BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no.	:	**4016 of 2025**
Date of filing :		**06.08.2025**
Date of decision:		**25.08.2026**

Brisk Lumbini Apartment Resident Welfare Association
R/o: - Brisk Lumbini Terrace Homes, Sector-109, Gurugram.

Complainant

Versus

Brisk Infrastructure and Developers Pvt. Ltd.
Regd. Office at: F.No. 1001, Sector-B, Vasant Kunj, New Delhi.

Respondent

CORAM:
Arun Kumar

Chairman

APPEARANCE:
None
Sh. Dhruv Rohtagi (Advocate)

Complainant
Respondent

ORDER

1. The present complaint dated **06.08.2025** 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. Facts of the complaint

2. The complainant-association has made the following submissions: -

I. That the Respondent is a private company incorporated under provisions of The Companies Act, 1956 (as amended) registered with the office of the Registrar of Companies, Delhi having Corporate Identity No. (CIN) U70101DL1996PTC082264 and is engaged in the business of real estate construction, development, marketing and sale of various types of residential and commercial projects having its registered office at the aforementioned address. Respondent is Developer in the present project namely "BRISK LUMBINI.

II. That the maintenance of the residential group housing society requires deployment of manpower and financial expenses. Each form of maintenance or construction or renewal requires monetary payments to be made to vendors for services or goods rendered. These expenses can only be covered through maintenance charges levied to each apartment. The charges levied for maintenance depends on the size of the apartment in terms of per sq. ft. area. It is imperative that for the smooth and efficient functioning of the complex that all flat owners pay their maintenance charges timely as the failure of such shall lead to lack of maintenance and upkeep of the complex which not only causes inconvenience but also lowers the value of property.

III. That the residential complex after completion and grant of occupation certificate was handed over to the complainant for maintenance in 2020. However, the Respondent remained in possession of many flats in the complex as on date of filing of the present complaint, the respondent is still in possession of 8 (Eight) Flats with pending Common Area Maintenance & electricity charges. Further, there are 19 (Nineteen) flats which were sold/transferred/given handover to various owners since March 2020 by the respondent. The handover of these flats were done without clearance of outstanding bills of BLARWA/complainant for the respective flats, even though the respondent on 2.3.2020 and even in 2021 had formally acknowledged and accepted that the respondent/BIDPL is liable to pay the maintenance and other charges for the flats under his control for the duration wherein he had direct control over the flats.

IV. That the complainant has on numerous occasions tried to contact the respondent and their representatives and employees requesting for clearance of amount pending. The complainant has on numerous occasions informed you regarding the dire financial situation and urgent need for recovery of all pending amounts as funds were required to maintain critical infrastructure and basic services such as round the clock security. however, all requests went in vain. The failure on respondents part to clear the pending payment and due to failure to comply with statutory assurances and obligations, complainant was constrained to approach respondents customer care department. Complainant sent all necessary details for

recovery of amounts due through and Email dated 9.2.2020 which are marked and annexed.

V. That the respondent has acknowledged & accepted the claims of the complainant vide email dated 2.3.2020. The flats mentioned in this petition are a subset of those in list of the email of March 2020 with regards to outstanding corresponding to the flats. This was further re-confirmed with communication between the parties in July 2021.

VI. That the respondent on 3.7.2021 issued a letter to the complainant wherein the respondent has referred to letter dated 25.6.2021 regarding *"Pending Maintenance Amount"*. The respondent states that it acknowledges the pending payment to the complainant but requests that it be adjusted to an amount with respect to payments related to FCFML which is another company. BIDPL & FCFML are two different companies and have different directors/owners. It is obvious that liability of one company cannot be adjusted in accounts of another company.

VII. That Subsequently, the recovery of amount from the Respondent was delayed due to COVID-19 pandemic, complainant again approached the respondent and their representatives and employees requesting them to urgently clear payments as necessary infrastructure upgrades and maintenance was required and that the failure to pay was causing inconvenience to all the residents of the apartment complex. After struggling for such a long period, the complainant was constrained to issue the Email on 19.10.2024 which clearly stated that on 9.2.2020 an email was issued

containing bills for maintenance & electricity dues for various flats for the tenure wherein the respondent had/has the custody & ownership of the respective flats.

