



Brisk Lumbini Apartment Resident Welfare Association

Brisk Lumbini Terrace Homes, Sector 109, Gurgaon 122017

Phone 0124 5070210 rwa@briskrwa.com www.briskrwa.com

Annual Report 2019-20

Dear Flat Owners,

I welcome all members to the first Annual General Meeting of the Members.

Background

Your Association received the certificate of registration dated 20 May 2019. Before that the flat owners were made to believe that an RWA had been formed as stated in the Deed of Declaration dated 2.3.2017 filed by the builder. However, the District Registrar of Societies officially informed us in 2018 on 24 April and 9 August that no RWA had been registered for Brisk Lumbini Terrace Homes. Therefore many owners got together and formed an Association and the Registrar of Societies registered it.

Taking Over

The RWA tried to hold discussion with the builder for taking over the society from the builder as three years had passed from the date of occupation certificate (issued in May 2016) but the builder never even acknowledged any of the several email written to the builder. Therefore the RWA was forced to complain to the Chief Minister who instructed the District Town Planner to take necessary action. The builder abandoned maintenance of the society as the GST registration of its maintenance agency had been cancelled for not filing returns and not depositing the collected GST in govt. account. In the meeting held in DTP office on 23 January 2020, the builder conceded that it had stopped maintenance of the society. Therefore it agreed that it will not raise any bills on flat owners from 1.11.2019. The maintenance was deemed to have been handed over to the RWA. It was agreed that the RWA will raise bills on flat owners from 1.11.2019 and that the builder will officially handover IFMS to the RWA by 31 March 2020. The Action Taken Report (ATR) of the DTP stated all these, and the builder, the RWA and the DTP signed the ATR.

The RWA started raising bills for maintenance and electricity. However, the builder has not handed over the NOCs, Operating Manuals and contract copies to the RWA and has not transferred the IFMS money to the RWA bank account. The RWA started from scratch without any funds in hand.

Defects in Deed of Declaration

The Deed of Declaration (DoD) dated 2.3.2017 filed by the builder has several defects and the RWA has filed a lawsuit in a civil court in Gurgaon challenging the defective clauses in the DoD. The defects in the DoD are listed in the Appendix to the Annual Report.

Work done by the RWA

1. **Saving of GST Cost:** The builder was charging 18% GST on the bill but the RWA is not charging any GST on the bill. The builder was charging Rs.3 per sq.ft. plus 18% GST. Against this Rs.3.54 per sq.ft. paid to the builder, the RWA charged Rs.2.50 per sq.ft. resulting in a saving of over one rupee per sq.ft.
2. **Reduction in Maintenance Rate:** The maintenance rate has been further reduced to Rs.2 per sq.ft. from June 2020.
3. The builder did not pay the DHBVN bill for bulk single-point supply of electricity in November 2019. DHBVN disconnected the supply. The RWA filed law suit in civil court and obtained stay order against disconnection of electricity due to non-payment by BIDPL and also obtained favourable order in March against the builder.
4. **Prepaid Metering system:** Maintenance Bill Collection and Implementation of Prepaid Metering System of Electricity & Maintenance with Mobile App (applauded by most owners). Daily updates on Receipts. Metering of maintenance and electricity through Xenius Mobile app thereby giving complete control and visibility to individual owners on their daily maintenance and electricity consumption.
5. **Repair of STP:** The STP system has been operating in bypass mode with almost no treatment, as per the AMC vendor, and the UV filter had never been commissioned. Thereby dirty and untreated water was being pumped out. STP plant has been overhauled and missing equipment has been replaced or installed with low cost and high results, thanks to the wise inputs and self-less hard work by engineer flat owners.
6. Renewed Maintenance Contracts in proper manner for Lift, STP, WTP, Security, Housekeeping and power metering at much lower costs than paid by the builder.
7. Assessment of equipment like STP, Lift, Firefighting, etc. with help of professionals and knowledgeable residents were done. Coordination with government authorities. Reminding DTP & BIDPL (Brisk) of grave deficiencies in handover (ongoing).
8. Detailed Frequently Asked Questions' (FAQs) issued, which most societies of Gurgaon do not have. Circulars issued frequently to inform and clarify matters to the flat owners.
9. **Development of RWA Website** and uploaded 11 Reports/MOM & Misc. Info, Proof Points etc. Developed in-house Mobile App for Maintenance resolution & Security.
10. **Legal Notice to Payment Defaulters:** Legal Notice for prolonged defaulters of non-payment of dues sent in accordance with the bye-laws.
11. **Celebrations and Festivals** - Ganesh Chaturthi, Navratri, Diwali, Guruparv, Lohri, Holi was organized with the help of residents. Independence and Republic Day celebration was organized. Distribution of gifts to all the staff during Diwali with help of residents.
12. **Measures during Covid-19 Lockdown:** Frequent sanitization of lifts and tower entrance. Complete sanitization with help of municipal corporation and local MLA. Collection and distribution of dry food to poor with help of many residents. Supply of protective gear (infrared thermometer, masks/protective screen, etc.) with help of residents. Homoeopathic medicine distributed to all the staff including security guards.
13. Establishment of Maintenance office in basement.

