

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

Complaint no. : 2530 of 2018
Date of filing complaint : 07.01.2019
Date of decision : 04.07.2023

<p>"Taksila Heights-RWA" R/o : Sector 37C, Gurugram, Haryana-122001.</p>	<p>Complainant</p>
<p>Versus</p>	
<p>1. M/s SVR Realtors Private Limited Registered Office: I-1, (Old No C-83), Maharani Bagh, New Delhi-110065 2. M/s APT Infrastructure Private Limited Registered Office: B-7/45, Safdarjung Enclave Extension, New Delhi-110029.</p>	<p>Respondent</p>

<p>CORAM:</p>	
<p>Shri Vijay Kumar Goyal</p>	<p>Member</p>
<p>Shri Ashok Sangwan</p>	<p>Member</p>
<p>Shri Sanjeev Kumar Arora</p>	<p>Member</p>
<p>APPEARANCE:</p>	
<p>Sh. Sukhbir Yadav</p>	<p>Advocate for the complainant</p>
<p>Sh. Mohd. Kamran</p>	<p>Advocate for the respondents</p>

ORDER

1. The present complaint has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter

alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the rules and regulations made there under or to the allottees as per the agreement for sale executed inter se.

A. Unit and project related details

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

S.N.	Particulars	Details
1.	Project name and location	"Taksila Heights", Sector-37C, Gurugram
2.	Project area	11.478 acres
3.	Nature of project	Group housing colony
4.	RERA registered/not registered	Not registered
5.	DTPC License no.	40 of 2008 dated 02.03.2008
	Validity status	01.03.2018
	Name of licensee	M/s SVR Realtors Private Limited
6.	Occupation Certificate detail	<p>OC received dated 05.06.2015 for tower-</p> <ul style="list-style-type: none"> ➤ 4 (ground floor to 14th floor) ➤ 5 (ground floor to 14th floor) ➤ 6 (ground floor to 14th floor) ➤ 7 (ground floor to 13th floor) ➤ 8(ground floor to 13th floor) ➤ EWS (ground floor to 4th floor) ➤ Community Building (ground floor to 1st floor) <p>OC received dated 13.05.2016 for tower</p>

		<ul style="list-style-type: none"> ➤ 1 (ground floor to 14th floor) ➤ 2 (ground floor to 14th floor) ➤ 3 (ground floor to 14th floor) ➤ 9&10 (ground floor to 14th floor) ➤ 11(ground floor to 14th floor) ➤ Convenient shopping ➤ Nursery School ➤ Basement of Nursery School
9.	Total tower in the project	11 towers
10.	Group housing society "Taksila Heights" - RWA Complainant herein (Through Sh. Sunjive Bhandari,)	Registered vide no. HR-018-2016-02617 dated 08.06.2016 under Haryana Registration and Regulation of Societies Act, 2012

B. Facts of the complaint

3. The complainant submitted that the complainant is a RWA namely "group housing society, Sector -37C, Village Basai" (through its president and other office bearer and members/ authorized representative) is a RWA registered under Haryana Registration and Regulation of Societies Act, 2012 having R/o Taksila Heights, Sector - 37C, Gurugram.
4. The complainant submitted that the respondent party no. 1 SVR Realtors Private Limited is a company incorporated under the Companies Act, 1956 having registered office at: I-1, (Old No. C-83), Maharani Bagh, New Delhi - 110065 and respondent party no. 2, APT Infrastructure Private Limited is a company incorporated under the Companies Act, 1956 and the project in question is known as Taksila Heights, Sector -37C, Gurugram, Haryana.

5. The complainant submitted that as per Sec 2(zk) of the Real Estate (Regulation and Development) Act, 2016, the respondents falls under the category of “promoter” and is bound by the duties and obligations mentioned in the said act and is under the territorial jurisdiction of this authority-.
6. The complainant submitted that both respondents have joint as well as several liabilities towards complainants.
7. That on 02.03.2008, SVR Realtors Pvt. Ltd., DSM Realtech Pvt. Ltd. and others, applied for a license to develop a group housing society in Sector -37C, Gurgaon. License was issued by competent authority on 02.03.2008 vide license No. 40 of 2008 (LC1338).
8. That on 25.03.2008, an agreement of grant and assignment of development rights was executed between SVR Realtors Pvt. Ltd. (the original developer), APT Infrastructure Pvt. Ltd (the assignee developer), DSM Realtech Pvt. Ltd (land owner -I), Shri Bijender Singh, Shri Krishan Kumar, Shri Gulab Singh, Shri Balwant Singh and Shri Sube Singh (land owner -II), Smt. Chhano Devi, Shri Ram Niwas, Shri Ramchander, Shri Azad Singh and Shri Sukhlal (land owner -III), Smt. Sumitra, and Kush Kumar (land owner -IV), Shri Vijaypal (land owner -V), Smt. Shakuntla Devi (land owner -VI), in the office of Sub. Registrar Farukhnagar, Gurgaon. As per this agreement, development and other rights were assigned to respondent no.2 namely APT Infrastructure Pvt. Ltd.
9. That on 19.08.2008, respondent no. 1 applied for approval of building plans and the Director, Town and Country Planning, Haryana approved the “building plans of group housing colony measuring 11.478 acres subject to conditions mentioned in BR-III (Memo No:- ZP-382/2953) dated 02.04.2009.

