the super area of the said flat for the period of further delay. (Emphasis supplied) (page 42 of complaint)</p>
11.	Date of commencement of construction	10.03.2012
12.	Due date of possession	10.03.2015 + 6 months = 10.09.2015.
13.	Total sale consideration	Rs. 52,22,071/- (as alleged by the complainant, page 35 of complaint)
14.	Total amount paid by the complainant	Rs. 50,83,534 /- (as alleged by the complainant, page 35 of complaint)
15.	Occupation certificate dated	28.04.2023 (mentioned in conveyance deed dated 20.09.2024, page 97 of reply)
16.	Notice to borrower under Section 13(2) of the SARFAESI, Act 2002 issued by the IIFL Home Loan in favour of Vikas Tyagi, Sonika Gupta & M/s Tybros India Tours (P)Ltd.	20.09.2019 (page 11 of reply)
17.	Possession notice (for immovable property) issued by IIFL home loan	09.01.2020 (page 117 of complaint)
18.	Newspaper publication w.r.t. to repayment of the loan amount	14.01.2020 (page 119 of complaint)

19.	Conveyance deed executed between the Sare Gurugram Pvt. Ltd. Etc. & Neelam Jagvijai Singh Rawat	20.09.2024 (page 93 of reply)
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B. Facts of the complaint

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

- i. That being allured by respondent no.1's representations, and believing in the assurances and promises, the original allottee booked a residential unit bearing no. T072001, tower no. T-07, 20th floor, in the "Green ParC-II" project situated in Sector 92, Gurugram admeasuring 1712 sq.ft. under the construction linked payment plan for a total sale consideration of Rs. 52,22,071/- by submitting a booking form dated 19.04.2011. The original allottee made a payment of Rs. 3,84,686/- through cheque bearing no. 156347 dated 15.04.2011 and respondent no.1 issued the payment receipt for the said transaction on 22.09.2016.
- ii. That on 26.09.2012, a pre-printed, arbitrary, unilateral, and ex-facie buyer developer agreement was executed between respondent no.1 and the original allottee. As per clause no. 3.3 of the BBA, respondent no.1 was obligated to handover possession of the original allottee's unit within 36 months from the date of commencement of the construction. The construction commenced on 10.03.2012, hence, the due date of possession for the original allottee's unit in the present complaint comes out to be 10.03.2015. After booking of the unit, the original allottee applied for a home loan for the unit in question to the complainant. Thereafter, the original allottee along with her husband submitted a loan application form with respect to availing of a home loan from IIFL HFL of Rs. 40,00,000/-. The said home loan application was submitted by the original allottee, Vikas



Tyagi, Vivek Tyagi and M/s Tybros Tours India Pvt. Ltd. The complainant sanctioned the said home loan of Rs. 40,00,000/-. Therefore, on 15.09.2016, a loan agreement was also executed among the complainant, the original allottee & Ors.

- iii. That on 23.09.2016, the respondent party issued an allotment letter in favour of the original allottee and confirmed the allotment of the unit bearing no. T072001 on the 20th floor situated in the project of the respondent namely "green ParC Crescent ParC" in favour of the original allottee. Thereafter, the respondent was permitted to mortgage against the unit in question to the complainant vide letter dated 29.09.2016. Subsequently, a tripartite agreement in lieu of the loan was submitted by the original allottee and was executed between the respondent no.1, the original allottee and IIFL HFL. Pursuant to clause 9 of the Tripartite agreement, in the event of default by the original allottee in repayment or as otherwise specified therein, IIFL HFL shall acquire ownership of the unit in question.
- iv. That according to payment receipts issued by the respondent, the original allottee paid Rs. 49,37,849/- against the unit bearing no. T07201, tower T-07, 20th floor in the Green ParC-II project by June 2015. Notably, Rs. 40,00,000/- of Rs. 49,37,849/- was disbursed by IIFL HFL as part of the home loan availed by the original allottee.
- v. That after disbursing the entire sanctioned amount of Rs. 40,00,000/- the original allottee defaulted on repaying the loan from the complainant by stopping monthly EMI payments. Consequently, IIFL HFL declared the original allottee's loan as a Non-Performing Asset and issued a certificate on 03.09.2019. Pursuant to Section 13(2) of the SARFAESI Act, 2002, the

complainant issued a notice dated 20.09.2019, to the original allottee and con-borrowers, declaring their account a non-performing asset. Moreover, the complainant in the said notice demanded the payment of Rs. 41,72,481/- as of 17.09.2019 and the failure to pay the said outstanding loan amount would result in the publication of a notice for public auction sale of secured asset i.e., unit bearing no T072001, tower no. T-07, 20th floor in the "green ParC-II" project under Section 13(8) of the SARFAESI Act, 2002.

