

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

**Date of decision: 05.03.2024**

NAME OF THE BUILDER		Ajay Enterprise Pvt. Ltd.	
PROJECT NAME		Rosewood City	
S. No.	Case No.	Case title	Appearance
1	CR/2457/2021	Wembley Estate Apartment Owners Welfare Association Through Its Secretary V/S Ajay Enterprises Pvt Ltd (Respondent no.1 ) Rakesh Sachdeva (Respondent no.2 )	Sh. Rajesh Kumar (Advocate) Sh.Venket Rao (Advocate)
2	CR/844/2021	Rajni Bala V/S Ajay Enterprises Pvt Ltd	Ms. Vidhi Goel (Advocate) Respondent no. 2 in person

**CORAM:**

Shri. Arun Kumar  
Shri Vijay Kumar Goyal  
Shri Ashok Sangwan  
Shri Sanjeev Kumar Arora

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

**ORDER**

1. This order shall dispose of all the complaints titled as above filed before this authority under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "the rules") for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se between parties.

2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, Rosewood City (Group Housing complex) being developed by the respondent/promoter i.e., Ajay Enterprises Pvt. Ltd. The terms and conditions of the buyer's agreements, fulcrum of the issue involved in all these cases pertains to failure on the part of the promoter to deliver timely possession of the units in question, seeking award of transfer of IFMS amount , audited account statement of IFMS and maintenance and handover of the community building.
3. The details of the complaints, building plans, occupation certificate, completion certificate, deed of declarations and relief sought are given in the table as given in para 7.
4. The detail of project and occupation certificate is given below:-

<b>Project Name and Location</b>	<b>Rosewood City , Sector 49 &amp; 50, Gurugram, Haryana</b>
<b>Occupation certificate: -</b> OC received dated 31.07.2009 and 24.09.2010	

5. The aforesaid complaints were filed by the association/complainant against the promoter on account of violation of the builder buyer's agreement executed between the parties in respect of transfer of IFMS amount, audited account statement of IFMS and maintenance and handover of the community building.
6. The Authority decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter/respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.

7. The facts of both the complaints filed by the complainant(s)/allottee(s) are also similar. Out of the above-mentioned cases, the particulars of complaint case bearing no. 2457/2021 titled as **Wembley Estate Apartment Owners Welfare Association Through Its Secretary V/S Ajay Enterprises Pvt. Ltd. and Rakesh Sachdeva** is being taken as a lead case in order to determine the rights of the allottee(s) qua handover /transfer IFMS and other funds along with interest till realization to the account of the association , furnish audited account statement of IFMS and other funds as well as monthly maintenance, to make the community building club functional for the use of the residents of the society being common amenity as per deed of declaration and handover the same.

**A. Project and unit related details**

8. The particulars of the project, the details of building plans , occupation certificate , completion certificate , deed of declaration , have been detailed in the following tabular form:

**CR/2457/2021 titled as Wembley Estate Apartment Owners Welfare Association Through Its Secretary V/S Ajay Enterprises Pvt. Ltd. and Rakesh Sachdeva**

S. N.	Particulars	Details
1.	Project name and location	"Rosewood City" Sector 49 & 50, Gurugram
2.	Project area	11.158 acres (As per declaration deed-annexure 2 of complaint)
3.	Nature of project	Group Housing Complex
4.	RERA registered/not registered	Not registered
5.	DTPC License no.	Not provided
6.	Maintenance agreement	23.07.2009 (As per page no. 171 of additional copy of complaint)
7.	Registration of society under Society Registration Act, 1860	Registration no. HR018/2014/01304 dated 31.03.2014.
8.	Revised building plans	05.12.2005

		For block C1, C2, D, EWS, community building & shops (As per page no. 200 of additional copy of complaint)
9.	Building plans	26.09.2007 For 2 nursery schools and community building (As per page no. 205 of additional copy of complaint)
10.	Occupation Certificate	31.07.2009 For block C1, C2, D with basement, EWS, 4 Shops, Community building with change room, guard room & 2 nursery school (As per page no. 249 of additional copy of complaint)
11.	Occupation Certificate	24.09.2010 For block A1, B1 & B2 with basement (As per page no. 208 of additional copy of complaint)
12.	Deed of declaration dated	01.12.2009 (As per page no. 185 of additional copy of complaint)
13.	Deed of declaration dated	15.10.2010 (As per page no. 223 of additional copy of complaint)
14.	Completion Certificate	13.12.2017

