BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no.	**:**	**6030 of 2019**
Decided on	**:**	**09.01.2023**

SS Hibiscus Apartment Owner's Association ....Complainant

Versus

1. SS Group Pvt. Ltd.
2. Hibiscus Maintenance Pvt. Ltd. ......Respondents

CORAM:

Shri Vijay Kumar Goyal	**Member**
Shri Ashok Sangwan	**Member**
Shri Sanjeev Kumar Arora	**Member**

APPEARANCE:

Shri Venket Rao, Advocate	On behalf of the complainant
Shri Aashish Chopra Senior Counsel with Shri Yashpal Sharma and Dhruv Dutt Sharma, Advocates	On behalf of the respondent

ORDER

1. The present complaint was filed on 28.11.2019. "The Hibiscus" is a group housing colony developed/being developed by M/s North Star Apartment Pvt. Ltd., an erstwhile subsidiary of SS Group Pvt. Ltd. which got amalgamated with the later. The said group housing complex comprises of various buildings, parking spaces and other utilities on the project land admeasuring 13.48 acres. The said project has a total of 268 flats in 12 towers having flats of different sizes and categories including 22 villas and other basic facilities including commercial facilities. The

respondent/builder i.e., M/s S.S. Group Pvt. Ltd. obtained the first part occupation certificate bearing no. ZP-161/SD/(BS) 2014/26238 on 13.11.2014 in respect of all residential towers/buildings except 3 Villas in the project from the DTCP, Haryana. The applications to obtain occupation certificate in respect of remaining 3 Villas, swimming pool & pump room were moved by the respondent no.1 on 11.05.2018 & 28.05.2019 respectively. Subsequently, the occupation certificate for the remaining three villas, swimming pool and pump room was obtained in July 2019 vide memo no. ZP-161/SD(DK)/2019 dated 11.07.2019 and Memo no. ZP-161/SD(DK)/2019/16084 dated 08.07.2019 respectively i.e., after coming into the force of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred to as 'the Act') and the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred to as 'the Rules') framed thereunder. Apart from that, the application to obtain the occupation certificate in respect of commercial facility i.e. shops was moved by respondent no. 1 on 14.10.2019 and subsequently the same was obtained by the respondent no.1 on 03.12.2019 i.e., after coming into force of the Act and even after filing of the present complaint.

A. Facts of the case

2. The complainant has made the following submissions:

i. That M/s North Star Apartments Pvt. Ltd., an erstwhile subsidiary of the promoter which subsequently got amalgamated into the respondent no.1 company obtained license no. 874-877 from the DTCP, Haryana for developing a group housing colony namely "Hibiscus" on land measuring 13.48 acres at Village Adampur, Sector 50, District Gurugram, Haryana. Accordingly, the promoter commenced promotion and advertisement for the sale of flats from the year 2006 and majority of the allottees/buyers

booked their flats from time to time in 2006. The allottees/buyers in the project entered into flat buyer's agreements with respondent no.1 in due course of time after booking. The flat buyer agreements had elaborate terms casting various obligations on the flat buyers and the respondent no. 1. The terms of the buyer agreement leaned heavily in favour of respondent no.1 and the intention of the respondent no.1 was undoubtedly to deny the allottees all valuable rights under the said project and to acquire a dominant position over them.

ii. The allottees made payments to the respondent no.1 in terms of the agreed payment plans without knowing that there was barely any construction activity on the site for significant lengths of time. By January, 2012, the overall state of completion of the project was merely at a dismal 65-70%. Apart from the inordinate delay, there were material changes in the planning of the entire project and there were several deviations in the specifications and layouts. There was an increase in the number of villas, the plans for the common facilities were changed, extent and type of several common facilities, and the building elevations were also varied to a considerable degree. Such material changes were effected without any prior information to the allottees. The allottees also came to know around the year 2012 that the Pool Homes originally marketed were replaced by additional Villas which were not part of the original brochure of the year 2006. Such increase in the Villas added to the density of population living in the project, which led to sharing of common facilities by more number of occupants and the same was never contemplated by the allottees. That the inordinate delay, the material changes and deviations in planning and the one-sided agreements constrained an association of allottees to issue a legal notice to the promoter calling upon the promoter to offer

compensation and to provide a firm timeline to complete the project among other things.

iii. After substantial delay and much persuasion by the allottees, the handing over of the possession of the units started in the year 2012 and the allottees started to take possession of their respective units after the execution of their respective conveyance deeds. However, it is pertinent to note that the promoter had not yet obtained occupation certificate for the project by that date.

iv. It is submitted that an office order was issued from the DTCP, Haryana bearing Memo no.- STP (G)/2013/ 421-456 dated 21.02.2013 to M/s North Star Apartments Pvt. Ltd. with respect to the handing over of the administration of the project to the Board of Managers of the association constituted under the provisions of the Haryana Apartment Ownership Act, 1983 wherein it was specifically directed to handover that part of the project/condominium, for which occupation certificate/completion certificate had been granted, to the Board of Managers of the association, but it was not done.

v. Subsequently, the promoter obtained part occupation certificate bearing no. ZP-161/SD/(BS) 2014/26238 on 13.11.2014 in respect of all except 3 Villas in the project from the Department of Town and Country Planning, Haryana. The occupation certificate for the remaining three villas, swimming pool and pump room was obtained in June/July 2019.

vi. That on obtaining possession, the allottees of the complex came to realize that the complex was teeming with maintenance issues of all sorts. In order to deal with the situation, the buyers in the project formed an association and approached the promoter to remedy the situation who, however, failed to act and address the buyers' grievances. That after

obtaining the occupation certificate, the promoter was bound to handover the control of the society to the residents/owners of the project by holding elections which the respondent failed to do.

vii. That the respondent no.1 was under legal obligation to create an association in a fair and equitable manner and further to assist the association in all measures and hand over the common areas to them in which the respondent no.1 had failed miserably. When the allottees tried to register an association, it was rejected by the District Registrar, Firm and Societies, on the basis that an association of the residents of the project already exists. The buyers came to discover that the promoter had surreptitiously formed an association by the name and style of "SS HIBISCUS APARTMENT OWNERS ASSOCIATION" (herein after referred to as "association" for the sake of brevity) which is a registered society under section 9(1) of the Haryana Registration and Regulations of Societies Act, 2012 in the year 2016 without informing the allottees. It is relevant to point out that the association of the project was registered by the builder with his own family members and a few other individuals.

viii. Thereafter, the allottees made a representation to the Registrar & Dist. Authorities, who then conducted fair elections on 05.05.2018 under their supervision and allowed the new Board of Managers (BOM) comprising of legitimate allottees to take over the association already registered by the promoter.

ix. Subsequently, a letter dated 11.09.2018 bearing Ref. No. - 2018/09/HAOA/04 was issued by the association to the predecessor of respondent no.1 i.e. North Star Apartments Private Ltd. and Hibiscus Maintenance Pvt. Ltd., with respect to handover of common area

maintenance along with IBMS/IFMS deposit of the Condominium to the association.

x. That it is submitted and stated that the respondent no.1 in a malafide manner had refused to transfer the same to the newly elected Board of Managers of the association, subsequent to which the complainant approached the District Registrar on 24.09.2018. Thereafter, the District Registrar, Firm and Societies, Gurugram had issued a letter dated 25.09.2018 to the Director of M/s North Star Apartment Pvt. Ltd. with respect to the transfer of the common area maintenance of the Condominium to the association along with the IBMS/IFMS deposits and other original documents to the elected governing body of SS Hibiscus Apartment Owners Association.

xi. That in spite of the order dated 25.09.2018, the promoters, in an arbitrary manner, did not handover the maintenance of the project to the association. From the bare perusal of the instant letter dated 30.09.2018, it is evident that the complainant association had raised various issues elaborating the situation and other circumstances where the appointed maintenance agency of the respondent promoter had continuously failed in providing proper maintenance to residents of the project.

xii. That contrary to the directions issued by the Ld. District Registrar, the respondent no.1 and his associates made grave threats to the members of the association and physically assaulted one of the residents of the project. Consequently, a complaint was made by the complainant to the Commissioner of Police, Gurugram, Haryana dated 01.10.2018 against the promoter and consequently, one F.I.R. bearing no. - 0452 of 2018 dated 01.10.2018 was filed at Sector-50, P.S., Gurugram.

xiii. Thereafter, the association had issued a letter dated 05.10.2018 to the District Registrar of Firms and Societies, for handover of common area maintenance control along with IFMS / IBMS to the association subsequent to which the District Registrar again on 12.10.2018 directed the promoter to hand over the administration of the project to the association and transfer the IBMS/IFMS to the association.

xiv. That in spite of the orders of the District Registrar, the respondent no.1 refused to hand over the maintenance to the association, subsequent to which, on 17.10.2018, the association approached the police for assistance and resultantly on 19.10.2018, the association, with the assistance of the police and the Ld. Duty Magistrate, as appointed by the Learned Registrar took over the control of the maintenance of the common area and security of the project. That it is submitted and stated that from 19.10.2018 onwards, the maintenance and control of the project is vested with the complainant. That in discharge of their duties under clause 24 (iii) of the Bye-Laws of the association, the duly elected Board of Managers of the complainant appointed M/s Alpha G: Corp Management Services Pvt. Ltd. as the maintenance agency for the project.

xv. That it is submitted and stated that the respondent no.-1 had preferred a writ application before the Hon'ble High Court for the State of Punjab and Haryana at Chandigarh bearing civil writ petition no.- 28290 of 2018 against the complainant and the District Registrar, Firms and Societies, Industrial Development Area, Gurugram, Haryana for the quashing of the order dated 25.09.2018 passed by the District Registrar, Firms and Societies, Industrial Development Area, Gurugram.

xvi. That there have been numerous defaults and violations of laws, rules and regulations on the part of the respondent which are enlisted hereunder:

Grievances of complainant & failure of the respondent no.1 in fulfilment of its obligations are elaborated herein after as follows: **I.** Not allowing for a smooth transition of the control of the project. **II.** Poor maintenance in spite of charging exorbitant maintenance charges. **III.** Non-adherence to sanctioned layout plan and false advertising.