- vi. That the original allottee failed to respond to the notice from IIFL HFL, prompting the complainant to take symbolic possession on 09.01.2020. This notice publicly declared the original allottee and others as non-performing assets due to their failure to repay the loan amount. As a result, the complainant proceeded to take possession of the secured asset in the exercise of powers conferred on him under Section 13(4) of the SARFAESI Act, 2002, specifically unit T072001, tower T-07, 20th floor, in the green ParC-II project. Further, the complainant published the aforementioned notice in newspapers, as required to publicly notify the original allottees default status and impending possession of the secured asset.
- vii. That thereafter, the complainant followed up with respondent no.1 requesting physical possession of the unit. However, the respondent failed to provide a satisfactory response. Pursuant to the tripartite agreement dated 29.09.2016, the complainant is the rightful deemed owner of the unit. As the unit serves as a secured asset for the loan availed by the original allottee, the respondent cannot deny the complainant deemed possession.
- viii. That the complainant, being a secured creditor, took the next step by submitting an application under Section 14(1) of the SARFAESI Act, 2002,

to the court of District Magistrate, Gurugram, against the original allottee and others. This was due to the respondent party's lack of response and the original allottee's failure to adhere to the financial discipline regarding the home loan availed from the complainant. As a result, the original allottee and others were declared a non-performing asset. The District Magistrate, utilizing the power conferred under Section 14 of the SARFAESI Act, passed an order on 25.05.2022 stating that the complainant is entitled to take possession of unit T072001, tower T-07, 20th floor, in the Green ParC-II project.

- ix. That pursuant to obtaining the aforementioned order from the District Magistrate, Gurugram, accordingly, by way of advance notice dated 07.03.2024 issued by duty magistrate for fixing the date of physical possession is duly intimated to allottees/borrowers. Accordingly, in presence of duty magistrate along with authorized officer of the complainant physical possession of the secured asset has been taken under Section 13(4) read with under Rule 8(1) of the Security Interest (enforcement) Rules 2002 on 13.03.2024.
- x. That it is crucial to note here that initially at the time of booking, the original allottee had booked the unit in the project "Green ParC Crescent ParC" being developed by the respondent no.1 at that time. However, later on after filing of a petition under Section 7 of Insolvency and Bankruptcy Code, 2016 against the respondent no.1 and being an insolvent company. The respondent no. 2 and 3 i.e. Dhoot Infrastructure Projects Limited and KGK Realty India Limited were replaced as promoter/developer for "Green ParC Crescent ParC" project in place of respondent no.1 i.e., Sare Gurugram Private Limited by the order/judgment dated 24.04.2023 passed by the

Hon'ble National Company Law Tribunal. As respondent nos. 2 and 3 are consortium, companies of respondent no.1. therefore, they have been communicating with the complainant on behalf of respondent no.1 regarding the unit in question.

- xi. That on consortium companies for the respondent no.1 i.e., respondent no.2 and 3 on behalf of the respondent no.1, replied to the aforesaid notice dated 09.03.2024 through their letter. Respondent no. 2 and 3 enlightened the facts in the said letter about the approval of the resolution plan submitted by the consortium respondent no.2 and 3 in the Corporate Insolvency Resolution Process of respondent no.1 i.e., Sare Gurugram Private Limited. Further to this, the respondent no.2 and 3, highlighted that the allotment of the unit in question has been cancelled by them vide termination letter dated 04.11.2023 upon non-payment of outstanding dues by Sonika Gupta and after the said cancellation, a closure letter dated 21.02.2024 was also issued by the consortium companies to Sh. Vikas Tyagi. Consequently, respondent no.2 and 3 asserted that the complainant has no rights over the unit in question. Respondent no. 2 and 3 further asked the complainant in light of the cancelled allotment and subsequent closure letter issued to Sh. Vikas Tyagi that the complainant, to withdraw the public notice for auction-cum-sale of the secured asset by necessary publications to set aside the said public notice.
- xii. That the respondent no.2 and 3 entered the scene subsequently, as the initial booking of the unit in question was made by respondent no.1. Respondent no.2 also granted permission for the mortgage and executed the tripartite agreement. Notably, the consortium companies may not have reviewed the contents of the tripartite agreement dated 29.09.2016,

specifically clause 9. A plain reading of clause 9 of the tripartite agreement reveals that respondent no.2 and 3 have misconstrued the due process of law. Specifically, they were obligated to inform the complainant about the termination of the unit allotment and did not refund a single penny to the complainant. Now, as the complainant, a secured creditor, is following the due process of law to sell the unit, respondent no.2 and 3 are unlawfully demanding that the complainant withdraw the public notice for auction.

