

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

Complaint no. : 3441 of 2020
First date of hearing : 23.12.2020
Date of decision : 23.12.2021

Antriksh Heights Flat Buyers Association
(Through Sh. Himanshu Sharma, Secretary
and Sh. Amar Nath Mishra)

Registration no. HR-018-2016-02700 dated
26.07.2016 under Haryana Registration and
Regulation of Societies Act, 2012

Regd. Office: AG-1601, Antriksh Heights,
Sector 84, Gurugram, Haryana.

Complainant

Versus

M/s Reliable Realtech Pvt. Ltd.

Regd. office: 301, 3rd floor, C- Block, मेव जयते
NMD-2, Netaji Subhash Place, Pitampura,
New Delhi- 110034.

Corporate office: BN 57E, 3rd floor,
Shalimar Bagh, New Delhi-110088.

Respondent

CORAM:

Dr. K.K. Khandelwal
Shri Vijay Kumar Goyal

**Chairman
Member**

APPEARANCE:

Shri K.K. Kohli and Arsh Mehta
Shri Shankar Wig

Advocates for the complainant
Advocate for the respondent

ORDER

1. The present complaint dated 13.10.2020 has been filed by the complainant in Form CRA 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 to the allottee as per the agreement for sale executed inter se them and section 14(3) of the Act wherein it is inter alia prescribed that in case of any structural defect or any other defect in workmanship, quality or provision of services or any other obligations of the promoter as per the agreement for sale relating to such development is brought to the notice of the promoter within a period of five years by the allottee from the date of handing over possession, it shall be the duty of the promoter to rectify such defects without further charge, within thirty days and in the event of promoter's failure to rectify such defects within such time, the aggrieved allottee shall be entitled to receive appropriate compensation in the manner as provided under this Act.

A. Unit and project related details

2. The particulars of the project, the details of the complainant, etc. have been detailed in the following tabular form:

S.No.	Heads	Information
1.	Project name and location	"Antriksh Heights", Sector 84, Gurugram.
2.	Licensed project area	23.10 acres
3.	Nature of the project	Residential group housing colony
4.	DTCP license no.	123 of 2008 dated 14.06.2008.
	Validity status	13.06.2018
	Licensee details	Reliable Realtech Pvt. Ltd.
5.	Total no. of towers in the project	13 towers
6.	Occupation certificate details	OC received dated 19.05.2016 for tower/block- ➤ AF (ground floor to 17 th floor) ➤ AG (ground floor to 9 th floor)



		<ul style="list-style-type: none"> ➤ AH (ground floor to 7th floor) ➤ AI (ground floor to 9th floor) ➤ AJ (ground floor to 9th floor) ➤ AL (ground floor to 18th floor) ➤ EWS (ground floor to 10th floor) <p>OC received dated 14.10.2016 for tower/block-</p> <ul style="list-style-type: none"> ➤ AE (ground + 1st floor to 19th floor) ➤ AG (10th floor to 19th floor) ➤ AH (8th floor to 19th floor) ➤ AI (10th floor to 19th floor) ➤ AJ (10th floor to 19th floor) <p>OC received dated 07.02.2020 for tower/block-</p> <p>Primary School (Ground floor to 3rd floor)</p>
7.	Respondent claiming deemed occupation certificate in respect of following towers	<ul style="list-style-type: none"> ➤ Tower AA - 80 Units, ➤ Tower AB - 80 Units, ➤ Tower AC - 74 Units, ➤ Tower AD - 80 Units, ➤ Tower AE - 40 Units Balance, ➤ Tower AK - 71 Units ➤ Tower AM - 160 Units ➤ EWS - 107 Units, ➤ Convenient shopping, Community center, balance Part of the basement
8.	Occupation Certificate detail	<p>OC received dated 21.09.2020 for tower/block-</p> <ul style="list-style-type: none"> ➤ AA (ground floor to 19th floor) ➤ AB (ground floor to 19th floor) ➤ AC (ground floor to 18th floor) ➤ AD (ground floor to 19th floor) ➤ AE (ground floor to 19th floor) ➤ AK (ground floor to 18th floor) ➤ AM (ground floor to 19th floor) ➤ EWS block (ground floor to 10th floor) ➤ 2 no's Convenient Shopping Type- 1 (ground only) Community Building (ground floor to



		1 st floor)
9.	HRERA registered/ not registered	Not registered
10.	Antriksh Heights Flat Buyers Association Complainant herein (Through Sh. Himanshu Sharma, Secretary and Sh. Amar Nath Mishra)	Registered vide no. HR-018-2016-02700 dated 26.07.2016 under Haryana Registration and Regulation of Societies Act, 2012
11.	Total number of members in the complainant association	255 members [page 11 of complaint]
12.	Number of members who have filed the present complaint	68 members [Page 160 and 161 of complaint]

B. Facts of the complaint

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

- i. The complainant submitted that the project "Antriksh Heights" is being developed and marketed by M/s Reliable Realtech Pvt. Ltd. and its associate company, namely M/s Decent Realtech Pvt. Ltd. (hereinafter referred to as "Builder") and approved under the DTCP license no. 123 of 2008 valid up to 13.06.2020 issued by Director General, Town and Country Planning, Chandigarh, Government of Haryana. The said license has not yet been renewed till date of filing of this complaint. The respondent has received occupation certificate vide endorsement no. ZP-451/SD(BS)/2016/9988 dated 19.05.2016 (in respect of

following towers-Tower AF 70 units; Tower AG 40 units; Tower AH 64 units; Tower AI 40 units; Tower AJ 40 units; Tower AL 76 units; EWS 106 units) and vide endorsement no. ZP-451/SD(BS)/2016/22269 dated 14.10.2016 (in respect Tower AE 79 units; Tower AG 40 units; Tower AH 96 units; Tower AI 40 units and Tower AJ 40 units). Unfortunately, the following units are yet to get the occupation certificates in the complex- Tower AA - 80 units; Tower AB - 80 units; Tower AC - 74 units; Tower AD - 80 units; Tower AE - 40 units Balance; Tower AK - 71 units; Tower AM - 160 units; EWS- 107 units and convenient shopping, community center, balance part of the basement.