I. Not allowing for a smooth transition of the control of the project.

xvii. The respondent no.1 has been obstinately refusing to handover the maintenance of the project ever since it has obtained the occupation certificate with respect to the project in spite of the many requests and representations of the complainant association and orders/directions of Authorities which is in violation of section 17(2) of the Act. The respondent no.1 has failed to handover the necessary documents and plans, and has failed to transfer to transfer the amount of IFMS including the common areas to the association of the allottees in accordance with the law. The promoter has also not shared the computations of the chargeable area of each unit. Despite the due payment of the respective maintenance bills by the residents of the project, gigantic bill remained pending against the project to various government agencies, which itself creates suspicion against the action of the respondents in the timely payment of the bills and therefore, documentary proof for the same is to be provided by the respondents to the association.

- **CAM Charges:** The promoter had continued to collect monies from the allottees with respect to the maintenance of common area even after the takeover of the maintenance by the association in October 2018. The promoter in an arbitrary manner has refused to pay the CAM charges to the association for all the inventory of apartments and villas held by them, which is contrary to the provisions of the Society Bye-Laws and

Haryana Apartment Ownership Act. Further, the promoter started collecting CAM charges from the allottees after giving possession letter from March 2012. However, it may be noted that the occupation certificate of the project (excluding 3 specific villas, swimming pool and pump room) was received only on November 13, 2014. Thus, for a period of nearly 2 years and 8 months, the promoter was collecting CAM charges from the allottees without having the occupation certificate. Further, the promoter did not pay the CAM charges for all the inventory held by them during the period the maintenance of the condominium was with them through respondent no. 2.

II. Poor maintenance in spite of charging exorbitant maintenance charges

xviii. Hibiscus Maintenance Pvt. Ltd. (hereinafter referred to as HMPL for the sake of brevity) is the nominated service providing agent of the promoter and continued to retain the maintenance of the project which was contrary to clause 7 of the conveyance deed wherein it was agreed that the HMPL shall maintain until the formation of the association of apartment owners only. Even after the collection of such a huge amount under the head as Maintenance Security, which is Rs. 50/- per sq. ft. of super area from each allottee as a condition of possession, the respondent no1. and its agency had failed to provide adequate maintenance service leading to uninhabitable situation prevailing in the project.

xix. In spite of hefty charges towards maintenance paid to HMPL, the respondents had failed to provide the services as per the standards and has violated section 11(4) of the Act. The deficiencies in the maintenance of the project are listed herein below:

- **DG Sets & Power Back Up-** The sanctioned load of the project is approx. 2900 kWh whereas the project currently has 2 DG sets of 1010 kVA and 500 kVA capacities causing significant tripping and failure of the DG system to take the load with increasing occupancy. The promoter is yet to handover the NOCs from the Electrical Inspector to operate the DG sets and the Transformers to the association.
- **Sewage Treatment Plant (STP)-** The promoter never completed and made the STP fully operational and STP area is perennially reeking of foul stench. The association had brought the instant fact to the notice of the promoter on various occasions but the promoter in an arbitrary manner has not provided any timelines to complete and hand over the STP, along with the proper licence and approvals from the HPCB to the association.
- **Fire-fighting system and equipment-** The fire alarm systems are non-functional at several places in the society. The fire line is not charged and there are leakages at several places, which have not been repaired. The respondent is yet to hand over the entire operational fire fighting system. As a result, the Fire Department has not provided its NOC and which is resulting in a critical situation risking the lives of the residents and their property.
- **Seepage and Structural Damage-** Despite repeated requests by the association regarding water seepage in the apartments, stair wells, lobbies, shafts, basement, roof and other common areas, which can be attributed to poor design and construction quality, has not been fixed by the promoter.

- **Rain Water Harvesting System (RWHS)-** The RWHS was never fully completed and made operational by the promoter.
- **Leakage in Swimming Pool-** The construction of the swimming pool is faulty and there is significant seepage of water from the pool into the basement which is significant concern. Several requests have been made by the association to the promoter to fix the seepage but the promoter has paid no heed to the requests of the association.
- **Structural issues in the Penthouses & Roofs-** There is significant seepage and water damage due to structural issues, poor plumbing, lack of waterproofing in the roof of the towers/buildings and from the penthouses constructed by the promoter.

III. Non-adherence to Sanctioned Layout Plan and False advertising

- **Recreational facility-** That as per the sanctioned layout plan, the promoter had to construct 2 Squash Courts in the basement of the complex but the same has not been constructed till date which amounts to misrepresentation and unfair trade practices by the promoter, violating section 12 and 14 of the Act.
- **Nursery School-** The promoter advertised and built 2 lawn tennis courts, which are being used by the residents. However, it has come to the knowledge of the association that the promoter is planning to build a Nursery School in place of one of the Lawn Tennis Courts. It is pertinent to note that the layout which was advertised and shown to the buyers is in variance to the sanctioned plans. In fact, the sanctioned plans have a Nursery School in place of one of the Lawn Tennis Courts. Also, the said fact came to the knowledge of the complainant only on 15.06.2019, subsequently, the complainant association made a

complaint dated 27.08.2019 to that effect to the Director General, Town & Country Planning, Haryana.

- **Commercial Complex-** The promoter has started construction of a commercial complex comprising of 9 shops next to the main gate of the project. They have not constructed the boundary wall of the project towards the front and made the opening of the shops towards the external main/sector road instead of within the project as an amenity for the residents. Further this shopping complex was not indicated in the marketing/advertisement brochures. It is pertinent to note that the promoter is constructing the same in utter violation of the sanctioned plans and hence, the respective arbitrary action of the promoter is contrary to the provisions of section 12 of the Act on account of false and incorrect statements made by the promoter.
- **Community Hall-** Section 2(n)(vii) of the Act states that all community and commercial facilities as provided in the real estate project constitutes the common areas under the Act. It is pertinent to note that the Community Hall along with its rest rooms as developed by the promoter constitutes the common area in accordance with the respective provision of the Act. But the promoter in an arbitrary manner has not handed over the community hall to the association. Rather the promoter had given the same to third party for operating the same as a club/restaurant to receive rent from the same, which amounts to unfair trade practices resorted to by the promoter. Community Hall is part of the super area for which the allottees have already been charged and an integral part of Condominium.

- **Basement Parking-** The promoter has not provided the approved drawings of the basement parking and the allotments to the association and have marked additional parking areas in the driveways and other areas and they are sold at an exorbitant amount to the residents. That the respondent no.1 in an arbitrary manner had charged the stated price for the basement parking from the allottees of the project as the basement parking cannot be charged by the respondent no.1, the same being part of the common areas. Further, the respondent has failed to adhere to his obligations under section 11 and 17 of the Act on account of failure to handover the common area as the promoter continue to claim title to such and derives rent/revenues from certain common area facilities.

xx. **Deed of declaration:** That the Deed of Declaration was executed by the promoter on 28.10.2016 under the provision of the Haryana Apartment Ownership Act, 1983 in respect to the group housing colony "The Hibiscus". From the perusal of the instant DOD, it is evident that the same is contrary to the license terms and other statutory laws as it mentions that "*the un-allotted car parking spaces in the basement/surface are specifically excluded from the common areas in the building and that the Respondent No1. shall have exclusive right to run/operate/dispose of/allot these parking spaces in any manner at its sole discretion*". It is pertinent to state that the basement is part of the common areas and the promoter is prohibited from selling the same and creating third party rights. Further, the Nursery School and the commercial/shopping area has not been included in the common area. The respondent no.1 has violated the terms of section 14(1) of the Act, by not completing the project in accordance with the sanctioned plans, layout plans.

xxi. That the actions of the respondents have been unprofessional and callous. As per Policy Decision of the State Government, the respondent no. 1 was under obligation to handover the administration of the condominium to the association immediately after the grant of occupation certificate for that part of group housing colony and common areas for which the occupation certificate stands granted by the department. Complainant has repeatedly sought the maintenance of condominium and common areas to be handed over after removal of the defects and handing over interest free maintenance security deposit. However, respondent no.1 has completely ignored and failed to hand over the same. Further, there is a contradiction in the sanctioned layout plans and the advertisement of the project. Hence, the respondent no.1 by way of such misrepresentation has indulged in unfair trade practices. There has been inherent defects in the buildings of the project which had been pointed out by the complainant to the respondents. However, no steps have been taken by the respondents to rectify such structural defects. Thus, the allottees of the project are constrained to prefer the present complaint collectively through their association for enforcement of obligations of promoter and redressal of their grievances.