xiii. That between 27.03.2024 and 29.04.2024, the complainant and respondents exchanged communications regarding the complainant's rights over the unit in question via emails/letters dated 27.03.2024, 15.04.2024 and 29.04.2024. Respondent no.2 and 3 persistently claimed that the complainant has no rights over the unit. However, the complainant drew the respondent's attention to Section 13 of the SARFAESI Act, 2002. Furthermore, Section 58 read with Section 100 of the Transfer of Property Act, 1882 nowhere states that a mortgage over immovable property cannot be created in terms of future assets. By virtue of the tripartite agreement dated 29.09.2016, a security interest has been created in favour of the complainant against the loan granted to Sonika Gupta, therefore, the complainant is within its rights to enforce in accordance with the provisions of the SARFAESI Act.

xiv. That pursuant to the letter dated 29.04.2024 sent by the complainant to the respondents, the respondents did not share any communication objecting to the right of the complainant over the unit in question. After taking possession of the secured asset, 1st sale notice dated 23.01.2024 issued by complainant for putting secured asset on auction and same is scheduled for e-auction on 28.02.2024. However, for want of bid auction was failed.

Subsequent to this, secured asset put for 2nd sale by way of e-auction and same is scheduled on 28.03.2024, but remained unsuccessful. Therefore, the complainant again re-auctioned the unit on 21.06.2024, resulting in a successful sale to the highest bidder. Following the sale of the unit to the highest bidder, Neelam Jagvijai Singh Rawat, via e-auction on 21.06.2024, the complainant wrote to respondent no. 1, 2 and 3 on 24.06.2024, requesting disclosure of outstanding builder/maintenance dues so that Neelam Jagvijai Singh Rawat, the highest bidder can clear these dues at the time of property registration in her name.

- xv. That in response to the letter dated 24.06.2024 the respondents shared an email dated 26.06.2024 which reflects the outstanding amount to be paid Rs. 19,05,972/- inclusive of principal overdue, interest overdue and holding charges. Thereafter, an email dated 04.07.2024 was also received by the complainant in which the total outstanding as on 04.07.2024 is Rs. 19,21,000/- inclusive of principal overdue Rs. 8,77,524/-, interest overdue Rs. 9,43,144/- and holding charges Rs. 99,987/-. The total sale consideration of the unit was Rs. 52,22,071/- and as per the statement of account as on September 2016 issued by respondent no. 1, a substantial sum of Rs. 50,83,534/- has been received by the respondent no. 1 against the unit bearing no. T072001 which is more than 97% of the sale consideration, therefore, the outstanding dues sought by the respondents are not reasonable. Furthermore, the respondents' claims for holding charges and interest overdue are unjustified and illegal since the complainant is not in default in any way, similarly, the demand for interest overdue is also unfounded and unlawful.

- xvi. That the respondents' demand for holding charges and interest overdue is unreasonable and unjustified. To obtain physical possession of the unit, the respondents require payment of these illegal charges. Respondents no. 2 and 3 are exploiting their dominant position, harassing the complainant with malicious intent. Notably, the complainant has priority rights to the unit under the tripartite agreement dated 29.09.2016. Therefore, the respondents cannot deny the complainant physical possession by demanding unreasonable and vexatious charges.
- xvii. That the due date of possession for the deemed complainant's unit has lapsed, and no words regarding the possession were ever shared by respondents with the complainant. The due date of possession of the unit in question was 10.03.2015 and now, it has been more than 9 years since respondent no.1 has retained the complainant's deposited and disbursed funds without providing possession. It would not be out of place to mention here that the respondent no. 2 and 3 after stepping in the shoes of respondent no. 1, initially lacked understanding of the transaction between the complainant and respondent no. 1. Despite being apprised of the facts and documentation, they failed to refund the complainant or provide physical possession. Furthermore, respondents no. 2 and 3 are unjustly demanding holding charges and interest, despite the complainant's timely payments disbursement and absence of default.
- xviii. That the complainant's repeated attempts to obtain possession of the allotted unit have been futile. Respondents no. 2 and 3 have not disclosed genuine outstanding dues, leaving the complainant uncertain about their intentions.