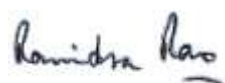
14. Replacement of Non-Functional LEDs in perimeter & Building v Initiating AMC for Portable Fire Fighting & High-Tension Wire for electricity. Beautification of society through lobby Lighting, horticulture, Rubbing & Shining of Common Area floor.
15. Kids Club- To develop children talent in form of poems, jokes, drawing, etc.
16. Launched Mobile App based Onsite Diesel Delivery to ensure Zero pilferage.
17. Meetings of Governing Body and Members have been held as necessary.
18. **Audit and Payments:** Displayed and shared Unaudited Summary of Collection and Expenses. Up-to-date payment to DHBVN and GMDA for Electricity & Water against Charges till date. First-ever Audit of Maintenance account for Lumbini Terrace Homes.
19. Exposed fraudulent collection of GST by the builder's maintenance agency FCFML without filing GST returns and without depositing the collected GST in bank account for almost 18 months. Filed police report against the fraud which also led to search raid by GST authorities. Cancellation of GST registration and all this pressure forced the builder to handover to the RWA.
20. Finally requested the Registrar to conduct elections in near future.

Work planned to be done in near future

1. Legal case in district court or High Court to ensure that the builder transfers 100% IFMS (~Rs.3 crore) to the RWA.
2. Follow up with DTP to ensure BIDPL pays for Major Cost of repair of STP, DG, Lift, Fire System as a part of handover.
3. Follow up with DTP for major defect of leakage in basement from expansion joints. This defect has been there since the OC and is a serious risk to safety of the buildings.
4. Insulation of water pipes to keep water from becoming hot during summer.
5. Augment CCTV system with additional cameras including inside the Lift cabins and Monitoring display (TV) at each tower reception and guardroom at the gate.
6. Airtel High Speed internet connection being installed.
7. Improve various systems (Amenities/safety) for better performance.
8. Approach authorities for extending public bus routes through Sector 109.
9. Piped Gas Supply in LTH, Sector 109. Installation of Solar panel connected to Grid.

Changes in Governing Body

Some members of the governing body of the RWA resigned for personal reasons. Mr. Parminder Singh, Mr. Kapil Alagh and Mr. Mantosh Kumar resigned from their positions. The RWA places on record the appreciation of good work done by them.



Ravindra Kumar Rao
President



Brisk Lumbini Apartment Resident Welfare Association

Brisk Lumbini Terrace Homes, Sector 109, Gurgaon 122017
Phone 0124 5070210 rwa@briskrwa.com www.briskrwa.com

APPENDIX to the Annual Report 2019-20

Defects in Deed of Declaration

Deed of Declaration (DoD) is defined in Haryana Apartment Ownership Rules 1987, Rule 3 / Form A.

Brisk Infrastructure and Developers Pvt. Ltd. executed the Deed of Declaration on 2.3.2017. The DoD has several defects. A brief summary is given in the next paragraph. Paragraph-wise details of the defects are then listed.

1. Unequal Voting rights (which is in contravention to HRRS 2012)
2. Roof top terrace rights to 2 flat owners (which is not permitted as per law)
3. Open Car parking not as per approved drawings from DTP
4. Size of some open car parking not as per ECS (Equivalent Car Space)
5. Builder continuing to have rights over areas inside the society even after all flats are sold off. (Which is against the HAOA 1983)
6. Selling of common terrace on second floor (top of Entrance lobby)
7. Builder has unrestricted right to change the percentage of individual interests, without obtaining consent of apartment owners. (Violation of the clause in HAOA)
8. Use of own-invented term “family unit” instead of the legal term “Independent Unit” as defined in HAOA 1983.
9. Builder has voting rights for each unsold flat (against the rule of HAOA 1983)

Para-wise Lists of Defects in the Deed of Declaration

Now paragraph-wise deviation in DoD dated 02 March 2017 are listed. The page numbers referred are the page numbers of the DoD filed by the builder.