B. Reply by the respondent no.1 i.e., M/s SS Group Pvt. Ltd.

3. The respondent no.1 has submitted as under:

i. That the complaint filed by the complainant is not maintainable before the Ld. Authority, on account of it primarily being a dispute *inter se* the complainant and maintenance agency, Hibiscus Maintenance Pvt. Ltd., a relationship that finds its premise from a 'Maintenance and Service Agreement(s)', which is not within the realm of jurisdiction of this Authority. Further, it is humbly submitted that the grievance of the

complainant solely lies against the maintenance agency, and since the said agency does not come within the ambit of the definition of 'promoter' as per provisions of the Act, the captioned complainant is not maintainable before this ld. authority, and accordingly, is liable to be dismissed.

ii. That the project which is the subject matter of this complaint does not fall within the definition of 'ongoing project' as contained in the Act and the Rules. Rule 2(1)(o) of the Rules defines 'ongoing project'. The occupation certificate for the all the towers in the project stood granted vide memo dated 13.11.2014. This date is evidently much prior to the coming into force of the Rules, and for that matter even prior to the 2016 Act itself. Thus, the project has neither been registered nor is liable for registration under the provisions of the Act and would fall out of the purview of the provisions of the said Act.

iii. That the respondent no. 1 owns land admeasuring 13.48 acres in Village Adampur, Sector-50, Gurugram. The Director Town & Country Planning, Haryana, Chandigarh (hereinafter referred to as '**DTCP**') has issued license bearing nos. 874, 875, 876 & 877 of 2006 for developing a group housing complex on the said land. Thereafter, the respondent no. 1 had obtained approval of Zonal Plan for the said land from the DTCP for developing a group housing complex, vide approval Memo No.21645 dated 18.08.2006 by virtue of which it is permissible to develop and construct the group housing complex on the said land. Pursuant to the permissions and sanctions granted to the respondent no. 1 by various statutory competent authorities, the respondent no. 1 undertook development of the condominium known as 'The Hibiscus'.

iv. That the complex was being developed by M/s North Star Apartment Private Limited, which entity had subsequently got amalgamated into SS

Group Private Limited, respondent no.1 herein, through a scheme of amalgamation approved by the Hon'ble Punjab and Haryana High Court, vide its orders dated 30.09.2014 and 10.11.2014, passed in Company Petition Nos.155 of 2003 and 203 of 2013, w.e.f. 07.03.2015. Accordingly, any reference to the word 'respondent no. 1' in the present petition, be also taken to also mean the erstwhile M/s North Star Apartment Private Limited.

v. That the persons who were interested in purchasing flats in the condominium had entered into various separate and respective 'flat buyer's agreement' with respondent no.1. It had been *inter alia,* agreed as per the terms of the flat buyer's agreement that the maintenance services of the block and/or group housing complex shall be carried out by the respondent no.1 itself or through its nominee and/or further, it has been agreed that the allottee would execute maintenance agreement and had undertaken to abide by the terms and conditions of the maintenance agreement. It is a matter of record that the allottees had executed separate maintenance and service agreements with a company namely Hibiscus Maintenance Pvt. Ltd.

vi. That keeping in view the provisions of Haryana Apartment Ownership Act, 1983 (hereinafter referred to as the '**1983 Act**'), the respondent no.1 executed a Deed of Declaration dated 28.10.2016. Pertinently, it is clearly stated in the said declaration that it is not the final declaration as it had been filed only in respect of those areas/buildings in respect of which occupation certificate had been then granted. Evidently, the declaration, while providing for General Common Areas and facilities for the complete scheme, *inter alia,* provides for common facilities restricted for independent units for individual blocks. Further, it even provides for

common facilities restricted for floor-wise use for individual units on the same floor in the building blocks/towers. As per the terms of the 1983 Act, read with the declaration, an allottee of a flat located in a particular block/tower, can use only those common facilities, which have been restricted for independent units for individual blocks. Keeping in view the nature of General Common Areas and Facilities for the complete scheme, the same continue to be maintained by the developer and its nominee, at least till such time the Completion Certificate for the entire scheme is granted by the competent authority and the final declaration is filed.

vii. That further, as the Bye-Laws of the Apartment Owners' Association were to form part of the aforementioned Deed of Declaration, the respondent no.1, as required, had got an Apartment Owners' Association, in the name of 'SS Hibiscus Apartment Owners Association', formed and registered on 28.06.2016, as per the provisions of 2012 Act. After the formation and registration of the association, the respondent no.1 had asked the residents/allottees of the complex to execute Deeds of Apartments, as the same was a mandatory requirement for claiming and transferring of ownership of apartments under the provisions of 1983 Act and for being inducted as a member in the association. Thereafter, owners of apartments, who submitted application for membership along with requisite fee, were duly inducted in the association as members. There were few allottees who had failed to comply with the provisions of 1983 Act and had not got their Deeds of Apartment registered and accordingly could not be inducted.

viii. That however, some of the residents of the complex had approached the Ld. Commissioner, Gurugram Division with certain erroneous and misconceived issues against the respondent no.1 regarding the formation

of Apartment Owners' Association. Succinctly stated, elections for the Governing Body of the Apartment Owners' Association were held on 05.05.2018 under the auspices of the Authorities and the newly elected governing body was granted approval vide Memo dated 23.05.2018, by District Registrar, Firm and Societies, Gurugram.

ix. That after the elections, respondent no.1 was in receipt of letter dated 11.09.2018, from the complainant, wherein amongst other misconceived, illegal and erroneous demands, the complainant also demanded handing over of the maintenance and upkeep of the complex. In response to the said letter, the respondent vide letter dated 25.09.2018 made a reference to rule 11 (d) of the Haryana Development and Regulation of Urban Areas Rules, 1976 (hereinafter referred to as the '**1976 Rules**'), wherein it has been provided that the developer/licensee would undertake responsibility for the maintenance and upkeep of all roads, open spaces, public parks and public health services for a period of five years from the date of issue of the completion certificate, unless earlier relieved of the said responsibility and thereupon transfer all such roads, open spaces, public parks and public health services free of cost to the Government or the Local Government. It had further been submitted that no direction had been issued by the DTCP, Haryana to the District Registrar in that regard.

x. That thereafter, the respondent no.1 was in receipt of an e-mail dated 28.09.2018 wherein a copy of an order dated 25.09.2018 passed by the District Registrar, Firm and Societies, Gurugram. Upon learning about the issuance of impugned order dated 25.09.2018, the respondent no.1 wrote a letter dated 29.09.2018 to the District Registrar, praying for *inter alia*, an opportunity to file an adequate reply before the District Registrar. Almost immediately, the complainant herein, taking aid of the illegal, void and *non*

est order dated 25.09.2018, passed by the District Registrar, has started creating law and order situation in the condominium.

xi. That vide email dated 27.10.2018, the complainant had stated that they have taken the maintenance control of the common areas of the complex purportedly under the presence of Duty Magistrate and Gurugram Police on 19.10.2018. The control is alleged to have been taken on the basis of not only aforementioned order dated 25.09.2018 but also some order dated 12.10.2018. Being aggrieved of the order passed by the District Registrar, and the illegal action taken by the complainant association under the garb of the said order, respondent no.1 was constrained to file a Civil Writ Petition No. 28290 of 2018 before the Hon'ble High Court of Punjab and Haryana.

xii. That the grievances of the complainant has been divided into three broad categories by the complainant itself:

I. Not allowing smooth transition of the control of the project.

xiii. That with regard to the first grievance, the Hon'ble High Court of Punjab and Haryana is seized of the matter vide *Civil Writ Petition No. 28290 of 2018* titled as *SS Group Pvt. Ltd. Versus District Registrar, Firm and Societies, Gurugram and Another.* The abovementioned Writ Petition had been filed by respondent no. 1 against order dated 25.09.2018, passed by the District Registrar, Firms and Societies, Industrial Development Area, Gurugram, whereby a direction was issued to hand over the maintenance of the common area of the project, along with IBMS/IFMS and other original relevant records to the newly elected Governing Body of SS Hibiscus Apartment Owners Association. Respondent No. 1 has challenged the order dated 25.09.2018 as being *inter alia*, without jurisdiction, illegally, arbitrarily and in violation of principles of natural justice. Even though, the

matter stands *sub judice* before the Hon'ble High Court, the complainant has arbitrarily, and in a misconceived fashion chosen to file the captioned complaint, raising issues upon which the outcome of the Writ Petition would have a substantial bearing.

II. Poor Maintenance in spite of charging exorbitant maintenance charges

xiv. In this regard, the complainant has placed reliance on section 11(4)(a) and section 11(4)(d) of the Act. It is pertinent to note that the obligations on the promoter under the said section can only be enforced '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.' It is the case of the complainant itself that from 19.10.2018 onwards, the maintenance and control of the project has been vested with the complainant, though evidently the alleged maintenance and control has been taken over illegally and misconceivingly. Further, the Hon'ble High Court, vide its order dated 14.11.2018, has ordered status quo to be maintained. Therefore, to seek redressal for any alleged grievances under section 11 of the Act before this Ld. Authority, is not only misconceived but also an abuse of the process of law. Further, in the present case, the project in question had not been registered, as it did not fall within the definition of an 'ongoing project' as defined in rule 2(1)(o) of the Rules. Therefore, no obligation as provided under section 11(4)(a) could have been fastened upon the developer such like respondent no. 1.

xv. Further, the raising of grievances regarding the quality of maintenance services and the alleged unreasonable charges of the same, at this stage are not only highly belated, but also not maintainable before this Ld.

Authority, as the same constitutes a contractual dispute between the allottees and the maintenance agency and do not arise out of any obligations of the promoter. Reference in this regard may be made to clause 10 of the sample flat buyer's agreement and clause 7 of the sample conveyance deed.