- xix. That the main grievance of the complainant in the present complaint is that despite adhering to the due process of law, the complainant has been unjustly denied physical possession of the unit. Although willing to settle genuine and reasonable outstanding dues, respondent parties have consistently failed to deliver possession. As a secured creditor, the complainant holds first rights to the secured asset. Following the e-auction on 21.06.2024, where the unit was sold to Neelam Jagvijai Singh Rawat, respondents no. 2 and 3 continue to withhold possession from the Complainant. The respondent had not recognised the complainant as an allottee and did not pay any delayed possession interest from the due date of possession till actual handover of the unit. Furthermore, the respondent did not send any offer of possession to the allottee/complainant and asked for unreasonable demand of the interest. It is more specifically submitted that since the respondent did not recognize the Neelam Jagvijai Singh Rawat as an allottee, the complainant is allottee (subsequent allottee) of the unit in question.
- xx. That the facts and circumstances as enumerated above would lead to the only conclusion that there is a deficiency of service on the part of the respondents and as such, they are liable to be punished and compensate the complainant.
- xxi. That there are a clear unfair trade practice and breach of contract and deficiency in the services of the respondents and much more a smell of playing fraud with the complainant and others is prima facie clear on the part of the respondents which makes them liable to answer the Authority/Adjudicating Officer.

xxii. That for the first-time cause of action for the present complaint arose in September 2019, when the original allottee failed to repay the home loan granted by the complainant and when the original allottee was declared a Non-performing Asset. The cause of action again arose in November 2023, when the respondent no. 2 and 3 cancelled the subject unit without keeping the complainant updated about the said decision. The cause of action further arose on March 2024, when respondent no. 2 and 3 failed to hand over the possession of the unit as per the buyer agreement and when they denied the rights of the complainant over the unit. Further, the cause of action again arose on various occasions, including on April 2024, June 2024 and many times till date, when the protests were lodged with the respondents about their failure to deliver the project and the assurances were given by them that the possession would be delivered by a certain time. The cause of action is alive and continuing and will continue to subsist till such time as the Authority restrains the respondents by an order of injunction and/or passes the necessary orders.

C. Relief sought by the complainant

4. The complainant has sought the following relief(s):
 - I. Direct the respondent to set aside the cancellation of the allotment of the unit.
 - II. Direct the respondent to pay delayed possession charges from the due date of possession i.e., 10.03.2015 till handing over of possession.
 - III. Direct the respondent to restrain them from charging holding charges and overdue interest.
 - IV. Direct the respondent to handover the physical possession of the unit and to execute the conveyance deed for the complainant.
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 no.1 ,2 & 3.

6. The respondents have contested the complaint on the following grounds.

- i. That the respondents i.e., Sare Gurugram Pvt. Ltd. and the consortium of KGK Realty (India) Private Limited and Dhoot Infrastructure Projects Limited which emerged as the successful resolution applicant in the corporate insolvency resolution process of Sare Gurugram Pvt. Ltd. are filing the present reply cum dismissal application to the complaint before this Hon'ble Authority to formally record certain developments concerning Sare Gurugram Pvt. Ltd. and its CIRP. In light of these developments, the Respondent seeks appropriate directions/orders for the dismissal and final disposal of the proceedings in the present matter ***India Infoline Housing Finance Limited vs Sare Gurugram Pvt. Ltd. and Ors. (RERA-GRG-5563-2024)***.
- ii. That the instant complaint in itself is completely devoid of merits and factual basis. It has been filed with the sole motive to harass the respondents, and extorting undue benefits, which is both unjustifiable and impermissible. The complainant represents an abuse of process and should be dismissed forthwith as it fails to present any legitimate grounds relief. The complaint is tainted with malafides and the complainant is guilty of *suppresio veri* and *suggestion falsi*. The complainant has purposefully, with the intent to misguide the Authority concealed material facts. The revelation of these concealed facts will unequivocally demonstrate the baseless nature of the complaint, warranting its immediate dismissal.
- iii. That at the outset, it is imperative to raise a substantive objection and highlight the conduct exhibited by the complainant, which appears to be

tainted by malafide intentions and ulterior motives, aimed at coercing unwarranted benefits from the respondent/promoter. In a deeply concerning sequence of events, the complainant, as an apparent afterthought, approached Authority with unclean hands, presenting a disguised and concealed set of facts, solely to mislead Authority and secure an order based on erroneous beliefs and pretexts. This conduct exhibits the vexatious character of the complaint, which is designed solely to serve the ulterior motives of the complainant only.

