



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

<b>Complaint no.:</b>	<b>2650 of 2019</b>
<b>Date of filing:</b>	<b>24.10.2019</b>
<b>Date of first hearing:</b>	<b>27.11.2019</b>
<b>Date of decision:</b>	<b>09.08.2023</b>

Sunshine County Residents Welfare Association,  
Tower no. 10, Flat no. 303,  
Ansal Sushant City Rai Sonipat, Haryana131029

....COMPLAINANT(s)

VERSUS

1. M/ Ansal Properties & Infrastructure Ltd,  
Office: 115 Ansal Bhawan ,16 K G Marg  
New Delhi 110001

2. Star Facilities Management Ltd  
Office: 1110 Ansal Bhawan ,16 K G Marg  
New Delhi 110001

....RESPONDENTS

**CORAM:**            **Dr. Geeta Rathee Singh**            **Member**  
                         **Nadim Akhtar**                            **Member**

**Present:**            Shri Venkat Rao, Counsel for the complainant  
                         Shri Pardeep Sharma, Representative for the complainant

**ORDER (DR. GEETA RATHEE SINGH - MEMBER)**

1. Present complaint was filed on 24.10.2019 by complainant under Section 31 of the Real Estate (Regulation & Development) Act, 2016 (for short Act of 2016) read with Rule 28 of the Haryana Real Estate (Regulation & Development) Rules, 2017 for violation or contravention of the provisions of the Act of 2016 or the Rules and Regulations made thereunder, wherein it is inter-alia prescribed that the promoter shall be responsible to fulfill all the obligations, responsibilities and functions towards the allottee as per the terms agreed between them.

**A. FACTS OF THE COMPLAINT AS STATED IN THE COMPLAINT**

2. Present complaint has been filed by an Association "Sunshine County Residents Welfare Association" which is a registered society registered in the year 2011 under the Society Registration Act, 1860, and the same was again re-registered in the year 2014 under Haryana Societies Act, 2012.
3. That the buyers in the project enter into Flat Buyer Agreement during the course sometime after booking. Said Flat Buyer Agreement had elaborate terms casting various obligations on the buyers. Flat Buyer Agreement of Mr. Narender Kumar (an allottee in this project) executed on 09.11.2009 has been provided wherein it had specifically mentioned that the respondent no. 1 had received the license to develop the said project from

  
Dr. Geeta Rathee

the Haryana Govt. and the development of the project was likely to be started on approval of building plans. It was promised that the possession will be offered within 30 months from the date of sanction of building plan. The agreement which were executed between the buyers and respondent no. 1 enshrined lopsided clauses and had been crafted in such a manner which tend to tilt the respective agreement in favour of Respondent no. 1. Thereafter, respondent no. 1 called the buyers for execution of conveyance deed. The said conveyance deeds were executed without taking approvals from DTCP and without paying penalties in the department for defaults with respect to increase in super areas above the sanctioned areas.

4. Despite several demands raised by the association, the management of Sunshine County has not been handed over to them which is contrary to the provision of Haryana Apartment Act, 1983. Project Sunshine County comprises of 639 flats in total, in 17 Towers allotted to the allottees for different set of units which are 4 bedroom flats, 3 bedroom flats, 2 bedroom flats and pent houses.
5. The main grievances of complainant association and failure of respondent no. 1 in fulfillment of its obligation are elaborated herein:-

i) **Maintenance and Replacement Fund**



Clause 24 of the Flat Buyer Agreement stipulates that the promoter or through its appointed agency shall look after the maintenance and upkeep of the common areas and facilities. The relevant clause has been reproduced below:-