III. Non-adherence to sanctioned layout plan and false advertising

xvi. That the third category of grievances of the complainant regarding alleged non-adherence to sanctioned layout plan and false advertising are false, misleading, erroneous and misplaced and cannot be sustained, especially in light of the clauses of the flat buyer's agreement and even the conveyance deed, executed by the allottees with respondent no.1.

xvii. A perusal of the flat buyer's agreement would reveal that the same authorizes the developer on his/her/their behalf to carry out such additions, alterations, deletions and modifications in the building plans of the block, floor plans, flat plans etc. Further, the individual allottees had also accepted, by virtue of the flat buyer's agreement that respondent no.1 has a right to make additions to or to put up additional structures in/upon the said block or anywhere in the said land as may be permitted by the competent authorities and such additional structures shall be the sole property of the developer which the developer shall be entitled to dispose of in any way it chooses without any interference on the part of the flat buyers. A similar provision is also contained in the Conveyance Deed. The Conveyance Deed would also indicate that the vendee/allottee had perused the changes made by the developer in the building/ site plan and has no objection to the said changes made in the building/site plan. Additionally, respondent no. 1 had been required to bring to the notice of the general public the changes made in the sanctioned plans which was

done vide public notices published in two English newspapers dated 10.09.2014. Thus, in any event, it does not lie in the mouth of the association much less any allottee to raise any grievance of any alleged change.

xviii. That false and misconceived pleas have been raised by the complainant with respect to following:

- **Recreational facility-** The averments made by the complainant as to the two squash courts are wholly erroneous in that the sanctioned plans dated 17.04.2007 do not provide for any squash court, and there was no consequential obligation on respondent no. 1 to construct the same. Thus, the allegations regarding misrepresentation under the provisions of section 12 of the Act in light of this are entirely misplaced. Without prejudice to the above, it may be mentioned that, despite being under no obligation to do the same, respondent no. 1 has made a provision for 2 squash courts in the basement of building b-4, but the construction of the same is solely within the discretion of respondent no. 1, and cannot be compelled to do the same under the provisions of any law.
- **Nursery School**: The averment alleging that the nursery school being sought to be constructed by respondent no.1 in place of the lawn tennis courts, is based purely on surmises and conjectures by the complainant, and is even contrary to the evidence sought to be relied upon by the complainant itself. It is a matter of record, as admitted by the complainant in the pleading submitted by it that the lawn tennis courts have already been built by respondent no.1 appurtenant to Block C and Block B-2. The site for the proposed nursery school, though was provided near Block C as per the sanctioned plan, has been moved near Block D-4, as per the As-Built-Plan. Thus, evidently, the nursery school

is not being built over the lawn tennis court, and accordingly, the allegation of mental agony and damage being caused to the members of the complainant association from merely by acquiring the knowledge of the plans to construct the nursery school, is entirely fictitious.

- **Commercial Complex**: It is submitted that the commercial complex has been constructed by respondent no. 1 in terms of the provisions of the Letter of Intent and the conditions of the license issued to it, wherein 0.5% of the permissible FAR of land is to be utilized in the construction of convenient shopping centre. Though, in the interest of fairness and full disclosure, it may be also be submitted that as per the approved plan, the commercial area was to be located under Block D-4, however, it was relocated near the main gate, and the same has been approved/acknowledged with payment of composition charges amounting to Rs. 5,67,989/- duly being made for the said variation. It may further be mentioned that occupation certificate dated 03.12.2019 in respect of the same has also been duly issued. All the averments made by the complainant with regard to the construction of the commercial complex are erroneous and misconceived.
- **Community Hall**: It is submitted that the Community Hall has been expressly excluded from the purview of the flat buyer's agreements that had been executed by the members of the complainant with respondent no. 1. Reference in this regard may be made to clause 1.3 of the agreement. Even further, they have also been expressly stated to remain the property of respondent no.1 as per the terms of the conveyance deed executed by the members of the complainant association. The averments made by the complainant in this regard as such are misconceived and misplaced.

- **Basement Parking**: The averments made with regard to the 'basement parking' are misconceived and misplaced. It is submitted that the basement car parking have been reserved for the allottees and the Apartment Buyers' Agreement contained a break-up of the total price of the apartment which included exclusive use of earmarked parking space as a separate charge. The contention of the complainant that an exorbitant amount is being charged from them in reference to car parking is baseless and contrary to the agreements entered into by the allottees of their own volition.

  It is further submitted that parking in the basement is not a part of the common area of the project and has been specifically excluded from the common areas even in the Deed of Declaration, filed under the provisions of the 1983 Act. In light of the above, the reliance sought to be placed upon sections 11(4)(f) and 17 of the 2016 Act by the complainant can also not be sustained.
- **Deed of Declaration**: The averments made with respect of the basement parking and the nursery school and commercial area being excluded from the deed of declaration need to be seen in light of the provisions of the Rules read in conjunction with the 1983 Act and the Rules framed thereunder, keeping in line with which the Deed of Declaration dated 28.10.2016 has been filed. The specific area comprising of the basement parking, nursery school, and convenience shop(s)/store(s) has been specifically excluded from common areas in the Deed of Declaration filed by the developer under the provisions of the 1983 Act.

xix. Therefore, all the reliefs as claimed by the complainant are false and misleading and therefore denied, and accordingly, as the complainant is

not entitled to any relief and the captioned complaint is liable to be dismissed, in the interest of justice, equity and good conscience.

C. Reply by the respondent no.2 i.e., M/s Hibiscus Maintenance Pvt. Ltd.

4. The respondent no.2 has submitted as under:

i. That the complainant has erred in seeking to invoke the jurisdiction of this Ld. Authority under the Act and seeking reliefs, especially *qua* the respondent no.2, which are not provided for, or envisaged under the Act. Consequentially, the answering respondent beseeches this Ld. Authority that the above captioned complaint be dismissed on the ground of lack of jurisdiction, as also mis-joinder of parties.

ii. That a perusal of the scheme and the provisions of the Act would make it evidently clear that while obligations have been placed upon promoters, real estate agents, and even allottees under various provisions of the Act, and the Rules framed thereunder. However, no obligations have been placed upon the maintenance agencies as such like the present answering respondent under the Act.

iii. That the answering respondent cannot in any event be said to fall within the definition of 'promoter' as provided under section 2(zk) of the Act. Therefore, it can be inferred with marked certitude that the Act was not enacted, nor was it envisioned to govern the relationship between a Maintenance Agency, such as the answering respondent, and the allottees/association of allottees such like the complainant association.

iv. That the relationship between the answering respondent and the members of the complainant–association arises out of, and is ought to be governed by and in terms of, the Maintenance Agreement that has been executed between them.

v. That a perusal of the above mentioned Maintenance Agreement would reveal that in case of disputes between the parties to the agreement, a remedy is provided in the form of arbitration, wherein reference would be made to the arbitration of a sole arbitrator appointed mutually by both the parties, and the decision of the Arbitrator shall be final and binding on the parties.

vi. That the remedy in the case of any alleged deficiency of service *qua* the answering respondent would lie in the form of a civil dispute and attempt of the complainant to invoke the jurisdiction of this Ld. Authority is wholly misplaced and erroneous.

vii. It is, therefore, respectfully prayed that keeping in view the aforementioned submissions, the reliefs as claimed by the complainant are beyond the purview of the Act, qua the answering respondent to say the least, and accordingly, the captioned complaint is liable to be dismissed, in the interest of justice, equity and good conscience.

5. Before proceeding further, it would be appropriate to make brief reference to the developments made in the present matter chronologically. The important orders passed in the case are re-capped as under:

   a. **Order dated 29.09.2021:** During the proceedings, the counsel for the complainant has raised various issues regarding deficiency in services, deviations in the sanctioned plans, certain structural defects, defect in workmanship. Thus, the authority has framed 16 issues which required determination by the authority. One such issue i.e., "Whether the project "Hibiscus" requires registration under the provisions of Real Estate (regulation and Development) Act. 2016 and the Rules framed thereunder, if so, to what effect?" The authority while dealing with the matter ordered particularly in paras 12 to 14

of the order that the project is on-going one and requires registration as per the provisions of Act, 2016 and the rules and the regulations framed thereunder. Also, taking into the consideration, the submissions made by the complainants, the authority appointed local commission to visit the project and to submit a detailed report on certain issues. Further, J Mandal & Company, Chartered Accountants was appointed to carry out the Forensic Audit of the amount of IFMS and CAM collected by the respondent from the allottees.

b. **LC report:** In pursuance of the order dated 29.09.2021, the requisite report was submitted by the local commission and was placed on record.

c. **Forensic audit report:** In pursuance of the order dated 29.09.2021, the requisite forensic report was submitted on 28.10.2022.

d. **Order dated 24.04.2023:** An application was moved by the complainant association on 28.03.2023 for restraining the shop-owners from refurbishing the illegally constructed shops in the project. Similarly, the builder also filed an application for restoration of power connection illegally disconnected by the complainant association to the above mentioned shops.

While disposing of both the complaints, it was held that the occupation certificate for the convenient shopping was received on 03.12.2019 after being compounded and the complainant association cannot disconnect the power connection to the shop, the same being the basic facility for those premises. The complainant association was directed to restore the power connection to those shops immediately. Thus, the application filed for restoration of power connection to these shops was allowed and the application filed by the complainant

for restraining the shop-owners from refurbishing the illegally constructed shops was rejected by the authority.

e. **Order dated 07.08.2023:** The order dated 24.07.2023 was challenged by the complainant association before the Hon'ble Haryana Real Estate Appellate Tribunal. The said appeal was disposed of by the Hon'ble Appellate Tribunal vide order dated 07.08.2023 while holding that earnest efforts shall be made to provide temporary connection within 10 days.

