



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	801 of 2023
Date of filing:	26.04.2023
First date of hearing:	04.07.2023
Date of decision:	21.09.2026

Nisha Rani and another

R/o House no. 491-A, First Floor,
Urban Estate, Sectro-5, Karnal, Haryana.

.....COMPLAINANT

Versus

RAS Development Pvt. Ltd.

Registered Office: 812-812A, 8th floor
Chiranjiv Tower, 43, Nehru Place,
New Delhi-110019

.....RESPONDENT

Present: - Adv. Akshat Mittal, counsel for the complainant.

None present for the respondent.

ORDER (NADIM AKHTAR –MEMBER)

1. Present complaints has been filed by the complainants on 26.04.2023 under Section 31 of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred as RERA, Act of 2016) read with Rule 28 of the Haryana Real Estate (Regulation & Development) Rules, 2017 for violation or contravention of the provisions of the RERA, Act of 2016 or the Rules and Regulations made thereunder, wherein it is inter-alia prescribed that the promoter shall be responsible to fulfil all the obligations, responsibilities and functions towards the allottee as per the terms agreed between them.

A. UNIT AND PROJECT RELATED DETAILS

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

S.No.	Particulars	Details
1.	Name and location of the project	"Kings County, Ras Residency II", Sector-35, Karnal, Haryana
2.	Name of the promoter	M/s RAS Developments Pvt. Ltd.
3.	Unit No.	801, Tower- P-2, 8 th floor
4.	Carpet area	4800 sq. ft.
5.	Date of allotment	No allotment letter
6.	Date of execution of flat Buyer Agreement	Builder buyer agreement not executed

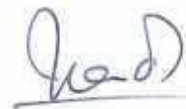


7.	Deemed date of possession	Not available
8.	Basic sale consideration	₹1,10,74,000/- at page no. 21 of application form annexed in reply dated 14.10.2024.
9.	Amount paid by the complainant	₹8,00,000/-
10.	Offer of possession	Not given till date

B. FACTS OF THE COMPLAINT

3. Followings are the submissions made by the complainants in its complaint book dated 26.04.2023:

- i. That the respondents floated a scheme for the development of a residential township to be constructed and developed on the land situated in the revenue estates of Karnal, Haryana under the name of "Kings County, RAS Residency" at Sector 35, Karnal.
- ii. That the complainants were approached by the respondent in relation of booking of the flat and in pursuance of the same, the booking was made on 01.01.2022, qua Penthouse No. 801, Eighth Floor, Tower-P measuring 4800 sq. ft. That the unit was offered for a total sale consideration of ₹1,05,66,438/- comprising of the Basic Sale Price of ₹1,01,51,238/- and EDC/IDC of ₹4,15,200/-.



- iii. That the booking was entered into, based on assurances given by the respondent company to the effect that the unit/penthouse would be 'Ready to Move In', and assurances with respect to the peculiar facilities, specifications etc. A communication/message dated 26.12.2021 was received from the official representative of the respondent company one Sh. Rinku Rathi and a copy of said communication dated 26.12.2021 is annexed as Annexure C-1.
- iv. That in pursuance of the booking, payments for an amount of ₹5,51,000/- was made on 01.01.2022 and ₹2,49,000/- was made on 21.03.2022. That total payment of ₹8,00,000/- has been duly made to the respondent. That the respondent company has failed to issue any receipt qua the same. However, in support of the said payments, copy of the Bank Account Statement of the complainant(s) is annexed as Annexure C-2.
- v. That the booking was entered into by the complainant(s) qua the 'Ready to Move in' unit, and it was assured that the physical possession of the said unit would be handed over immediately and at the earliest and within 45 days, i.e., by 15.02.2022. However, the possession of the said unit is already delayed by almost one and a half year from the date of booking, and more than one year from the due date of possession. Possession has not been handed over to the complainant(s) even till date despite numerous



requests on part of the complainant allottees, and as such the delay is still continuing.