- ii. That the Antriksh Heights Flat Buyers Association has been authorized by the General Body to proceed legally against the builder for various issues like delay in construction, expired license, non-registration with HRERA, status of EDC/IDC payment, construction quality and more issues like utilities, club, parks, roads, car parking, maintenance charges in advance, HVAT and many other issues related to the project Antriksh Heights and to take legal course of action to make the builder responsible and legally bound to carry out full swing construction at site without any further delay as project is already behind schedule, ask builder to pay delayed payment charges to the members of the association, as per the law prevalent on date.

- iii. Those 68 members of the complainant association has filed the present complaint (list of members is annexed herewith). The members of complainant association purchased their respective apartments in the said project during the period from June 2008 onwards. The members of the complainant association started making payments from June 2008 onwards. The members signed the buyers' agreement wherein at clause no. 11, it was specified clearly that the delivery shall be made within three years from the date of start of construction/excavation which would be around April 2012. The members of the complainant association made a payment of approximately 90% to 95% against the total basic sale price, car parking, EDC/IDC, club house charges, GST, IBMS/IFMS, power backup plus PLC, HVAT, of the unit and payments made were construction linked as per the installment payment plan attached with the buyer's agreement and were paid as and when the bills were raised by the respondent.
- iv. That the respondent, from March 2016 onwards started offering the possession of the units to the members of the complainant association, though the same was illegal as without obtaining the occupation certificate the possession of the unit cannot be offered by the respondent.
- v. The complainant association sent an email dated 23.05.2016 to the respondent raising several issues such as delay in possession, club facility issue, no water supply, no proper road connectivity,

etc. The members of the association sent a letter dated 08.06.2016 to the Deputy Commissioner, Gurugram raising the concern that the 60% to 70% of project is still under construction and respondent vide letter dated 28.03.2016, offered the possession of the unit. The Deputy Commissioner-Cum-Chairman sent a letter dated 17.06.2016 to DTP (Planning), Gurugram and a copy was marked to Secretary of association Sh. Himanshu Sharma stating that the complaint dated 08.06.2016 received from Sh. Himanshu Sharma against M/s. **Reliable Realtech Pvt. Ltd** in the project **Antriksh Heights**, Sector-84, Gurugram, asking the DTP (Planning), to check whether the units are booked in prelaunch vis-à-vis examining the license/other documents of the builder along with status of the construction at site as provided with the complaint. In case of any violation found, action to be taken as per law.

- vi. That many members of the complainant association, despite having paid a considerable amount ranging from 90% to 95% of the payment against the total consideration under the agreement to sell, have not been delivered the possession of the apartment as per the delivery schedule provided in the agreement. The respondent always kept the members of the complainant association in dark about the construction of the units for which deemed OC was being claimed by the respondent and the

respondent did not leave any stone unturned to extract money from the members of the complainant association.

- vii. That M/s Reliable Realtech Private Ltd, the respondent, had started telling the members of the complainant association, that the respondent has submitted an application complete in all respects, for grant of an occupation certificate for all the units/ towers (license no. 123 dated 14.06.2008) in Sector 84, Manesar Urban Complex, Gurugram on 18.10.2016 with the Director, Town and Country Planning, Haryana, Chandigarh vide letter dated 18.10.2016. That in the present case the respondent claimed that the application for part occupation certificate for part project was made on 18.10.2016 and the respondent further is taking the plea that occupation certificate was deemed to have been granted after sixty days i.e. on 18.12.2016. The respondent further stated that since the "occupation certificate" is deemed to have been granted, hence it is not necessary for the respondent to take any formal "occupation certificate" and the delivery of the units can now be given after a lapse of four years beyond the delivery period committed.
- viii. That a joint meeting was again held between the allottees and four members from the respondent including Shri Rakesh Yadav, director of the respondent who signed at serial no. 37 of the attendance sheet wherein at para one, it has been agreed in the

joint meeting that "OC or project completion" will be provided within 3 months from 24.08.2019.