D. Issues to be decided

6. The authority vide its order dated 29.09.2021 framed 16 issues which are relevant for dealing with the controversy in present matter and they are as under:

   a. Whether the project "Hibiscus" requires registration under the provisions of the Act and the rules framed thereunder, if so, to what effect?

   b. Whether the complaint against respondent no.2 is maintainable or not?

   c. Whether the respondents were well within their rights to collect CAM charges from the Allottees prior to obtaining the part occupation certificate?

   d. Whether the respondent no.1 is under legal obligation to pay the CAM charges of the Apartments owned by the respondent no.1 in the project?

   e. Whether the respondents are under legal obligation to keep the amount of IFMS in Fixed Deposit and transfer the deposit with interest to the association of allottees as and when maintenance is taken over by the association? If so, to what effect?

f. Whether the construction of the extra villas and commercial facility i.e., 9 shops at the main gate of the complex with opening on the main road in violation of the sanctioned plan without getting the plan revised as per law is illegal?

g. Whether the proposal of the respondent no.1 to shift the site of the Nursery School to Children Park area without getting the plan revised is as per law?

h. Whether the respondent no.1 cheated the owners/allottees by selling the complex by showing the site of nursery school (as per Sanctioned Plan) as Tennis Court?

i. Whether the party hall/Club is part of common areas and facilities?

j. Whether the commercial facility, nursery school and the basement are part of common area? If so, to what effect?

k. Whether the Deed of Declaration filed by the respondent no.1 is not as per law? If so, to what effect?

l. Whether the respondent no.1 is under legal obligation to transfer the common areas to the association of allottees?

m. Whether the respondent no.1 is under legal obligation to handover the documents pertaining to the project to the complaint?

n. Whether the respondent no.1 is under legal obligation to disclose the computations of the super area/saleable area to the allottees and justification of increase in super area?

o. Whether the respondent no.1 has committed fraud by obtaining the occupation certificate of the swimming pool despite having defects/being incomplete? If so, to what effect?

p. Whether the respondent no.1 is liable to pay compensation to the allottees for the deficiencies pertaining to the following:

i. Seepage & structural damage
ii. Penthouse and roofs
iii. Amenities
iv. DG sets & power Backup
v. Swimming pool
vi. Sewage Treatment Plant
vii. Firefighting equipment
viii. Rain water harvesting system

E. Determination of issues by the authority

Issue a. Whether the project "Hibiscus" requires registration under the provisions of the Act and the rules framed thereunder, if so, to what effect?

7. The present issue was decided by the authority vide its order dated 29.09.2021 whereby particularly under para 12 to 14, it was held that the present project falls within the definition of 'ongoing project' and thus requires registration under the Act and the rules and regulations made thereunder.

8. For the sake of brevity it is reiterated that no completion certificate has yet been obtained by the promoter-builder till date in respect of the project 'Hibiscus' and the part-occupation certificates have also been obtained by the respondent-promoter much after coming into force of the Act and thus the project requires registration under the Act and the rules and regulations made thereunder. For non-registration of the project, the authority has already initiated suo-moto proceedings vide suo-moto complaint bearing no. CR/1782/2023 which are to be dealt separately.

Issue b. Whether the complaint against respondent no. 2 is maintainable or not?

9. The counsel for the complainant submitted that the respondent no.2 falls within the ambit of the Act, 2016 as there is 'Principal and Agent' relationship between the respondent no. 1 and 2. Further, as per the

provisions of section 11(4)(a) and (g) of the Act of 2016, the respondent no.1 is liable/responsible to maintain the project.

10. The respondent no.2 has contended that the present complaint is not maintainable against it as, the Act cast obligations upon the promoters, real estate agent and the allottee, however, the respondent no.2 cannot in any event be said to fall within the definition of promoter. Thus, the present complaint shall be dismissed.

11. The authority observes that section 31 of the Act empowers an aggrieved person to file a complaint against any promoter, allottee or real estate agent as the case may be. Section 31 of the Act reads as under: -

> *"31. **Filing of complaints with the Authority or the adjudicating officer.** —(1) Any aggrieved person may file a complaint with the Authority or the adjudicating officer, as the case may be, for any violation or contravention of the provisions of this Act or the rules and regulations made thereunder, against any promoter, allottee or real estate agent, as the case may be."*

12. It is pertinent to note that the aforesaid provision entitles any aggrieved person to file a complaint with the authority or the adjudicating officer, as the case may be, for any violation or contravention of the provisions of this Act or the rules and regulations made thereunder, against any promoter, allottee or real estate agent, as the case may be. The respondent no.2 does not fall within the definition of promoter, allottee or a real estate agent as per sections 2(zk), 2(d) or 2(zm) of the Act respectively. The respondent no.2 is not covered under either of the definitions under the Act. Thus, the present complaint is not maintainable against the respondent no.2.

Issue c. Whether the respondents were well within their rights to collect CAM charges from the Allottees prior to obtaining the part occupation certificate?

Issue d. Whether the respondent no.1 is under legal obligation to pay the CAM charges of the Apartments owned by the respondent no.1 in the project?

13. The counsel for the complainant stated that the promoter started collecting Common Area Maintenance (CAM) charges from the allottees after giving possession letter from March 2012. However, it may be noted that the occupation certificate of the project (excluding 3 specific villas, swimming pool and pump room) was received only on 13.11.2014. Thus, for a period of nearly 2 years and 8 months, the promoter was collecting CAM charges from the allottees without having the occupation certificate. Further, the promoter did not pay the CAM charges for all the inventory of the apartments and villas held by them during the period the maintenance of the condominium was with them through respondent no. 2. It is submitted that the said non-transfer of CAM charges has larger implications on the allottees.
14. The counsel for the respondent contended that the project in question had not been registered as it does not fall within the definition of an 'ongoing project' as defined in rule 2(1)(o) of the rules. Therefore, no obligation as provided under section 11(4)(a) & (d) of the Act could have been fastened upon the respondent no. 1. Further, respondent no.1 is not under an obligation to pay common area maintenance charges on the apartments which have not yet been sold is inasmuch as neither the 2016 Act nor the 2017 Rules require the promoter to pay maintenance charges towards the unsold units. In the absence of any statutory provisions, the maintenance charges, if any, can only be charged as per the terms of an express agreement entered into between the parties. However, no such agreement has been entered into between respondent no.1 and the complainant whereby the respondent has consented to paying any maintenance charges in respect of the unsold units. In addition to the above, the respondents were also well within their rights to collect CAM charges from

the allottees prior to obtaining the OC in as much as respondent no.1 had offered possession of the units to the allottees in 2012 itself and the allottees had taken over possession in 2012, as is admitted by the complainant itself in the complaint. Moreover, the grievances pertaining to charging CAM charges before receiving OC, besides being misplaced, are highly belated and the complainant is estopped from raising such issues at this stage after passing of many years and having paid the said charges without any demur or protest.

15. The authority vide its order dated 29.09.2021 appointed local commission to visit the project and to submit a detailed report on certain issues and further, J Mandal & Company, Chartered Accountants was appointed to carry out the Forensic Audit of the amount of IFMS and CAM collected by the respondent from the allottees. In pursuance of the order dated 29.09.2021, the requisite forensic report was submitted on 28.10.2022. As per the forensic report dated 28.10.2022, the CAM charges are categorized under three stages which is enlisted below:

S.no.	Stage	CAM charges collected
1.	Prior to first OC i.e., till 13.11.2014	Rs.2,80,74,385/-
2.	W.e.f 14.11.2014 till 18.10.2018 i.e., when the association took over the maintenance	Rs.13,31,40,027/-
3.	Payable by the developer of the apartments owned by it to the association for the period from 18.10.2018 when association took control till 30.06.2022	Rs.6,46,36,219/- (recoverable from the developer)

16. The authority observes that w.r.t the Common Area Maintenance (CAM), the Act mandates under section 11(4)(d) of the Act that the developer will

be responsible for providing and maintaining the essential services, **on reasonable charges, till the taking over of the maintenance of the project by the association of the allottees**. Section 19(6) of the Act also states that every allottee, who has entered into an agreement for sale, to take an apartment, plot or building as the case may be, under section 13, shall be responsible to make necessary payments in the manner and within the time as specified in the said agreement for sale/the builder buyer's agreement and shall pay within stipulated time and appointed place, the share of the registration charges, municipal taxes, water and electricity charges, **maintenance charges**, ground rent and other charges, if any.

17. Maintenance charges essentially encompass all the basic infrastructure and amenities like parks, elevators, emergency exits, fire and safety, parking facilities, common areas, and centrally controlled services like electricity and water among others. Initially, the upkeep of these facilities is the responsibility of the builder who collects the maintenance fee from the residents. Once a resident's association takes shape, this duty falls upon them, and they are allowed to change or introduce new rules for consistently improving maintenance. In the absence of an association or a society, the builder continues to be in charge of maintenance. Usually, maintenance fees are charged on per flat or per square foot basis.

18. **CAM charges prior to first OC i.e., 13.11.2014:** It is an undisputed fact that the allottees had taken possession of the respective flats in the year 2012 without receipt of the occupation certificate by the competent authority. The complainant is claiming refund of the CAM collected for the period till 13.11.2014 but admittedly the possession was already taken by the allottees in the year 2012 and they have been enjoying the possession

of the respective flat along with the common areas and facilities. The basic motive behind collecting maintenance is to upkeep, maintenance, and upgrade of areas which are not directly under any individual's ownership and the promoter has maintained the project premises for such period. If the promoter offers possession of the unit illegally without obtaining occupation certificate, he may be proceeded under the applicable law and penalty can be imposed for handing over possession to the allottee without receipt of occupation certificate. However, it does not also lie in the mouth of the complainant to take double benefit, one by taking possession of the subject unit and second by seeking refund of the common area maintenance charges at such a belated stage and hence, respondent was entitled to charge maintenance charges for this period from those allottees who have chosen to take over the possession prior to grant of occupation certificate.

19. **For refund of common area maintenance for the period w.e.f. 14.11.2014 till 18.10.2018 (when the association took over the maintenance):** As far as issue regarding common area maintenance charges is concerned where the flat buyer's agreements have been entered into before coming into force the Act of 2016, the matter is to be dealt with as per the provisions of the builder buyer's agreement. The authority is of the view that the respondent obtained the occupation certificate from the competent authority on 13.11.2014 in respect of Blocks A1, A2, A3, B1, B2, C, D1, D2, D3, D4, D5, D6, E (9 villas), F (10 villas) and EWS. Rule 11(d) of Haryana Development and Regulation of Urban Areas Rules, 1976 (hereinafter referred to as the '**1976 Rules**'), provides that the developer/licensee would undertake responsibility for the maintenance and upkeep of all roads, open spaces, public parks and public health

services for a period of five years from the date of issue of the completion certificate, unless earlier relieved of the said responsibility and thereupon transfer all such roads, open spaces, public parks and public health services free of cost to the Government or the Local Government.