- vi. That respondent company has failed to even issue any allotment letter qua the unit to the complainants and has thus acted against the law and also against the mutual understanding and assurances between the parties.
- vii. That the complainant(s) has constantly been raising concerns and disputing to the malafide attitude of the respondent company. Communication sent by the complainants to the representative of the respondent company dated 16.12.2022 is attached as Annexure C-3.
- viii. That the respondent company replied to the said message of the complainant stating that they are helpless and that the complainant was expected to pay more. That till date no allotment letter has ever been issued by the respondent to the complainants. More so, the respondent has not even issued any receipt qua the payments made by the complainant(s).
- ix. That instead of issuing any document qua the booking to the complainant(s), respondent company had again started pressing for exorbitant payment demands in violation of section 13 of the Act by demanding and accepting a sum of more than 10% of the total cost of the apartment in question without first entering into a proper written agreement and registration of the same. The message/communication dated



13.02.2023 received from the respondent representative Rinku Rathi is attached as Annexure C-4.

- x. That the complainant(s) have been making continuous efforts qua redressal of the grievances, and feeling helpless, were even constrained to issue Legal Notice dated 21.09.2022 to the respondent company, calling upon the latter to refund the amount so received alongwith interest and compensation. Copy of the legal notice dated 21.09.2022 alongwith the postal receipts, is annexed as Annexure C-5-colly.
- xi. That the respondent promoter has been unilaterally and arbitrarily changing the specifications and the layout plan of the unit repeatedly and continuously since the booking of the same. That the specifications/layout plan was unilaterally and arbitrarily changed by the respondent company and was intimated on 03.01.2022 through the representative one Sh. Sandeep. The detailed message received from the said representative of the respondent company is annexed as Annexure C-6.
- xii. That furthermore, the said specification were again amended by respondent company and complainant(s) vide letter dated 20.06.2022, said letter is annexed as Annexure C-7.
- xiii. That the complainant was shocked to observe that the swimming pool as promised had now been converted to the plunge pool of much smaller



dimensions of 12x8x4 sq. ft. as against the earlier promised 14x10x4 sq. ft. Likewise, the 'Waterfall' as promised was also now converted into 'Water flow fountain'. Specifications found no mention of the 'cement bridge from flat to swimming pool side' as was mentioned in the earlier specifications dated 03.01.2022.

- xiv. That even further, the said specifications were infact again disgustingly changed by the respondent, and was intimated vide e-mail dated 02.03.2023. That the complainant was yet again shocked to observe that the swimming pool size, which was earlier reduced to 12x8x4 sq. ft. from the earlier promised 14x10x4 sq. ft., has now again been reduced to 10x8x2.5 sq. ft. Likewise, the Waterfall near by swimming pool' as promised which was earlier unilaterally converted into 'Water flow fountain near to pool area', had now been converted into 'Small Waterfall in plunge pool', meaning thereby that the respondent company had duped the complainant into booking of the unit with dream of having a large swimming pool with an adjacent waterfall, into a small plunge pool with a small waterfall inside and not beside the said plunge pool. Furthermore, disgustingly, the '3 Car Parking Exclusive' were now converted to '2 Car parking exclusive', and '2 seater iron swing' was now converted to 'iron swing'.



- xv. More so, vide the said email dated 18.02.2023, the respondent company has again demanded 20% payment before the Builder Buyer Agreement, again against the provisions stipulated in the RE(R&D) Act, 2016. It is also pertinent to mention that the said letter now mentions that the flat construction work will be complete within 120 to 150 days after the complete payment, as opposed to the assurance of possession within 45 days made earlier. The email dated 18.02.2023 issued by the respondent company to the complainant(s) is annexed as Annexure C-8.
- xvi. That it must also be mentioned that the complainant(s) have been acting in utmost good faith, and despite the massive defaults on the part of the respondent promoter, have already availed and got the Home Loan Sanctioned for the unit in question and would be burdened by the EMI instalments thereto. The documents pertaining to the said loan are annexed as Annexure C-9. That adding to the malafides of the respondent company, it is relevant to highlight that the building plans, which were approved on 16.09.2011 were only valid upto 15.09.2021 and have since expired.
- xvii. That no Occupation Certificate has been received or even applied for by the respondent qua the unit in question, and infact the project and the unit is in a pathetic and grossly incomplete condition even at this juncture, with there being only the superstructure standing.



- xviii. That given the miserable attitude and default on the part of the respondent company, the complainant(s) would have all the right to withdraw from the project in question and to seek refund of the amount paid qua the unit in question alongwith interest, in accordance with the provisions of the R.E.(R.&D.) Act 2016. However, in utmost good faith, the complainant(s) are still not seeking refund and are praying for possession of the unit in question alongwith directions to the respondent promoter to comply with the assurances and deliver the facilities, specifications, layout etc. as promised, alongwith the delayed possession charges.
- xix. That it is reiterated that the complainants herein have been repeatedly and continuously expressing discontent and objecting to the malafide attitude of the respondent towards their allottees. That the complainants have made numerous requests and efforts seeking redressal of their grievances. In this regards, the email dated 16.01.2023 issued by the complainant to the respondent company, alongwith reminders dated 06.01.2023, 11.01.2023, 16.01.2023 are being attached as Annexure C-10-colly.
- xx. It is to mention that complainants had filed an application dated 19.09.2024 mentioning the payment details paid to the respondent.