10. That the respondent no.2 sold the flats of above said group housing society by various scheme and payment plans through other companies also. Total sale consideration of each flats contains following components: sale price, EDC & IDC, car parking, club membership fees, IFMS, applicable taxes, power backup etc.
11. That on 05.06.2015, Directorate of Town and Country Planning, Haryana issued an occupation certificate for tower no. 4,5,6,7 & 8 along with EWS and community building.
12. That on 13.05.2016, Directorate of Town and Country Planning, Haryana issued an occupation certificate for tower no. 1,2,3,9,10 & 11 along with convenient shopping building and nursery school.
13. The complainant also submitted that on 06.06.2016, RWA namely "group housing society, Sector -37C, Village Basai" came into existence and at present below named persons are office bearer of RWA :
- Mr. Sunjiv Bhandar- President
Mr. Tanmay Guha - Vice President
Mr. Vikas Bansal - Secretary
Mr. Yogesh Chandra Upadhyay - Joint Secretary
Mr. Arvind Kumar Singh - Treasurer
Mr. Vikas Kumar Thakral - Executive Member
Mrs. Renu Bachlaus - Executive Member.
14. That on 19.06.2015, respondent no. 2 offered the physical possession of flats and asked to deposit interest free maintenance security (IFMS) @ Rs. 50 /- (Fifty) per sq. ft covered car parking sold @ 2,25,000/- per unit and open car parking space @ 1,50,000/- per unit.
15. That at the time of booking / receiving the payment against the flats respondents and his agents claims and projected the rosy picture of project. Being impressed by the claims / projections made by

respondents, many allottees (current owner of flats and members of RWA) booked flats in project. The respondents projected that project will contain high quality construction, club house with health club, 100% power backup, rain water harvesting etc.

16. The complainant also submitted that RWA/ office bearer sent several emails to respondents between 24.12.2017 to 20.01.2018 and requested to them to handover the society maintenance/ supervision along with record and requisite documents of society and also requested transfer/ handover the corpus accumulated on account of IFMS and other reserves to RWA after completing structural and construction defects.
17. That on 17.09.2018, RWA's office bearer sent an email to respondents, alleging frequent puncture of fire line between tower no. 6,7 & 8.
18. The complainant also submitted that on 09.10.2018, one resident of group housing and member of RWA namely Mr. Atul Shrivastava sends grievance email to respondents and informed that concrete piece from tower no. 5 second floor balcony has been fallen and poor construction quality/ defect in quality, workmanship & finishing etc.
19. That as per drawings submitted by respondents to DTCP, respondents have to construct the boundary wall from 2,850 mm to 4,000 mm (9.35 feet to 13.14 feet), but onsite boundary walls of society are much below than promised. In some areas boundary height from outside is just 6 feet. The quality of boundary wall is also very poor, there is not plaster on outside of wall and inside plaster is also indigent.

20. That as per drawing submitted to DTCP, there need to be 4 no of diesel generator (DG) with capacity $1200 \times 3 + 600 = 4200$ KW but onsite there are 2 Nos. DG with capacity of $1024 \times 2 = 2048$ KW.
21. The complainant further submitted that acoustics facilities in DG room are very poor, when DG runs, there is high vibration in nearby towers especially in tower no. 8 & 11. There need to improvement in acoustics facilities in DG room.
22. It is pertinent to mention here that as per clause no. 24 of flat buyer agreement, company have to transfer the IFMS to RWA and as of now maintenance is taking care by RWA.
23. The complainant also submitted that the respondents converted the community building into club house. As per approved sanction plans, there is no club house and as per occupation certificate there is no club house. The respondents have charged Rs. 50,000/- from each allottee for the same. There are 590 flats in group housing hence total corpus realized on account of club membership is Rs. 2,95,00,000/-.
24. It is again pertinent to mention that respondents utilized the corpus realized on account of IFMS, club membership charges and reserves from collected maintenance charges etc. Hence respondents have to pay the interest @ 24% on use of that funds.
25. The complainant also submitted that respondents sold stilt floor as car parking @ Rs. 2,25,000/- per car parking & Rs. 1,50,000/- per car parking. It is highly pertinent to mention that respondents sold front area of stair case as car parking, in case of fire or any emergency, resident cannot come out from towers easily as same will be great obstruction on the way.
26. The complainant also submitted that respondents sold common area/open area as tensile parking @Rs. 1,50,000/- per car parking.