Page 5 of 64 - Extract

1. “Subsequent upon the receipt of full consideration and further to the compliance of all terms and conditions of BBA by the allottees, builder/grantor shall convey the ownership to the allottee”.

- Interpretation- Since the owners have paid full consideration and executed the conveyance deed, the title should be transferred to such buyers after rectifying the DoD.
2. Grantor reserves the right to amend the Declaration (DoD) and file supplementary declarations after CC for the project is received and/or all unsold inventory is sold out, which will be final and binding on all the owners of the apartment
- Interpretation - The builder can file amendment to the DoD. Therefore there should be no problem in removing these defects.

Page 6 of 64

Illegal Parking Spaces and Slots

3. Regulations say that the total car parking should be 1.5 times the number of independent units and that 5% should be reserved for EWS.

This means that LTH should have $274 + 137 = 411$ car parking slots.

But LTH has 510 car parking (= 380 covered + 130 open slots).

Open parking alongside the Nursery School (currently open grass area), the Car Parking slots are 19 as against 16 in the approved drawings.

Parking opposite A and B block - 22 Car Parking slots have been marked against 20 as per approved drawing.

Similar observations are at other places too.

- What is the purpose of having more parking slots than required? The intention is to profiteer from illegal sale of open car parking slots in contravention of laws.
4. "The open areas have been landscaped with greenery, etc. and open surface parking".
- Open Surface parking cannot be sold and no money can be taken for use of these open surface parking - *This has been clarified through an RTI* response received from DTCP, Chandigarh.
 - Similarly, *the RTI response clearly says* Open Green Area cannot be sold as parking, which has been done in case of LTH.

Page 13 of 64 - III a - General Facility for owners/apartments / units in GHS

5. It says at Para m) - Water meters
- Where are individual water meters?
6. It says at Para j) - Swimming pool filtration plant
- Since Community/Club has not been declared as part of Common area in the DoD and not owned by the apartment buyers, then how can the

swimming pool filtration plant, which is part of Community Club, be part of common area?

7. It says at Para t) -

Space for scooter/cycle parking at basement as common area.

- Then how has scooter parking been sold illegally?

Page 14 of 64 - III b -

Common Facility for apartment buildings comprising Towers A to E

8. It says at Para f) *Plumbing and fire shafts* and at g) *Electrical and LV shafts* and at h) *Lighting in Lobbies and corridors* are part of common facility for the apartments in Tower A to E

Interpretation -

- So no one can encroach upon the plumbing, fire shaft, electrical and LV shaft as well as lobby lights. The 13th floor of C block is not an exception. So why it has been permitted to encroach upon C Tower top floor. Not only is it encroachment, it also amounts to using common area electricity for personal use and even more importantly it puts the building and inhabitant's life to risk in case of fire on higher floors and the need to evacuate from Terrace.
- This also violates the Fire NOC conditions. Kindly share the submitted document against which Fire NOC was accorded
- It also violates the terms of the insurance policy and will lead to rejection of insurance claims in case of any fire in tower C.

Page 15 of 64 - III d-

Limited Common Facility for Apartment on same floor (in all building blocks)

9. Lift Lobby/Passage/corridors/*fire hydrants with hose reel* and *cabinet*/portable fire extinguisher

- Interpretation - Why has then these been encroached upon by a flat on 13th floor of C block, thereby putting the tower and residents to risk in case of fire and violating the conditions of the Fire NOC obtained from the govt. dept.

Page 16 of 64 - IV Vote

10. It says the builder has the right to file supplementary DoD after Completion Certificate, which will be binding on all owners. It further says that there could be change in voting rights if there is change in area of apartment at the time of CC.

- The Template as per Form A- Deed of Declaration (Para IV) **has no mention of voting rights or change on account of change in area of**

apartment. Then why such a clause has been included, if the rules or Act do not mention it? This clause has to be removed from the DoD.

Page 16 -17 of 64 - Para V

11. As per the Model/standard/Template of Deed of Declaration (as defined in Form A of Haryana Apartment Ownership Rules 1987) for Para V- It just mentions that ***each independent unit (IU) shall include area of all outer walls and half of common walls.***

- But the DoD file by builder says that “The Super Area of each flat is inclusive of area under the **periphery walls, balconies, area under the columns and walls within the units**, half of the area of common walls including **entrance lobbies, lifts, lift lobbies, lift shafts, electrical shafts, fire shaft on each floors, area under staircases, munties, passages, corridors, ramps, lifts, machine rooms, overhead water tanks, security/fire control rooms, service area in basement and roof top including but not limited to** Electric substation, DG Set room, underground water storage tanks, STP & WTP areas.

