

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

**Complaint No. : 1277 of 2018**  
**Date of First**  
**Hearing : 17.01.2019**  
**Date of Decision : 02.05.2019**

Tatvam Resident Welfare Association  
(TRWA)

Address: Villa no. 138, Tatvam Villas,  
Sector-48, Gurugram

**...Complainant**

Versus

1. M/s Vipul Limited (through its Managing Director/ Chairman/ Director)  
Office at: Vipul Tech Square, Golf Course Road, Sector 43, Gurgaon, Haryana
2. Senior Town Planner  
Office at: HUDA Office Complex, 3<sup>rd</sup> Floor, Sector-14, Gurugram
3. Executive Engineer  
Office at: Dakshin Haryana Bijli Vitran Nigam(DHBVN), Maharaja Agarsain Road, Sohna, Gurugram
4. Executive Engineer  
Address: HSVP, Division III, Gurugram
5. Commissioner, Municipal Corporation Gurugram  
Address: C-1, Info City, Sector 34, Gurugram
6. Mr. Punit Beriwalla, Managing Director  
Address: Vipul Tech Square, Golf Course Road, Sector 43, Gurgaon, Haryana
7. Ms. Guninder Singh, CEO  
Address: Vipul Tech Square, Golf Course Road, Sector 43, Gurgaon, Haryana

**...Respondents**

**CORAM:**

Dr. K.K. Khandelwal  
Shri Samir Kumar  
Shri Subhash Chander Kush

**Chairman**  
**Member**  
**Member**

**APPEARANCE:**

|   |  |
|---|--|
| Shri Ajay Gupta                               | Secretary of complainant society<br>in person                |
| Shri Somesh Jawaram                           | President of complainant<br>society in person                |
| Shri Kamal Dahiya and Shri<br>Mukul Sanwariya | Advocates for the complainant                                |
| Shri Rakesh Sharma                            | Authorised representative on<br>behalf of responden\ company |
| Shri Aashish Chopra and Smt.<br>Swati Dayala  | Advocates for the respondent<br>no.1                         |

**ORDER**

1. A complaint dated 17.10.2018 was filed under section 31 of the Real Estate(Regulation and Development) Act, 2016 read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 by the complainant Tatvam Resident Welfare Association (TRWA), against the promoters M/s Vipul Limited (through its Managing Director/ Chairman/ Director), Senior Town Planner, Executive Engineer (DHBVN), Executive Engineer (HSVP), Commissioner (MCG), MR. Punit Beriwal Managing Director, Ms. Guninder Singh, CEO, on

account of violation of obligations of the promoter under section 11(4)(a) of the Act *ibid*.

2. The particulars of the complaint are as under: -

|     |  |   |
|-----|--|---|
| 1.  | Name and location of the project       | “Tatvam Villas Complex” in sector 48, Gurugram        |
| 2.  | Nature of real estate project          | Residential colony                                    |
| 3.  | Unit no.                               | <b>Not applicable</b>                                 |
| 4.  | Project area                           | 50 acres  |
| 5.  | Registered/ not registered             | <b>Not registered</b>                                 |
| 6.  | Society registration number            | DR/GGN/508. Revised vide certificate dated 23.12.2016 |
| 7.  | Date of office space buyer’s agreement | <b>Not applicable</b>                                 |
| 8.  | Total consideration                    | <b>Not applicable</b>                                 |
| 9.  | Total amount paid by the complainant   | <b>Not applicable</b>                                 |
| 10. | Payment plan                           | <b>Not applicable</b>                                 |
| 11. | Date of delivery of possession         | <b>Not applicable</b>                                 |
| 12. | Delay of number of months/ years       | <b>Not applicable</b>                                 |

3. The details provided above have been checked on the basis of the record available in the case file which have been provided by the complainant and the respondent no.1.

4. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. The case came up for hearing on 17.01.2019, 07.02.2019, 20.03.2019 and 02.05.2019. The respondent filed an application for rejection of complaint. The reply has been filed by the respondent and the same has been perused.

#### **Facts of the complaint**

5. The present complaint is being filed by Tatvam Residents Welfare Association (TRWA) which is a registered body under Haryana Registration and Regulations of Societies Act, 2012 and the instant complaint is filed on behalf of TRWA through Mr. Ajay Gupta, who is authorized by resolution of the society dated 03 Oct.,2018, to file case and represent the complainant before this hon'ble authority.
6. The complainant submitted that the respondent no.1 is a public limited company which is duly incorporated under the provisions of the Companies Act, 1956, and is fully responsible for the acts, conduct business and carry on day to day affairs

through its Managing Director or Chairman or Directors or Chief Executive Officer.

7. The complainant submitted that the respondent no.1 has been developing well planned residential villas over land admeasuring 50 acres forming part of Vipul World. It is specifically submitted that respondents had separated such 50 acres of land and got sanction of separate zoning plan for such villa complex. Such villa complex has been developed by the respondents specifically adhering to the terms and conditions of the above referred separate zoning and under name and style of "Tatvam Villas". The respondent no.1 has claimed in their brochures and conveyance deed, such villa complex as exclusive project and claimed all the rights to develop, advertise and sell, lease, transfer, or deal with in any manner such exclusive project.

8. The complainant submitted that thereafter, the respondent no. 1 got the layout plan, for the development of the entire residential colony over the land of Vipul World, duly sanctioned and started construction of the integrated township. However, the respondents had revised the layout

plan in September 2012 without abiding the statutory provisions of law as well as in express breach of provision of RERA Act, 2016.

9. The complainant submitted that the respondents widely advertised the said project of residential villas i.e. Tatvam Villas as a gated, community/colony and further made representations that it is entitled to develop, advertise and sell, lease, transfer or deal in any manner the said project together with appurtenant spaces comprising of various residential villas, parking spaces, community sites, angana spa and facilities and other utilities forming part of the said project. On the basis of said project and thereafter executed various documents to that effect including buyer's agreement.
10. The complainant submitted that subsequent to the aforesaid formalities, the respondents handed over the possession of the said villas to the respective allottee(s) and also executed the sale/conveyance deed for such villas. The purchasers/allottee(s) amongst themselves formed a resident welfare association with the name of "Tatvam Residents Welfare Association-TRWA".

11. The complainant submitted that TRWA has been registered as a legal entity under Society Registration Act, 1860 and issued unique number as DR/GGN/508 vide letter dated 16<sup>th</sup> March, 2011 by District Registrar Societies. The revised certificate of registration of society dated 09.01.2014 and further revised certificated dated 23.12.2016 wherein registered address of the TRWA was changed has been annexed.
12. The complainant submitted that the complex consists of 254 villas and since year 2010 till 2014 more than 60 per cent of villas were sold and occupied by the residents. That after constitution of new governing body of TRWA the officials of the TRWA requested the respondent to hand over maintenance, Interest Free Maintenance Security (IFMS) and also to recognize the RWA for each and every purpose. However, the respondent denied for manipulative reasons and does not give any scope for further talks.
13. The complainant submitted that it has been decided in general body meeting of TRWA dated 16.10.2016 that the respondent no.1 should hand over the essential services to TRWA and to give effect to such decision of general body meeting (GBM)



resolution dated 09.01.2017 was sent to respondent and it was specifically requested to hand over the essential services to TRWA.