Respondents sold more than 64 tensile parking and collected more than Rs. 96,00,000/- illegally. As per terms of license common area belongs to resident and builder do not have any right to sell said common area, therefore above said Rs. 96,00,000/- to be refund to concern allottees.

27. That the respondent used substandard material in construction of internal road and used poor quality speed breaker and are liable to remove these defects.
28. That there is huge defect in workmanship and finishing work in lobby area of all towers. The lobby slope is not proper, parking level is higher lobby level, during rainy session, rainwater accumulate in lobby.
29. That as per onset layout plans and service plans there were provision of 10 towers, there after due to increase in FAR, respondents constructed an additional tower but services utilities i.e. sewage treatment plan, DG capacity, visitors parking remains unchanged.
30. That as far as DG is concern as per submitted plans there was provision of 4 DG (Three DG with capacity of 1200 KVA and one DG with capacity of 600 KVA) but respondents have installed only 2 DG with capacity of 1024 KVA and respondents allocated more load than the capacity of current DG. Many times, DG get fails and trip due to excess load. It is pertinent to mention that respondent have collected Rs. 25,000 per K.V. load.
31. That the main grievance of the complainant in the present complaint is that in spite of complainant (member of RWA / Allottees) have paid total sale consideration as per terms of apartment buyer agreement, but the respondents failed to deliver the quality oriented project, there are multiple defect in structure, defect in quality, defect in

workmanship and defect in finishing. The respondents used sub - standard material in construction as well as in mechanical electrical and plumbing services. It is clearly evident from photographs annexed in complaint that building is detracting and not safe of habitation. Due to continuous seepage, several towers get adversely affected up to 5 floor levels and that causes rust in columns and beams and as a result structure of building getting de-stable.

32. That it is highly pertinent to mention here that "over-head automatic water controller" is not working properly.
33. That the respondent did not used P-TRAP on each outlet pipe of WC line and wastewater lines, as a result foul odour came in toilets.
34. That community hall in community building has poor acoustic and this cause unhealthy sound. The respondents are liable to remove these issues on his cost.
35. That many apartments were delivered with multiple defects, viz. POP without plaster on internal walls, floor tiles without proper cement work underneath, plumbing done with poor quality pipes which lead to seepage on walls around plumbing area. Balcony railing done with scrap steel. Poor quality wooden flooring in bedrooms instead of good quality vitrified tiles, etc. It is prayed that on account of poor construction quality inside the apartment, appropriate compensation be provided to impacted apartment owners.
36. That HT line from DHBVNL feeder to society has poor quality cable and instruments. Society is spending Rs. 60,000/- to 70,000/- (per month) to fix the line faults. Respondents have taken substantial amount from allottees for electrical connection but did not used good quality wires and instruments / panels. It is the responsibility and

duty of respondents to get fix the faults and change the cable and instruments.

37. That as of now there are more than 500 families living in society and their lives are at risk and in danger.

38. That the facts and circumstances as enumerated above would lead to the only conclusion that there is a deficiency of service on the part of the respondent party and as such, they are liable to be punished and compensate the complainant.

39. That due to above acts of the respondent and terms and conditions of the apartment buyer agreement, the complainant have been unnecessarily harassed mentally as well as financially, therefore the opposite party is liable to compensate the complainant on account of the aforesaid act of unfair trade practice.

40. That after obtaining the occupancy certificate and handing over physical possession to the allottees, 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, the association of the allottees or the competent authority, as the case may be, within thirty days after obtaining the occupancy certificate.

C. Relief sought by the complainants:

The complainants have sought the following relief:

- i. To direct the respondent to remove the defect in structure, quality, workmanship and finishing of towers/flats as shown in photographs.

- ii. To direct the respondent to raise the height of boundary wall up to 9 feet to 13 feet heights and also direct to complete the plaster on both side of boundary wall.
- iii. To direct the respondent to change the fire-fighting line on his cost with good quality pipes with proper water presser resistance capacity.
- iv. To direct the respondent to handover all assets including but not limited to the community building, convenient shopping buildings, nursery school as shown in the deed of declaration along with duly audited maintenance accounts of society to RWA through proper process.
- v. To direct the respondent to remove seepage problem in all towers.
- vi. To direct the respondent to handover the corpus of IFMS to RWA along with accrued interest.
- vii. To direct the respondent to handover the corpus of reserves from maintenance charges to RWA.
- viii. To direct the respondent to handover the corpus of club membership charges to RWA along with accrued interest.
- ix. To direct the respondent to handover the community building to RWA.