- ix. The members of the association then, followed up with the Fire Department to know if the respondent has ever applied for the NOC for the Tower AA to AM and was informed by the office of the Assistant Divisional Fire Officer, Sector 29, Fire Station, Gurugram, Haryana that no NOC has been applied by the respondent and hence no NOC is in existence on date and was never in existence at all. Further, it was informed that no Fire NOC was issued to tower AA to AM.
- x. That a complaint was then filed before the CM Window to find out the status of the deemed occupancy certificate, for the towers and other structures as it was being claimed by the respondent to the effect that they have the deemed occupancy certificate. In its reply, it was stated that as per the office record, colonizer has applied for occupation certificate dated 05.12.2019 and deficiencies were conveyed to the colonizer on 15.01.2020 within sixty days. So, it is not covered under section 4.10.(4) of Haryana Building Code - 2017 and colonizer has not made the compliance till date.
- xi. The complainant in support of its contention has put reliance on Dr. B.I. Wadhwa vs Govt. of NCT of Delhi and Ors. dated 29 May 2003 wherein it was held that no person can occupy or permit any one to occupy any building or use or permit to be used a

building or part thereof to any one until occupation certificate has been issued.

xii. That the members of the complainant association, who are approaching this authority with their grievances are of three different categories as mentioned hereunder:

- i. Those who have been delivered the possession of the units for which the occupation certificate has been obtained by the respondent.
- ii. Those who have been delivered the possession of the units for which the occupation certificate has not been obtained but still the possession has been given.
- iii. Those who have not been delivered the possession as the occupation certificate has not been obtained by the respondent.

xiii. That the project is not registered with Haryana Real Estate Regulatory Authority, Gurugram for the last four years and hence, the necessary penalty needs to be imposed on the Respondent as per section 59 of the Act.

xiv. That there are structural defects for those towers handed over as per occupation certificate dated 19.05.2016 & 14.10.2016 in RCC columns, basement roof beams, major cracks in basement slabs, etc. Therefore, it is very important to get a structural audit of the entire construction done, which includes those for which the OC has been received and for those for which the OC is yet to be received.

- xv. The respondent is asking for 12 months of advance maintenance charges amounting from the members of complainant association who have been given the possession in towers for which the OC has not been received. The offer of possession is not a valid offer of possession, even though the possession has been taken by many of the members.
- xvi. There is seepage issue - basement leakage/seepage - ground floor seepage as per photographs attached in the entire complex. Substandard plaster on the inner and outer surface. GST on common area electricity (CAE) by the maintenance agency appointed by the respondent. ECC/ESS charges - electricity substation charges collected from the owners of towers whose occupation certificate has been issued on 14.10.2016.
- xvii. The buyer's agreement states against car parking that covered parking charges is Rs.3,00,000/- (one bay is mandatory) and open car parking for Rs.1,75,000/- (optional). The basements and the open areas are a part of the common area and hence the basement parking being provided by the builder for the allottees qualifies as the basement or parking areas which are included in the definition of common areas and facilities in Haryana Apartment Ownership Act, 1983. In Nehal chand Lalooch and P. Ltd. Versus Panchali Co-op. Housing Society Ltd. (2010) 9 SCC 536 it was held that the basement is included in the definition of common areas and facilities as given in Section 3(f) of the

Haryana Apartment Ownership Act, 1983. The parking areas are also expressly included in the definition of common areas and facilities. The basement would mean every basement provided in a multi-storied building irrespective of the use to which the basement is put.

- xviii. Regarding the external development charge/internal development charge (EDC/IDC), a specific provision has been made in clause no. 05 of the buyer's agreement by incorporating a provision regarding the EDC / IDC. As per the provisions of the agreement, EDC and IDC is payable by the members of the complainant association. The members of the complainant association have been making payments in this regard in the past also. EDC have to be paid to the State Government for providing variety of external services. The IDC, however, is to be used by the developer for providing services within the colony. It would be appropriate to direct the respondent to separate the demands being made on account of EDC and IDC. The basis of calculating of IDC has not been provided to the complainant's association and this should also be conveyed by the respondent to the members of the complainant's association. Accordingly, the due payable EDC charges as per the calculation should be paid by the members of the complainant association to the respondent for paying to the State Government Authorities.

- xix. The complainant submitted that a community centre is provided to them and not a club, hence collection of Rs. 50,000/- towards the club charges is illegal. The club does not find any mention in any of the approvals granted by the Directorate of Town and Country Planning, Haryana and hence there is no club in the residential complex called Antriksh Heights. The respondent has either to provide a club, or the respondent will have to return Rs. 50,000/- to each member of the complainant association plus stamp duty besides interest from the day the respondent has taken the money from each member of the complainant association.
- xx. A sum of Rs. 125 to 250 sq. ft. approximately has been charged from the members of the complainant association for all the units, whereas the units of the members do not have advantage over others in terms of location and there is absolutely no difference between the different units which have been charged PLC and the units which have not been charged PLC. It would therefore be noticed that PLC is being charged for a corner unit and since there are only four units in each corner of the floor and hence, all the units are corner units and hence where is the advantage that one has in terms of location over the other. There is none and hence the PLC should not be charged.
- xxi. That the buyers' agreement was one sided and many of the conditions were favouring the builder and none to the buyer and

It is pertinent to note that while under clause 14 (b) of the buyer's agreement, upon delay of payment by the allottee, the respondent can charge 18% simple interest per annum. It is submitted that this clause is totally unjust, arbitrary and amounts to unfair trade practice as held by the Hon'ble NCDRC in the case titled as *Shri Satish Kumar Pandey Anr. v/s M/s Unitech Ltd. (14.07.2015)* as also in the judgment of Hon'ble Supreme Court in *Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and Ors. (W.P 2737 of 2017)*.