C. RELIEFS SOUGHT

4. Complainants have sought following reliefs:

1. To direct the respondents to immediately hand over the physical and uncompromised possession of the penthouse in question, to the complainant allottees.
2. To direct the respondent promoter to issue the payment receipts towards the payments made by the complainant allottee(s) towards the unit in question.
3. To direct the respondent promoter to issue the allotment letter, the builder buyer agreement and other documents towards the booking of the unit in question to the complainant allottees.
4. To direct the respondent promoter to compensate the complainant for the delay in offer of possession of the unit, by paying interest as prescribed under the Real Estate (Regulation And Development) Act 2016 read with Haryana Real Estate (Regulation & Development) Rules, with effect from the due date of possession i.e. 15.12.2022 till the actual handing over of possession of the unit complete in all respects, on the entire amount deposited qua the said unit by the complainant.
5. To direct the respondent promoter not to change/amend any specification, facilities or the layout plan of the unit to the detriment of the complainant



allottees, and to offer the unit with the specifications, facilities and the layout plan as originally promised.

6. To direct the respondent company to include the originally promised 'Swimming pool' of size '14x10x4' to the complainants, instead of the Plunge pool of 10x8x2.5'
7. To direct the respondent company to include the originally promised "Waterfall near by swimming pool" to the complainants instead of 'Small Waterfall in the plunge pool'.
8. To direct the respondent company to include 3 exclusive car parkings as originally promised to the complainants instead of 2 car parkings.
9. To direct the respondents to pay a sum of ₹20,00,000/- on account of grievance and frustration caused to the complainant by the miserable attitude of the respondents and deficiency in service and for causing mental agony cause to complainant along with interest from the date of filing the present complaints till its realization.
10. The registration, if any, granted to the Respondent promoter for the project in question, under RERA read with relevant Rules, may kindly be revoked under Section 7 of the Act for violating the provisions of The Act.
11. To impose penalty on the respondent under section 61 of the Act for contravention of the provisions of the Act, as elaborated in the complaint.



12. The complainant may be allowed with costs and litigation expenses of ₹1,50,000/-;

13. Any other relief as this Hon'ble Authority may deem fit and appropriate in the facts and circumstances of the instant complaint.

D. REPLY ON BEHALF OF RESPONDENT

5. Following submissions are made by the respondent in its reply dated 14.10.2024:

- i. That due to the reputation and prestige of the respondent company, the Complainants had voluntarily invested in the project of the respondent Company, namely - "RAS Residency" at Sector 35, Karnal, Haryana.
- ii. That the project of the respondent, is registered under the HRERA. That there is no deliberate or willful delay on the part of the respondent in completion of the project. It has put its best efforts to deliver timely possession to all its customers.
- iii. That when the Respondent Company commenced the construction of the said project, the RERA Act was not in existence, therefore, the Respondent Company could not have contemplated of any violations and penalties thereof, as stated in the RERA Act. The law in this regard is well settled that unless the statute expressly provides retrospective application of the provisions of the statute they cannot be enforced retrospectively. In a recent



judgment, the Hon'ble Supreme Court in the matter titled as "Newtech Promoters and Developers Pvt. Ltd. Vs. State of UP and others", in Civil Appeal Nos. 6745-6749 of 2021 has held that application of the RERA Act is retroactive in character. That the provisions if given retrospective effect will be onerous, cause undue grave hardship and will ruin the finances of the Respondent Company which will also disturb the construction and development plan of the project of any developers including the Respondent Company. That the provisions of the RERA Act are to be applied prospectively. Therefore, the present complaint is not maintainable and falls outside the purview of the provisions of the RERA Act. Be that as it may, the RERA Act came into effect in 2016 and cannot be held to be retrospective in nature.

- iv. That present complaint is without any cause of action. The Complainants have filed the present complaint only to harass the Respondent builder, to cause wrongful financial loss to the Respondent and gain themselves particularly on the facts that when the Project of the Respondent is completed to the knowledge of the complainant. Secondly, the complainants have no locus to file the captioned complaint. The captioned complaint is defective on many counts, which are being averred in the subsequent paragraphs.