VIII. That on 9.11.2024, the complainant issued another email wherein it referred to the previous email dated 19.10.2024. the complainant reiterated its demand and informed that the updated amount as on 1.10.2024 is Rs. 81,15,000/- for the period of direct control of flats by the respondent. It is also vital to state that any other expenses incurred through or on behalf of the builder in the residential complex is separate from a statutory requirement to pay common area maintenance and electricity charges. The law does not permit Respondent to not pay or transfer its liability to pay common are maintenance & electricity charges for the period when the respondent/builder firm was/is the owner of custody and title for the said flats. The Haryana Apartment Ownership Act, 1983 is crystal clear that the Act shall apply to every apartment lawfully constructed for residential purposes whether constructed before or after the application of the Act. The Act states that once the Deed of Declaration is filed after the grant of Occupation Certificate, the residential complex shall come within the purview of the *Haryana Apartment Ownership Act, 1983. Section 3 (b)* defines an *"apartment owner"* as person or persons owning an apartment and undivided interest in common area and facilities in the percentage specified and established in the declaration. There is no provision in the Act which exempts the Respondent from not abiding by all the rules and regulations

applicable to apartment owners. Hence, while handing over or transfering/selling rights/title of flats to any one else , the Respondent who sells the flat, needs to clear all encumbrances/outstanding of maintenance & other charges of BLARWA who is managing the society.

IX. That Under *Section 10* of the *Haryana Apartment Ownership Act, 1983*, all common profits of the property shall be distributed among, and the common expenses shall be charged to, the apartment owners according to the percentage of the undivided interest in the common areas and facilities. Further, under *Section 17*, no apartment owner shall be entitled to exempt himself from the liability for his contribution towards the common expenses by waiver of the use or enjoyment of any of the common area and facilities or by abandonment of his apartment. Under the Real Estate (Regulation and Development) Act, 2016 (RERA) makes it compulsory for the developer to be responsible for providing and maintaining the essential services, on reasonable charges, till it is taken over by the association of the allottees.

X. That the complainant was constrained to issue a legal notice to the respondent on 5.12.2024 wherein the complainant requested the respondent to pay an amount of Rs. 79,66,224/- as Common Area Maintenance Charges and electricity charges along with interest for 26 apartments mentioned in the said Notice. However, the respondent failed to pay the said sum and also failed to reply to the notice dated 5.12.2024 issued by the complainant.

XI. That On directions from Govt Authorities, the builder firm started the repair in early 2023. It was decided that Painting will also be done well in time by the respondent. However, the builder showed a lacklustre behaviour and ignored some places of repairs (EWS and few other repair places) and completely ignored painting. Timely start of painting was necessary to provide protection to health of towers of the society. Looking at the ignorance of the respondent, the complainant decided to get the painting in its own hand and requested the respondent to pay for the same, however the respondent choose not to respond. Hence the complainant has started the paint work.

XII. That the respondent is also liable to pay the complainant for the painting work being conducted by the complainant as the said amount was assured to be paid by the respondent. The complainant is about to spend an amount of Rs. 91,39,277/- or more.

B. Relief sought by the complainant:

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

I. Pass an order / direction thereby directing the respondent to pay the complainant a sum of Rs. 84,56,587/- along with interest as pending Common Area Maintenance Charges, and Electricity Charges realised till date of actual final payment.

II. Pass an order / direction thereby directing the respondent pay the complainant a sum of Rs. 91,39,277/- as payment of the Painting

Works carried out in the residential complex, with appropriate interest till date of actual payment.

4. 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.