### B. Facts of the complaint

9. The complainant has made the following submissions in the complaint: -
- I. That the respondent no. 1 is a private limited company and after completion of construction and all other formalities of the said project, the respondent no.1 handed over the possession of the said apartments/flats to the respective allottee(s). Since the year 2008 to 2014 more than 90 % of the flats were sold and occupied by the residents and respondent no.1 executed various documents to that effect, including buyer's agreement/deed of declaration/sale deeds/ maintenance agreement, on various dates in favour of the residents of the apartment/ society. Subsequent to the handing over the possession of the said apartments/ flats to the respective allottee(s) and



execution of sale/conveyance deeds for such apartments, the allottees amongst themselves formed an "association of apartment owners", as defined in section 3(d) of Haryana Apartment Ownership Act, 1983, with the name of "WEMBLEY Estate Apartment Owners Welfare Association" "WEAOWA", which has been registered as a legal entity under Society Registration Act, 1860 and issued unique number as Registration No.HR018/2014/01304 vide letter dated 31.03.2014 issued by District Registrar, Firms & Societies, Gurgaon. After formation of the association, the officials of the association requested respondent no.1 to hand over the maintenance, interest free maintenance security and also to recognize the association for each and every purpose. However, respondent No.1, kept on evading the matter for a long time without assigning any valid reason, which is not only malafide and arbitrary but also gross violation of principal of natural justice and rule of law.

- II. That as per the provisions of section 11 (4) (d) & (e) of the Act of 2016 and Rules thereunder, respondent no.1 was 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. However, in June, 2018, respondent no.1 had suddenly stopped providing and maintaining essential services and completely abandoned the maintenance work of the society and failed to fulfill his legal obligations, leaving the residents of the society in lurch. Finding no solution of the problems of the residents of the flats regarding essential maintenance services, the association decided to take over the essential maintenance work of the society. That vide letter dated 11.06.2018, the president and the secretary of the association sent an extract of proposed resolution to respondent no. 1 for handing/taking over of Wembley Estate, but despite

that respondent no.1 has not come forward for execution of formal handing over agreement. Thereafter, the association again wrote a letter dated 30.06.2018 to respondent no.1, intimating that the association is going to take over the maintenance of the society w.e.f. 01.07.2018.

- III. That since 01.07.2018 i.e. taking over the maintenance work of the society, the association is revolving with several deficiencies including non-payment of IFMS and other funds, non-functional of community building (club house) and several other essential services and amenities such as blockage of sewage system, electrical infrastructure, water supply pipes, dg sets, streetlights, club house equipment, internal roads and building infrastructure needs repairing.. When the association took over the maintenance of common areas on 01.07.2018, all the essential services required huge amount of money to bring them in good shape which is not possible to be done in limited funds with the association. The respondent no.1 had also taken away the DG set of the society.
- IV. That the association has requested respondent no.1 many times to transfer the assets of the society and other infrastructure through a formal memorandum of understanding which respondent no. 1 failed to execute till date. The respondent no.1 has not paid a single penny of IFMS, parking charges, club security deposit and building replacement funds (Rs.13 Crores approx.) plus interest till the date of handover the same to the home-buyers or the association which was collected by the respondent no. 1 at the time of possession. Thus, respondent no.1 is liable to return all the aforesaid funds mentioned in this para along with interest till realization. The respondent no.1 owe Rs.13,31,92,150/- (13 Crores approx.) to the residents of the apartments/flats of the association . However, calculation sheet is a rough estimate and the actual and exact money is more than that, which

would be ascertained at the time of filing of audited statement of expenditure incurred by respondent no.1. The electricity infrastructure is not completed by the builder as yet. There are heavy seepages and waterlogging in the society which are affecting the foundation of the structures.

- V. That respondent no.1 has illegally taken and retained the interest free maintenance security of super built up area from every apartment in the complex at the time of giving possession to the residents, and never used such money for the upkeep and maintenance of the complex and continue to retain such IFMS money and other funds such as sinking fund (building replacement fund), parking charges, club security deposit etc., even after 12 years of possession and formation of association of allottees i.e. WEAOWA, which is totally illegal and arbitrary on the part of respondent no.1 company. The respondent no.1 company has charged huge sum of amount from residents of the complex under head of IFMS, and also the respondent denies paying the interest on such collective amount to the residents, while on other hand, respondent no.1 used such money of interest amount as well as principal amount for their own vested purposes or personal gains. Now the maintenance work is being looked after/done by the association since 01.07.2018, and therefore, respondent no.1 has nothing to do with the IFMS deposit and the same is liable to be transferred to the account of the association and the same may kindly be ordered to be transferred to the account of the association.
- VI. That as per the provisions of Haryana Apartment Ownership Act, 1983 as soon as the project is complete, the duty of maintenance of the project vests with the association of allottees and also gets vested with the power to collect funds from the residents of the society. Thus, respondent no.1 is

liable to provide audited account statement of the funds/money so raised by respondent no.1 on account of maintenance and sinking/replacement funds as well as the audited account statement of the funds/money utilised during so many years and to transfer all rights, title and interest in the building of Wembley Estate, Sector-49, Gurugram, detailed and described in declaration to the WEAOWA as per Clause 22(b) of the builder-buyer agreement. Thereafter, the association through its counsel, got issued a legal notice dated 2.9.2018 to respondent no.1, which was duly replied and in its reply dated 29.11.2018, he has admitted the formation of the association and existence of community building (club) with swimming pool & changing room & four shops, for common use, common facilities. Now the respondent no.1, with an intention to extract more money from the residents, by one way or other, has handed over/leased out the community building (club) to the third party i.e. respondent no.2. The respondent no.2 is running his own shop as well as office in the name and style of Ozone Steam Sauna & Pools, and has made the community building (club) non-functional which is for common use of the residents of the society and it had adversely affected the rights of the residents of the apartments and the apartment owners have been prevented from using the community and commercial facilities. The respondent no.1 cannot create personal lease of club which is for common use as detailed in deed of declaration.