C. Reply by the respondent.

4. The respondent has filed reply on 20.11.2020 and contested the complaint on the following grounds:
 - i. That the respondent submitted that the project in question comprising 13 towers on 23.10 acres of land is divided into two parts of six and half towers each headed by two separate groups of directors i.e., Jai Bhagwan group & Rajbir Singh Goyat group. Jai Bhagwan group has developed AF, AG, AH, AI, AJ, AL & half portion of AE towers and Rajbir Singh Goyat group has developed AA, AB, AC, AD, AK, AM & half portion of tower AE. Complainants no. 1 to 35 of the present complaint are from the towers belonging to the portion of Jai Bhagwan group. Hence the present reply is being filed qua the complaint of the complainants no. 1 to 35 in the present complaint. Shri Amit Goel is the authorized representative of the respondent (Jai Bhagwan group) vide a separate resolution to file the present

reply and to do other related acts in the above noted case and hence, competent to file the present reply.

- ii. That the possession of the flats in question had been offered to the complainants no. 1 to 35 long back and possession has been admittedly handed over to them after mutually settling all the issues in respect of their flats and now the present complaint has been filed with malafide intentions and ulterior motives. Hence, the complaint is liable to be dismissed.
- iii. That the respondent obtained the license for the project in question in the year of 2008, got the drawings sanctioned on 05.05.2009 and got clearance /NOC of pollution on 05.04.2011. Upon sanctioning of the drawings and other clearances, the construction of the project started in July- August 2010 and completed in August 2013. On 22.8.2013 the respondent applied for issuance of occupancy certificate to the Director General Town & Country Planning, Haryana. The project in question falls on Dwarka Expressway or Northern Periphery way which got stucked due to the land litigation and could not be developed by the Govt. of Haryana/Haryana Urban Development Authority till date. Recently, the Dwarka expressway had been declared a National Highway by the Govt. of India through its Minister Shri Nitin Gadkari so that it could be constructed as early as possible. The concerned sector roads, sewers, electric cables, drains, water pipelines, Community Centers, dispensaries, parks, and schools etc. could not be developed by HUDA/Govt of Haryana because of the above given reasons. The projects in these sectors were not accessible due to

lack of public transport and sector roads. Due to these problems the DGTCP Haryana issued occupancy certificate to the respondent in the year 2016 which was beyond its control. Because of the non-development of the sector by HUDA, the allottees of the society themselves were not willing to take early possession as it would have unnecessarily put heavy burden of maintenance on them. On receiving of the occupancy certificate, respondent has offered possession to the complainants on 15.10.2016. Thus, there is no delay in possession on its part to the allottees.

- iv. That all the complainants in the present complaint cannot be placed at the same footing as the dates of bookings of their respective flats are different ranging between 1 to 9 years and the status of possession of their respective flats is also different. Hence, a common complaint cannot be entertained for all the complainants. Even complainants no. 1 to 35 also cannot be entertained in the same complaint on account of above-mentioned grounds in this paragraph.
- v. That the complaint for the complainant-no. 1 to 35 is barred by law of limitation as the offer of possession of the flat had been made on or before 15.10.2016 and possessions of the flats had been handed over to them long back prior to the notification of The Haryana Real Estate Regulatory Authority Act. The complaint of complainants no. 1 to 35 is hopelessly time barred one and hence, liable to be dismissed.
- vi. That complainants no. 1 to 35 are illegally levelling false allegations against the respondent (Jai Bhagwan group) merely

with malafide intention and ulterior motive of extortion of money from the respondent. The Act of 2016 was notified on 25.03.2016 and in exercise of powers of section 84 of the Act, Haryana Real Estate Rules 2017 was notified on 28.07.2017. As per the Act, the developer has to register his project prior to its launching in the market. Ongoing project has also to be registered and "on going" projects are defined under rule 2(1)(o) of the Rules. However, project in question had been completed in 2013 and application for occupation certificate had been moved on 22.08.2013 and occupation certificate had been obtained on 14.10.2016 that is much prior to the publication of RERA rules i.e., on 28.07.2018.

- vii. That the license has been extended automatically for a period of six months by the Govt. on account of corona pandemic. It is also submitted that the balance occupation certificate has also been obtained by the respondent although the same is not related with the answering respondent i.e., Jai Bhagwan Group.
- viii. That the answering respondent has handed over the possession of the flats to the complainant's no. 1 to 35 with all facilities and utilities like club, parks, roads, car parking etc. The advance maintenance charges are necessary to maintain the society which have been collected by the respondent and the same has been deposited in a separate maintenance account and the same would be handed over to the RWA at an appropriate time. EDC/IDC has been deposited with Huda by the respondent and H-VAT has also been deposited with the Government. The

project has already been completed and hence, the association has no relevance after the completion of the project.

ix. That the respondent is not answerable to the second and third category of the complainants and the category no.1 who have been delivered the possession of their flats with occupation certificate i.e., complainants no. 1 to 35 have no locus to file the present complaint after receiving possession of their flats and signing the settlement papers with the answering respondent. The complainants no. 1 to 35 who have already taken possession with occupation certificate long back and have signed a settlement letter with the answering respondent.

5. 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.

D. Relief sought by the complainant.

6. The complainant has sought following relief(s) and the authority has passed the following direction:-

1. Direct the respondent not to cancel booking of the complainant association till the pendency of the present complaint of all the members of the complainant association.

7. This relief is with regard to individual allottees and cannot be granted to the association as no documents have been filed in support of the same. Moreover, there is nothing on record or in pleadings of the complainant as to the fact of cancellation of allotment/booking of the units. Therefore, no relief can be granted.

II. Restrain the respondent from raising any fresh demand with respect to the project and in case any justified amount is payable by the members of complainant association, to adjust

the same from the amount of interest payable on account of delay in delivery of the possession.