C. Reply by the respondent.

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

   i. That the present complaint is not maintainable in law or on facts. The present complaint raises several such issues which cannot be decided in summary proceedings. The said issues require extensive evidence to be led by both the parties and examination and cross-examination of witnesses for proper adjudication. Therefore, the disputes raised in the present complaint are beyond the purview of this Hon'ble Authority and can only be adjudicated by the Civil Court. Therefore, the present complaint deserves to be dismissed on this ground alone.

   ii. That the present complaint is not maintainable in law or on facts. The provisions of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the 'Act') are not applicable to the project in question. The application for issuance of occupation certificate in respect of the said project in question was made on 29.09.2014 i.e. before the notification of the Haryana Real Estate Regulation and Development Rules 2017 (hereinafter referred to as the 'Rules') and the Occupation certificate was thereafter issued on 19.05.2016; copy of the same has been appended

herewith. It is pertinent to state that the project in question is outside the purview of this Hon'ble authority. Since the Respondent has received its Occupation Certificate before the enactment of the RERA Rules, 2017, it does not fall within the definition of an 'ongoing project' as defined under Rule 2(o) of the RERA Rules, 2017.

iii. That the complainants previously had also instituted a complaint before this very forum, against the respondent, titled ***Brisk Lumbini Apartment resident Welfare Association Vs Brisk Infrastructure & Developers Pvt. Lts. & Anr.***, bearing ***Complaint No. 1836 of 2022***, claiming several reliefs, in which this Hon'ble Authority has already passed its **Final Order dated 19.12.2023**. However, the complainants in order to extort money from the respondent, have again approached the Authority raising the issues and claims, for which no fresh cause of action has arisen. The issues and grievances raised and the reliefs sought in the present false and frivolous complaint are barred under the provisions **of Order 2 Rule 2 CPC.**

iv. That the present complaint, is also not maintainable for the reason that the **present complaint has been filed seeking recovery of alleged Common Area Maintenance charges by the RWA against the developer**, allegedly having unsold inventory. At the outset, it is submitted that **the said dispute is outside the purview of the RERA Act** and the present recovery proceedings do not fall under the purview of any provisions of the RERA Act, nor arise out of any builder buyer agreement and will have to be filed before a Civil Court only. The said submission is

without prejudice to the submission that the alleged claims of the complainant are false and frivolous.

v. That the present complaint is also not maintainable for the reason that the complainant has filed a common complaint, in respect of 26 flats, as detailed in para (d) of the complaint. It is settled law that a Complaint can be filed in respect of a single unit/ flat and there is no provision for a single complaint in respect of multiple flats, under RERA.

vi. That the respondent is a well known, law abiding real estate developer in Delhi/NCR for whom customer satisfaction is paramount. That the Respondent in collaboration with the Raheja Developers Pvt. Ltd. to develop a land admeasuring about 10.793 acres situated in Sector-109, Gurgaon, Haryana vide license dated 01.10.2008 bearing LC-V Licence No. 174 from Town and Country Planning, Department of Government of Haryana vide Endst. No. DP-V-2008/8621 dated 01.10.2008, launched a project "Lumbini Terrace Homes" (hereinafter referred to as the said project) in early 2011 and the bookings were accepted from prospective buyers for acquiring the flats/units in the project. As per the Supplementary Agreement, the respondent was under an obligation to develop its project in its share of 57% of the licensed land, i.e. 6.156 acres. The balance share of 43% of the licensed land fell to the share of M/s Raheja Developers, which is an independent entity and was to develop its own project on the balance land, independent of the Respondent herein. Thus, the project Brisk Lumbini Terraces has been developed by the

respondent at its allocated share of the licensed land and hence, is to be treated as an independent project. The project already stands completed much before the publication of the RERA rules.

vii. That the permission to develop the said land was modified vide approval letter dated 16.03.2011 and the respondent was granted permission to develop a multi-storey housing complex on the 'Part' of the above land. That the requisite approval for building plan was also granted vide memo no. ZP-508/JD(BS)/2011/3227. Thus, evidently, the present project in hand was to be constructed on a part of the entire land parcel, of which licence was granted. The other part of the land was never a part of this project and was an independent project in itself. Thus, the Occupation Certificate so granted for the project in hand is to be treated as 'Completion Certificate' for the said project.

viii. That the contract for construction of the building was awarded to M/s Ahluwalia Construction Ltd., one of the foremost and respective contractors for construction of the Housing project (civil work) on 06.06.2011. It is submitted that various purchase orders and contracts were awarded to various parties for various aspect of the project at different points in time. That the approval of transformers from Executive Engineer (Electrical), Gurgaon, Haryana was obtained on 31.08.2012. It is further submitted that the Single line diagram was approved from the Electrical Inspector, Hayana, Chandigarh on 03.09.2012. That the NOC

from Administrator, HUDA obtained for usage of ground water for construction purpose obtained on 17.09.2012.