14. The complainant submitted that the respondent had denied to hand over the maintenance and essential services to TRWA without assigning any valid reasons thereof which is not only arbitrary but also gross violation of principal of natural justice and rule of law.
15. The complainant submitted that TRWA had approached the Deputy Commissioner, Gurgaon vide letter dated 25.12.2016, wherein, TRWA has raised all their grievance, including but not limited to, issues related to IFMS, non-recognition of TRWA by respondent, and failure to provide essential/non-essential services or maintenance to residents of TRWA.
16. The complainant submitted that the Deputy Commissioner, Gurgaon acted on the request of TRWA and issued direction to Senior Town Planner (STP), Town and Country Planning, Gurugram vide letter dated 25.12.2016. The STP submitted the detailed report of action taken and suggestions made by him



against the grievances raised by TRWA to DGTCP vide letter dated 27.01.2017.

17. The complainant submitted that it has been specifically observed by officials of Town and Country Planning, Gurugram vide letter dated 27.01.2017, that TRWA is a registered society. Furthermore, it has been observed in such report that gross violation of law has been done by the respondent wherein prominent are under mentioned:

- (i) Villa no.52 has been constructed illegally at site without approval under layout plan.
- (ii) The boundary wall towards Badshahpur drain has been constructed beyond the licence area and thereby developing open land and springs and play area.
- (iii) The revenue rasta passing through the site are blocked by raising wall, although it was not possible for him to ascertain whether these rastas were further connected to other roads/rastas.
- (iv) The basketball court in front of villa no.57 and cricket net in

between green pocket of villa no.71 has been constructed.

Thus, converting green area into hard surface.

(v) The respondents are charging exorbitantly high maintenance service charges from Tatvam Villa holders to the tune of more than Rs.40 per sq. yard.

(vi) The respondent had not shared or provided information about expenditure on maintenance matter of Tatvam Villa.

18. The complainant submitted that the officials of Town and Country Planning, Gurugram has observed vide letter dated 27.01.2017, that respondent are willing to hand over the entire township i.e. Vipul World, which spreads over 150 acres of land, to government/MCG for maintenance purposes as per provision of Act No.8 of 1975 instead of TRWA. However, it is worth mentioning that TRWA is a body of residents of the Tatvam Villa which spreads over only 50 acres of land out of total land of Vipul World i.e. 150 acres. The respondent had shown their willingness to hand over the maintenance of entire colony i.e. 150 acres of land to government. However, they could have agreed to hand over the maintenance of

residential colony i.e. Tatvam Villa which spreads over only 50 acres out of 150 acres of land. But just to take undue benefit and purposefully defeat the object of law the respondent had not agreed to handover the maintenance to TRWA. It is also pertinent to note that for area of Vipul world, excluding area of Tatvam Villa Complex, the respondent no.1 is Charging only Rs. 0.5 per sq. ft. for maintenance, per month, however, the same respondent no. 1 is charging, Rs. 4 per sq. ft. of super built up area per month from Tatvam Villas residents, which is discriminatory, unreasonable and illegal by every standard of law. In view of such circumstances, it would not out of context to mention that respondent no. 1 has separately demarcated the land of Tatvam Villa complex and also got approved separate zoning plan for the same land, which clearly establishes that Tatvam Villa complex is separable and distinct entity from Vipul World. The respondent had malafidely created grounds for handing over the entire complex i.e. Vipul World which spreads over 150 acres to government/MCG just to harass the residents of TRWA. The respondent act was malafide and wrongful since inception as they do not want to

give democratic rights to TRWA and this is the sole reason of non-recognition to registered body i.e. TRWA.

19. The complainant submitted that as per provisions of section 11 (4) (d) of RERA, 2016, the promoter i.e. the respondent shall be responsible for providing and maintaining essential services, on reasonable charges, till the taking over of maintenance of the project by the association of allottees. That the complainant has made numerous complaints to competent authorities about exorbitant high maintenance service charges to the tune of Rs 4 per sq. ft. i.e. Rs 36 - 45 per sq. yards. from villa owners which is 3 times higher than normal maintenance charges paid by similar situated colonies / persons. It is pertinent to mention that STP Gurugram vide letter dated 27.01.2017 has observed that respondent is charging Rs 4 per sq. ft. maintenance charge on super area per month which becomes more than Rs 40 per sq. yards. of the covered area, which is extremely excessive and highly unreasonable by any standard of law. The respondent has expressly violated the duty cast upon the promoter by charging exorbitant and most

unreasonable service charges for providing essential maintenance services.

20. The complainant submitted that as per section 11 (4) (e) of RERA, 2016, the promoter i.e. respondent shall enable the formation and association or society or cooperative society. However, despite the fact that TRWA is a registered body or association of allottees and being acknowledged by official of Town and Country Planning Department, Haryana vide letter dated 27.01.2017, still the respondent does not recognize the association of allottees which has been constituted voluntarily by the residents of Tatvam Villa and duly incorporated by the statutory provisions of law.
21. The complainant submitted that it has been specifically mentioned in section 11 (4) (d) and (e) of RERA, 2016 that the respondent shall enable the formation of association and it has been expressly mandated on the part of the respondent that they would recognize the registered body or association, which in the instant case is the TRWA. Moreover, after recognition of such association by the respondent it is obligatory on the part of the respondent that all the

maintenance services of the project shall be handed over to association of allottees i.e. TRWA in the instant case. The respondent has not only violated the express provision of section 11 (4) (d) and (e), rather has defeated the purpose of law by not recognizing TRWA as authorized and valid association of allottees. The respondent-promoter has no role to play in maintenance of essential services of the colony once the registered body comes into existence. In fact the residents themselves may determine their own way to live and maintain their premises as per their own wishes and convenience. The respondent has debarred the valuable rights of the complainant in most arbitrary, discriminatory and illegal manner. The denial of basic right of TRWA by respondent proves the nefarious designs and mala-fide intentions of respondent and also proves that respondent is gaining wrongfully and causing wrongful loss to TRWA, which per-se is criminal act.