- VII. That the respondent no. 1 & 2 were asked by the residents of the apartments/flats as well as the association many times not to indulge in such type of unfair trade practices and to make the community club functional for common use of the occupants/residents/inhabitants of the apartments/flats, but both the respondents flatly refused to make the community building (club) functional for use of the residents of the



society/apartments/flats and does not give any scope for further talks. That respondent no.1 cannot create perpetual lease in favour of respondent no.2, in respect of community building (club), the same being common facilities/amenities as detailed in the deed of declaration. Such act of respondent no.1 amounts of unfair trade practice.

- VIII. That lastly on 17.09.2019, in the presence of Senior Town Planner and DTP Gurugram, it was observed that there was gross violation of law by the respondent which is discriminatory, unreasonable and illegal by every standard of law. On 17.09.2019, a joint meeting took place in the presence of representative of respondent no.1, representative of the association and the representative of maintenance agency appointed by the association and in that meeting various deficiencies or shortcomings in basic infrastructure facilities to be provided by respondent no. 1 were pointed out specifically which the representative of respondents committed to comply with within due course of time. However till date nothing substantive has happened from the respondent end.
- IX. That the respondent no.1 is also governed by the provisions of Haryana Apartment Ownership Act, 1983 and is duty bound to honour the agreement and to transfer all rights, title and interest in the building/property of Wembley Estate, detailed and described in Declaration, to the "association of allottees" WEAOWA, as has been mentioned in para No. 22(b) of the agreement executed between the parties. The respondent no.1 has abandoned the maintenance of the society since June 2018 and the maintenance work is being looked after by the agency appointed by the "WEAOWA" since 1.7.2018 till today. Further the grievances of the association against the respondent are as follows:-

- a) The respondent no 1 has miserably failed to handover the maintenance of the common areas and facilities to the complainant despite repeated request since handing over of possession and continues to deny the same till date.
  - b) The respondent no. 1 failed to handover to the applicant community building/club and other community facilities which are part of common areas.
  - c) The respondent no. 1 failed to transfer the IFMS amount to the Applicant.
  - d) The respondent no.1 collected maintenance charges and replacement fund/charges since possession amount and failed to provide any detail/account with respect to the amounts spent on maintenance/replacement.
  - e) The respondent no. 1 illegally leased out the community building/club to respondent no. 2 for commercial usage thereby unjustly enriching itself.
- X. That the deed of declaration and/or building plan records the community building are a part of common facilities. It is hereby pertinent to mention that one of the subject matters of crucial dispute lies with the usage of community building (club) by respondent no. 2 whereas the prescribed legal exhaustion of the community building is significantly stands under the "common areas and facilities", as provided in sub-clause b of Clause V of deed of declaration dated 01.12.2009, which is reproduced following section for reference purpose -
- "b. General Common areas and facilities for all buildings in this scheme i.e., all apartments including Car Parking, Dwelling Units for EWS, Community Building (Club) with Swimming Pool & change Rooms situated in the Complex"*
- XI. The deed of declaration recognised the entire complex in the name as "Wembley Estate Group Housing Scheme, Gurugram" and specifically articulates that the dwelling units and common areas/facilities of the buildings are described in the building plans which are enclosed with the deed of declaration as Exhibit - A. Furthermore, the building plan of the community building (club) issued by DTCP on 05.12.2005 wherein it has been clarified in the clause X that- "*The Community centre shall be included*

by you as a part of the common areas of the group housing colony while filing the declaration under the Apartment Ownership Act and such community centre shall be for the exclusive use of the residents of this group housing colony only." It is relevant to mention herein that the said deed of declaration was executed on 01.12.2009 and building plan are enclosed with the deed of declaration which manifest a fact that there was no change in the nature and usage of the constructed building. Another deed of declaration was executed on 15.10.2010, wherein the community building was placed under the ambit of general common areas and further, the right and interest of each dwelling owner. Further, the said deed of declaration dated 15.10.2010 has certain rights and interest in clause XI, XII, XIII & XVI. The deed of declaration eradicates the doubts pertaining to the community building which falls under the ambit of common area. Also the maintenance agreement executed with every allottees contains clause wherein an understanding was put forth by the respondent no. 1 that the respondent will transfer its rights pertaining to common facilities/area to the applicant association.