- v. That as per Section 2(d) of the RERA Act, the Complainants do not fall under the category of the Allottee. Perusal of Section 2(d) states that an allotment Letter or BBA should have been executed in order to fall under the category of Allottee whereas in this case the complainants have failed to execute Allotment letter/BBA for not making timely payments and cannot allege that the Respondent Company is in violation of any of the provisions of the RERA Act.
- vi. That the said unit was only provisionally allotted to the complainants and was subject to the final payment of the due amount at the time of allotment and execution of BBA. The same is evident from Clause 2 of the terms and conditions for registration for provisional allotment of the Apartment/Flat annexed with the Application form (Annexure R-1) signed and submitted by the complainants herein.
- vii. There is no deliberate delay on the part of the Respondent entitling the Complainants for any compensation or any other amount as claimed. That the Complainants after signing the Application form and paying merely a sum of ₹8,00,000/- out of the total sale consideration of ₹1,10,74,000/- (i.e. not even 10% of the total consideration amount), completely vanished.
- viii. That the total sale consideration of the said unit was fixed for ₹1,10,74,000/-, as specified in the Application Form, duly executed by both the



allottees/complainants upon accepting all the terms and conditions outlined therein, after agreeing upon certain conditions regarding payments to be made in lieu of the said unit. The complainants have miserably failed to abide by the said terms and conditions. That due to non-payment of the amount to be paid at the time of allotment and execution of BBA, the amount paid by the complainants was forfeited and accordingly, the name of the complainants was struck off from the said project of the Respondent Company. Copy of Application Form dated 06.01.2022 along with terms and conditions is annexed as Annexure R-1. That the said fact has been concealed by the complainants in their complaint thereby trying to mislead the I.d. Authority and conceal material facts. The captioned Complaint must be dismissed on this very ground alone.

- ix. The Respondent Company has always been ready to issue allotment letter and further execute BBA after payment of 10% of the Total Sale Consideration of the Unit but complainants have not come forward to make any further payment and instead chose to file the captioned complaint as after a gap of almost 2 years, only to harass the Respondent Company and extort undue money.
- x. That the complainants are at total default herein as they have failed to abide by "Clause 12" of the Terms and Conditions of the Application form, which



gives the Respondent Company complete authority to cancel the unit and forfeit the money invoking Clause 11 of the Terms and Conditions of the Application form, duly signed by both the complainants and being the only document executed between the complainants and Respondent Company.

- xi. That the complainants had invested in the said project of the Respondent Company for the sole reason of investing and earning profits and speculative gains. Since the property has been bought by the complainants for earning profits and speculative gains, the complaint is therefore, liable to be dismissed.
- xii. That in any case, the present complaint is miserably hit by the principle of delay in laches and is accordingly, barred by limitation and the same is not maintainable before the Ld. Authority.
- xiii. It is denied that the complainants were approached by the respondent in relation of booking of the flat and in pursuance of the same, the booking was made on 01.01.2022, qua Penthouse No. 801, Eighth Floor, Tower-P measuring 4800 sq. ft. That the Complainants herein are an investor and have themselves approached the Respondent Company due to their reputation in the Real Estate Market and had invested in the said project out of their own free will in order to earn speculative gains. That the said unit was not allotted as such to the complainants as the complainants failed to



even make 10% of the Payment towards the total sale consideration. That the said unit was only provisionally allotted to the Complainants and was subject to the final payment of the due amount at the time of allotment and execution of BBA. The same is evident from Clause 2 of the terms and conditions for registration for provisional allotment of the Apartment/Flat annexed with the Application form (Annexure R-1) signed and submitted by the complainants herein.