20. Further, the Real Estate (Regulation and Development) Act, 2016 completely came into force on 01.05.2017. A quick glance at the provisions of the Act may be taken in this respect to the responsibility of the promoter for providing and maintaining essential & common services at a reasonable charge payable by the flat purchasers till the time the co-operative housing society or RWA is formed. As per section 11(4)(d) of the Act, the promoter shall 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. From the aforesaid provisions, it is evident that the promoter is to provide and maintain essential services in the project till the taking over of the maintenance of the project by the association of the allottees. It is obligation of the promoter under section 11(4)(e) of the Act to enable the formation of an association of the allottees under the laws applicable. Section 11(4)(g), provides that the promoter shall be responsible to pay all outgoings until it transfers the physical possession of the real estate project to the allottees or the association of allottees, as the case may be, which it has collected from the allottees, for the payment of outgoings (including land cost, ground rent, municipal or other local taxes, charges for water or electricity, maintenance charges, including mortgage loan and interest on mortgages or other encumbrances and such other liabilities payable to competent authorities, banks and financial institutions, which are related to the project. Section 17(2) of the Act says that after obtaining

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

21. The counsel for the complainant submitted that on 19.10.2018, the association with the assistance of the police and the Ld. Duty Magistrate as appointed by the Ld. Registrar had taken control of the maintenance of the common area. However, being aggrieved by the order passed by the District registrar and action taken by the complainant association, the respondent no.1 has filed Civil Writ Petition no. 28290 of 2018 before Hon'ble High Court of Punjab and Haryana. Vide order dated 14.11.2018, the Hon'ble High Court has ordered "*Process dasti as well for service on respondent no.2. Status quo be maintained till then.*" On the next date of hearing, the appearance was marked on behalf of the respondent no.2 however, status quo was not extended further. Thus, there is no embargo in proceeding further with the present complaint. Moreover, the complainant association is already in control of maintenance of the project as admitted by both the parties and no change or alteration is being sought by either of the parties.

22. Keeping in view the aforesaid facts and provisions of law, the authority is of the view that the respondent is entitled to collect common area maintenance charges for the period w.e.f. 13.11.2014 till 18.10.2018 as per the terms and conditions of the builder buyer's agreement executed between the promoter and the respective allottees. Though the respondent is liable to give justification with respect to the expenditure incurred from the common area maintenance so collected from the

allottees within 60 days and is directed to handover the remaining balance amount to the association in view of the foregoing provisions within 3 months from the date of this order. If any such expenditure is found to be in conflict with the permissible deductions as per law, the same shall also be transferred to the association.

23. **Whether CAM is payable by the developer of the apartments owned by it to the association for the period w.e.f. 18.10.2018 till 30.06.2022**- The authority observes that the maintenance charges are payable by the ***owners of the residential unit*** on monthly or quarterly basis at the time of offer of possession after the receipt of the occupation certificate. But there are certain cases, where the units are not sold to anyone or in simple words, there are unsold inventories; an important question which needs to be adjudicated and put forth before this authority in the present matter is that "*who will pay the CAM charges for these unsold inventories?*"

24. The authority is of the view that as there are no respective allottees regarding these unsold inventories which means that these inventories are still in possession and under the ownership of the promoter builder which will lead us to a logical conclusion that as in every eventuality the owner pays for the CAM charges, similarly regarding these unsold inventories, the promoter builder being the owner of the unsold inventories will have to pay the CAM charges. Further, section 19(6) of the Act mandates that every allottee shall be responsible to make necessary payments in the manner and within the time as specified in the said agreement for sale/the builder buyer's agreement and shall pay within stipulated time and appointed place, the share of the registration charges, municipal taxes, water and electricity charges, **maintenance charges**, ground rent and other charges,

if any. On same analogy, the maintenance charges in respect of the unsold inventories shall be payable by the promoter being the owner of those inventories. Thus in view of the above, the complainant-association is entitled to levy and recover the maintenance charges in respect of the unsold inventories from the respondent no.1.

Issue e. Whether the respondents are under legal obligation to keep the amount of IFMS in Fixed Deposit and transfer the deposit with interest to the association of allottees as and when maintenance is taken over by the association? If so, to what effect?

25. The counsel for the complainant submitted that respondents have also failed to transfer the Interest Free Maintenance Deposit (IFMS) collected from the allottees at the rate of Rs.50 per sq. ft. of super area which is estimated to the tune of Rs.5.14 crores to the complainant association (excluding interest on the deposit amount).

26. The counsel for the respondent submitted that the amount towards IFMS has been collected as per the terms agreed between the parties in the builder buyer agreement. Respondent no.1 is only required to handover the IFMS corpus after settlement of accounts and adjustment of outstanding amounts, if any. Moreover, there exists a recoverable amount of Rs.2.36 crores from various allottees which remains unsettled till date and hence recoverable from the outstanding IFMS as per terms of agreement. The respondent further submitted that as per terms of agreement, the allottee was under obligation to deposit and keep deposited IFMS with the respondent no.1. Although the IFMS was collected by the maintenance agency i.e. respondent no.2, the same was transferred to respondent no. 1 as per terms of builder buyer's agreement. Therefore,

the auditor's opinion of transfer of amount being in contravention of the Act is not only unjustified and without any basis but also fallacious.

27. The issue regarding the IFMS has already been decided by the authority in complaint bearing no. ***CR/4031/2019 titled as Varun Gupta Vs. Emaar MGF Land Ltd.*** wherein it was held that the promoter may be allowed to collect a reasonable amount from the allottees under the head "IFMS". However, the authority directs and passes an order 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.

28. As per forensic audit report dated 28.10.2022, following observation has been made w.r.t IFMS '*it had collected Rs.4.41 crore (This differs from the balance sheet's 4,22,21,750 amount) as IFMS from 197 allottees through its associate company M/s Hibiscus Maintenance Pvt. Ltd. and took the money back from M/s Hibiscus Maintenance Pvt. Ltd. as loan. The developer/ M/s Hibiscus Maintenance Pvt. Ltd. being the trustee of the amount was supposed to keep the same in fixed deposit carrying the maximum rate of interest but instead of keeping the amount in fixed deposit, it put the money to its own use.*'

29. The authority is of the view that the purpose for collecting IFMS is that when certain unforeseen eventuality arise for any reason then the said fund may be used to upkeep and manage the subject project. With the complete trust, the allottees had handed over their hard-earned monies to the maintenance agency and in the present case, the maintenance agency given that amount as loan to the respondent builder. In view of the above,

the respondent is directed to handover the amount of IFMS collected by it along with the interest accrued on that amount coupled with all the details regarding the IFMS amount and the interest accrued thereon. 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.

Issue f. Whether the construction of the extra villas and commercial facility i.e., 9 shops at the main gate of the complex with opening on the main road in violation of the sanctioned plan without getting the plan revised as per law is illegal?

30. The counsel for the complainant submitted that the respondent no. 1 has started construction of a commercial complex comprising of 9 shops next to the main gate of the project. They have not constructed the boundary wall of the project towards the front and made the opening of the shops towards the external main/sector road instead of within the project as an amenity for the residents. Currently there is a visitor parking area operational in the place where the shopping complex and boundary walls are earmarked. During the pendency of the complaint, the respondent no. 1 completed the construction of the shops and sold those shops to different persons without getting the project registered under section-3(1) of the Act. The respondent no. 1 also obtained occupation certificate in respect of those shops vide Memo no. ZP-161/JD(NC)/2019/29681-686 dated 03.12.2019. On examination of the record, it was found that the respondent no. 1 had shifted the location of the commercial facility from Block-D4 to the main gate of the complex with opening towards the main gate without getting the layout plan revised as per law.

31. The counsel for the respondent submitted that earlier, the said convenient shopping center was situated on the ground floor of building nos.3 and 4, which was later shifted to accommodate construction of a bigger club and gym for the benefit the residents. The said change was conceived way back in the year 2014 itself, though the OC was granted in 2019 on completion of the convenient shopping center. The respondent no.1 had also constructed a convenient shopping center (comprising of 9 shops), the construction whereof was stated to be an excess area of 2666.135 sq. ft. (247.6921 sq. m.) for which though the plans were not initially sanctioned, the construction conformed to the Building Bye-Laws/Zoning and was hence compoundable. Respondent no.1 was therefore charged a composition fee of Rs. 5,67,989/- by the DTCP, upon payment whereof, even the said construction stood regularized and OC granted for the shops vide memo dated 03.12.2019. Further, all the shops of the convenience center have been sold and third party rights have been created.

32. This issue has been delineated by the authority vide order dated 24.04.2023 wherein it was held that the though the convenient shopping centre was shifted from its originally sanctioned location in the layout plan, the DTCP which is competent authority in this regard, has already compounded the violation by charging a composition fee of Rs. 5,67,989/- and on payment of the same, the said construction stood regularized, leading to the issuance of occupation certificate dated 03.12.2019. It was further held that notwithstanding the fact that the shops built by the respondent have been duly compounded and stand granted occupation certificate, it prima facie constitutes violation of the provisions of section 14(1) of the Act as there is no evidence on record regarding the respondent

having obtained the consent of the allottees before affecting change in approved layout plans.