- iv. That the company, Sare Gurugram Pvt. Ltd. incorporated on 28.08.2006 and is in the business of construction and development of residential and commercial real estate projects. It owns two parcels of land admeasuring 66.03 acres which is divided into two projects - (i) residential project under the name of The Crescent Pare project being developed on a land admeasuring 48.818 acres situated in the revenue estate of village Wazirpur and Mewka, Sector 92, Gurgaon, Haryana situated in the revenue estate of village Dhorka, Sector 92, Gurgaon, Haryana.
- v. That one of the financial creditors of the said company namely Asset Care and Reconstruction Enterprises Limited filed an application under Section 7 of the Insolvency and Bankruptcy Code, 2016 before the Hon'ble National Company Law Tribunal, New Delhi Principal Bench.
- vi. That the Hon'ble NCLT *vide* its order dated 09.03.2021 in C.P. (IB) No. 300 (PB)/2020 admitted the application filed by ASREC and thereby commenced the CIRP of the Sare Gurugram Pvt. Ltd. from 09.03.2021, further to which a moratorium as prescribed by the Code was declared.

- vii. That pursuant to the Admission Order, CA Ajit Gyanchand Jain was appointed as an interim resolution professional for conducting the CIRP of the Sare Gurugram Pvt. Ltd. by the Hon'ble NCLT and was subsequently confirmed/appointed as the resolution professional by the committee of creditors in its first meeting held on 19.04.2021.
- viii. That a public announcement was issued in form-A under Regulation 6 of IBBI on 12.03.2021. The last date for submission of the claims by the creditors was 24.03.2021. The Resolution Professional issued 3 (three) addendums on 13.03.2021, 14.03.2021 and 15.03.2021 to Public Announcement published on 12.03.2021 in Business Standard (English Newspaper), Business Standard (Hindi Newspaper), Financial Express and Jansatta Newspapers. For the representation of home buyers of the project in the CoC, the resolution professional shortlisted names of three insolvency professionals to act as their authorized representative, further to which Ms. Rakesh Verma was appointed as authorized representative to represent the home buyers of the project under Section 21(6A)(b) of the Code. The resolution Professional thereafter filed an application on 05.04.2021 for approval of the Authorized representative and the Hon'ble NCLT vide order dated 01.06.2021 appointed Ms. Rakesh Verma as the authorized representative for the homebuyers.
- ix. That the resolution professional has made every endeavour to protect and preserve the assets and the value of the corporate debtor and manage the operations of the corporate debtor as a going concern. Pursuant to Section 20(2)(e) of the Code, the resolution professional had allowed all the home buyers to reach out to him to harmoniously address their concerns. Further, the resolution professional had been continuously engaged in monitoring

and verifying the claims which were received in the CIRP of the corporate debtor.

- x. That the resolution professional received expression of interest in terms of form-G from 23 interested parties and thereafter had received resolution plans from 7 prospective resolution applicants, which were delayed for discussion, negotiation, compliances and thereby for conclusion, due to the outbreak of COVID-19 pandemic, in the country. Thereafter, the CoC after satisfactorily examining the feasibility and viability of the resolution plans received, approved the resolution plan of the SRA with 100% votes in its favour in terms of Section 30(4) of the Code.
- xi. That pursuant thereto, the resolution professional filed an application before the Hon'ble NCLT *inter alia* seeking approval of the Hon'ble NCLT on the successful resolution plan.
- xii. That the complainant has filed the present complaint before the Authority which is pending for adjudication wherein the respondent is hereby filing present reply to complaint cum application for dismissal pursuant to the above-mentioned complaint in the case of ***India Infoline Housing Finance Limited vs Sare Gurugram Pvt. Ltd. and Ors. (RERA-GRG-5563-2024)***.
- xiii. That the complainant has filed the instant complaint, bearing number RERA-GRG-5563-2024, before the Authority. It is significant to mention that the present complaint is wholly misconceived, devoid of merit, and liable to be dismissed in limine, as the subject matter, which is the core of the present dispute has already been lawfully and irrevocably transferred by the complainant itself. The complainant, IIFL, being a financing agency, had an interest in the said unit only in its capacity as a lender. However, upon the

execution of a valid and legally binding conveyance deed in favor of the buyer, namely Neelam Jagvijai Singh Rawat, who obtained the said unit through auction conducted by the complainant, all rights, title, and interest in the said unit stood transferred, extinguishing all rights of the complainant upon the said unit and against the respondents. Therefore, the present complaint, lacks any legal standing and is an abuse of the process of law.