22. It is further submitted that as per the report of STP, Gurugram dated 27.01.2017, there has been blatant violation of statutory provision as mentioned under section 14 (3) of RERA Act,

2016. It has been specifically mentioned in para 5 of such report that there has been illegal construction of one Villa i.e. Villa 52, Illegal conversion of green area into hard surface took place on the site i.e. in the area of Tatvam Villas. It is pertinent to mention that there has been major *defect in workmanship, quality or provision of services* as well as major structural and infrastructure defects since from the inception of the colony which have not been rectified / adhered to by the respondent no.1, some of which are underlying as under:-

- i. There is incessant water logging inside the complex as well as on the approach road of the colony even after 5 minutes of rain, which proves the fact that drainage and sewage system are not properly installed or are in poor condition.
- ii. The boundary walls of the Tatvam Villas have collapsed four times and further in danger of collapsing during rains. The respondent no.1 refused to build concrete retaining wall which is the only remedy to cure such defect.
- iii. The plaster and paint on boundary wall is always falling and the respondent no.1 refused to provide a permanent solution.



- iv. The respondent no.1 has not made any provision for underground diesel storage tank which is a potential fire hazard and is endangering the lives of residents.
- v. The rain water harvesting pits are inadequate and not able to cater the requirements of the residents of Tatvam Villa Complex.
- vi. The floors in some villas are sinking and despite of repeated reminders the respondent no.1 refused to rectify the same, just to harass the residents of Tatvam Villa Complex.
23. The complainant submitted that the respondent no.1 has illegally taken and retained the Interest Free Maintenance Security (IFMS) of Rs. 200 per sq. ft. of super builtup area from every Villa in the complex (ranging from Rupees 600,000/- to Rupees 15,30,000/-), at the time of giving possession to the residents, and never used such money for the upkeep and maintenance of the complex. It is shocking that, in some cases of residents of complex, respondent no. 1 is retaining such IFMS money, even after 8 year of possession, which is totally illegal and arbitrary on the part of the respondent no.1. That

to add on the miseries of the residents, respondent no. 1 is charging monthly maintenance in addition to IFMS from individual allottee, which is per se illegal and not supported by any provision of law. It is interesting to note that on one hand respondent no. 1 has charged huge sum of amount from residents of the complex under head of IFMS, and also the respondent denies paying the interest on such collective amount to the resident, while on other hand, respondent no.1 uses such money of interest amount as well as principal amount for their own vested purposes or personal gains. The respondent no.1 failed time and again to give audited statement of accounts of such amount to TRWA, for reasons known best to them.

24. The complainant submitted that the respondent no. 1 is using such amount of money for their personal gains and not for the designated purposes, which amounts to criminal breach of trust and cheating on part of the respondent no.1.

25. The complainant submitted that the respondent has revised the lay out plan/zoning plan in Sept.,2012 without taking the consent of 2/3 residents which is against the policy of

respondent no.2 as well settled principles of law. The respondent no.1 has expressly violated the provisions of Sec. 14(2) (i)(ii) of RERA, 2016, by changing the sanctioned lay out/zoning plan without taking the consent of the allottees.

26. The complainant submitted that on 30.06.2018, a joint meeting took place in the presence of representative of respondent no.1, representative of complainant and representative of maintenance agency i.e. JLL, which is appointed by respondent no. 1. The minutes of the meeting were recorded and shared with respondent no.1. It is pertinent to mention that in such joint meeting, various deficiencies or shortcomings in basic infrastructure facilities to be provided by respondent no.1 were pointed out specifically, which the representative of respondent no.1 committed to comply with within due course of time. However, till date nothing substantive has happened from the respondent's end.

27. The complainant submitted that there are various deficiencies or shortcomings in basic infrastructure facilities to be provided by respondent no.1 and such facilities were committed by respondent no.1 through advertisement and

through their marketing staff at the time of launch of the project. Such facilities/services are lacking in the complex and such facilities have not been provided to Tatvam Villas complex till date by the respondent no. 1 despite repeated calls, letters and requests by the TRWA. The point wise submissions would crystalize the factual position which exist as on date:

- i. The requisite electrical load is close to 2200 KW , however, the respondent no. 1 has got sanctioned only for 1950 KW but shockingly, till date the respondent no. 1 is providing only 950 KW. The respondent no.1 made temporary arrangements to fill the gap of sanctioned electrical load and actual supplied electrical load by switching on the Diesel Generator (DG) sets and charges the DG usage rate at the rate of Rs. 22 per unit, which is not only unreasonable rather unjustified by any standard of law. It is pertinent to mention that as per Haryana Electricity Regulatory Commission (HREC) regulations Maximum Rs. 7.1 per unit could be charged if power arrangements are made through DG sets, in case of adequate sanctioned load is available from respondent no 3. Thus, the

respondent no. 1 has failed miserably to fulfil its obligation of providing the adequate load. The residents of Complex wrote a letter dated 13.07.2018 to respondent no. 1 for excessive and unnecessary use of DG Sets and also complained about frequent power cuts due to faulty cable laid down by the respondent no. 1.

- ii. The respondent on.1 has installed only 3 DG sets of 750 KVA each in the complex. The DG sets are inadequate to meet the overall demand of the complex as the collective demand of the complex requires 4 DG sets of 750 KVA each to generate 1950-2000 KW of power.
- iii. The respondentno.1 has not supplied potable water to Tatvam Villas Complex which has been provided by government agency and forced the residents to use unhealthy and substandard quality of underground water thus endangering the health and life of residents of complex. The copy of water test report is annexed, which clearly establishes the fact that water supplied by respondent no.1 is not fit for human consumption. It is pertinent to mention that Haryana Shehari Vikas Pradhikaran (HSVP) i.e. respondent no.4 has provided

water connection to Vipul World and the same water has not be supplied to the residents of complex, which proves the malafide intention of respondent no. 1, for not supplying the potable water to Tatvam Villa Complex, which has been released by respondent no.4, for the residents of Tatvam Villa Complex. The residents of Tatvam Villa Complex wrote a letter to Executive Engineer, HSVP, Div-III, Gurugram regarding such grievances of the residents. The O/o EE, HSVP wrote a letter dated 02.08.2018, to respondent no. 1 for redressal of the grievances of the residents of complex. The residents of complex wrote letter dated 19.09.2018 to respondent no. 1 about their grievances and also about enforcement of order of E.E, HSVP dated 02.08.2018, but the respondent no.1 has not replied till date.

- iv. The respondent no. 1 has not connected the sewage line of the complex from its Sewage Treatment Plant (STP) to the sewage line of Municipal Corporation Gurugram(MCG) i.e. respondent no.5.