- x. To direct the respondent to install the DG as per service plans and load distribution.
- xi. To direct the respondent to handover the below to RWA :
 - a. Land acquisition details
 - b. Project details -Map/ drawings/ permissions/ licenses/ approvals/modifications/NOCs/compliances.
 - c. Agreements among SVR Realtors, Piedmont developers
 - d. Deed of declaration
 - e. Asset details

D. Reply by the respondent

The respondent by way of written reply made the following submissions.

41. The respondent submitted that the present reply on behalf of the respondents is being filed by Mr. Anand Misra, for respondent no. 1 and Mr. Shahzeb Khan, for respondent no. 2, who have been duly authorized by the Board of Directors of the respondent no. 1 & 2 vide board resolution dated 17.01.2019 of respondent no. 1 and board resolution dated 16.01.2019 of respondent no. 2 to sign and verify the present reply and to do all such acts ancillary thereto.

42. The respondent submitted that the present complaint filed by the complainant is baseless, vexatious, containing intentional false and frivolous statements and is also not tenable in accordance with the law therefore, the complaint deserves to be dismissed at the threshold with heavy cost

43. The respondent submitted that complainant is not entitled to seek rectification of structural defects, handover to complainant and for refund of the IFMS, maintenance charges, club membership charges with interest.
44. The respondents submitted that they had applied for approval of revised building plans of group housing society in respect of the license earlier granted in the year 2008, being license no. 40 of 2008 dated 02.03.2008, which were approved by Directorate of Town and Country Planning, Haryana. It is stated that all the conditions stipulated in the said approved building plan dated 24.02.2012 have been duly complied with by the respondents and as such, there are no deficiencies.
45. The respondent submitted that the possession of the flats at the project could not be handed over within the stipulated time, however, there was no inordinate delay in doing so, as the same was on account of the directions issued by various judicial/quasi-judicial authorities in relation to the projects in Gurugram on account of various environment related concerns and other issues like unavailability of labour and other hardships faced by the respondents etc. Further, as per the terms and conditions of the apartment buyer agreement, the respondents duly paid the penalty to the flat owners by adjusting the amount incurred for each day delay in handing over the possession to them at the rate of Rs.5/- per square feet.
46. The respondent submitted that all the amounts that were taken by the respondents have been duly utilised in construction works and related works to the project and all the services rendered qua the project have been as per the terms and conditions of the apartment buyers' agreement. Furthermore, several flat occupants/owners in

the project have committed severe and serious defaults in making their due payments.

47. The respondent submitted that the complainant has filed the present complaint to seek refunds for IFMSD, club membership, interest thereof, maintenance reserves, rectification of alleged structural and other defects, etc. by making false and misleading averments and presenting the facts in a distorted manner to paint an altogether false picture with a view to unnecessarily harass and extort money from the respondents herein. The complainant is not entitled to the club membership charges or the alleged corpus thereof, as club membership charges were a one-time payment made by the purchasers which was used in the construction of the club/community building existing at the project. It is stated that the complainant is not entitled to seek the possession of the club/community building as the keys of the same were handed over to the complainant way back in November 2017 at the time of handover by the respondents to the complainant with effect from 30.11.2017, making it patent that the possession of the same has been with the complainant only. The complaint is full of false, frivolous and concocted claims filed by the complainant only with a view to harass the respondents and to extort money from them, despite the respondents discharging their duties as per the Apartment buyers' agreement and as per law and even after handing over of the maintenance in November 2017 (w.e.f. November 30, 2017) to the complainant RWA along with all the relevant materials, records and documents, the respondents have been co-operating with the complainant and other residents at the project.

48. The respondent submitted that the complainant has itself attached several documents along with the complaint related to the project, clearly indicating that a due and proper hand over of the project has been done by the respondents
49. The respondent submitted that with respect to the IFMS charges, it is stated that the IFMS charges is an adjustable amount, as the name suggests, to be adjusted in cases of defaults in maintenance dues. The respondents have time and again clarified to the complainant that the IFMS charges have been duly used and spent in meeting the maintenance at the project prior to handover of the maintenance to the complainant. The complainant has agreed that the respondents remain entitled to claim and recover the outstanding maintenance and electricity dues as they stood on November 30, 2017. There has been no progress on the side of the complainant to affect these recoveries from their residents and effect payment of the due and payable amount to the respondents. It is stated that amount, if any, to be refunded to the complainant, is to be computed after adjusting for the defaults in payment of maintenance, electricity dues, costs incurred for removal of excess sewage water (past, ongoing and future) by the residents and other charges. Furthermore, even with regard to these refunds, going by the contractual obligations of the respondents, the respondents had informed the complainant and maintained since inception that any amount, if liable to be refunded, shall be refunded to individual flat owners/purchasers upon them providing specified documents viz. undertaking, declaration, NOC, affidavit, etc. as asked for. Further, the complainant has in fact failed to arrange above said documents in favour of the respondents, despite requests and reminders. notably, it is stated that the