xiv. That prior to the execution of the conveyance deed, the complainant had received full and final payment towards the settlement of the outstanding debt. This payment extinguished any claim or charge that the complainant may have had over the said unit. Upon receipt of such payment, the complainant ceased to have any further right, claim, or lien over the said property. Therefore, any claim now sought to be raised against the respondents is baseless and does not disclose any cause of action. The complainant, having accepted the payment and executed the conveyance deed, is estopped from raising any further grievance in this regard.

xv. That the execution of the conveyance deed amounts to a complete and final transfer of ownership, thereby severing any liability between the respondent and the complainant. Once the complainant voluntarily transferred the unit and received full consideration, it relinquished all claims, title, and encumbrances over the unit. The present complaint, therefore, is an afterthought and a mala fide attempt to re-litigate an issue that has already been settled. The complaint is, thus, frivolous, vexatious, and not maintainable in law.

xvi. That in light of the above, the complainant has failed to establish any subsisting liability of the respondent. The complaint, as framed, is legally untenable and constitutes an abuse of legal proceedings.

- xvii. That, the claims of the complainant, even if assumed to exist, stand fully and finally extinguished by virtue of the Successful Resolution Plan approved on 24.04.2023. The claim of the complainant, IIFL, was duly admitted under Form F of the Resolution Plan at entry no. 241, and was accordingly settled as per the terms of the said plan. The clean slate doctrine, as recognized by the Hon'ble Supreme Court, mandates that once a resolution plan is duly approved by the Committee of Creditors and subsequently sanctioned by the adjudicating authority, all prior claims, whether filed or unfiled, admitted or disputed, stand irrevocably settled and cannot be resurrected.
- xviii. That it has been clearly upheld in the case of ***Ghanshyam Mishra & Sons (P) Ltd. Vs. Edelweiss Assets Reconstruction Co. Ltd., (2021) 9 SCC 657 (Ghanshyam Mishra's Case)*** that Section 31 of the Insolvency and Bankruptcy Code, 2016, stipulates that once the adjudicating authority is satisfied that a resolution plan meets the requirements of Section 30(4) of the Code and approves it, the resolution plan becomes binding on the corporate debtor and its employees, members, creditors, including the central government, any state government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force. This includes authorities to whom statutory dues are owed, guarantors and other stakeholders involved in the resolution plan.
- xix. That it has been further reiterated by the Hon'ble Supreme Court in ***Ruchi Soya Industries Limited v. Union of India (2022) 6 SCC 343 ("Ruchi Soya Case")*** that the claims of the revenue department not forming part of the approved resolution plan shall stand extinguished in light of the clean slate principle.

- xx. That the Hon'ble Calcutta High Court in the matter of *Sri Vasavi Industries Limited v. West Bengal State Electricity Distribution Company Limited ("Vasavi Industries Case")*, subsequently upheld the decision of *Hon'ble Supreme Court in West Bengal State Electricity Distribution Company Limited v. Sri Vasavi Industries Limited & Anr. (Petition for Special Leave to Appeal (C) No. 15719/2022)* that an approved resolution plan shall alone prevail and govern as to the past dues of the corporate debtor. Such past dues include electricity bills, and that a licensee is prevented from recovery and discontinuation of electric supply in regard to pre-CIRP debts.
- xxi. Furthermore, it is significant to mention that in light of the all-abovementioned judicial pronouncements, even this Authority in the complaint no. RERA-GRG-2559-2023 titled as "*Col M. S. Sehrawat vs Sare Gurugram Pvt. Ltd.*", vide order dated 07.02.2025 was pleased to dismiss the complaint of the complainant against the respondent.
- xxii. That in view of the foregoing facts and well-established legal principles, the present complaint is wholly devoid of merit and ought to be dismissed outright. The complainant has no subsisting claim against the Respondent, as the subject matter of dispute has already been resolved through (i) a valid conveyance deed transferring the unit to a bonafide buyer, thereby discharging all obligations, and (ii) the clean slate doctrine, which has extinguished all past claims upon approval of the resolution plan. Having received the payment for the unit and participated in the resolution process, the complainant cannot now seek to resurrect a settled claim. Allowing such a claim would not only contravene the finality of resolution proceedings but also undermine the sanctity of duly executed legal transactions.