## 28. Issues to be determined

- I. Whether the respondents have taken all the necessary clearances/approvals/N.O.C's from the concerned authorities before initiating the project?
- II. Whether the respondents have intentionally and willfully played fraud upon the complainant by wrongfully portraying the colorful picture of the project?
- III. Whether the respondents have intentionally and willfully misrepresented the facts related to the project?
- IV. Whether the respondents have intentionally and willfully failed to develop the Tatvam Villa Complex as per the specifications and approved lay out plan?
- V. Whether the respondents are duty bound to comply with the provisions of sec.11 (4)(d) and (e) of RERA Act,2016?
- VI. Whether the respondents have wrongfully and illegally not recognized the complainant as resident welfare association?
- VII. Whether the respondents are liable to pay all outstanding/arrears/outgoings/expenses before handing



over the possession of the project to TRWA as per provisions of sec. 11(g) of Act,2016?

VIII. Whether the respondents are liable for violation of sec. 14(3) of Act,2016?

IX. Whether the respondents have expressly violated the provisions of Sec. 14(2) (i)(ii) of RERA Act,2016, by changing the sanctioned lay out/zoning plan without taking the consent of the allottees?

X. Whether the respondents have cheated the allottees by charging and retaining IFMS money at the time of handing over of possession of villas?

XI. Whether the respondents are under legal obligation to provide the audited account statement of the IFMS fund since year 2011 when RWA came into existence?

XII. Whether the respondents have used IFMS fund beyond the scope of the agreement?

XIII. Whether the respondents have used IFMS fund for their personal use?

- XIV. Whether the respondents have committed offence of criminal misappropriation of funds and criminal breach of trust under IPC by using the IFMS funds for their personal purpose?
- XV. Whether the respondents are liable to return/refund IFMS fund to the complainant?
- XVI. Whether the respondent has malafidely charged monthly maintenance from the residents since from the formation of TRWA i.e. year 2011?
- XVII. Whether the respondent has liable to furnish the audited account statement for monthly maintenance paid by the residents since from the formation of TRWA i.e. year 2011?
- XVIII. Whether respondents are liable to remove all structural defects and shortcomings, which complainant is alleging?
- XIX. Whether respondents are liable to make arrangements to avail sanctioned electricity load?
- XX. Whether respondents are liable to supply electricity to

Tatvam Villa Complex from main source of electricity i.e. electricity supply from respondent no.3?

XXI. Whether respondents are liable to change the defective and poor-quality electricity cables supplying electricity to the complex of complainant?

XXII. Whether respondents are illegally supplying the electricity from DG sets despite the fact that government supply can be availed by the respondents?

XXIII. Whether respondents are liable to charge for electricity consumption as per the rates determined by respondent no.4, till the time proper arrangements are not made by the respondents to provide complete sanctioned electricity supply from respondent no.3?

XXIV. Whether respondents are liable to make arrangement for purchase of 1 more DG Set of 750 KW to meet the requirements of complainant?

XXV. Whether respondents are liable to construct, at its own expenses, diesel storage tank for DG sets, as per the policy

of law?

XXVI. Whether the respondents are liable to provide potable water to the complainant?

XXVII. Whether the respondents have illegally stopped the supply of water to the complex of complainant?

XXVIII. Whether the respondents are liable to make arrangements to supply water, at their own expenses, to every Villa in the complex, especially when such water is released by the respondent no. 4 for residents of complex?

XXIX. Whether the respondents are liable to connect the STP line of the complex with the sewage line provided by the respondent no.5, at its own cost?

**29. Relief sought**

- I. To direct the respondent to recognize complainant as valid resident's welfare association for each and every purpose.
- II. To direct the respondents to hand over maintenance of essential services to the complainant.
- III. To direct the respondents to furnish audited account

statement of IFMS funds as well as monthly maintenance funds since from the formation of TRWA i.e. year 2011.

- IV. To direct the respondents to furnish audited account statement of monthly maintenance paid by the residents since from the formation of TRWA i.e year 2011.
- V. To direct the respondents to hand over IFMS funds to the complainant.
- VI. To direct the respondents to get electricity supply of complete sanctioned load from respondent no.3, at their own expenses.
- VII. To direct the respondents to supply complete electricity load to the residents of complex.
- VIII. To direct the respondents to stop using the DG sets as main source of power.
- IX. To direct the respondents to pay the additional/excess charges accrued due to use of DG sets instead of main power supply.
- X. To direct the respondents to stop over charging for

inflated bills of electricity.

- XI. To direct the respondents to make purchase of one unit of DG set, at their own expense and hand over it to the complainant.
- XII. To direct the respondents to construct underground diesel storage tank for DG sets.
- XIII. To direct to transfer physical possession of all assets being used to run various services in the complex.
- XIV. To direct the respondents to make arrangements of supply of potable water to the residents of complex, which has been provided by respondent no. 4.
- XV. To direct the respondents to connect STP of Complex with the sewage line provide by respondent no.5.
- XVI. To direct the respondent no.1 to pay all outgoings before it transfers the physical possession and maintenance to TRWA as per provisions of sec. 11(g) of RERA Act,2016.
- XVII. To remove the defects /shortcomings in structure of the complex as mentioned in Para XX of the complaint.
- XVIII. To direct the respondent no.1 to share and hand over

all sanctioned plans, compliances, NOCs, licenses, approvals, technical audit reports related to the said project, including but not limited to, movable, immovable, tangible and intangible, assets.

XIX. To impose penalty upon the respondents as per the provisions of section 61 of RERA Act for contravention of sec 12, sec 14 and sec 16 of RERA Act.

XX. To issue directions to make liable every officer concerned i.e. Director, Manager, Secretary, or any other officer of the respondent's company at whose instance, connivance, acquiescence, neglect any of the offences has been committed as mentioned in Sec 69 of RERA Act,2016 to be read with HRERA Rules,2017.

XXI. To recommend criminal action against the respondents for the criminal offence of cheating, fraud and criminal breach of trust under section 420, 406 and 409 of the Indian Penal Code.

XXII. Any other relief which this hon'ble authority deem fit and appropriate in view of the facts and circumstances of this complaint.



**Note: No reply has been filed by respondent no. 2, 3, 5, 6 and respondent no. 7.**

**Respondent no.4's reply**

30. The respondent no. 4 submitted vide letter dated 04.12.2018 that no point, i.e. point no. I to XXVI does not pertain to his office. Hence, information with respect to his office may be treated as *Nil*.

**Respondent no.1's reply**

31. The respondent submitted that the complainant, who has approached this learned authority with unclean hands, is guilty of '*suppressio veri suggestio falsi*' and is not entitled to be shown any indulgence much less as is being claimed in the complaint titled by it.

32. The respondent submitted that the complaint is shown to have been made by an entity named 'Tatvam Residents Welfare Association', who is claiming to be the residents welfare association of the allottees of 'Tatvam Villas'. However, the complainant does not have any locus to file the above-mentioned complaint or even raise the issues as raised in the

complaint. Further, the complaint is devoid of any details with respect to the constitution and membership details of the complainant. Consequently, the complaint is liable to be rejected.