complainant does not have any authority to collect IFMS charges on behalf of the flat owners/purchasers and the complainant has failed to bring on record any documentary proof thereof. The respondents, most respectfully submitted, cannot affect lump sum payment of the outstanding amounts (after adjustments) to the complainant as the complainant is not authorised by each and every flat owner to collect the remainder of the IFMS on their behalf. As such, payment to the complainant would expose the respondents to the claims from and liabilities towards the remainder of the IFMS amount. The complainant has not paid heed to the requests of the respondents and is now falsely claiming that the respondents are wrongfully retaining IFMS charges. Needless to add, the complainant is not entitled to interest thereof as well. More so, the respondents have anyway been settling the IFMS claims of the residents along with necessary adjustments, if any, based on mutual consent and agreement of the concerned residents. The plea of the complainant to claim the IFMS is to unlawfully enrich itself and is also contrary to the contractual agreement in existence.

50. The respondent submitted that there are no alleged maintenance reserves as alleged by the complainant. It is stated that the respondents have duly utilised the amounts submitted for maintenance for the said purpose. Not only this, in fact, the respondents are still continuing to incur costs for maintenance at the project, which are borne by them from their own pocket, as explained hereunder and the complainant is very well aware of the same, yet the complainant has made false allegations and false demands, imputing non-performance, inter alia, on the part of the respondents, which is false to its own knowledge. There are thus, no maintenance

reserves as alleged by the complainant and nothing in that regard (including the interest thereof) can be claimed by the complainant.

51. The respondent further submitted that the respondents continue to incur maintenance charges with respect to the sewage treatment plant, paid from their own pocket. It is submitted that the government authority, viz. HUDA, is incumbent to put the sewage water pipeline through which the excess treated water can be disposed through the government sewage line from the project. However, there has been delay on the part of HUDA to lay down the sewage pipes, as a result of which, in order to avoid accumulation of excess treated water in the society, the respondents are incurring ongoing cost for disposal of treated water at the rate of Rs. 80,000/- each month. It is stated that the respondents are incurring this cost without having the legal obligation to do so, hence, this ongoing cost (including cost incurred in future) on this account as well as other costs incurred in maintenance of the project from time to time after 30.11.2017 are liable to be adjusted from the IFMS charges or otherwise legally recoverable from the complainant/RWA or from the flat owners/residents individually. The copies of Bills showing the expenses incurred on a monthly basis for disposal of excess treated water are attached herewith.

52. The respondents submitted that they have already spent enormous amount of money towards the due construction and development of the various blocks / segments / constituents / parts / phases of the project and the handover to the complainant had already been done in November 2017. The respondents are not liable to pay any maintenance charges whatsoever or the alleged corpus thereof, as all

of the funds with respect to the same have been duly utilised for resolving various issues at the project and maintenance.

53. The respondents further submitted that the apartment buyer agreement delineates the respective liabilities of the complainant as well as the respondents in case of breach of any of the conditions specified therein. In this view of the matter, the complaint is not maintainable in law and is liable to be dismissed *in limine*. Even otherwise, the captioned complaint is not maintainable in law and is liable to be dismissed. It is a well settled proposition of law that the courts cannot travel beyond what is provided in the agreement/contract and generate altogether a new contract; the responsibility of the court is to interpret appropriately the existing contract and decide the rights and liabilities of the parties within the four corners of the contract.
54. That the respondents are not responsible for any mental agony if any, allegedly suffered by the complainant's members since the respondents have discharged all their duties and obligations as per the apartment buyer's agreement and as per law. The respondents have always co-operated with the complainant and the residents at the project and continue to do so. In fact, the mismanagement at the project is happening pursuant to the handover given by the respondents to the complainant w.e.f. 30.11.2017 along with all the relevant records and documents, etc. pertaining to the project since the members of the complainant RWA are residents who are perhaps unable to devote their time and energy to the ongoing problems at the project, which are largely owing to normal wear and tear of the equipment, etc. and not any structural defect or defect in services rendered. The complainant RWA has in fact, itself given statements in

the media clearly indicating the good quality of work and workmanship of the respondents. The provisions of RERA are being misused by the complainant to harass and extort unlawful monies out of the respondents. They occupants/flat owners of the subject residential complex are provided with each and every item of construction, facility and specification they were promised, and they paid for. The complainant has failed to show on record any deficiency in the project or in the services rendered qua the project by the respondents and has purportedly made whimsical claims which have no basis in facts or law.