XII. The complainant- association has filed the written submission and the same has been taken on record and perused further.

**C. Relief sought by the complainant /association :-**

10. The complainant/association has sought following relief(s):

- I. Direct the respondent no. 1 to handover /transfer IFMS and other funds along with interest till realisation to the account of the association.
- II. Direct the respondent no.1 to furnish audited account statement of IFMS and other funds as well as monthly maintenance funds since the formation or / taking over the maintenance by Wembley Estate Apartment owners welfare association.

- III. Direct the respondent to furnish audited account statement of monthly maintenance paid by the residents since the formation or/taking over of the maintenance by WEMBLEY Estate Apartment owners welfare association.
- IV. Direct the respondent to make the community building club functional for the use of the residents of the society being common amenity as per deed of declaration and handover the same.
- V. Direct the respondent to honour the agreement executed between the parties and to transfer all rights, title and interest in the building / property of Wembley estate detailed and described in the deed of declaration to the association allottees.

**D. Reply by the respondent no. 1**

11. The respondent has contested the complaint on the following grounds.
  - I. That WEMBLEY estate apartment owner's welfare association is not duly constituted registered society under the provisions of the Haryana Apartment Ownership Act, 1983 as they simply registered themselves under the Haryana Registration and Regulation of Societies Act, 2012. A society of persons who have not complied with such requirements viz. Deed of Apartment registration as mandated by Section 5 (2) of Haryana Apartment Ownership Act, 1983 read with Rule 4 of Haryana Apartment Ownership Rules, 1987 are not entitled to claim themselves to be a Society registered under the 1983 Act. It is notable that being registered merely under the 2012 Act without compliance of the provisions of 1983 Act debar a society from claiming rights and privileges as bestowed upon a society registered under the 1983 Act. Thus, the complainant is not a validly constituted body under the Haryana Apartment Ownership Act, 1983, therefore it is not entitled to seek any relief as is being sought in the present complaint from this Authority.

- II. That the society is trying to promote interests of 636 main dwelling units in seclusion to the owners of 114 economically weaker section apartments and other space owners like the commercial shop owners and the respondent which continues to own an inventory of 22 car parking spaces besides the community building (club) which has not been declared as common area in terms of the deed of declaration duly registered with respect to the WEMBLEY estate group housing.
- III. That the occupation certificate of WEMBLEY Estate was granted by the office of Director Town & Country on 24.09.2010 much prior to promulgation of The Real Estate (Regulation and Development) Act, 2016. Therefore, the present matter does not come in the purview of the Act, 2016 and is liable to be dismissed in limine. The WEMBLEY estate is a part of larger colony namely rosewood city and all the residents/ occupants of rosewood city are entitled to use the common areas and facilities as available in the WEMBLEY estate and the complainant cannot claim the said facilities exclusively.
- IV. That vide letter dated 11.06.2018, the complainant admitted that the complainant is an association of only 636 main dwelling units of Group Housing Colony namely WEMBLEY Estate situated within Rosewood City, Sector 49 & 50, Gurugram however, there is no mention of owners of 114 EWS Dwelling Units, 1 community building (club) with swimming Pool & Change Rooms, 2 nursery schools and 4 Shops in this association who are also entitled to use common areas and facilities in WEMBLEY Estate. In addition, the purported resolution for taking over of WEMBLEY Estate authorizes its president & secretary for signing of all the relevant documents related to handing/taking over of WEMBLEY estate, nowhere specifies the names and other details of the President & Secretary, if so

authorized. Moreover the complainant have never shared any documentary evidence with the respondent no. 1 with respect to election of its office bearers despite repeated demands. Despite the fact that the respondent duly pointed out all the deficiencies and was ready and willing to handover the administration and maintenance of WEMBLEY Estate to the complainant, however, the complainant has completely failed to address these highly concerning issues of the respondent no. 1. Pending an undertaking by the complainant for maintenance of EWS tower having 114 EWS dwelling units, 1 community building (club) with swimming pool & change rooms, 2 nursery schools and 4 shops which are also part of WEMBLEY estate, it is not possible to handover the maintenance or maintenance related funds with regards WEMBLEY estate group housing to the complainant. The above stated deficiencies are major hindrances in execution of handing over agreement and complainant itself is responsible for delaying the same.

- V. That the respondent no. 1 had proposed the physical handing over of maintenance of WEMBLEY Estate to the complainant subject to removal of deficiencies as referred above including signing of handing over agreement, however, the complainant, instead of removing the deficiencies, intimated the respondent no. 1 vide its Letter dated 30.06.2018 that it shall take over the maintenance of WEMBLEY Estate on 01.07.2018. It was decided by the respondent no.1 to handover maintenance of WEMBLEY estate to the complainant on the condition that the complainant shall rectify the above stated deficiencies before signing of the handing over agreement and this fact was duly recorded in e-mail dated 30.06.2018.
- VI. That the respondent no.1 remains committed to execute an agreement for handing over the maintenance of WEMBLEY estate which has otherwise

already been taken over by the complainant on 01.07.2018 .It is unfortunate that not much progress has taken place ever since the complainant took over the maintenance of WEMBLEY estate unlawfully for the reason best known to the complainant. The complainant took over administration and maintenance of the WEMBLEY estate forcefully without any intention to do maintenance therefore the respondent no. 1 has no other option to maintain the same from its own resources till the time complainant will not do the same.