- xiv. It is denied that the unit was offered for a total sale consideration of ₹1,05,66,438/- comprising of the Basic Sale Price of ₹1,01,51,238/- and EDC/IDC of ₹4,15,200/-. That the total sale consideration of the said unit was fixed for ₹1,10,74,000/-, as specified in the Application Form, duly executed by both the Allottees/Complainants upon accepting all the terms and conditions outlined therein, after agreeing upon certain conditions regarding payments to be made in lieu of the said unit. The Complainants have miserably failed to abide by the said terms and conditions.
- xv. It is denied to the extent that booking was entered into, based on assurances given by the Respondent Company to the effect that the unit/penthouse would be 'Ready to Move In', and assurances with respect to the peculiar facilities, specifications etc. It is denied that in this regard, communication/message dated 26.12.2021 was received from the official



representative of the respondent company. That no such terms have been agreed upon between the parties and are hence, denied. That the copy of chat annexed by the Complainants is vehemently denied as the same is not supported with any certificate of Section 65-B of the IT Act, 2000 which is essential for admissibility of any electronic evidence in the Court of Law. Furthermore, the said chat is merely on a plain piece of paper, so therefore, cannot be authenticated and accordingly must not be admitted by the Ld. Authority for any adjudication.

- xvi. That the date of payments stated herein are wrong as the payment of amount of ₹5,51,000/- was made on 06.01.2022 and payment of ₹2,49,000/- was made on 24.03.2022 as the same can be ascertained from the ledger account issued by the Respondent Company. Copy of Ledger Account issued by the Respondent Company is annexed as Annexure R-2.
- xvii. That a total payment of ₹8,00,000/- has been duly made to the Respondent, the same being a matter of record. However, it is denied that the respondent company has failed to issue any receipt qua the same. That the Complainants were intimated time and again from the Respondent Company to come, visit and proceed for further documentation after completing the payment of 10% of the total booking amount that is necessary for allotment and executing the



BBA and collect their payment receipts to which the complainants failed to respond for the reason best known to them.

xviii. It is denied that the booking was entered into by the complainant(s) qua the 'Ready to Move in' unit, and it was assured that the physical possession of the said unit would be handed over immediately and at the earliest and within 45 days i.e., by 15.02.2022. That the Respondent Company had informed the Complainants to make further payments in order to proceed further and execute BBA to which Complainants again and again asked for some time as they had to avail for a loan. That it is impossible for a Company to give possession of an alleged Ready to Move in Unit worth ₹1,10,74,000/- for merely ₹8,00,000/-, that too was paid in two instalments with a gap of 2 months. Hence, the Complainants are at total default here as they have failed to abide by "Clause 12" of the Terms and Conditions of the Application form, which gives the Respondent Company complete authority to cancel the unit and forfeit the money invoking Clause 11 of the Terms and Conditions of the Application form, duly signed by both the Complainants and being the only document executed between the Complainants and Respondent Company.

xix. It is denied for specific want of knowledge that the respondent company replied to the said messages of the complainant stating that they are helpless,



and that the complainants were expected to pay more. It is not denied that till date no allotment letter has ever been issued by the Respondent to the Complainants. Further, it is denied that the Respondent has not even issued any receipt qua the payments made by the Complainant(s). That after signing the Application form on 06.01.2022 and making payment of only ₹8,00,000/- in two instalments with a gap of over two months, the Complainants did not pay any heed towards making due payments i.e. 10% of the Total Sale Consideration and time and again sought more time. The Complainants were very clear from the inception as to how and when the payments are to be made and further to get the allotment letter and get the BBA executed. Despite the same, the Complainants failed to make any payment.

- xx. It is denied that the respondent company, instead of issuing any document qua the booking to the complainant(s), had again started pressing for exorbitant payment demands in violation of the principles of the Act. It is also denied that in this regard, the message/communication dated 13.02.2023 received from the respondent representative Rinku Rathi is being reproduced. That the Complainants are making false and vexatious averments and are only trying to mislead this Ld. Authority. That the Complainants have failed to mention the mode of communication and



further failed to annex a Certificate under Section 65-B of the IT Act 2000 required for admissibility of electronic evidence in the Court of Law.

xxi. It is denied that the Respondent has clearly violated the provisions as enumerated under section 13 of the Act by demanding and accepting a sum of more than 10% of the total cost of the apartment in question without first entering into a proper written agreement and registration of the same. That the Complainants herein are making false and baseless averments as the Respondent Company has never asked for sum more than 10% of the Total Sale Consideration. That there is no violation of Section 13 of the RERA Act as the Complainants have only paid ₹8,00,000/- which is not even 10% of the Total Sale Consideration so there is no way the Respondent Company has accepted more than 10% of the total cost of the apartment. That the Complainant herein is in default of Section 19(6) of the RERA Act for not making timely payments and is shifting the blame of his own wrongdoings onto the Respondent Company.

xxii. It is denied that the complainants have been making continuous efforts qua redressal of the grievances, and feeling helpless, were even constrained to issue Legal Notice dated 21.09.2022 to the respondent company, calling upon the latter to refund the amount so received along with interest and compensation. That the Contents and Receipt of the Legal notice are denied.