ix. That it is noteworthy mention that the excavation work on the project commenced from the mid June, 2011 as per the agreed timeline. It is submitted that in August, 2011, the respondent started the foundation work and as per the terms and conditions of the buyer's agreement, the laying of foundation marks the commencement of construction work and the same is the start date for commitment period. It is submitted that the respondent raised demands upon the allottes/buyers as per the schedule of payment plan as opted by the members of the complainant.

x. That an application for grant of Occupancy Certificate dated 29.09.2014 to Director General, Town and Country Planning (DG TCP) was made by the respondent.

xi. That it is noteworthy to mention that despite of the continuous efforts of the respondent to complete the construction within the stipulated time, some of the buyers/allottees preferred to register a complaint against the respondent. That pursuant to the acknowledgment of the complaints filed by the buyers, an explanation was sought by the DTP Gurgaon on the complaints made by the buyers regarding the delay etc. Upon due consideration of all facts and events, a report was submitted by DTP Gurgaon to Dy. Commissioner on the complaint of the buyers, wherein it was accepted by DTP that the delay has occurred due to changed norms of

Fire Department and which has resulted in non receipt of Fire NOC and consequently occupancy certificate.

xii. That it is noteworthy to mention that despite of the continuous efforts of the respondent to complete the construction within the stipulated time, some of the buyers/allottees preferred to register a complaint against the respondent. That pursuant to the acknowledgment of the complaints filed by the buyers, an explanation was sought by the DTP Gurgaon on the complaints made by the buyers regarding the delay etc. Upon due consideration of all facts and events, a report was submitted by DTP Gurgaon to Dy. Commissioner on the complaint of the buyers, wherein it was accepted by DTP that the delay has occurred due to changed norms of Fire Department and which has resulted in non receipt of Fire NOC and consequently occupancy certificate.

xiii. That on 19.05.2016, Occupancy Certificate was received in respect of the project. Subsequently, a letter dated 19.05.2016 informing the buyers about the receipt of occupancy certificate was dispatched by the respondent in as much as the respondent was much concerned about the time taken by government departments for grant of occupancy certificate.

xiv. That the demands and the grievances as has been raised by the complainant herein are whimsical and without any basis. it is submitted that the buyers/allottees at the time of making application and execution of the builder buyer agreement has agreed to pay all charges for construction of the units and other charges and levies as incurred on the

project as also demanded by the various government bodies, departments etc. That the complainant herein with due knowledge that the expenditure has been incurred on account of revised guidelines etc. and on account of the increase in cost. increase in area etc. which are thoroughly justified but the complainant has become dishonest. This is despite the fact that under the terms of the agreement, they are wholly liable to pay the amounts as demanded.

6. All other averments made in the complaint were denied in toto.

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.

D. 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.

D. 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.

D. 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 complainants at a later stage.

E. Maintainability of complaint.

12. In the present complaint, the complainant intends to continue with the project and is seeking direction to the respondent to pay the complainant a sum of Rs. 84,56,587/- along with interest as pending Common Area Maintenance Charges, and Electricity Charges realised till date of actual final payment. The respondent states that the complainants previously had also instituted a complaint before this very forum, against the respondent, titled ***Brisk Lumbini Apartment Resident Welfare Association Vs Brisk Infrastructure & Developers Pvt. Lts. & Anr.***, bearing ***Complaint No. 1836 of 2022***, claiming

several reliefs, in which this Hon'ble Authority has already passed its Final Order dated 19.12.2023.