- VII. That the complainant has sought relief to transfer ownership of 1 community building (club) with swimming pool & change rooms, 4 shops and two nursery schools in its favour alleging them to be part of common area which is contrary to the deed of declaration as already filed by the respondent no. 1 in terms of the Haryana Apartment Ownership Act, 1983. It is further stated that the community building (club) with swimming pool and change rooms (hereinafter referred to as "Club") does not fall under the definition of common areas and facilities in terms of the Deed of Declarations (under Section 2 of the Haryana Apartment Ownership Act, 1983) dated 01.12.2009 and 15.10.2010 filed by the respondent no. 1 in respect of WEMBLEY Estate and hence the Apartment Owners of WEMBLEY Estate including the complainant, have no other right over the said club or any part thereof except the right to "use" as held by the Hon'ble Supreme Court of India in plethora of Judgments including ***DLF Limited vs. Manmohan Lowe & others in Civil Appeal No. 10930 of 2013***. Accordingly, the ownership of the said Club will continue to vest with the respondent even though maintenance of WEMBLEY estate has already been taken over by the complainant as aforesaid. Therefore, the respondent no. 1 will continue to hold the club security deposit collected for use of club facilities

by the residents and indemnification of any damage caused by them to the assets of the club. Moreover, as per the terms of individual agreements, the flat owners of WEMBLEY estate are liable to pay yearly membership charges separately, which many of them have not paid since beginning. The arrears of yearly membership charges due from each apartment owner is also liable to be deducted while settling the amounts of IFMS, replacement fund and club security.

- VIII. That the complainant/association has sought refund of IFMS amount, parking charges, club security deposit and building replacement fund to the tune of Rs.13,31,92,150/-. In this regard it is stated that the respondent no. 1 have neither received nor charged any amount in respect of 340 open car parking charges as alleged by the complainant, therefore the respondent no. 1 is not liable to pay/ refund any amount to the complainant on said count. That the club security deposit charges were paid by the apartment owners for use of club facilities by the residents and indemnification of any damage caused by them to the assets of the club. In this regard, the arrears of yearly membership charges due from each flat owner shall also be payable by the residents which have not been paid by them since long and the same shall be deducted while settling the amounts of club security, IFMS and replacement fund with the individual flat owners subject to further deduction of amount payable by the flat owners towards common area maintenance and the amount spent on replacement of certain facilities by the respondent. Further the club security deposit charges deposited with the respondent no. 1 are pertaining to the club which is the property of the respondent no. 1 and they never agreed to hand over to the complainant at any point of time, thus question of handing over the same to the complainant does not arise at all.



- IX. That in addition, these two nursery schools do not share any common areas or facilities in the WEMBLEY estate as per the deed of declarations. In fact, these two nursery schools are being fully maintained by the respondent including their watch & ward independently without any help and facilities provided by the complainant, thus no question of making any payments towards maintenance in this regard to the complainant by the respondent is made out and the complainant cannot claim ownership of the same in any manner claiming them to be essential amenities for the group housing since they are not at all part of the common areas.
- X. That the respondent denies that an amount of Rs.13,31,92,150/- is payable by it to the complainant along with interest as alleged or otherwise. The respondent no.1 is always ready and willing to settle the account of each individual flat owners and this fact is equally acknowledged in the complainant's own resolution dated 10.06.2018, however the complainant is not letting the respondent to settle the account as they themselves want to take monies from the respondent in contravention to their own resolution dated 10.06.2018.
- XI. That the present application of the complainant is in contradiction of Judgment passed by the Hon'ble Supreme Court of India in case titled ***as DLF Ltd. vs. Manmohan Lowe & Ors. (SLP NO. 34275 OF 2009 & CA No. 10930 of 2013)*** as the deed of declarations filed by the respondent are in accordance with the law which is upheld by virtue of the aforesaid Judgment. According to the said Judgement, the apartment owners/ occupants have no other right except the right to use the said Community Centre (Club) and that too upon payment of the usage charges. The complainant or the apartment owners/ occupants have no right of ownership over the community centre (club) or any other area which is not

declared as common area in the deed of declaration filed by the developer as held by the Hon'ble Apex Court in the aforesaid Judgment.