8. This relief is regarding individual allottees and cannot be granted to the association as no documents are filed in support of the same. Therefore, the authority cannot grant the abovementioned relief.

III. Direct the respondent to pay interest at the prescribed rate i.e. "interest at the rate prescribed" which shall be the State Bank of India highest Marginal cost of lending rate plus 2% as specified in Section 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the due date of possession till date of actual date of possession.

9. In the present complaint, the complainant is seeking delay possession charges as provided under the proviso to section 18(1) of the Act. The complainant i.e., resident welfare association is seeking the relief of delayed possession charges through various allottees but have not provided any details as to any individual agreement and other document therefore the relief under section 18(1) cannot be adjudicated. Section 18(1) proviso reads as under.

"Section 18: - Return of amount and compensation

18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —

.....
Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."

10. The complainant association through its allottees is directed to file separate individual complaint with requisite documents for seeking the relief of delayed possession charges.

IV. The Hon'ble Authority be pleased to appoint a quality surveyor and a financial auditor for the project.

V. Direct the respondent to rectify all the defects including seepages issues, basement seepage, ground floor seepage.



11. While filing the complaint, the complainant sought a direction from the authority for appointment of Quality Surveyor Financial Auditor for the project and to rectify *all the defects including seepages issues, basement seepage, ground floor seepage*. As per section 11 (4) and 14 (3) of the Act, the promoter is under an obligation towards allottees with respect to structural defects, seepage issues, substandard plaster, and reinforced steel exposed or provision of services or any other obligations.
12. The Act cast the responsibility on the promoter to rectify the structural defects or any other defect in workmanship, quality, or provision of services when it is brought to the notice of the developer within a period of five years by the allottee(s) from the date of handing over the possession. In the present case, the first part occupation certificate (hereinafter referred to as the OC) in the project was granted by the DPTC for towers AF, AG, AH, AI, AJ, AL and EWS on 19.05.2016 and the second OC for the towers AE, AG, AH, AI & AJ on 14.10.2016 and the respondent claiming deemed occupation in respect of following towers AA, AB, AC, AD, AE, AK, AM, EWS, and convenient shopping, community center, and balance part of basement and the same was granted on 21.09.2020. The complaint has been filed within the period prescribed under section 14(3) of the Act. This authority appointed a local commission to submit its findings on the issues involved in the complaint and the relevant part of report is reproduced as under:

The flat buyer association has filed a complaint in the Authority in which they have raised the various issues regarding the defects and deficiency in construction of project. Accordingly, as per directions of the Authority, site of project has been inspected and at that time, the flat buyer association has raised the various issues regarding the defects and deficiency in construction as detailed further.

- A. *Structural defects*
- B. *Seepage issues*
- C. *Substandard plaster*
- D. *Reinforced steel exposed*

Site observations regarding issues:

The issues raised by the flat buyer association have been physically checked at the time of site inspection and the detailed description of various issues regarding defect and deficiency in construction is given further.

A. Structural defects: -

The association has raised complaint regarding structural defects in the project, particularly in the basement of the project. Therefore, the basement has been visited to find out the structural defects and it is observed that.

- At the entrance slope to basement near tower AM the beams supporting the slab are sagging.
- Proper covering is not provided to reinforcement in some beams due to which steel is exposed to weather and getting rusted. This will ultimately affect the strength of the beam.
- At some places steel reinforcement in basement slab is also exposed to weather due to poor covering to steel at the time of casting the slab particularly of tower AM.
- Steel reinforcement in one beam is not placed properly. Steel bars are left overhanging instead of supporting them on column and these bars are exposed to weather as no concrete is filled in that gap.
- The above issues are in the basement under tower AM and there are no such issues in the balance basement of the project.
- At some places honeycombing has been observed and the promoter has not repaired the same properly.

B. Seepage issue: -

The association has raised complaint regarding seepage in the project. Therefore, the project has been visited to find out the seepage issues and it is observed that.

- Seepage has occurred in the complete project i.e., in all towers/structures of the project. Primarily, it is observed that the seepage in the towers particularly around bathrooms and plumbing shafts has occurred due to defects in plumbing works done in the towers i.e., either the plumbing fitting are leaked or damaged.
- Seepage has led to the dampness in the walls and concrete structures which results in tearing/falling of paint and plaster in the towers and flats.

- Dampness in the balcony slab is also increasing due to the seepage.
- At some places repair work is completed and further being carried out by the promoter.
- Due to seepage or dampness in flats, a foul smell is spread in the flats and society.
- Plumbing pipes of wastewater running in the basement are leaking from joints. This leakage has led to dampness in the concrete structures and walls due to which paint and plaster getting peeled off.
- At some locations, seepage has reached to that extent where reinforced steel becomes exposed from concrete structures.

C. Substandard plaster: -

- Plaster of mostly balconies where grill has been fixed has fallen down or tored/peeled off.
- Plaster from the external and internal walls near bathrooms and plumbing shafts has also fallen/tored due to seepage issue or dampness in the walls.
- Plaster and paint from external walls have been tored/fallen down due to substandard plaster material which absorbs moisture from atmosphere.

D. Other issues: -

- The expansion joints in the basement slab were left open to sky at ground level due to which the water flows to the basement in rainy season or during watering the landscaped area. Now the promoter has covered the expansion joint on ground level and further placing the trays below expansion joint for proper drainage of water if any during rainy season.
- Green or landscaped area in the project is not properly levelled due to which the water remains in down portions of green area and the surface becomes slippery.