- xxiii. It is denied that the complainants were already shocked and taken aback due to the omission on part of the respondent company in attaching the connecting stairs to the roof top garden which had been booked, agreed upon and paid for by the complainant(s). It is also denied that Sh. Sandeep mentioned that one Anil Sir has denied for it for the stairs, to which the complainant requested that there would be no use of the roof top garden if there is no connectivity. That no formal conversation was made between the Complainants and the Respondent for the same. Moreover, the document annexed by the Complainant in support of the averment made is without Section 65-B certificate of the IT Act, 2000 which is essential for admissibility of any electronic evidence in the Court of Law.
- xxiv. It is denied the said specification were again amended by Respondent Company and were informed to the Complainant(s) vide letter dated 20.06.2022. That the letter annexed is undated so it would be uncertain to state that the averments made by the Complainants are true to what extent.
- xxv. It is denied that it must also be mentioned that the complainant(s) have been acting in utmost good faith, and despite the massive defaults on the part of the respondent promoter, has already availed and got the Home Loan Sanctioned for the unit in question and would be burdened by the EMI instalments thereto. It is submitted that the complainants are intentionally



attempting to shift the responsibility onto the Respondent Company, despite their failure to make the requisite payments in a timely manner, notwithstanding their knowledge of the payment schedule and the possession date. Further, the document pertaining to the said loan as annexed by the complainants are denied for want of knowledge as nowhere it is stated that the said loan has been availed for which unit/project.

xxvi. It is denied that no Occupation Certificate has been received or even applied for by the respondent qua the unit in question, and infact the project and the unit is in a pathetic and grossly incomplete condition even at this juncture, with there being only the superstructure standing. That the project is complete, and the Respondent Company has already applied for OC vide Letter dated 13.03.2023. Copy of Letter dated 13.03.2023 is annexed as Annexure R-3. That the Unit is completed in all aspects and has already been allotted to another allottee. Further, the complainants in any case are not associated with the project anymore and do not fall under the definition of the Allottee as per the RERA Act, hence has no locus to approach the Ld. Authority.

xxvii. It is denied that given the miserable attitude and default on the part of the respondent company, the complainants would have all the right to withdraw from the project in question and to seek refund of the amount paid qua the



unit in question alongwith interest, in accordance with the provisions of the R.E.(R.&D.) Act 2016. However, in utmost good faith, the complainants are still not seeking refund and are praying for possession of the unit in question alongwith directions to the respondent promoter to comply with the assurances and deliver the facilities, specifications, layout etc. as promised, alongwith the delayed possession charges. That as no BBA has been executed as the complainants have failed to fulfil their part of obligations in making timely payments for the said unit. That the Maharashtra Real Estate Regulatory Authority in its Judgement in the matter of "*Prachi Thakker and Anr Vs Keystone Realtors Pvt. Ltd.*" has made a categorical observation and stated that it was explained to the Complainant's counsel that no order for interest as per section 18 of the said Act can be passed since no agreement for sale has been executed and registered between the parties.'.

xxviii. That the document annexed by the Complainants bears the name "Vibhor Aggarwal" as the sender of the e-mail who is evidently not involved in the matter in any capacity. As such, the said document, as annexed, lacks any relevance or accountability in the present case.

xxix. It is denied that in view of the above, the Respondents have committed breach of the provisions incorporated under Section 12, Section 13, Section 18 (1) and other provisions of the Real Estate (Regulation & Development)



Act 2016 read with relevant Rules as stipulated under the Haryana Real Estate (Regulation And Development) Rules, for which the complainants are entitled to the reliefs being prayed for.

xxx. It is denied that it is also important to highlight that the conduct of the Respondent Company absolutely warrants and invites the application of Section 61 of the Act, and is thus amenable to imposition of penalties which may extend up to 5% of the estimated cost of the real estate project as determined by the Hon'ble Authority. That the Complainants are at fault for failing to fulfill their obligations necessary to be classified as "Allottees." A clear perusal of Section 2(d) delineates the responsibilities of Allottees, which the Complainants have notably failed to meet. Moreover Section 61 of the RERA Act is not applicable in the present case for the reasons already stated herein above.

xxxi. It is to mention that respondent has filed the written submissions arguments dated 03.08.2026 and for the sake of brevity, the same are not being reproduced, as their contents are already on record in the reply filed by the respondent.