33. The respondent submitted that it is pertinent to submit that 'Tatvam Villas' is not an independent colony but forms part of 'Tatvam World', a 150 acres residential colony in Sector 48, Gurugram, for which license(s) has/have been granted under the provisions of Haryana Development and Regulation of Urban Areas Act, 1975 ('1975 Act') and Haryana Development and Regulation of Urban Areas Rules, 1976 ('1976 Rules'). 'Tatvam Villas' is part of Block X, Y & Z of 'Vipul World'. A perusal of the complaint leads to the inescapable conclusion that the complainant has sought to give an erroneous and misconceived projection with respect to the 'Tatvam Villas' being an independent complex, when clearly such a projection is contrary to the record. Thus, if at all, there can be, a resident's welfare association, it cannot be only for residents of 'Tatvam Villas' to the exclusion of the other residents of 'Vipul World'. As such the filing of the complaint by the

complainant, more so when it seeks to raise issues pertaining to the entire colony i.e. 'Vipul World', is erroneous, misconceived and the same cannot be filed or maintained by the complainant much less before this Id. authority.

34. The respondent submitted that without prejudice to the aforesaid, the complaint under reply is nothing but an abuse of process of law and is also an endeavor on the part of the complainant to indulge in forum-shopping. The complainant has approached this Id. authority with unclean hands without disclosing complete factual matrix. The complainant has, deliberately and intentionally, not disclosed that it had already approached Ld. Director, Town and Country Planning, Haryana, Chandigarh, (hereinafter referred to as 'DTCP') for its purported grievances against respondent no.1 by filing a representation/ complaint dated January 31, 2016, wherein most of the points/issues sought to be agitated in the present complaint, amongst others, had been agitated by the complainant before DTCP. The DTCP passed an order on July 31, 2017 on the said complaint, which was conveyed vide memo dated August 08, 2017 to the answering respondent

herein. The said order had been passed apparently on the basis of a memo/report dated January 27, 2017 of Senior Town Planner ('STP'), Gurugram, though without even giving an opportunity to the answering respondent herein, to respond/to object to the said report. The said order was assailed by filing a statutory appeal under the provisions of 1975 Act before the Principal Secretary, Town and Country Planning Department, Haryana. The appellate authority passed an order dated January 24, 2018. Further, the order that had been passed by the appellate authority, has been assailed before the Hon'ble Punjab and Haryana High Court in a writ petition bearing CWP no. 6921 of 2018, which is pending for further consideration and is now listed on January 17, 2019. Evidently, in the complaint filed before this Id. authority, not only the issues, as raised in the complaint filed before DTCP, have been raised, but even reliance is sought to be placed by the complainant on report dated January 27, 2017 of STP, Gurugram, on basis whereof the DTCP had already passed an order. Evidently, the aforementioned facts assume importance and ought to have been disclosed before this Id.

authority. The factum regarding the complaint and the writ petition pending before the Hon'ble High Court has been concealed by the complainant with a *mala fide* intent. It is submitted that the complainant, accordingly, cannot get its claims adjudicated under the provisions of The Real Estate Authority (Regulation and Development) Act, 2016 and rules framed thereunder, *inter alia*, keeping in view the fact that the issues as raised in the complaint under reply are sub-judice and are subject matter of writ petition pending before the Hon'ble High Court.

35. The respondent submitted that the complaint filed by the complainant before this Id. authority is even otherwise not maintainable and is as such untenable in the eyes of law. The complainant besides filing a misconceived, misplaced and erroneous complaint, has further misdirected itself in filing the above captioned complaint before this Id. authority as the same cannot be said to even fall within the realm of jurisdiction of this Id. authority as also cannot be said to fall under the ambit of the 2016 Act.

36. The respondent submitted that section 3 of 2016 Act, which had come into force with effect from May 1, 2017, provides that no 'promoter' shall advertise, market, book, sell or offer for sale, or invite person to purchase in any manner, any plot, apartment or building, as the case may be, in any real estate project or part of it, in any planning area, without registering the real estate project with RERA, established under the 2016 Act. The first proviso of section 3 provides that the projects that are *ongoing* on the date of commencement of the 2016 Act and those projects for which completion certificate has not been issued, the promoter shall make an application to the authority for registration of the said project within a period of three months from the date of the commencement of the 2016 Act.

37. The respondent submitted that as such, proviso to section 3 *inter alia*, provides that the projects that were *ongoing* would make an application to RERA for registration of the said project within a period of three months from the date of commencement of the 2016 Act. Further, the 2017 rules define 'ongoing projects' under rule 2(1)(o) to mean a project

for which a license was issued for the development under 1975 Act on or before the 1<sup>st</sup> May, 2017 and where development works are yet to be completed on the said date but does not include *inter alia*, that part of any project for which part completion/completion, occupation certificate or part thereof has been granted on or before publication of the 2017 rules.

38. The respondent submitted that it is to the knowledge of the complainant that respondent no.1 has been granted more than 250 occupation certificates for each of the villas in 'Tatvam Villas' from 2010 to 2017. Further, the answering respondent had even applied for on 19.11.2015 followed by another application on 31.03.2017 and was granted part completion certificate on 20.07.2018, which included the area of 'Tatvam Villas'. Evidently, the occupation certificates stood granted prior to publication of 2017 rules. As such, the project in question does not fall under the definition of 'ongoing projects', as defined under rule 2(1)(o). Consequently, there was no requirement for getting the project registered. As, the project of respondent no.1 did not require registration for the



purposes of 2016 Act, the project of respondent no.1 falls out of the purview of provisions of 2016 Act.

39. The respondent submitted that he cannot be considered to be a promoter in terms of the definition of the word 'promoter', under section 2(zk).

40. The respondent submitted that evidently, the activity carried out and/or to be carried out by a person and/or any development authority, who is being referred to as a promoter, is for the purpose of selling all or some of the apartments or plots. It is in this context, that section 3 provides that no promoter shall advertise, market, book, sell or offer for sale or invite persons to purchase in any manner any plot, apartment or building, as the case may be, in any real estate project or part of it, in any planning area, without registering the real estate project with this Id. authority. As such, reference to the obligations of the promoter, under 2016 Act, would be to a person and/or development authority, who *is carrying out the activities* as mentioned in section 2(zk) for the purpose of sale of the apartment or plot, which can only be done if the promoter registers the real estate project. Thus, it

cannot be said much less even remotely suggested that an obligation of a promoter would be *de hors* of registration of the real estate project by such promoter. Consequently, the provisions of 2016 Act with reference to promoter would become applicable only if the real estate project is registered.