Twenty number of photographs captured during site inspection showing the structural and seepage issues in the project are attached herewith as annex-B. Further the approved layout plan of the project is attached herewith as annex-C.

5. Conclusion:

The site of project "Antriksh Heights" being developed by "Reliable Realtech Pvt Ltd" has been inspected on 22.02.2021 and the issues raised by the flat buyer's association have been checked at site. Therefore, it is concluded that:

1. *The steel reinforcement in RCC structures i.e., column, beam, slab is not placed properly i.e., proper covering to steel in cement concrete is not provided at the time of construction. Due to this*

steel becomes exposed to weather and getting rusted which will affect the strength of the structure. This issue occurs mainly in the basement below tower AM.

- 2. Steel reinforcement in one beam is not placed properly at column beam junction i.e., the steel bars are overhanging instead of supporting on column.*
- 3. Mostly structural defects are in the basement below tower-AM and the rest basement has very minor defects.*
- 4. Seepage is the major issue in the project.*
- 5. Primarily, it is observed that the seepage in the overall project has occurred mostly due to poor plumbing fittings. Either the plumbing fittings are leaked or broken down due to which seepage occurred. This seepage causes dampness in the walls and concrete structures which ultimately affect the strength of structure.*
- 6. Plumbing pipes of the sewerage or wastewater are leaked from the joints and ultimately this leakage increases dampness in the structures due to which strength of the structure decreases.*
- 7. Plaster and paint of the project has also been damaged due to the seepage issue or dampness and substandard plaster material.*
- 8. Expansion joint in the basement slab were left open due to which water in rainy season enters in the basement. Now the promoter has covered the expansion joint from top and placing the trays below the expansion joint.*
- 9. Green area developed in the project is not levelled properly.*

13. As per section 14(3) of the Act, the respondent/promoter is liable to rectify the defects in workmanship, quality, or provision of services for a period of five years from the date of handing over possession. From the aforesaid report, it is clear that there are numerous defects in the said project and the same were to be rectified by the promoter within two months as given by this authority vide order dated 20.07.2021. Further vide order dated 20.07.2021, the authority directed LC to re-visit the site and submit the up-to-date report i.e., after completion of two months failing which a penalty of Rs.50,000/- per day was to be imposed on account of non-compliance of the order of the authority and submit the finding report w.r.t. to the same. A report in this regard was received by the authority on 15.12.2021. The concluding paragraph of the LC report is reproduced herein after: -

"5. Conclusion:



14. The site of project "Antriksh Heights" being developed by "Reliable Realtech Pvt Ltd" has been inspected on 23.11.2021 and the issues pointed out during last visit have been checked at site. Therefore, it is concluded that:

1. *The steel reinforcement in concrete structures i.e., beam, slab which was exposed to weather had been repaired/covered by plastering cement mortar and the surfaces are painted in the basement of tower AM & AL only where these issues were maximum.*
2. *Further the steel is exposed to weather in the basement under other towers and the honeycombing also exists which are still pending for repairing or treatment.*
3. *Outer surfaces of the towers from where plaster and paint were damaged have been replastered and repainted but still there are some patches which are left unfinished.*
4. *As on date seepage in the basement from roof slab occurred at two or three places which needs to be repaired again.*
5. *Mostly structural defects were in the basement below tower-AM which have been repaired and the rest basement has also some defects like exposed steel bars from roof slab & beams, honeycombing etc. which needs to be repaired.*
6. *Some plumbing pipes and their joints which were leaked or damaged, are being replaced and repaired by the respondent in tower AM.*
7. *Expansion joints in the basement slab are being covered from the top and trays are being installed below the expansion joint to stop the entry of water in the basement. The work is not complete till date.*
8. *Green area developed in the project is still not levelled properly.*
9. *Proper technical team should be appointed by the respondent to carve out the minor-to-minor defects and deficiencies like exposed steel bars, honeycombing, cracks, damaged plaster, reasons for seepage or dampness etc. and then take appropriate measures to rectify/repair the same.*
10. *After visiting the project site overall conclusion is that the respondent has started the work for removing the defects in the project but till date all the defects in the project are not removed completely.*

15. But as per the LC report dated 15.12.2021, as reproduced above, the respondent has started removing the defects in the project till now the defects are not completely rectified. During the course of arguments, it was submitted by the respondent/builder through its counsel that in pursuant to the report of LC dated 22.02.2021, necessary structural defect and deficiency in construction and services are being carried



out. Even this fact is not disputed by the complainant through his counsel. Keeping in view the direction given by the authority in pursuant to LC report dated 22.02.2021 and the latest one received on 15.12.2021 a period of 3(three) months is given to the respondent /builder to rectify the defect and deficiency in construction and services. If anything remains to be done after that, then the complainant association is free to approach the appropriate forum for failure to rectify such defect within such time the aggrieved allottees shall be entitled to receive appropriate compensation in the manner as provided under the Act as per section 14(3) of the Act of 2016.