E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT

6. Learned counsel for the complainants reiterated the facts of the complaint. No one has put in appearance on behalf of respondent.



F. ISSUE FOR ADJUDICATION

7. Whether the complainants are entitled for the reliefs claimed by them in terms of RERA Act of 2016?

G. OBSERVATIONS AND DECISION OF AUTHORITY

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

i. The complaint is barred by limitation under Section 69 of the Real Estate (Regulation and Development) Act, 2016.

Reference in this regard is made to the judgement of Apex court Civil Appeal no. 4367 of 2004 titled as M.P Steel Corporation v/s Commissioner of Central Excise.

"It seems to us that the scheme of the Indian Limitation Act is that it only deals with applications to courts, and that the Labour Court is not a court within the Indian Limitation Act, 1963." 20. In Kerala State Electricity Board v. T.P"

The promoter has till date failed to fulfill his obligations because of which the cause of action is re-occurring. RERA is a special enactment with particular aim and object covering certain issues and violations relating to housing sector. Provisions of the Limitation Act 1963 would not be applicable to the



proceedings under the Real Estate Regulation and Development Act, 2016 as the Authority set up under that Act being quasi-judicial and not Courts.

(ii) Respondent has raised an objection that the provisions of the Real Estate (Regulation and Development) Act, 2016 cannot be applied retrospectively and, therefore, the present complaint is not maintainable under the said Act. Authority observes that the complainants applied for the penthouse/unit on 06.01.2022. Therefore, the transaction between the parties, insofar as the subject unit is concerned, commenced in the year 2022, i.e., much after the enactment and coming into force of the RERA Act, 2016. The rights and obligations sought to be enforced by the complainants arise out of a transaction which was entered into after the statutory regime under the RERA Act, 2016 had already come into operation. Thus, the question of giving retrospective effect to the provisions of the Act does not arise in the manner alleged by the Respondent.

Accordingly, the contention of the Respondent that the complaint is liable to be dismissed solely on the ground that the RERA Act, 2016 cannot be applied retrospectively is devoid of merit. The Authority, therefore, holds that the provisions of the RERA Act, 2016 are applicable to the transaction in question and the complaint cannot be rejected on the aforesaid ground.



9. After going through the submissions made by both the parties and documents on record, Authority observes that complainants applied for the penthouse/unit in the project of the respondent namely Kings County, RAS Residency II, sector-35, Karnal, Haryana being developed by the respondent vide application form dated 06.01.2022 and paying the booking amount of 5,51,000/-. Thereafter, complainants made payment of ₹2,49,000/- on 24.03.2022, meaning thereby complainant made total payment of ₹8,00,000/- as it is clear from the customer ledger issued by the respondent which is annexed as Annexure A-2.
10. Complainants claim that total sale consideration of the penthouse was 1,05,66,438/- comprising of basic sale price of ₹1,01,51,238/- and EDC/IDC of ₹4,15,200/-. In contra respondent claimed that total sale consideration was ₹1,10,74,000/-. Going through the application form it is revealed that total sale consideration of the unit was ₹1,10,74,000/-. Meaning thereby complainants paid total amount of ₹8,00,000/- to the respondent against the total sale consideration of ₹1,10,74,000/-.
11. Allegation of the respondent is that complainants do not fall under the category of the allottee. Perusal of Section 2(d) of RERA Act of 2016 reveals that an allotment letter or Builder Buyer Agreement should have been executed in order to fall under the category of allottee whereas in this case the



complainants have failed to execute Allotment letter/BBA for not making timely payments and cannot allege that the respondent is in violation of any of the provisions of the RERA Act. Perusal of the application form dated 06.01.2022 revealed that it was **provisional allotment** of the unit and accordingly respondent **provisionally allotted** unit no. 802, Tower 16, Block P on 06.01.2022 and on same day, complainants paid an amount of ₹5,51,000/- as booking amount. Meaning thereby that respondent only provisionally allotted unit in favour of complainants subject to other terms and conditions of application form.

12. Now, the foremost issue for consideration is whether the complainants have established the existence of a concluded allotment in their favour. **Clause 2** of the said application form is reproduced for reference:

The booking/allotment of the said residential flat is entirely at the discretion of the Company. The booking/allotment of the said residential flat shall be provisional and shall be confirmed on signing of the Buyer's agreement on the Company standard format which has been read and understood by the applicant.