41. The respondent submitted that in furtherance of the above, it may be mentioned that section 4(1) provides that every 'promoter' shall make an application to the authority for registration of a real estate project in such form, manner, within such time and accompanied by such fee, as may be prescribed. Evidently, the 'promoter' is the one as defined under section 2(zk) and on whom, an embargo has been put by virtue of section 3 and it is keeping this in view that section 4 provides that 'every promoter' shall make an application to the authority for registration of the real estate project. Thus, the word 'promoter', wherever used in 2016 Act, is in reference to the promoter, who has got the real estate project registered and/or is required to get the real estate project registered in accordance with the 2016 Act. On this count also, it cannot be said that the 2016 Act would be applicable to the

project, which do not require registration.

42. The respondent submitted that without prejudice to the submission that this Id. authority has no jurisdiction to entertain the complaint made by the complainant and that the allegations made by the complainant are erroneous, misconceived and untrue, it is further submitted that the complainant has sought various reliefs/directions from this Id. authority and the said reliefs are beyond the jurisdictional competence of this Id. authority as circumscribed by the provisions of 2016 Act and 2017 rules. This Id. authority is not empowered by the provisions of 2016 Act to grant the reliefs sought by the complainant. The reading of the complaint and the reliefs sought thereunder leave not even an iota of doubt that the present complaint has been filed to arm-twist respondent no.1 and its officials to agree to all the illegal, erroneous and misconceived demands of the complainant. In the humble submission of respondent no.1, the provisions of 2016 Act cannot be misused in the manner as is being sought to be done by the complainant in the present case.

43. The respondent submitted that the Id. authority, which is to perform administrative functions, can only enjoy such powers, which have been provided to it specifically under the statute i.e. the 2016 Act. It cannot assume the power which otherwise cannot be said to be vested in it, merely on a misconceived notion that the aggrieved person may not have any other remedy.

44. The respondent submitted that further, without prejudice to the aforementioned, assuming, though not admitting, that this Id. authority has the jurisdiction and that the complainant could seek direction for imposition of penalty for alleged violations, under the provisions of 2016 Act, the same cannot be claimed much less granted for any action carried out prior to coming into force of 2016 Act and/or rules framed thereunder. The provisions of 2016 Act have prospective operation and cannot operate retrospectively, especially when it *inter alia*, seeks to impose new burden. It is well settled law that a statute shall operate prospectively unless retrospective operation is clearly made out in the language of the statute. Only a procedural or declaratory law operates retrospectively

as there is no vested right in the procedure. In the absence of any express legislative intendment of the retrospective application of the 2016 Act, and by virtue of the fact that the 2016 Act creates a new liability of penalty, the 2016 Act cannot be construed to have retrospective effect. The penalty in terms of the 2016 Act, if can accrue, the same can only be in respect of sale agreements executed after the date of commencement of the 2016 Act. Without prejudice to the submission that respondent no.1 is not in violation of any provisions of 2016 Act, it is stated that the provisions of 2016 Act cannot be resorted to for opening proceedings against respondent no.1 for actions that were completed much prior to enactment of the said Act. The enactment of 2016 Act cannot be made an open-ended till for perpetuity with respect to the actions that had been completed much prior to its enactment. It is trite law that statutes are to be interpreted prospectively unless the language makes them retrospective and statutes creating penalties for new offences are always prospective. Thus, on this ground also, relief as being claimed by the complainant, is unsustainable in the eyes of law and liable to be rejected.

### **Written submissions by complainant**

The complainant submitted following averments in support of his complaint: -

45. The complainant submitted that the respondent no.1 has failed miserably to fulfil the obligations as provide under the section 11(4) of the real estate (regulation and development) Act, 2016.
46. The complainant submitted that the combined reading effect of section 11(4)(b) and section 34 (f) and (g) of the Act 2016 is that in case of non-compliance of obligation cast upon the promoter the authority may pass suitable direction or compliance of such obligations and mentioned in section 11(4)(b). Moreover, section 37 of the Act, 2016 provides power of authority to issue direction for the purpose of discharging its function under the provision of the act or rules or regulations made thereunder. Furthermore, section 63 of the said Act provides for penalty on the promoter in case of failure to comply with orders of the authority. Further, section 61 prescribes penalty for contravention of the provisions of

the said Act other than that provided under section 3 or 4.

47. The complainant submitted that the present complaint is maintainable as no other similar complaint/petition is filed or contested in any civil court or High Court. It is pertinent to mention here that the complainant has submitted to the jurisdiction of the hon'ble authority, wholly and solely, for the adjudication of the above captioned case. The respondent wants to create an impression by stating that a case is sub-judice before Hon'ble High Court, however, no cogent evidence has been adduced by the respondent to support their contention. The complainant is ready to swear an oath that that no similar case is pending before any court including High Court. The matter which is pending before the High Court is regarding the club and allied issues but not related to the issues raised in the present complaint. The instant complaint is qua the essential services to be delivered to the TRWA as well as maintenance and IFMS charges to be handed over to the complainant. For the ease and assistance of the hon'ble authority, the complainant submitted following table of cases,



wherein all the cases by or against the complainant has been filed:

| Year | Authority  | Subject   | Outcome  |
|------|------------|---|--|
| 2016 | High Court | Writ petition in HC flouting to seek the following reliefs: <ol style="list-style-type: none"> <li>1. Ensure that all licensing conditions are followed.</li> <li>2. Club to be strictly used as community center and only for the residents of "Vipul world"</li> <li>3. Not to allow any illegal construction and demolition of any illegal construction</li> <li>4. Second gate in Tatvam Complex</li> </ol> | HC refers the matter to DTP to address the grievance and also pass any interim order   |
| 2017 | DTP        | Same as above   | Passes the order that <ol style="list-style-type: none"> <li>1. Club is community center and 3 party right created must be cancelled</li> <li>2. Villa 52 is illegal construction</li> <li>3. Solar water heaters need to be installed as per license conditions.</li> <li>4. Maintenance charges are</li> </ol> |

|      |      |                                    |  |
|------|------|------------------------------------|--|
|      |      |                                    | <p>too high audited accounts must be submitted and a committee must be formed to audit the expenses including maintenance security</p>   |
| 2017 | DTCP | DTP order challenged by Vipul Ltd. | <p>DTCP withholds the order of DTCP a follows under section 10 of its order:</p> <ol style="list-style-type: none"> <li>1. Club is community center and 3<sup>rd</sup> party right created must be cancelled use of community center is free.</li> <li>2. Villa 52 is illegal construction and must be demolished unless developed gets its regularized within one month or the</li> </ol> |

|      |            |                                   |  |
|------|------------|-----------------------------------|--|
|      |            |                                   | <p>order provided FAR allows it.</p> <p>3. Solar water heaters need to be installed as per license conditions</p> <p>4. another gate created must close and demolished wall must be reconstructed.</p> <p>5. maintenance contract is bi-lateral in nature and department has no role in interfere in this.</p> |
| 2018 | High Court | Writ petition filed by Vipul Ltd. | <p>Challenges the order of DTCP only counts out of 5(from 10a-10d). It must be noted that it does not challenge of maintenance which is 10(e) in the above order.</p>  |
|      |            |                                   | <p>HC, in its interim order, allows residents to use all facilities of community</p>   |

|             |                             |   |   |
|-------------|-----------------------------|---|---|
|             |                             |   | center/club for Rs. 2500/- per villa.   |
| <b>2019</b> | District and Sessions court | Under section 9, developer wants to either recover, or get a guarantee or deposit in court of the non-payment of maintenance dues | The complainant has challenged it that since the matter is in RERA, as per supreme court Judgement no other court can take up the matter. |

48. The complainant submitted that Tatvam villas, Gurugram and the Vipul world, Gurugram are two different projects adjacent to each other. Further, the respondent no.1, has prepared the cost sheet of the Tatvam Villas separately, which clearly shows that the respondent no.1 considers the tatvam Villa Complex as a separate project.