*"That the Company shall look after the maintenance and upkeep of the common areas and facilities until these are handed over to some body-corporate or other agency appointed by the Company for maintenance, upkeep, repairs, security, etc. of the building (s) including the landscaping and common areas. The Apartment Allottee unconditionally agrees and consents to the said arrangement and he shall pay interest free security deposit @ ₹20/- per sq. ft. and maintenance charges as determined by the company or its appointed maintenance agency from time to time depending upon the maintenance cost. In addition to maintenance charges, there will be contribution to the Replacement fund etc. Any delay in payments will make the Allottee liable for interest @ 24% per annum. The Allottee further unconditionally agrees that in the event of non-payment of any of the charges within the time specified shall also disentitle the Apartment Allottee to the enjoyment of common services including lifts, electricity, water etc. and the Maintenance Agency shall be free to discontinue/disconnect the said services. The Allottee also undertakes and agrees to execute a separate agreement with the maintenance agency, the format of which has been seen and approved by the Allottee."*

Respondent No. 1 had used its dominant position by inducing the buyers into executing one sided agreement wherein allottees for imposed with huge maintenance cost.

Clause 29 of the conveyance deed stipulates that the vendor or its nominee maintenance agency shall look after the



maintenance and upkeep of the common area and facilities in the complex and vendee shall execute a separate agreement with a nominated maintenance agency and pay the maintenance charges and other charges. In this way, respondent no. 1 had cast a strict obligation upon the buyers to execute a separate maintenance agreement with the vendor or its nominated agency. Respondent no. 1 unilaterally had appointed M/s Star Facilities Management Services as its Nominee Service Providing Agent. Accordingly, maintenance agreement were executed with the said agency. Sample agreement with Col Jagdish Chandra dated 26.11.2011 has been provided as annexure C-6.

Clause 15 of the maintenance agreement provides for various services to be provided by the maintenance agency.

#### OBLIGATIONS OF M/S STAR FACILITIES MANAGEMENT LTD.

- i) *General watch and ward of the colony.*
- ii) *To provide drainage and sewerage connections lines upon payment, and its maintenance and repairs within 15 days from the date of offer of possession or the first day of the following month whichever is earlier irrespective of the date of possession.*
- iii) *To provide single connection per unit for water supply and to provide sewer line connection to the main sewer in the near vicinity of the units.*
- iv) *Street lights and its maintenance and repairs.*
- v) *General cleaning of the area including Garbage collection and disposal.*
- vi) *Maintenance and repairs of roads.*
- vii) *Maintenance and repairs of underground water reservoir, overhead tanks and water supply distribution system including water generation.*
- viii) *Providing managerial, skilled, semi-skilled and unskilled staff for smoothly carrying out the works mentioned above*



*by employing sufficient manpower as required through competent vendors.*

- ix) Cleaning of drains and berms.*
- x) Providing services of electrician/ plumber for jobs of minor nature such as replacement of fuses, starter, chokes, tubes, bulb holders, attending to leaking taps, cisterns, choked pipes and siphon defects etc. on nominal charges as decided by Estate Manager. However, the materials are to be arranged by the occupant of the property. This by itself is illegal and not chargeable, as the Respondent is charging Flat rate of Rs.0.30 per sq. ft. from the allottees/ residents since the beginning till date and continues.*

Respondent had collected a charge of ₹16,000/- or ₹25,000/- per allottee as Interest Free Maintenance Security(IFMS) totalling to ₹ 1,05,30,000/- in addition to an amount at the rate of ₹20 per sq. ft. (the rate per sq. ft. for IFMS may vary from category of the flats). In total the respondent has collected an amount of ₹3,28,97,900/- as IFMS from 639 allottees. Even after collecting such huge amount the respondent and its agency has failed to provide maintenance services. Tabular chart representing the IFMS is annexed as annexure C-7. Respondent has also not handed over the necessary documents and plans, including the common areas to the association of the allottees.

**(ii) REPLACEMENT FUND**

Respondent had collected replacement fund from the allottees @0.30 sq. ft per month with effect from March 2011 to October, 2019, i.e, for the period of 104 months from the residents and the same amounts to



₹3,45,42,956/-. No replacement had taken effect within the stated period and the fund thereby collected had been unutilized at the society.