- XII. That, while granting approval for the building plans of the community centre (club), the Govt. Authorities, vide letter dated 05.12.2005, laid down a condition that the said community centre will be part of common area. Imposition of such a condition was due to misinterpretation of law by the office of DGTCP, Haryana in this context and the developments taking place on legal front before Hon'ble Punjab & Haryana High Court in the CWP No. 960 of 2000 (Cap. Retd. Manmohan Lowe and Others vs. State of Haryana). However, later on, such misinterpretation of law were challenged before the Hon'ble Supreme Court in case titled as DLF Ltd. vs. Manmohan Lowe & Ors. (SLP NO. 34275 OF 2009 & CA No. 10930 of 2013), the office of DGTCP, while granting the occupation certificate dated 24.09.2010 to the respondent in respect of said Community Centre (Club), amended its stand and inter-alia directed the respondent as below:

*"17. That the decision of the Hon'ble Supreme Court in SLP No. 34275 of 2009 arising out of decision of the Hon'ble High Court in CWP No. 960 of 2000 dated 09.09.2009 shall be binding on you"*

- XIII. That in view of the above stated facts, the respondent filed the deed of declaration 15.10.2010 in accordance with law wherein the said community centre (club) is nowhere declared as common area by the respondent, therefore said community centre (club) cannot be termed as a common area by any stretch of imagination as alleged and claimed by the complainant.
- XIV. This contention of the respondent is supported by the ratio of Judgment passed by the Hon'ble Supreme Court of India in case titled as "DLF Ltd. vs. Manmohan Lowe & Ors. (SLP NO. 34275 OF 2009 & CA No. 10930 of 2013)". As such the sanctity of a deed of declaration has been upheld by the Hon'ble Apex Court in the above referred Judgment. Moreover, the office of the

DGTCP accepted said Deeds of Declaration as filed by the respondent and accordingly the office of DGTCP granted final completion certificates for not only the said Group Housing Colony but the whole of Residential Colony namely Rosewood City vide Memos dated 22.11.2017 & 13.12.2017 respectively.

XV. That the community centre (club) is not declared as common area in the Deed of Declarations dated 01.12.2009 & 15.10.2010. The Deed of Declaration dated 01.12.2009 & 15.10.2010 filed by the respondent no. 1 were filed in consonance of terms of the Hon'ble Supreme Court Judgment in *DLF Ltd. vs. Manmohan Lowe & Ors.* supra, which does not declare the Community Centre as common area and said Deeds of Declaration have been accepted by the DGTCP and thereafter issued completion certificates in respect of said group housing colony including the community centre (Club). Thus, in view of the preceding paragraphs, given the conduct of the complainant it cannot be granted any relief as sought in the application including the interim relief with respect to the creation of any rights, title and interest in the community centre (club) except usage of the same subject to payment of charges.

XVI. That the complainant filed a civil suit in respect of the same cause of action before the Gurugram Court titled as "WEMBLEY Estate Apartment Owners Welfare Association vs. Ajay Enterprises Pvt. Ltd. & Ors." (CS (OS) 899/2017) and the same has been dismissed by the Hon'ble Trial Court after granting numerous opportunities to the complainant where it did not turn up, hence it was dismissed due to non-prosecution. As such it is clearly established that the complainant is doing forum hunting and has made mockery of the judicial system. It is not within the scope of Authority of STP,

Gurugram to decide the ownership of the club building in complete defiance of the order of Supreme Court.

XVII. The respondent has filed the written submission and the same has been taken on record and perused further.

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

**E. Reply by the respondent no. 2**

- I. That the complaint of the association is neither maintainable nor tenable in the eye of law and the same is liable to be dismissed summarily in favour of respondent No. 2, Rakesh Sachdeva. The respondent no.2, Rakesh Sachdeva is neither the owner nor should have appeared in the complaint list since he is just a lessee and a tenant in the community centre/club site.
- II. That the said premises was given to the respondent no. 2 by respondent no. 1 on lease for a period of nine years vide registered lease deed bearing vasika No.5860 dated 10.06.2015. The possession of the demised premises was handed over to the respondent no. 2 w.e.f. 16.04.2015 for fit outs. The respondent no. 2 was given the club site in a bare shell and pathetic state with condition to develop the club site at the expenses of answering defendant. The respondent no. 2 started repairing the building and developed the club after spending approximately Rs.2,00,00,000/- and also repaired the swimming pool and installed new pumps and added cartridge Filter etc.. The respondent no. 2 also bought equipment's and created a huge gym with state of art facilities and also furnished the restaurant, banquet hall, yoga room, music room and sports arena after spending huge amount , bought table tennis, table for the club , furnished the whole club site with expensive furniture and other fixtures including lighting etc. after spending huge amount , repaired and bought equipments for kitchen after spending huge amount , established a beautiful salon in