49. The complainant submitted that it is pertinent to mention here that the respondent no. 1 has collected IFMS charges from the residents of Tatvam villas, ranging from Rs. 6,00,000/- to Rs. 15,30,000/-, and never have used the same money for the upkeep and maintenance of the Tatvam villas complex as there were number of issues with the maintenance and the complex

is in a poor condition. Further, it is lawful right of the complainant, being a duly registered resident welfare association, to get access to such funds/ charges collected by the respondent no. 1/ promoter.

50. The complainant submitted that since 2012 -2013, the respondent no.1 is charging exorbitant maintenance and electricity charges from the residents of the Tatvam Villas which is way more than the charges collected from the residents of the Vipul world as the respondent no.1 is charging maintenance @ Rs. 4.00 per sq. ft. of the super area per month, from the residents of the Tatvam Villa, whereas, maintenance @ Rs. 0.50 per sq. ft. of the super area per month, has been charged from the residents of the Vipul world. Further, the respondent no.1 charges @ Rs. 22/- per unit on the electricity supply through diesel generator (DG) sets, which is unreasonable, and unjustified by any standard of law, whatsoever. It is pertinent to mention here that as per the Haryana Electricity Regulatory Commission (HREC) regulations, the maximum of Rs. 7.10 per unit could be charged if the power arrangements are to be made through DG sets.

### **Written submissions by respondent no.1**

The respondent no.1 refuted the allegations made by the complainant and reiterated the submissions made by him in his reply. In addition, the respondent submitted following averments in support of his reply: -

51. The respondent no.1 submitted that the complainant does not have any locus to file the complainant in question or to even raise the issues raised therein.
52. The respondent no.1 submitted that 'Tatvam Villas' is part of block X, Y and Z of 'Vipul World'. A resident welfare association has to be for all residents of 'Vipul World' including the residents of 'Tatvam Villas'. The other residents of Vipul World are not members of the complainant association. As such, the filing of the complaint by the complainant, more so when it seeks to raise issues pertaining to the entire colony, i.e. 'Vipul World', is erroneous, misconceived and the same cannot be filed or maintained by the complainant much less before this learned authority.
53. The respondent no.1 submitted the entire emphasis of the

complainant on independent or separable nature of its Tatvam villas is erroneous and misconceived. There is no provision of law to transfer and handover maintenance, interest free maintenance security to it or to recognize it for any purpose whatsoever. The transfer of the entire colony to the MCG, if and when takes place, would be as per law and the complainant possibly cannot have any grievance in that regard.

54. The respondent no.1 submitted that the factum regarding the complaint and the writ petition pending before the Hon'ble High Court has been concealed by the complainant with a mala fide intent. Further the issues as raised in the complaint are sub judice and are subject matter of writ petition pending before the Hon'ble High Court.

55. The respondent no.1 submitted that without prejudice, the complainant has sought various reliefs/ directions from this Id. Authority and the said reliefs are beyond the jurisdictional competence of this authority as circumscribed by the provisions of 2016 Act and 2017 rules. this authority is not empowered by the provisions of the said Act to grant the reliefs sought by the complainant.



56. The respondent no.1 submitted that the penalty in terms of the 2016 Act, can only be in respect of sale agreements executed after the date of commencement of the said Act. Without prejudice to the submission that respondent no.1 is not in violation of any provisions of 2016 Act, it is stated that the provisions of 2016 Act cannot be resorted to for opening proceedings against respondent no.1 for actions that were completed much prior to enactment of the said Act. The enactment of 2016 Act cannot be made an open-ended till for perpetuity with respect to the actions that had been completed much prior to its enactment. It is trite law that statutes are to be interpreted prospectively unless the language makes them retrospective and statutes creating penalties for new offences are always prospective. Thus, on this ground also, relief as being claimed by the complainant, is unsustainable in the eyes of law and liable to be rejected.

#### **Determination of issues**

57. With respect to issues to be determined, a perusal of comparative analysis of both the contentions raised by the

parties, it comes on surface that 'Tatvam Villas' comprising of 50 acres is a part of 'Vipul World' of 150 acres of land was constructed in the year 2010 onwards and at the moment, RWA is a registered society with 206 members. Since the matter has been agitated before DTCP in a very patent manner that the maintenance charges should be reasonable and it should not be exorbitant in any manner. However, at the moment, the matter is sub-judice before the Hon'ble High Court in CWP No. 6921/2018 which is fixed for hearing on 10.7.2019.

58. As such, it is advisable for the parties to wait till the final judgment of Hon'ble High Court over the issues involved and raised by the RWA. However, in the present case, the handing over the maintenance of the project to MCG by the builder/promoter is *sine qua non* as per section 11 (4) (d) (e) of Act *ibid*. The respondent is to abide by the directions of the statutory enactment, i.e. as per provisions of section 11 (4) (d) & (e) of Real Estate (Regulation and Development) Act 2016 which reads as under: -

***“Section 11 (4) (d) & (e) The promoter shall-***

*(d) 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;*

*(e) enable the formation of an association or society or co-operative society, as the case may be, of the allottees, or a federation of the same, under the laws applicable....”*

59. Accordingly, both the parties have to wait till the final decision of the Hon’ble High Court, till then the *status-quo* shall prevail and the provisions of law shall come into force immediately after the decision of the Hon’ble High Court. Both the parties are advised to pursue the matter before the Hon’ble High Court on the date fixed.

**Findings and decision of the authority**

60. **Jurisdiction of the authority-** The project is located in sector 65, Gurugram, thus the authority has complete territorial jurisdiction to entertain the present complaint. As the project in question is situated in planning area of Gurugram, therefore the authority has complete territorial jurisdiction vide notification no.1/92/2017-1TCP issued by Principal Secretary (Town and Country Planning) dated 14.12.2017 to entertain

the present complaint. As the nature of the real estate project is commercial in nature so the authority has subject matter jurisdiction along with territorial jurisdiction.