55. That the complainant is attempting to raise false and frivolous issues which per se are immaterial. It is stated that the hand over to the complainant was done by the respondents without the complainant asking for it and at the instance of the respondents. The respondents have been dedicated to maintaining the project in the best way possible and have continued to provide best services keeping in mind the interests and well-being of the residents till the time the complainant RWA was not formed, since after the formation of the complainant, the handover has been duly made to the complainant w.e.f. 30.11.2017 as per the mandate of law. The respondents have used good quality material and have got all the civil works executed as per the Indian Standard Code for civil engineering and as per the other norms in place. The services rendered by the respondents at the project, including the services rendered for its maintenance and upkeep, have been duly given and no deficiency can be imputed with regard to the same

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

57. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority

58. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E. I Territorial jurisdiction

59. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana, the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. In the present case, the project in question is situated within the planning area of Gurugram district. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

E. II Subject-matter jurisdiction

60. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottees as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

Section 11(4)(a)

Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be.

Section 34-Functions of the Authority:

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

E. Findings on the relief sought by the complainants.

- A. To direct the respondent to remove the defect in structure, quality, workmanship and finishing of towers/flats as shown in photographs.
- B. To direct the respondent to raise the height of boundary wall up to 9 feet to 13 feet heights and also direct to complete the plaster on both side of boundary wall.
- C. To direct the respondent to change the fire-fighting line on his cost with good quality pipes with proper water presser resistance capacity.
- D. To direct the respondent to handover all assets including but not limited to the community building, convenient shopping buildings, nursery school as shown in the deed of declaration along with duly audited maintenance accounts of society to RWA through proper process.
- E. To direct the respondent to remove seepage problem in all towers.
- F. To direct the respondent to handover the corpus of IFMS to RWA along with accrued interest.



- G. To direct the respondent to handover the corpus of reserves from maintenance charges to RWA.
- H. To direct the respondent to handover the corpus of club membership charges to RWA along with accrued interest.
- I. To direct the respondent to handover the community building to RWA.
- J. To direct the respondent to install the DG as per service plans and load distribution.
- K. To direct the respondent to handover the below to RWA :
- L. Land acquisition details:
Project details -Map/ drawings/ permissions/ licenses/ approvals/modifications/NOCs/compliances.
Agreements among SVR Realtors, Piedmont developers
Deed of declaration
Asset details.

61. In the present complaint, earlier a Local Commissioner was appointed, and a report of local commissioner was received on 05.04.2021 with regard to structural defects, seepage issued, and substandard plaster and it was found that certain tangible and discernible defects. Vide order dated 18.08.2021, the authority directed the respondent to take immediate necessary action in this regard within one month failing which penal action under section 14 as well as section 36 and 37 and notice under section 63 of the Act, 2016 will be initiated and LC is also directed to revisit the site after 25.09.2021 i.e., after completion of one month to check upon the progress and submit the finding report w.r.t. the same.

62. On 06.10.2021, the respondents took a plea that in compliance of order dated 18.08.2021, the respondent has started the work at

"Taksila" but the same could not be completed due to ban on construction work by the NGT and now the said restriction is removed, according the work of removal of certain defects have been recommenced. Further, overhead tanks of some towers have already been repaired and work is at progress for other towers.

63. Thereafter the site of the project was reinspected on 21.12.2021 wherein it was observed that the promoter was addressing the deficiencies as mentioned in the earlier site visit report. On 15.02.2023, the complainant states that report dated 18.03.2021 of Local Commission has been received and respondents were supposed to remove the structural defect. It further states that some of the defects which were not covered in LC report as such plaster of boundary wall, provision of DG set of adequate capacity etc. are not adhered to by the respondent. The complainant and respondent both requested the authority to appoint LC to inspect the matter. Now as per the directions of the authority on 15.02.2023 regarding revisit of project site after one month, the site of project was inspected on 28.03.2023 after information to both the parties i.e., the complainant and the respondent.

64. Sh. SK Puri, Sh. Vikas Bansal, Sh. Tilak Raj and Sh. Dheeraj on behalf of RWA and Sh. Anand Mishra and Sh. Sanjay Bhindwa on behalf of the respondent M/s SVR realtors Pvt. Ltd. Were present during site inspection on 28.03.2023. the attendance sheet duly signed by the complainant and the respondent representatives.

65. The detailed report of site visit is discussed further:

Details of Complaint:

The RWA has raised various issues regarding the defects and deficiency in construction of project. Accordingly, as per directions of

the Authority, the site of project had been inspected on 18.03.2021 wherein the deficiencies pointed out by RWA were physically checked at the site and the detailed report was submitted. The various issues regarding the defects and deficiencies in construction as submitted by RWA are detailed further.

- A. Structural defects
- B. Seepage issues
- C. Substandard plaster

All the above-mentioned issues were checked in detail and the report was submitted. Now the Authority vide it's order dated 15.02.2023 again directed the L C team of the Authority (Sh. JS Sindhu Executive Engineer(M) and Sh. Sumeet, Engineering Officer) to inspect the project site after one month and check the status of removal of deficiencies as already pointed out including the plaster of boundary wall and provision of DG sets of adequate capacity on the project location.