33. Thus, for changes made in plans without prior consent of two-third allottees in contravention of the provisions of section 14(1) of the Act, the penal action under provisions of section 61 of the Act be clubbed along with the suo-moto complaint bearing no. CR/1782/2023. Further, the complainant is at liberty to approach the adjudicating officer for seeking compensation in terms of section 14(3) of the Act.

Issue g. Whether the proposal of the respondent no.1 to shift the site of the Nursery School to Children Park area without getting the plan revised is as per law?

Issue h. Whether the respondent no.1 cheated the owners/allottees by selling the complex by showing the site of nursery school (as per Sanctioned Plan) as Tennis Court?

34. The counsel for the complainant submitted that the layout which was advertised and shown to the buyers is at variance to the sanctioned plans. In fact, the complainant found out later that the sanctioned plan of the subject project has a nursery school in place of one of the lawn tennis courts. The respondent no.1 has blatantly cheated and misled the buyers to believe in the advertised plans and has thereby caused mental agony and damage to the allottees. The aforementioned fact came to the knowledge of the complainant association on 15.06.2019 and immediately the complainant association made a complaint dated 27.08.2019 to that effect to the Director General, Town & Country Planning, Haryana. The action of the promoter of building a nursery school in place of tennis court will amount to the unfair trade practices and will be contrary to the

provisions of section 12 of the Act of 2016 and are in complete contradiction to the advertisement published by the respondent no. 1.

35. The counsel for the respondent submitted that it is a matter of record that the lawn tennis courts have already been built by respondent no. 1 appurtenant to Block C and Block B-2. The site for the proposed nursery school, though was provided near Block C as per the sanctioned plan, has been moved near Block D-4, as per the As Built-Plan. It is further submitted that nursery school is as per norms of DTCP, Haryana. The site for the same is reserved and respondent-company shall construct the nursery school, if so directed.

36. The local commission appointed by the authority inspected the project site on 11.11.2021 and it has been reported that *"As per approved plan in 2007 by the competent authority and as per as built plan certified by the promoter only, the site for nursery school in the project has been sanctioned near tower C but the promoter has developed the badminton court and children park on those sites."*.

37. The authority observes that the complainant association in the present point has sought a relief from this authority for contravention of section 12 of the Act, 2016. The proviso to section 12 of the Act clearly provides that if the allottee is affected by incorrect, false statement contained in the notice, advertisement or prospectus, intends to withdraw from the proposed project, he shall be returned his entire investment along with interest at such rate as may be prescribed and the compensation in the manner provided under this Act. Based on the representations made by the respondent, the counsel for the complainant was specifically asked whether he intend to withdraw from the project and wish to avail remedy of refund of the entire amount paid by them along with interest at the

prescribed rate in terms of section 12 of the Act. The counsel for the complainant answered in negative. So, the complainant association is left solely with a remedy to file a sepatate complaint seeking compensation from the Ld. Adjudicating Officer in terms of section 71 of the Act.

Issue i. Whether the party hall/Club is part of common areas and facilities?

Issue j. Whether the commercial facility, nursery school and the basement are part of common area? If so, to what effect?

Issue k. Whether the Deed of Declaration filed by the respondent no.1 is not as per law? If so, to what effect?

38. The counsel for the complainant submitted that the averments made with respect to the nursery school and commercial area being excluded from the deed of declaration need to be seen in light of the provisions of 2017 Rules read in conjunction with the 1983 Act and the rules framed thereunder, keeping in line with the Deed of Declaration dated 28.10.2016.

39. The counsel for the respondent submitted that the competent authority for adjudicating the above-mentioned issue is DTCP, Haryana and not this Ld. Authority. Assuming though that the said issue could be adjudicated even before this Ld. Authority, the deed of declaration(s) as filed is/are as per law. Further, there is even a policy dated 25.01.2021 issued by the State Government wherein, on account of divergent/conflict definition appearing in respect of common areas in the provisions of 2016 Act and 1983 Act, it has been decided for all intent and purposes, the definition as appearing in 1983 Act would have force. For ease of reference the relevant extract of the Policy is reproduced hereunder:

> *'B. **Treatment of community and commercial facilities falling in licensed colonies:** In order to resolve the situation arising out of conflicting definition of common areas in the RERA Act, 2016, vis-a-vis the Haryana Apartment Ownership Act, 1983, for all intents and purposes, the common areas shall be governed by the definition as provided under the special Act of 1983 ibid in force in the State since*

28.09.1983 and Rules of 1987 framed thereunder. Any contradictory provision / definition as existing in the RERA Act, 2016 shall be considered to be redundant for all facts and purposes.
This is issued with the approval of the competent authority in the Government All necessary steps be taken to ensure the implementation of the decision as above in letter and spirit.' [Emphasis added]

Additionally, the counsel for the respondent further submitted that the common areas as mentioned in deed of declaration are in consonance with the provisions of 1983 Act and the school, does not form part of the common areas.

40. The Authority places reliance on Section 3(f) of the Haryana Apartment Ownership Act, 1983 provides the definition of common areas and facilities wherein except sub-clause (vii) i.e. such commercial activities as may be provided in the declaration, rest of the items shall form part of the common area and facilities. Section 3(f)(iii) provides that the basement parking areas, garden and storage spaces have been included in the common area and facilities apart from other parts. Section 3(f)(i) provides that land on which the building is located is also included in the definition of common area and facilities.

41. Herein, the authority places reference on the Hon'ble Supreme Court judgement in **DLF Ltd. Vs. Manmohan Lowe and others [2014(12) SCC 231]** wherein it was held as under:

*"43. We are also of the view that the High Court has committed an error in directing the DTCP to decide the objections of the apartment owners with regard to the declaration made by the colonizer. The Competent Authority is defined under Section 3(i) of the Apartment Act. Section 11(2) provides for filing of declaration in the office of the Competent Authority. Section 24A of the Act prescribes penalties and prosecution for failure to file a declaration and Section 24B permits the prosecution only with the sanction of the Competent Authority. **In a given case if the developer does not provide common areas or facilities like corridors, lobbies, staircases, lifts and fire escape etc. the Competent Authority can look into the objections of the apartment owners but when statute has given a discretion to the colonizer to provide or not to provide as per Section 3(f)(7) of the***

Apartment Act the facilities referred to in Section 3(3)(a)(iv) of Development Act, in our view no objection could be raised by the apartment owners and they cannot claim any undivided interest over those facilities except the right of user. *In the instant case the apartment owners have raised no grievance that they are being prevented from using the community and commercial facilities referred to in Section 3(3)(a)(iv) of Regulation Act, but they cannot claim an undivided interest or right of management over them."*

42. With regard to the aforementioned issue, the authority observes that the deed of declaration was filed by the promoter/colonizer in the year 2016 under the provisions of the Haryana Apartment Ownership Act, 1983 and as per the principle laid down by the Hon'ble Apex Court **DLF Ltd. Vs. Manmohan Lowe (supra)** before the concerned competent authority. Moreover, the deed of declaration was filed by the promoter prior to the commencement of the Act of 2016 and was filed under the then applicable laws which was in force at that point of time. Thus, regarding the issue of deed of declaration being not as per law, the complainant association is at the liberty to raise the said issue before the concerned competent authority before which the deed of declaration was filed by the promoter.

Issue l. Whether the respondent no.1 is under legal obligation to transfer the common areas to the association of allottees?

Issue m. Whether the respondent no.1 is under legal obligation to handover the documents pertaining to the project to the complainant?

43. The counsel for the complainant submitted that respondents have been obstinately refusing to handover the maintenance of the project ever since it has obtained the occupation certificate with respect to the project in spite of the many requests and representations of the complainant association and orders/directions of authorities. Further, the respondent is required to transfer the necessary documents and project records along

with the CAM charges & IFMS so collected by the respondents to the association of the allottees.

The authority observes that certain rights and obligations which flows to a promoter as per the Act of 2016 are discussed herein below:

44. Section 11(4)(d) states that the promoter shall 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.

45. Moreover, as per section 11(4)(e) of the Act, it is very clear that the promoter is under an obligation to **enable the formation of an association** or society or cooperative society, as the case may be, of the allottees or a federation of the same, under the laws applicable.

46. Section 11(4)(f) states that the promoter shall execute a registered conveyance deed of the apartment, plot or building, as the case may be, in favour of the allottee **along with the undivided proportionate title in the common areas to the association of allottees** or competent authority, as the case may be, as provided under section 17 of this Act.

47. Further, section 11(4)(g) states that the promoter shall pay all outgoings **until he transfers the physical possession of the real estate project to the allottee or the associations of allottees**, as the case may be, which he has collected from the allottees, for the payment of outgoings (including land cost, ground rent, municipal or other local taxes, charges for water or electricity, maintenance charges, including mortgage loan and interest on mortgages or other encumbrances and such other liabilities payable to competent authorities, banks and financial institutions, which are related to the project).

48. Section 17(2) of the Act says that after obtaining OC and handing over physical possession to the allottees in terms of sub section (1), it shall be the responsibility of the promoter to handover the necessary documents, plans, including common areas, to the association of the allottees or the competent authority, as the case may be, as per the local laws. The clause is reproduced below for reference:

> ***17. Transfer of title.***—*(1) The promoter shall execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of the allottees or the competent authority, as the case may be, and hand over the physical possession of the plot, apartment of building, as the case may be, to the allottees and the common areas to the association of the allottees or the competent authority, as the case may be, in a real estate project, and the other title documents pertaining thereto within specified period as per sanctioned plans as provided under the local laws:*
> *Provided that, in the absence of any local law, conveyance deed in favour of the allottee or the association of the allottees or the competent authority, as the case may be, under this section shall be carried out by the promoter within three months from date of issue of occupancy certificate.*
> *(2) After obtaining the occupancy certificate and handing over physical possession to the allottees in terms of sub-section (1), it shall be the responsibility of the promoter* ***to handover the necessary documents and plans, including common areas, to the association of the allottees or the competent authority, as the case may be, as per the local laws****:*
> *Provided that, in the absence of any local law, the promoter shall handover the necessary documents and plans, including common areas, to the association of the allottees or the competent authority, as the case may be, within thirty days after obtaining the [completion] certificate.*

49. From the above provisions, specifically section 11(4)(f) read with section 17 of the Act, it is quite evident that the respondent-promoter is liable to handover the necessary documents, plans, including common areas, to the association of the allottees in the real estate project. In light of the above, the respondent no.1 is directed to handover necessary documents, plans, including common areas, to the association of the allottees in the real estate project within 3 months from the date of this order.