13. The respondent further states that it is also a matter of record that some of the allottees are presently pursuing their alleged grievances before different forums, including that before the ***Hon'ble NCDRC***, in ***Consumer Complaint No. 1779 of 2016***, titled ***Vikas Saini & Ors. Vs Brisk Infrastructure and Developers Pvt. Ltd.*** The Flat Nos. B-061, C-13, C-043, C-093, C-101, D-081, E-041 and E-071 are the units which are under litigation by the allottees and are also in their possession. The Flats No. A-073, A-083, B—063, B-101, C0083, C-102, D-012 and D042 are also the unit under the said litigation, but not taken over by the allottees. The respondent is not liable to pay any dues against such allottees, who have not taken possession till today. It is a matter of record that the offer of possession has not been held invalid and in terms of the buyer's agreement, the allottees are liable to pay common area maintenance charges from the date of issuance of the offer of possession. Thus, these allottees shall be liable to pay their own respective dues and not the respondent. Furthermore, it needs to be noted that from a bare perusal of the Minutes of Meeting dated 06.07.2025, filed by the Complainant at Page 17 of the complainant, the 1st complainant in the pending case bearing complaint No. 1779 of 2016, Mr. Vikas Saini, is also the office bearer of the Complainant Association and as such has wilfully tried to conceal the said fact from this Hon'ble Authority. It is also mention to note that in respect of Flat No. E-071, which is featured in the table of the complainant, the complainant association

had itself issued a "No Objection Certificate on 27.10.2025 and yet, it is claiming its dues in the present complaint.

14. After considering the documents available on record as well as submissions made by the parties, the Authority is of the view that the present complaint is not maintainable before the Authority as is barred by the principle of res-judicata as the matter in issue between the parties has already been heard and decided by the Authority vide order dated 19.12.2023 in the former complaint bearing no. CR/1836/2022. Further, if any party fails to abide by the directions mentioned the said order, then the same shall be enforced by the executing authority as provided under Section 40 of the Act of 2016 read with Rule 27 of the Haryana Real Estate (Regulation and Development) Rules, 2017, in such manner as may be prescribed. No doubt, one of the purposes behind the enactment of the Act was to protect the interest of consumers. However, this cannot be fetched to an extent that basic principles of jurisprudence are to be ignored. Therefore, subsequent complaint on same cause of action is barred by the principle of res-judicata as provided under Section 11 of the Code of Civil Procedure, 1908(CPC). Section 11 CPC is reproduced as under for ready reference:

> *"11. Res judicata.—No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.*

Explanation I.—*The expression "former suit" shall denote a suit which has been decided prior to a suit in question whether or not it was instituted prior thereto.*

Explanation II.—*For the purposes of this section, the competence of a Court shall be determined irrespective of any provisions as to a right of appeal from the decision of such Court.*

Explanation III.—*The matter above referred to must in the former suit have been alleged by one party and either denied or admitted, expressly or impliedly, by the other.*

Explanation IV.—*Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.*

Explanation V.—*Any relief claimed in the plaint, which is not expressly granted by the decree, shall for the purposes of this section, be deemed to have been refused.*

Explanation VI.—*Where persons litigate bona fide in respect of a public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this section, be deemed to claim under the persons so litigating .*

1[Explanation VII.—*The provisions of this section shall apply to a proceeding for the execution of a decree and references in this section to any suit, issue or former suit shall be construed as references, respectively, to a proceeding for the execution of the decree, question arising in such proceeding and a former proceeding for the execution of that decree.*

Explanation VIII. —*An issue heard and finally decided by a Court of limited jurisdiction, competent to decide such issue, shall operate as res judicata in a subsequent suit, notwithstanding that such Court of limited jurisdiction was not competent to try such subsequent suit or the suit in which such issue has been subsequently raised.]"*

15. The Authority is of view that though the provisions of the Code of Civil Procedure, 1908 (CPC) is, as such, not applicable to the proceedings under the Act, save and except certain provisions of the CPC, which have been specifically incorporated in the Act, yet the principles provided therein are the important guiding factors and the Authority being bound by the principles of natural justice, equity and good conscience has to consider and adopt such established principles of CPC as may be necessary for it to do complete justice. Moreover, there is no bar in applying provisions of CPC to the proceedings under the Act

if such provision is based upon justice, equity and good conscience. Thus, in view of the factual as well as legal provisions, the present complaint stands dismissed being not maintainable

16. Complaint stands disposed of.

17. File be consigned to registry.

(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

25.08.2026