Site observations regarding issues.

The site of project is revisited on 28.03.2023 and the deficiencies as pointed out earlier were checked at the site and the detailed description to each issue is detailed further:

- a) **Structural defects:** The parapet walls on the terrace of towers which were damaged, have been removed by the promoter and the same are replaced with steel railing instead of concrete/brick. Further, two railings have been prepared but pending for installation in absence of residents' approval. • The cracks in the beams have been repaired by the promoter by grouting and further the promoter is repairing the further

cracks as pointed out by RWA in beams joining the tower elevations in two or three beams are being repaired.

b) **Seepage Issue:** Seepage from the overhead water tanks on the terraces of towers has been rectified by the promoter. Seepage in the basement of the project under community building and its surrounding landscaped area is still pending which needs to be rectified. The promoter stated that they are in process to rectify the same with the help of RWA.

c) **Substandard Plaster:** The damaged plaster in the society has been repaired by the promoter by peeling off the damaged plaster and replastering the surface. The damaged plaster of internal face of boundary walls has been replastered by the promoter.

d) **Other issues:** The promoter had installed the two DG of 1010 KVA capacity each in the basement area of the project and stated that the capacity of both DG is sufficient for the society. The promoter submitted the calculation sheet of load of the society which was attached.

The boundary wall has been plastered by the promoter from internal side and the external face of the boundary wall which faces towards the others property is not plastered.

Conclusion: The site of project "Takshila Heights" being developed by "SVR Realtors Pvt Ltd" has reinspected on 28.03.2023 and it is concluded that:

- i. Two occupation certificates have been granted by DTCP, Haryana to the promoter for complete project on dated 05.06.2015 and 13.05.2016.

- ii. The damaged parapet walls of the terrace of towers have been replaced by the promoter by steel railing and two railings are still to be fixed after approval from RWA.
- iii. Cracks developed in the beams have been repaired by the promoter. Further cracks as pointed out by RWA in beams joining the tower elevations in two or three beams are being repaired.
- iv. Seepage in overhead water tanks has been rectified/repared by the promoter.
- v. Damaged plaster has been repaired by the promoter.
- vi. Seepage in the basement of the project under community building and its surrounding landscaped area is still pending which needs to be rectified.
- vii. Internal road of the project has been completed after laying of sewer line.
- viii. Boundary wall of the project is not plastered from outer side facing towards the other property which is vacant as on date.
- ix. The photographs captured at the time of site inspection were attached.

66. After considering from the above facts, the authority is of view that as per section 14(3) of the Act, the respondent/promoter is liable to rectify all the defect 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 major defects has been rectified/repared by the promoter. Subsequently, the promoter is directed to rectified/repared those defects which are left, within 90 days from the date of this order.

67. Further, if the respondent fails to comply with directions of the authority, then allottee can also approach adjudication officer to claim compensation under sections 12, 14, 18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation.

E.I. Interest free maintenance security (IFMS):

68. The complainant submitted that on 19.06.2015, the respondent no. 2 offered the physical possession of flats and asked to deposit interest free maintenance security. This is a security deposit and builder will get interest on amount but has not passed it to the complainants which is illegal, arbitrary and unilateral. On the contrary, the respondent builder submitted that IFMS charges is an adjustable amount, to be adjusted in cases of defaults in maintenance dues.

69. The term IFMS has been defined in clause 23 of the buyer's agreement provides as under:

In case of failure of the Allottee to pay the maintenance bill, other charges on or before the due date, the Allottee in addition to permitting the maintenance agency to deny him/her the maintenance services, also the Company to adjust in the first instance, the interest accrued on the IFMS against such defaults them of maintenance bills and in case such accrued interest falls short of the amount of the default, the Allottee further authorizes the Company to adjust the principal amount of the IFMS against such defaults. If due to such adjustments in the principal amount, the IFMS falls below the agreed sum of Rs. 50 per sq ft. of the Super Area of the said Apartment, then the Allottee (6) hereby undertake(s) to make good the resultant shortfall within fifteen (15) days of demand by the Company Further, the Company reserves the right to increase IFMS from time to time in keeping with the increase in the cost of maintenance services and the Allottee agrees to pay such increases within fifteen days (15) of demand by the Company. If the Allottee fails to pay such increase in the IFMS or to make good the shortfall as aforesaid on or before its due

date, then the Allottee authorize(s) the Company to treat the allotment as cancelled without any notice to the Allottee and to recover the shortfall from the sale proceeds of the said Apartment and to refund to the Allottee only the balance of the money realized from such sale after deducting there from the entire earnest money, interest on delayed payments, any interest paid, due dues as set out in the payment plan. It is made specifically clear and it is so agreed by At and between the Company and the Allottee hereto that this condition relating to IFMS as stipulated in.....