61. The preliminary objections raised by the respondent regarding jurisdiction of the authority stands rejected. The authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter as held in ***Simmi Sikka v/s M/s EMAAR MGF Land Ltd.*** leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.
62. The complainant made a submission before the authority under section 34 (f) to ensure compliance/obligations cast upon the promoter as mentioned above.

The complainant requested that necessary directions be issued to the promoter to comply with the provisions and fulfil obligation under section 37 of the Act.

63. In the present matter before this authority, Tatvam residents welfare association (TRWA) has come forward against the high handedness of respondent- Vipul Ltd. for charging Rs.4/-

per square feet per month as maintenance charges of built up area which is not reasonable as per their version. The matter remained under litigation before the DTCP, Haryana and the DTCP vide its order dated 31.7.2017, para Nos. 6 and 7 has dilated over the issues involved in the matter. The relevant portion of para Nos.6 & 7 is re-produced as under: -

Para No.6: STP, Gurugram vide memo dated 31.01.2017, reported the following:

- (a) *The colonizer is charging Rs.4/- per sq. ft. maintenance charges on super area per month, which becomes more than Rs.40 per sq. yds of the covered area;*
- (b) *The colonizer is not in agreement to hand over the mandatory services to the RWA as there is no provision in the Act/licence condition. Rather the licensee is willing to hand over the entire licenced area i.e. approx. 150 acres to the Government/MCG, Gurugram as per provisions of Section 3 of Act No.8 of 1975;*
- (c) *As informed by RWA, the colonizer has the maintenance security to the tune of Rs. 23 crores, which the licence is to ascertain. However, the licensee has denied to share/provide information about expenditure on maintenance by referring the matter as sub-judice in CWP No.11022 of 2016 i.e. the instant case in which the present order is being passed.*

*Although the points in para 6(a) and 6(c) above are bilateral in nature in which the department cannot interfere, however, in view of the facts reported by the Circle Office, action as per following be also taken:*

*(a) It is clarified that maintenance charges should not be levied with profit motive. Maintenance charges mean the payment enough to satisfactorily manage and maintain the colony. As far as possible, the maintenance charges must be levied on 'no profit no loss' basis and annual submission of accounts should be mandatory. Hence, colonizer is hereby directed to provide the accounts of maintenance charges to the petitioners.*

*(b) The Deputy Commissioner, Gurugram and the Commissioner, Municipal Commissioner, Gurugram will send their recommendations/consent for taking over of the colony for maintenance of the services, so that the matter may be presented to the Government for decision to hand over the colony to MCG for the purpose referred above.*

64. However, the respondent in its reply regarding maintenance charges as mentioned at page no.28 has brought on record certain facts and issues involved in the matter. The relevant para is reproduced as under: -

***Maintenance charges:***

*Regarding recovery of maintenance charges from the allottees, I find sufficient force in the argument of Mr. Chopra that the Director is not entitled to issue any direction to the colonizer regarding recovery of maintenance charges as it is a matter to be settled between the allottees and the developer in accordance*



*with the terms and conditions mutually settled by them as per plot/flat buyers agreement executed by and between the allottees and the developer. DTCP has also hinted in para No.7 of the impugned order that the point No.6 (a) and 6 (c) are of the bilateral in nature in which Department cannot interfere. The law laid down by the Hon'ble Supreme Court in the case of DLF Universal Limited & Another Vs. Director, Town & Country Planning, Haryana & Others decided on 19.11.2010 (reported as 2010 (2) HLR page 575) is very clear on this issue which is reproduced as under:-*

*"In our considered opinion the Director is not authorized to interfere with agreements voluntarily entered into by and between the owner/colonizer and the purchasers of plots/flats. The agreed terms and conditions by and between the parties do not require the approval or ratification by the Director nor is the Director authorized to issue any direction to amend, modify or alter any of the clauses in the agreement entered into by and between the parties".*

65. During the proceedings dated 02.05.2019, the counsel for the respondent submitted that the maintenance charges are being charged in terms of agreement executed with the allottees. It is a well settled law by the Hon'ble Supreme Court that nobody can interfere in the terms and conditions of agreement executed between the parties. The services as mentioned therein are required to be maintained by the maintenance agency as has even been held by the Principal Secretary, Town and Country Planning, Haryana and the reply filed by



respondent. The said findings have not been challenged by either of the parties and thus has attained finality. Services are required to be handed over to MCG as has even been noted in the order of DTCP dated 31.7.2017. Further, it has been submitted by the counsel for the respondent that section 11(4)(d) and (e) of the Act ibid even if said to be applicable to the facts and circumstances of the present case, the complainant is not being association of the entire colony of 'Vipul World' comprising of 150 acres, cannot draw any benefit thereof.

66. A perusal of comparative analysis of both the contentions raised by the parties, it comes on surface that 'Tatvam Villas' comprising of 50 acres is a part of 'Vipul World' of 150 acres of land was constructed in the year 2010 onwards and at the moment, RWA is a registered society with 206 members. Since the matter has been agitated before DTCP in a very patent manner that the maintenance charges should be reasonable and it should not be exorbitant in any manner. However, at the moment, the matter is sub-judice before the Hon'ble High

Court in CWP no. 6921/2018 which is fixed for hearing on 10.7.2019.

67. As such, it is advisable for the parties to wait till the final judgment of Hon'ble High Court over the issues involved and raised by the RWA. However, in the present case, the handing over the maintenance of the project to MCG by the builder/promoter is *sine qua non* as per section 11 (4) (d) (e) of Act *ibid*. The respondent is to abide by the directions of the statutory enactment, i.e. as per provisions of section 11 (4) (d) & (e) of Real Estate (Regulation and Development) Act 2016 which reads as under: -

**"Section 11 (4) (d) & (e) The promoter shall-**

*(d) 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;*

*(e) enable the formation of an association or society or co-operative society, as the case may be, of the allottees, or a federation of the same, under the laws applicable...."*

68. Accordingly, both the parties have to wait till the final decision of the Hon'ble High Court, till then the *status-quo* shall prevail and the provisions of law shall come into

force immediately after the decision of the Hon'ble High Court.

Both the parties are advised to pursue the matter before the Hon'ble High Court on the date fixed.

69. However, RWA is authorized to take care about their essential issues w.r.t. security, horticulture, power back-up and garbage collection. However, the costs shall have to be borne by the RWA.

70. The complaint is disposed of accordingly.

71. The order is pronounced.

72. Case file be consigned to the registry.

**(Samir Kumar)**

Member

Haryana Real Estate Regulatory Authority, Gurugram

Date: 02.05.2019

**(Subhash Chander Kush)**

Member

**Judgement Uploaded on 10.06.2019**