- VI. *Direct the respondent not to charge any interest on payment demands raised after expiry of the possession due date in terms of the respective buyer's agreement as the same are required to be adjusted from the amount payable as interest for the delay in delivery of possession to the members of the complainant association.***
16. This relief is w.r.t individual allottee and cannot be granted to the association as no documents are filed in support of the same.
- VII. *Direct the respondent to pay interest to the members of the complainant association from Sr. No. 1 to Sr. No. 35, as specified in the enclosure annexed as annexure C/21, as the possession has not yet been given to them by the respondent.***
- VIII. *Direct the respondent to pay interest to the members of the complainant association from Sr. No. 36 to Sr. No. 42, as specified in the enclosure annexed as annexure C/21, as the possession has not been given to them by the respondent without having obtained the occupation certificate.***
- IX. *Direct the respondent to pay interest to the members of the complainant association from Sr. No. 43 to Sr. No. 68, as specified in the enclosure annexed as annexure C/21, as the possession has been given to them by the respondent and the sale deed has been executed but no interest has been paid to them for the delay in the delivery period up to the date of the sale deed execution.***

17. The reliefs sought by the complainant cannot be granted as it lacks certainty. The relief (s) are with regard to individual allottee and cannot be granted to the association. The documents placed on record by the complainant are ambiguous and not proper to make out the certain reliefs. The documents are not making a distinction between those allottees who were granted DPC and who were not. Hence, no direction could be given to the respondent in these respective reliefs.

X. The Hon'ble Authority be pleased to penalize the respondent for not registering their said project under section 59 of RERA, 2016.

18. The OC dated 19.05.2016 and 14.10.2016 have been obtained prior to publication of Rules. For the rest of the project, the question w.r.t date of grant of occupation certificate is itself is pending before the Hon'ble High Court in civil writ petition bearing no. 16873 of 2020.

XI. Direct the respondent, to provide the details required to be disclosed by the promoter under rule 4(1)(a) of the HRERA Rules.

19. The complainant association is seeking relief under rule 4(1) (a) of the rules 2017. Rule 4(1)(a) is reproduced below: -

Rule 4 Additional disclosure by Promoters of ongoing projects.

*4. (1) The promoter of an ongoing project shall make an application to the Authority to furnish the following information, namely: -
(a) the total money collected from the allottees, money spent on development of the project.*

20. The above information is being provided by the promoter at the time of registration of the project and the project is not registered with the authority. Since the respondent/promoter i.e., M/s Reliable Realtech Private Limited has obtained part occupation certificate dated 19.05.2016 and 14.10.2016 and the respondent is claiming deemed occupation certificate dated 19.12.2016. The deemed occupation



certificate dated 19.12.2016 of grant of occupation certificate is itself is pending before the Hon'ble High Court in civil writ petition bearing no. 16873 of 2020.

XII. Direct the respondent to provide the facilities in club as mentioned in the brochure/advertisement when what has been provided is a community centre as per the approval of the DTCP, Haryana, Chandigarh.

21. While filing reply, a specific plea was taken by the respondent/builder with regard to handing over possession of flat to complainants no. 1 to 35 with all facilities and utilities i.e. club, parks, roads, car parking etc. This version has not been denied by the complainant. Even a settlement with individual allottees took place and the same was reduced into writing in the year 2017. There is also a photograph of club house attached with the report of LC dated 22.02.2021. It is held that if the club has come into existence and the same is operational or is likely to become operational soon i.e. within reasonable period of around 6 months, the demand raised by the respondent for the said amenity shall be discharged by the complainant as per the terms and conditions stipulated in the builder buyer's agreement. However, if the club building is yet to be constructed, the respondent should prepare a plan for completion of the club and demand money regarding club charges and its membership from the allottees only after completion of the club.

XIII. Direct the respondent to refund the parking charges collected for parking in the common areas as the basements and the open areas are a part of the common area and hence the basement parking being provided by the builder for the allottees qualifies as the basement or parking areas which are included in the definition of common areas and facilities in Haryana Apartment Ownership Act, 1983.

22. The above-mentioned relief sought by the complainant association. The reliefs were not pressed by the complainant counsel during the arguments in the course of hearing. The authority is of the view that the complainant counsel does not intend to pursue the relief sought by the complainant. Hence, the authority has not returned any findings with regard to the above-mentioned relief.

XIV. Direct the respondent to offer the possession of the units to the members of the complainant association only after obtaining the occupation certificate.

23. The OC dated 19.05.2016 and 14.10.2016 have been obtained prior to publication of Rules. For the rest of the project the question w.r.t date of grant of occupation certificate is itself is pending before the Hon'ble High Court in civil writ petition bearing no. 16873 of 2020. This relief is w.r.t individual allottees and cannot be granted to the association.

XV. Direct the Respondent to renew the license for the entire project which has expired on 13.06.2020 as per the guidelines laid down by Town and Country Planning, Haryana.

24. The respondent submitted that the license has been extended automatically for a period of six months by the Govt. on account of corona pandemic. The contention has been replied on page no. 5 of the reply.

XVI. Direct the respondent not to ask for the advance maintenance charges from the members of the complainant association or to return the amount collected for advance maintenance charges with interest to the members of the complainant association.

25. The Act mandates under section 11(4)(d), that the developer will be responsible for providing and maintaining the essential services, on reasonable charges, till the taking over of the maintenance of the project by the association of the allottees. Section 19(6) of the Act also



states that every allottee, who has entered into an agreement for sale, to take an apartment, plot or building as the case may be, under section 13, shall be responsible to make necessary payments in the manner and within the time as specified in the said agreement for sale/the builder buyer's agreement and shall pay within stipulated time and appointed place, the share of the registration charges, municipal taxes, water and electricity charges, maintenance charges, ground rent and other charges, if any.