The respondent has specifically pleaded that no formal allotment letter or Agreement for Sale was executed and that the complainants failed to comply with the prerequisite payment conditions. The complainants admittedly paid



only ₹8,00,000/- against the total consideration claimed by the respondent as ₹1,10,74,000/-. That the said unit was only provisionally allotted to the complainants and was subject to the final payment of the due amount at the time of allotment and execution of BBA. The same is evident from Clause 2 of the terms and conditions for registration for provisional allotment of the Apartment/Flat annexed with the Application form (Annexure R-1) signed and submitted by the complainants herein.

13. It is observed that the complainants failed to establish that they acquired an unconditional right to possession of the subject unit. The respondent has consistently maintained that the unit was only provisionally allotted, subject to payment of the stipulated amount and completion of the necessary documentation. In the absence of execution of the Agreement for Sale and fulfilment of the prescribed payment conditions, the complainants cannot claim an absolute and vested right to possession. The mere acceptance of an initial payment, without completion of the contractual and documentation requirements, cannot by itself establish that the entire sale transaction stood concluded.
14. The complainants admittedly did not pay the balance consideration despite being required by the clause 2 of application form to make further payment. In this regard Authority observes that complainants stated that they have sent



communications dated 16.12.2022 annexed as Annexure C-3 to the representative of the company regarding allotment and execution of the builder byer agreement. Thereafter, complainants alleges that respondent demanded exorbitant amount from the complainants and in this regard communication dated 13.02.2023 is mentioned and annexed as Annexure C-4. However, it is to be noted that said communication is not on record.

15. With regard to the allegation made by the complainants that the respondent had changed the specifications of the unit, the complainants have stated that they had raised objections regarding the alleged changes through communications dated 03.01.2022 and 26.02.2022. The said communications have been placed on record as Annexures C-6 and C-7, respectively. However, merely raising objections through these communications does not establish that the specifications mentioned by the complainants had actually become part of the contractual terms agreed between the parties. The complainants have not produced any concluded and duly executed Agreement for Sale or any other legally binding document showing that the particular specifications relied upon by them were finally agreed to by the respondent. In the absence of such a concluded agreement, the alleged representations or assurances regarding the specifications cannot, by themselves, be treated as final and binding contractual obligations upon the respondent.



16. It is also important to note that the complainants have not been able to establish through sufficient and reliable evidence that the respondent was legally bound to provide the specifications as alleged by them. A representation, discussion, communication, or assurance made during the course of negotiations cannot automatically be treated as a contractual term unless the same is incorporated into a concluded and legally enforceable agreement between the parties.

Further, Authority observes that these communications are not valid as per terms of law and merely constitute unauthenticated plain pages, which cannot be relied upon as valid evidence and hence, the complainants have not demonstrated by cogent material that they were ready and willing to discharge their substantial financial obligations under the proposed transaction.

17. The allegation by the complainants regarding the "Ready to Move In" representation by the representative of the respondent is also disputed by the respondent and has not been established through a duly executed contractual document. The electronic communications relied upon by the complainants cannot be reliable and legally inadmissible evidence, the same cannot form the sole basis for granting possession.



The allegation that the respondent deliberately delayed possession is therefore not established. The complainants themselves had paid only ₹8,00,000/- against the substantially higher stated consideration and had not completed the further payment and documentation requirements. A promoter cannot reasonably be held responsible for delayed possession where the purchaser's own failure to comply with essential payment obligations prevented completion of the transaction. The complainants have also not established their readiness and willingness to perform their reciprocal obligations. While they seek possession of the unit, they have not demonstrated payment or tender of the substantial outstanding consideration in accordance with the terms of the proposed transaction.

18. The overall conduct of the complainants, as emerging from the pleadings, indicates that the transaction did not mature into a completed allotment entitling the complainants to demand possession of the unit. The complainants made an initial payment but failed to fulfil the subsequent financial and documentation requirements necessary for completion of the transaction. It is therefore observed that the complainants have failed to establish a legally enforceable right to possession of Penthouse No. 801, Tower-P, in the project "Kings County, RAS Residency", on the basis of the material placed before the Authority. In view of above, Authority concludes that present complaint



is not maintainable under the RERA, Act 2016 and decides to dispose of the captioned **complaint as dismissed**.

19. **Disposed of.** File be consigned to record room after uploading of the order on the website of the Authority.



NADIM AKHTAR
[MEMBER]