Issue n. Whether the respondent no.1 is under legal obligation to disclose the computations of the super area/saleable area to the allottees and justification of increase in super area?

50. The counsel for the complainant submitted that the respondent no.1 has also not shared the computations of the chargeable area of each unit/flat. In the absence of such data, the complainant association believes that the respondent no.1 has included certain areas unauthorized in the chargeable area, which the complainant association believes are in a violation to the Building Code.

51. The counsel for the respondent submitted that as soon as the construction of the said project is completed, the respondent no.1 had applied to the DTCP, Haryana for grant of OC in respect of blocks A1, A2, A3, B1, B2, C, D1, D2, D3, D4, D5, D6, E (9 villas), F (10 villas) and EWS. Further, as there was deviation from the sanctioned plans so while seeking approval from the DTCP, Haryana, a penalty compensation fee of Rs. 1,38,46,529/- was levied on respondent no.1 by the DTCP, Haryana *inter alia,* for composition of the excess area/deviation for which though the plans were not sanctioned stood regularized upon payment of such fee and DTCP was even pleased to issue OC to for the aforementioned Blocks, vide memo dated 13.11.2014. Therefore, the increase in area/deviations was/were not only permissible in accordance with the terms agreed upon by the allottees in the flat buyer's agreement but was/were even subsequently regularized and hence valid under law. Additionally, it was submitted that before the grant of OC, the respondent No. 1 had been required to bring to the notice of the general public the changes made in the sanctioned plans which was done vide public notices dated 10.09.2014 published in two English and one vernacular newspaper. Pertinently, no objections were received by

any of allottees to the changes made in the sanctioned plans and as such, the allottees are now estopped from objecting to any changes made in the sanctioned plans. Even though the complainant cannot be said to be having any locus to seek disclosure of computations of super area/saleable area much less any justification of the increase, it is not oblivious of the factual aspect, however, without prejudice, an elaborate explanation has been given in that regard in affidavit dated 28.03.2023.

52. This issue has already been comprehensively decided by the authority in complaint bearing no. CR/4031/2019 wherein it was held that there is no harm in charging for the extra area, if justifiable, at the final stage but for the sake of transparency, the respondent-promoter must share the calculations for increase in the super area based on the comparison of the originally approved building plans and finally approved building plans. The premise behind this is that the allottee must know the change in the finally approved lay-out and areas of common spaces viz-a-viz the originally approved lay-out plans and common areas.

53. The authority after hearing both the parties elaborately on this issue is of the view that in the present matter the agreements executed inter se promoter and the respective allottees are pre-RERA agreements. Also, occupation certificate for the project in question has already been obtained by the promoter and respective conveyance deeds had been executed with the respective allottees long back. The authority observes that as per the laws in force at the time when respondent no.1 had applied for OC, the only requirement under law, in case of deviation from sanctioned plans, was seeking approval of the DTCP, Haryana if such deviation/construction was sanctionable after payment of requisite composition fee and in the present matter the promoter had already made

the payment of the composition fee and accordingly, the same stood regularized. However, in view of the judgement of this authority in CR/4031/2019, for the sake of transparency, the respondent-promoter must share the calculations for increase in the super area based on the comparison of the originally approved building plans and finally approved building plans.

Issue o. **Whether the respondent no.1 has committed fraud by obtaining the occupation certificate of the swimming pool despite having defects/being incomplete? If so, to what effect?**

Issue p. **Whether the respondent no.1 is liable to pay compensation to the allottees for the deficiencies pertaining to the following:**

i. Seepage & structural damage
ii. Penthouse and roofs
iii. Amenities
iv. DG sets & power Backup
v. Swimming pool
vi. Sewage Treatment Plant
vii. Fire fighting equipment
viii. Rain water harvesting system

54. The authority vide its order dated 29.09.2021 appointed local commission to visit the project and to submit a detailed report on certain issues. In pursuance of the order dated 29.09.2021, the local commission inspected the project site on 11.11.2021 and submitted a detailed report on 28.01.2022 and 06.09.2022. The concluding paragraph of the LC report is reproduced hereunder:

> *"5. Conclusion*
> *The site of project namely "Hibiscus" being developed by M/s Northstar Apartments Pvt Ltd in sector-50, Gurugram has been inspected on 11.11.2021 and the issues raised by the complainant are cross verified and it is concluded that;*
> 1. *The promoter was directed to provide the documents relating to the project to resolve the issues raised in the complaint prior to site inspection and as well as during the site visit but the promoter provided the insufficient documents.*

Further another intimation was also given to the promoter to submit the necessary documents, but they again failed to submit the same. Therefore, the promoter may be directed to provide the balance documents to resolve the issues of the complainant.

2. *As on date, the repairing work of swimming pool is progressing on site. The estimated amount to complete the repairing work as provided by the complainant is Rs. 52.61 lacs, out of which an amount of Rs. 40.12 lacs have been paid to the firm (i.e., Ecolap Creation LLP). Balance 12.49 lacs are yet to be paid after work completion.*
3. *The sewerage treatment plant has been provided in the basement below EWS tower which is operational as on date. However, the complainant has submitted copies of various notices issued by HSPCB including a copy of notice date 14.01.2022 issued by the HSPCB regarding the discharge of effluents beyond the prescribed standards.*
4. *The promoter had installed the firefighting equipment's in the project, but the fire tender path marked in the sanctioned layout plan is mostly obstructed by developing some architect feature and landscaping on the same. The promoter didn't provide the plan of firefighting system. Further, DULB has rejected the application of fire NOC on 16.09.2021 on account of blocking of fire movement road, unsealed electrical shaft, non-installation of lift well pressurization fan and non-working smoke exhaust fan.*
5. *Rainwater harvesting pits are constructed by the promoter and are well connected from the storm water drains, but as on date the pits are not cleaned due to which they have become un-operational.*
6. *Seepage has occurred in the basement slab of the project and the outer faces of the high-rise towers. The seepage has led to the tearing of plaster and paint of the structures and created unpleasant environment.*
7. *No squash court has been developed by the promoter.*
8. *As per approved plan in 2007 by competent authority and as per as built plan certified by the promoter only, the site for nursery school in the project has been sanctioned near tower C but the promoter has developed the badminton court and children park on those sites.*
9. *The promoter had installed two DG sets of 1x 1010 KVA and 1 x 500 KVA in the basement of the project.*
10. *There are some deviations in the approved site plan which are shown in as built plan certified by the promoter only. The promoter had developed the shopping complex near the entrance of the project facing towards the service road, but the shopping area was sanctioned in the stilt area of tower D. Further, the nursery school was also sanctioned for the project, but the promoter didn't construct the nursery school and developed the badminton court & children park at that place. The promoter had developed five extra villas from the sanctioned number. The entrance of villa E4 is from different direction from that shown in the site plan. Also, the setback between some villas and the site boundary is obstructed to make it exclusive for the use of particular villas.*

HARERA
GURUGRAM

> *11. Details of the super area charged from the allottees is by the promoter and is attached in the file.*
>
> *Twenty four number of photographs captured during site inspection are attached herewith as annex-C."*

55. The authority observes that as per section 14(3) the promoter is liable to rectify any structural defect or any other defect in workmanship, quality or provisions of services if such defect is brought to the notice of the promoter within a period of five years from the date of handing over possession without further charge within 30 days. Further, in the event the promoter fails to rectify the defect within such time, the aggrieved allottees shall be entitled to receive appropriate compensation in the manner provided under the Act.

56. As per the aforesaid LC report, certain defects have been pointed out and a period of 3 (three) months is given to the respondent /builder to rectify the defect and deficiency in construction and services, failing which the complainant association is at liberty to approach the adjudicating officer for failure to rectify such defect within aforesaid time and for seeking appropriate compensation in the manner as provided under the Act as per section 14(3) read with sections 71 & 72 of the Act.

F. Directions of the authority

57. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f) of the Act:

    i. The respondent is directed to handover the amount of IFMS collected by it along with the interest accrued on that amount coupled with all the details regarding the IFMS amount and the interest accrued

thereon. 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.

ii. The respondent no.1 is directed to handover the necessary documents, plans, including common areas, to the association of the allottees in the real estate project within 3 months from the date of this order.

iii. In pursuance to the LC report, a period of 3 (three) months is given to the respondent /builder to rectify the defect and deficiency in construction and services, failing which the complainant association is at liberty to approach the adjudicating officer for seeking appropriate compensation in the manner as provided under the Act as per section 14(3) of the Act read with section 71 & 72 of the Act, 2016.

iv. For the changes made in plans without prior consent of two-third allottees in contravention of the provisions of section 14(1) of the Act, the penal action under provisions of section 61 of the Act be clubbed along with the suo-moto complaint bearing no. CR/1782/2023.

v. The complainant association complainant-association is entitled to levy and recover the maintenance charges in respect of the unsold inventories from the respondent no.1.

58. Complaint stands disposed of.

59. File be consigned to registry.

(Sanjeev Kumar Arora)	(Ashok Sangwan)	(Vijay Kumar Goyal)
Member	Member	Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 09.01.2024