- the club for the residents of the colony after spending huge amount. The respondent no. 2 spent amount on the said facilities from his own pocket with the assurance of respondent no.1 and the residents that the respondent no. 2 will run the club for nine years and has also paid Rs.13,50,000/- as security to respondent no.1 and has already paid Rs.1,35,00,000/- to respondent No.1 towards rentals and electricity charges till date and continued to spend money on the club site as per demand and requirements of residents of the colony.
- III. The respondent no. 2 has engaged three persons for the swimming pool. There was a swimming coach, lifeguard and swimming pool operator for which the respondent no. 2 is paying Rs.38,000/- per month. For the gym there was a gym instructor and a helper to whom the answering defendant is paying Rs.35,000/- per month. Apart from these persons there were six employees in Salon and three housekeeping staff, one electrician and plumber to take care of the club building and facilities admeasuring 25000 sq. ft.
- IV. The respondent no. 2 has not earned much from the club till date since he has already invested crores of rupees from his own pocket in the hope of generating profits in coming years. It is pertinent to mention here that earlier the club was being run in the name and style of "club addiction" by some other operator. As per information supplied to respondent no. 2, the said operator was not operating the club to the satisfaction of residents and builder and they offered the club site to answering defendant. The said operator removed all his furniture, fixtures, equipments etc. from the club site and the site was handed over to the answering defendant in a damaged condition. The answering defendant agreed to run the club with the assurance of respondent no. 1 and the residents of the colony that the



answering defendant will not be ousted before nine years. None of the residents raised any objection at the time when the answering defendant was investing approximately Rs.2,00,00,000/- in the project. Approximately 200 families were enjoying the club facility during the year 2016-17, 2017-18 & 2018-19 before COVID 19 hit the world. Since then, club was not permitted to operate by the government. The respondent no. 2 was being provided electricity by respondent no .1 but subsequently respondent no. 2 applied for a separate connection with the understanding of respondent no.1 and the residents will made the payment of electricity charges directly to the electricity department and will be responsible for its connection.

V. The respondent no. 2 is just a lessee of the community centre/club for the last five years with the consent and knowledge and all the residents of the colony. Neither the plaintiff nor any resident raised any objection when the answering defendant was spending huge amount on development of the club. Now neither the plaintiff nor any resident of the colony has any right to restrain the answering defendant from running the club till expiry of the whole lease period of nine years.

VI. The respondent has filed the written submission and the same has been taken on record and perused further.

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

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

**F. Jurisdiction of the authority**

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

**E. I Territorial jurisdiction**

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

**E. II Subject matter jurisdiction**

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

**Section 11**

.....

*(4) The promoter shall-*

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

**Section 34-Functions of the Authority:**

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

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

**G. Objection regarding that the respondent has made an application for grant of occupation certificate before coming into force of RERA**

17. The respondent-promoter has raised the contention that the said project of the respondent is a pre-RERA project as the respondent has already obtained

occupation certificate from the competent authority on 31.07.2009 and 24.09.2010 respectively i.e., before the coming into force of the Act and the rules made thereunder.

18. The authority is of the view that as per proviso to section 3 of Act of 2016, ongoing projects on the date of commencement of this Act i.e., 01.05.2017 and for which completion certificate has not been issued, the promoter shall make an application to the authority for registration of the said project within a period of three months from the date of commencement of this Act and the relevant part of the Act is reproduced hereunder:-

*Provided that projects that are ongoing on the date of commencement of this Act and for which the completion certificate has not been issued, the promoter shall make an application to the Authority for registration of the said project within a period of three months from the date of commencement of this Act:*

19. The legislation is very clear in this aspect that a project shall be regarded as an “ongoing project” until receipt of completion certificate. Since, the completion certificate has been obtained by the promoter-builder on 13.12.2017 with regards to the concerned project i.e., after coming into force of the Act, the plea advanced by it is hereby rejected.

#### **H. Findings on the relief sought by the complainant /association**

**H.I Direct the respondent no. 1 to handover /transfer IFMS and other funds along with interest till realization to the account of the association.**

20. The complainant/association stated that the respondent no. 1 owes Rs.13,31,92,150/-to the residents of the apartments/flats of the association on account of IFMS. The complainant/association was, stated that the calculation a rough estimate and the actual amount is more than that, which would be ascertained at the time of filing of audited statement of expenditure incurred by respondent no.1.
21. During proceedings dated 05.03.2024 the counsel for the complainant in complaint bearing no. 844 of 2021, stated that the IFMS amount be refunded to



each of the individual allottee is in view of resolution dated 10.06.2018 passed by the complainant /association. The authority observes that as per clause 2 of the said resolution dated 10.06.2018, it was resolved that *'a clause will be included in the MOU with Ajay enterprises that they will **refund IFMS to respective owner within one month from the date of signing of MOU.** In case, Ajay enterprises do not agree to include this clause in the MOU, then owners have suggested that WEAOWA will resort to legal actions on their behalf.'* It is admitted by both the parties that so far as MOU is concerned, the same has not been executed till date. Notwithstanding the above, the Authority is of the view that the IFMS is a corpus which is created at the time of completion/handing over of the project to ensure a sustainable solution for maintenance of the property and meet contingent capital expenditure to safeguard the interest of all the inhabitant including tenants of the property. It is a common fund to be held by the promoter before handover and by the RWA after handover of the project as a custodian in the common interest. Moreover, by this time the ownership of the individual units would have changed hands in many cases. In view of this, the Authority is of view that such a common fund to be held in trust cannot be dissolved and redistributed.