26. The maintenance charges essentially encompass all the basic infrastructure and amenities like parks, elevators, emergency exits, fire and safety, parking facilities, common areas, and centrally controlled services like electricity and water among others. Initially, the upkeep of these facilities is the responsibility of the builder who collects the maintenance fee from the residents. Once a resident's association takes shape, this duty falls upon them, and they are allowed to change or introduce new rules for consistently improving maintenance. In the absence of an association or a society, the builder continues to be in charge of maintenance. Usually, maintenance fees are charged per flat or per square foot basis. The advance maintenance charges on the other hand accounts for the maintenance charges the builder incurs while maintaining the project before the liability gets shifted to association of owners. Builders generally demand advance maintenance charges for 6 months to 2 years in one go on the pretext that regular follow up with owners is not feasible and practical in case of ongoing projects wherein OC has been granted but CC is still pending. A quick glance at the provisions of the Act may be taken in this respect to the responsibility of the promoter or project developer



for providing and maintaining essential and common services at a reasonable charge payable by the flat purchasers till the time the co-operative housing society or RWA is formed. Section 17(2) of the Act says that after obtaining OC and handing over physical possession to the allottees in terms of sub section (1), it shall be responsibility of the promoter to handover the necessary documents, plans, including common areas, to the association of the allottee or the competent authority, as the case may be, as per the local laws. The clause is reproduced below for reference.

17. Transfer of title.—(1) The promoter shall execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of the allottees or the competent authority, as the case may be, and hand over the physical possession of the plot, apartment of building, as the case may be, to the allottees and the common areas to the association of the allottees or the competent authority, as the case may be, in a real estate project, and the other title documents pertaining thereto within specified period as per sanctioned plans as provided under the local laws:

Provided that, in the absence of any local law, conveyance deed in favour of the allottee or the association of the allottees or the competent authority, as the case may be, under this section shall be carried out by the promoter within three months from date of issue of occupancy certificate.

(2) After obtaining the occupancy certificate and handing over physical possession to the allottees in terms of sub-section (1), it shall be the responsibility of the promoter to handover the necessary documents and plans, including common areas, to the association of the allottees or the competent authority, as the case may be, as per the local laws:

Provided that, in the absence of any local law, the promoter shall handover the necessary documents and plans, including common areas,

to the association of the allottees or the competent authority, as the case may be, within thirty days after obtaining the [completion] certificate.

27. Also, **clause 11 of the Annexure A** (Agreement for Sale) to the rules provide for maintenance of the project. It states that "the promoter shall be responsible to provide and maintain essential services in the project till the taking over of the maintenance of the project by the association of the allottees". Furthermore, it provides that the cost of such maintenance has been included in the total price of the plot/unit/apartment for residential/commercial/industrial/IT colony /any other usage. From aforesaid clause, it is clear that the maintenance charges are included in the total cost of the unit and in case, the allottee/association of allottees fails to take possession, then only the promoter has right to recover such amount as spent on maintaining such essential services after coming into force of the Act. The matter in dispute is to which of the welfare association "Antriksh Heights flat buyers association" and "Antriksh heights resident welfare association" the charge of taking maintenance vests and this is to be decided.

XVII. Direct the respondent not to charge PLC from the members of the complainant association as the units of the members does not have advantage over others in terms of location and there is absolutely no difference between the different units which have been charged PLC and the units which have not been charged PLC.

28. This relief is w.r.t individual allottee and cannot be granted to the association as no documents are filed in support of the same.

XVIII. Direct the respondent to refund the amount charged for ECC/ESS charges collected from the owners of the units whose occupation certificate has been issued on 19.05.2016 & 14.10.2016.

29. This relief is w.r.t individual allottee and cannot be granted to the association as no documents are filed in support of the same.

XIX. *Direct the respondent to refund the amount collected for GST as it is a fresh tax which came into existence after deemed date of delivery.*

30. The complainant is directed to approach the appropriate forum. Further, the above-mentioned relief sought by the complainant association was not pressed by the complainant counsel during the arguments in the course of hearing. The authority is of the view that the complainant counsel does not intend to pursue the relief sought by the complainant. Hence, the authority has not returned any findings with regard to the above-mentioned relief.

XX. *Direct the respondent to deposit entire EDC amount payable to DTCP into the Dedicated Development Account designated under RERA Regulations so that the timely payments of the instalments to DTCP could be ensured under the provisions of Haryana Development and Regulation of Urban Area Rules, 1976 read with section 11 (4) (g) of RERA Act.*

31. The complainant should approach the appropriate forum to collect details/information w.r.t. payment of EDC /IDC. Further, the above-mentioned relief sought by the complainant association was not pressed by the complainant counsel during the arguments in the course of hearing. The authority is of the view that the complainant counsel does not intend to pursue the relief sought by the complainant. Hence, the authority has not returned any findings with regard to the above-mentioned relief.

E Directions of the authority


32. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of


obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

- i. In view of the facts mentioned above and the direction given by the authority in pursuance to the LC report dated 22.02.2021 and the latest LC report as received on 15.12.2021, a period of (3) three months is given to the respondent/builder to rectify the defect and deficiency in the construction and service. If any such defect and deficiency remain existent and the same is not removed by the respondent/promoter, then the complainant association is free to approach the authority.

33. Complaint stands disposed of.

34. File be consigned to registry.


(Vijay Kumar Goyal)
Member


(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 23.12.2021

Judgement uploaded on 18.02.2022