xxiii. That according to the provisions of Section 38 of the RERA Act, the RERA Authorities are required to act on the principle of the natural justice and if we read the entire provisions of Section 32 and 38 of the Act, in conjunction with the Acts overall scheme, the Authority is established not only to protect the interest of the allottees of the real estate project but also to protect the interest of the promoters in order to promote a healthy growth of real estate sector.

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 parties.

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.

F. Observations of Authority with regard to maintainability of complaint.

12. The unit in question was initially booked by Ms. Sonika Gupta, and an allotment letter was issued by respondent no. 1 on 23.09.2016 in her favour. Subsequently, a buyer's agreement was executed between the original allottee and respondent no. 1. The original allottee had availed a home loan from IIFL Home Finance Limited against the said unit. Respondent no. 1 created a mortgage in favour of IIFL Home Finance Limited vide a letter dated 29.09.2016. Thereafter, a tripartite agreement dated 29.09.2016 was executed among respondent no. 1, the original allottee, and IIFL Home Finance Limited. Due to the original allottee's failure to repay the home loan, IIFL Home Finance Limited declared the loan account as a Non-Performing Asset. Pursuant to the tripartite agreement dated 29.09.2016, the complainant exercised its rights, and by virtue of an order passed by the court of the District Magistrate dated 25.05.2022 under the SARFAESI Act, the complainant

stepped into the shoes of the original allottee. Consequently, IIFL Home Finance Limited is presently deemed to be in possession of the aforementioned unit. Thus, IIFL Home Finance Limited has become the complainant in the present case, seeking relief for the deprivation of its rightful entitlements by respondent nos. 2 and 3.

13. The respondent in its application for dismissal of complaint stated that the resolution plan submitted by the consortium of KGK Realty (India) Private Limited and Dhoot Infrastructure Projects Limited had emerged as the successful resolution applicant (collectively referred to as the "Respondents") in the corporate insolvency resolution process (the "CIRP") of Sare Gurugram Private Limited ("SGPL"). One of the financial creditors of SGPL namely Asset Care and Reconstruction Enterprises Limited ("ASREC") filed an application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (the "Code") before the Hon'ble National Company Law Tribunal, New Delhi, Principal Bench ("NCLT"). The Hon'ble NCLT *vide* its order dated 09.03.2021 (the "Admission Order") in C.P. (IB) no. 300 (PB)/2020 admitted the application filed by ASREC and thereby commenced the CIRP of SGPL from 09.03.2021, further to which a moratorium as prescribed by the code was declared.
14. During proceeding dated 27.01.2026, the counsel for the respondent states that the subject unit has already been sold and refund of Rs. 87,50,000/- has also been made to the complainant.
15. The Authority observes that the unit was initially booked by Ms. Sonika Gupta, and a buyer's agreement was executed between the original allottee and respondent no. 1. Thereafter, the original allottee availed a home loan from IIFL Home Finance Limited, and a tripartite agreement was executed among IIFL Home Finance Limited, respondent no. 1, and Ms. Sonika Gupta. Due to non-

payment of the loan, IIFL Home Finance Limited declared the loan account of Ms. Sonika Gupta as a Non-Performing Asset. Subsequently, on 09.03.2021, respondent no. 1, i.e., M/s Sare Gurugram Private Limited, was admitted into the Corporate Insolvency Resolution Process. Thereafter, by an order dated 25.05.2022 passed by the District Magistrate under the SARFAESI Act, the complainant stepped into the shoes of the original allottee. Further, on 24.04.2023, the Resolution Plan submitted by the consortium of KGK Realty (India) Limited and Dhoot Infrastructure Projects Limited was approved by the Hon'ble National Company Law Tribunal. After approval of the Resolution Plan, an allotment letter and payment reminders were issued to Ms. Sonika Gupta for making the outstanding payments against the unit. However, since no payments were received, respondent no. 1 proceeded to terminate the allotment and issued a termination letter. Subsequently, a closure letter was issued by respondent no. 1, detailing the refundable amount. Thereafter, on 07.10.2023, IIFL Home Finance Limited issued a notice for taking physical possession of the unit, and on 31.05.2024, a press note was released for auction of the said unit. The auction was conducted on 21.06.2024, wherein Mrs. Neelam Jagvijay Singh Rawat emerged as the successful bidder. IIFL Home Finance Limited, vide its letter dated 24.06.2024, informed M/s Sare Gurugram Private Limited about the auction and sought details of the outstanding dues against the unit. A sale certificate was issued by IIFL Home Finance Limited in favour of the auction purchaser. Upon receipt of the outstanding dues, possession of the unit was handed over to the auction purchaser by respondent no.1. Thereafter, on 20.09.2024, a conveyance deed was executed by respondent no. 1 in favour of the new allottee, i.e., Mrs. Neelam Jagvijay Singh Rawat. Moreover, as per sale certificate dated 29.06.2024, the IIFL