22. The Act mandates under section 11(4)(d), that developer would be responsible for providing and maintaining the essential services, on reasonable charges, till the time, the same is taken over by the association of the allottees.
23. In view of the above, the respondent promoter is obligated to handover the amount of IFMS collected by it with all the details regarding the IFMS amount and the interest accrued thereon if any to the complainant association.

**H.II Direct the respondent no.1 to furnish audited account statement of IFMS and other funds as well as monthly maintenance funds since the formation or/taking over the maintenance by WEMBLEY Estate Apartment owners welfare association.**

**H.III Direct the respondent to furnish audited account statement of monthly maintenance paid by the residents since the formation or/taking over of the maintenance by WEMBLEY Estate Apartment owners welfare association.**

24. Both the reliefs being interconnected are being taken up together. The promoter is duty bound to provide the details to the complainant/association in furtherance to his obligation under section 11(4)(d).

**H.IV Direct the respondent to make the community building club functional for the use of the residents of the society being common amenity as per deed of declaration and handover the same.**

**H. V Direct the respondent to honour the agreement executed between the parties and to transfer all rights, title and interest in the building /property of WEMBLEY estate detailed and described in the deed of declaration to the association allottees.**

25. The complainant/association namely WEMBELEY estate apartment owners association state that the handover of the project to the association was done in the year 2018. At present the community building/club is still under possession of respondent no. 2 i.e., Rakesh Sachdeva. The respondent has not handed over the common area to the complainant/association till date. Two deeds of declaration are placed on record and which were executed on 01.12.009 and 15.10.2010 respectively. Furthermore, the building plan of the community building (club) issued by DTCP on 05.12.2005 wherein it has been clarified in the clause X that " *The Community center shall be included by you as a part of the common areas of the group housing colony while filing the declaration under the Apartment Ownership Act and such community center shall be for the exclusive use of the residents of this group housing colony only.*" It is relevant to mention herein that the said deed of declaration was executed on 01.12.2009 and building plan are enclosed with the deed of declaration which make it clear that there was no change in the nature and usage of the constructed building. Another deed of declaration was executed on 15.10.2010, wherein the

community building was placed under the ambit of general common areas and further, the right and interest of each dwelling owner. The counsel for the complainant stated that the word "i.e." used in the clause which talks about community building (club) is included in common area and the office of Senior Town Planner , Gurugram directed the builder to handover the community building/club to RWA on 01.08.2018.

26. The respondent no. 1 stated that the community center (Club) is not declared as common area in the Deeds of Declaration dated 01.12.2009 & 15.10.2010. The Deeds of Declaration dated 01.12.2009 & 15.10.2010 filed by the respondent no. 1 were filed in consonance of terms of the Hon'ble Supreme Court Judgment in *DLF Ltd. vs. Manmohan Lowe & Ors.* supra, which does not declare the community center as common area. Whereas the respondent no. 2 stated that said premises was given to the respondent no. 2 by respondent no. 1 on lease for a period of nine years.
27. 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.
28. Herein, the authority places reference on the Hon'ble Supreme Court judgement in SLP no. 34275 of 2009 titled as ***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 prribes 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."*


29. The deeds of declaration after obtaining occupation certificate were filed on 01.12.2009 and 15.10.2010 by the promoter/colonizer under the provisions of the Haryana Apartment Ownership Act , 1983 which is much prior to coming into force the RERA Act , 2016.
30. Therefore, as far as the issue if any pertaining to handover of community building as part of common area as per the deed of declaration, is concerned the complainant association is at liberty to raise the said issue before the concerned competent authority.


#### **I. Directions of the authority**

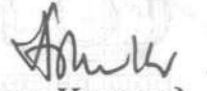
31. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):
- I. The respondent is directed to handover the amount of IFMS collected by it along with the interest accrued, if any, on that amount, coupled with all the details regarding the IFMS amount and the interest accrued thereon to the complainant association.
  - II. The respondent is directed to handover the duly audited financial details to the association in terms of para 24 above.

- III. The complainant/association is at liberty to raise the issue of handover of community building as a part of common area before the concerned competent authority.
32. The complaints stand disposed of. True certified copies of this order be placed on the case file of each matter.
33. Files be consigned to registry.

  
(Sanjeev Kumar Arora)  
Member

  
(Ashok Sangwan)  
Member

  
(Vijay Kumar Goyal)  
Member

  
(Arun Kumar)  
Chairman

**Haryana Real Estate Regulatory Authority, Gurugram**

**Dated: 05.03.2024**

**HARERA**  
**GURUGRAM**