12. It also says that Grantor has absolute and unrestricted rights over signage areas, hoardings, illuminated signboards, etc. in the atrium, lifts, lobbies, corridors, basement parking spaces, terraces of the building and has absolute authority to deal with the same in any manner whatsoever

- The DoD defined as per Haryana Apartment Ownership Rules 1987 (Rule (3) Form A) ***does not provide any such rights to grantor.*** Then why has such damaging clause been included in the DoD?

13. Common Area -It says at V(2)(a) (i) - Swimming pool filtration plant -

- How can Swimming pool filtration plant be part of common area when the club has not been mentioned as part of Common Area in the Deed of Declaration?

Page 58 of 64 - Para VI (c) -

14. As per the Standard DoD defined under Haryana Apartment Ownership Rules 1987, it just says “*The proportionate representation for voting purpose provided in VI (a) and VI (b) hereof may be limited in accordance with the provision of bye-laws attached hereto as Exhibit B.*”

- Bye laws are not binding since neither the RWA was registered nor its Memorandum of Association and Bye laws
- Further, the DoD says “subsequent upon the receipt of full consideration and further to the compliance of all terms and conditions of BBA by the allottees, builder/grantor shall convey the ownership to the allottee”.

Then why is signing of DoA is being imposed now.

15. The DoD also says since the flats are unsold, the grantor has all the voting rights.

- Unsold flats do not have voting rights. **This is a wrong clause made to influence voting during RWA formation. This clause has to be deleted.**

Page 59 of 64 - Para VIII

Use of illegal term “Family Unit” in place of legal term “Independent Unit”

16. The DoD uses term “Family Unit” which has no reference of definition in Standard DoD as per HAO Rules 1987. The HAO Rules use the term **Independent Unit (I.U)** and as already stated above it defines the area of each I.U as “each independent unit (IU) shall include area of ***all outer walls and half of common walls***”.

- This is a trick to mislead and avoid use of legal term “Independent Unit” (I.U.) as the use of the legal term I.U. will expose the illegal concept of Super Area. Why have you used an illegal term in place of the legal term I.U. defined in Haryana Apartment Ownership Act 1983?

17. The DoD says that the “Ownership of apartment will be transferred by way of Conveyance (conveyance deed) to buyers after full consideration is received.

- Note, here It does not even say ownership depends on meeting the terms of BBA. Two different conditions for "transfer of ownership" within the same DoD. How come?

Page 60 of 64 - Para XII

18. As per the Model/standard DoD published by Govt. as per HAOR 1987, the clause reads as “*that the percentage of the undivided interest in the general and/or restricted common areas and facilities established herein **shall not be changed except with the unanimous consent of all the apartment owners** expressed in amendment to this deed duly registered*”.

- **But the DoD adds the following para** after the above clause:

“However, the Grantor has unrestricted rights to change the percentage of individual interests, **without obtaining consent of Apartment Owners**, till such time the unsold units as mentioned in this Deed remain unsold and for which a supplementary Declaration shall be filed by the grantor.

“Unrestricted rights and without any consent for buyers who have paid the full consideration”???? Why such an illegal clause damaging the interests of the buyers of the flat has been included, when HAOA 1983 and HAOR 1987 says exactly the opposite????

Page 60 of 64 - Para XIII

19. The DoD again uses the illegal term “Family Unit” instead of legal term “Independent Unit (I.U.)” whereas *there seem to be nothing as “Family Unit”* defined in HAO Act 1983 and HAO Rules 1987.

Page 60 of 64 - Para XVI, XVII, XX, XXI, XXII

20. Same as above “Family Unit” instead of “Independent Unit (I.U.)” - just so that super area clause cannot be challenged.

=====

After Page 64

21. Replace the entire contents of Exhibit B with the Memorandum of Association and Byelaws of legally registered BriskLumbini Apartment Resident Welfare Association and the names of the founder members and governing body as approved by the Registrar of Firms and Societies, Gurgaon, Government of Haryana and for which registration certification number 0793 dated 20.05.2019 has been issued by the Registrar of Firms and Societies, Gurgaon, Government of Haryana.

=====

These are only salient points and are only some of the defects, lacunae and illegalities in the DoD dated 2.3.2017 filed by BIDPL. More such defects, lacunae and illegalities may come to our notice on further scrutiny of the DoD.