- 70.** IFMS is a lump sum amount that the home buyer pays to the builder which is reserved/accumulated in a separate account until a residents' association is formed. Following that, the builder is expected to transfer the total amount to the association for maintenance expenditures. The system is useful in case of unprecedented breakdowns in facilities or for planned future developments like park extensions or tightening security. The same is a one-time deposit and is paid once (generally at the time of possession) to the builder by the buyers. The builder collects this amount to ensure availability of funds in case unit holder fails to pay maintenance charges or in case of any unprecedented expenses and keeps this amount in its custody till an association of owners is formed. IFMS needs to be transferred to association of owners (or RWA) once formed.
- 71.** In the opinion of the authority, the promoter may be allowed to collect a reasonable amount from the allottees under the head "IFMS". However, the authority directs that the promoter must always keep the amount collected under this head in a separate bank account and shall maintain the account regularly in a very transparent manner. If any allottee of the project requires the promoter to give the details regarding the availability of IFMS amount and the interest accrued thereon, the promoter must provide details to the allottee. It is

further clarified that out of this IFMS/IBMS, no amount can be spent by the promoter for the expenditure he is liable to incur to discharge his liability under section 14 of the Act.

E.II. Maintenance Charges:

72. The issue w.r.t. the maintenance charges was referred to by the allottee. As far as issue regarding advance maintenance charges is concerned, where the said agreements have been entered into before coming into force the Act, the matter is to be dealt with as per the provisions of the builder buyer's agreement.
73. The authority observes that since maintenance charges are applicable from the time a flat is occupied, its basic motive is to fund operations related to upkeep, maintenance, and upgrade of areas which are not directly under any individual's ownership. RERA's provisions enjoin upon the developer to see that residents don't pay ad hoc charges. Also, there should be a declaration from the developer in the documents that they are acting in own self-interest and that they are not receiving any remuneration or kick-back commission. The same has been observed by the **Telangana State Consumer Disputes Redressal Commission in its judgement dated 21.01.2021 while deciding an appeal filed by India Bulls Centrum Owners Welfare Cooperative Society**, which maintains a gated community at lower Tank Bund, in Hyderabad.
74. Thus, the authority is of the view that the respondent is entitled to collect advance maintenance charges as per the builder buyer's agreement executed between the parties. However, the period for which advance maintenance charges (AMC) is levied should not be arbitrary and unjustified. Generally, AMC is charged by the builders/developer for a period of 6 months to 2 years. The authority

is of the view that the said period is required by the developer for making relevant logistics and facilities for the upkeep and maintenance of the project. Since, the developer has already received the OC/part OC and its ample time for a RWA to be formed for taking up the maintenance of the project and accordingly the maintenance charges is handed over to the RWA.

75. Keeping in view the facts above, the authority deems fit that the respondent is right in demanding advance maintenance charges at the rate prescribed therein at the time of offer of possession in view of the judgements (supra). However, the respondent shall not demand the advance maintenance charges for more than one (1) year from the allottee even in those cases wherein no specific clause has been prescribed in the agreement or where the maintenance charges has been demanded for more than a year.

E.III. Club Membership Charges:

76. 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 complainants as per the terms and conditions stipulated in the builder buyer's agreement. It is pertinent to mention here that since, the developer has already received the OC/part OC and the respondent confirms that the club facilities already stands handed over to the association.

E.IV Direct the respondent to handover all assets including but not limited to the community building, convenient shopping building, nursery school as shown in the deed of declaration



along with duly audited maintenance accounts pf society to RWA through proper process.

E.V. Direct the respondent to handover the land acquisition, project details, deed of declaration, assets details.

77. The respondent builder is required to handover all the common areas as per deed of declaration filed with the competent authority alongwith all requisite details including copy of deed of declaration in terms of section 19(5) of the Act to RWA as it has already received occupation certificate.

F. Directions of the Authority:

78. Hence, the Authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016:

- a. The respondent-promoter are directed to get rectify /repair all remaining defect in workmanships, quality, or provisions of services, within 90 days from the date of this order failing which the complainant association may approach adjudicating officer to seek compensation under section 14, 18, 19 and section 71 of the Act of 2016.
- b. The respondent builder is directed to transfer the IFMS amount to the association along with account details of amounts received therein alongwith interest accrued and expenditures incurred, if any.
- c. The respondent builder is directed to handover all the common areas as per deed of declaration filed with the competent authority alongwith all requisite details including copy of deed

of declaration and other plans under section 19(5) of Act of
2016

79. Complaint stands disposed of.

80. File be consigned to the Registry.


Sanjeev Kumar Arora
Member


Ashok Sangwan
Member


Vijay Kumar Goyal
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 04.07.2023


HARERA
GURUGRAM