acknowledge the receipt of Rs. 87,50,000/-. The relevant part of the sale certificate reproduced below:

*"The undersigned **acknowledge the receipt of Rs. 87,50,000/-** (Rupees Eighty-Seven Lakh Fifty Thousand only) against the sale price/consideration in full and handed over the delivery and possession of the scheduled property.*

The Sale of the scheduled property has been made free from all encumbrances known to the secured creditor viz. IIFL Home Finance Ltd., except those applicable under the terms of sale/auction notice."

16. In view of the above, an amount of Rs. 87,50,000/- is refunded to the complainant. Therefore, no claims were left with the complainant.

17. Furthermore, now the question arises that whether the complainant falls under the category of allottee or not. In the present case the complaint is filed by the bank i.e., **India Infoline Housing Finance Ltd.** The definition of an "allottee" as provided under Section 2(d) of the Real Estate (Regulation and Development) Act, 2016. The definition is reproduced as under:

"...the person to whom a plot, apartment or building...has been allotted, sold...or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment... but does not include a person to whom such plot...is given on rent

18. As per Section 2(d) of the RERA Act, 2016, an "allottee" means a person to whom a plot, apartment or building has been allotted, sold or otherwise transferred by the promoter. In the present case, admittedly no allotment of any unit was ever made in favour of the complainant and in the absence of an allotment letter or agreement for sale, the status of an "allottee" cannot be conferred upon the complainant.

19. Further, Section 29 of the Indian Contract Act, 1872, provides that agreements whose meaning is not certain, or cannot be made certain, are void and therefore not legally enforceable. The Authority observes that, for a legally enforceable contract to come into existence, there must be *consensus ad idem* on the

essential terms, such as the identification of the unit, consideration, payment schedule, and the rights and obligations of the parties. These essential terms are ordinarily crystallized through an allotment letter and an agreement for sale. In the absence of such documents, no concluded contract for sale came into existence between the parties.

20. Since no allotment letter, agreement, or confirmation of allotment was ever issued in the favour of complainant, and in the absence of any concluded allotment or legally recognised interest in the project, the complainant lacks the requisite locus standi to maintain the present complaint before the Authority.
21. Therefore, the Authority holds that the complainant does not fall within the definition of "allottee" as defined under Section 2(d) of the Real Estate (Regulation and Development) Act, 2016. Consequently, the present complaint is not maintainable under the provisions of the Act and is accordingly dismissed with liberty to the complainant to avail appropriate remedies in accordance with law before the competent forum.
22. Moreover, the complainant itself admitted in its complaint that under Section 14 of the SARFAESI Act, an order was passed by the District Magistrate that the complainant is entitled to take possession of the unit in question. So, to execute the order dated 25.05.2022 of SARFAESI, the complainant may approach to the Appropriate Forum.
23. In the light of the above stated facts and applying aforesaid principles, the Authority is of the view that the present complaint filed by the complainant seeking delay possession charges & physical possession, is not maintainable *firstly*, an amount of Rs. 87,50,000/- has already refunded to the complainant *secondly*, the complainant does not fall under the definition of allottee *thirdly*,

the complainant may approach to the Appropriate Forum to execute the order dated 25.05.2022 passed by the SARFAESI Act.

24. In view of the above, the complaint is **dismissed** as being not maintainable, with liberty to the complainant to seek appropriate remedies before the appropriate forum in accordance with law.

25. The complaint stand disposed of.

26. Files be consigned to registry.



(Phool Singh Saini)

Member

Haryana Real Estate Regulatory Authority, Gurugram

27.01.2026



(Arun Kumar)

Chairman