#### 6. DEFICIENCY IN SERVICE/MAINTENANCE

Various issues pertaining to the poor maintenance at the society are described as under :-

- i. **Lifts/Elevators are unreliable** : Quality of service of the lifts at the society is in poor condition and is unreliable. There has been circumstances when the residents had remained trapped inside the lifts for 45 minutes.
- ii. **Location of STP** : Location of STP is not mentioned in the approved layout plan dated 27<sup>th</sup> of April, 2006. The actual location of the STP is absolutely inappropriate which is established opposite to the entrance gate which causes the residents of 4 nearby / surrounding towers to undergo agony of foul smell and hence is clear violation of hygienic living conditions.
- iii. **Club Facilities** : Respondent had collected exorbitant amount of ₹25,000/- from the allottees as club charges. Total of this amount collected from all the buyers amounts to ₹ 1,68,25,000/-. However club facilities have not been provided to the resident of the society (Tabular chart at Annexure C-9).



- iv. **Link Road** : Temporary link road has been provided by the builder which has not been repaired or maintained in the last few years and the residents were compelled to get the road repaired on their own contribution by the individual flat owners.
- v. **Re-carpeting of Internal Road** : Only patch repair work was done by the promoter after several request and follow-up by the Association.
- vi. **Leakage and seepage in the basement** : Repairs of expansion joints of the buildings were not done in the last few years as a result of which continues leakage and seepage is there in the basement of the buildings. Plasters from the walls and roof have also come off, Iron Bars have left the concrete structure and dangerously hanging at several places. Loose live electric wires in such humid and porous structures are a constant safety hazard on account of heavy water logging in electrical rooms in basement (Annexure C-11).
- vii. **Horticulture**: Poor upkeep of horticulture.
- viii. **Poor Housekeeping**: Poor housekeeping services are rendered by respondent-promoter.
- ix. **Structure defects** :
  - a. Seepage, peeling of the materials from the walls of all the towers.
  - b. Situation of the basement is really precarious.
  - c. Due to leakage stinking filth from every pipe line, water logging in the entire basement.





Secretary, Sunshine County Residents Welfare Association has written e-mails dated 24.11.2018, 05.03.2019 and 14.05.2019 to apprise the concerned authority of the prevailing problems in the Society. However, no efforts can be seen on behalf of the concerned authority for early redressal of the issues such as leakage and seepage in the basement area (Annexure C-17).

- x. **Handing Over Maintenance :** Despite repeated requests from the Society for handing over the maintenance of the society as mandated by developmental laws and RERA, Respondent No. 1, has utterly failed in its obligation to do the same. Respondent No. 1 was under an obligation to handover the maintenance within 5 years from the date of completion of the project. Respondent No. 1 is delaying to hand over the maintenance to reap the benefits of collection of heavy maintenance charges by its associate or nominated agency. Complainant Association has repeatedly sought the maintenance to be handed over after removal of the defects and making up of the deficiencies of major equipment and handing over interest free maintenance security deposit, however, Respondent No. 1 has completely ignored and failed to hand over the same. Section 11(4)(d) of the RERA Act, 2016 makes it obligatory to the promoter to be responsible for providing and maintaining the essential services, on



reasonable charges, till the taking over the maintenance of the project by the association of the allottees.

- xi. Electricity :** Respondent No. 1 made entering into Electricity Connection Agreement as precondition for providing electricity connection to the individual units. Respondent have obtained one single point connection in the premise of the society but individual meter had not been setup to individual allottees and the Association had made observation and had made a sampling of bills which clearly points out that the bills paid by the individual allottees are not in the tune of the bills generated for the single point connection. Respondent had mentioned and collected electrical connection charges @ ₹60/- per sq. ft. from the allottees of the Society which amounts to ₹6,70,73,700/- and further had charged power back up @ ₹120/- per sq. ft. which amounts to ₹13,41,47,400/-. However, actual expense incurred on the same is subject to audit by the competent authority.
- xii. Respondent has violated the terms of Section 14(1) and 14(3) of the RERA Act.**
- xiii.** Residents of the Sunshine Country are subjected to several hardships at the instance of the respondents on account of the failure on their part to handover the common area along with the requisite documents and other arbitrary actions contrary to the provisions of the law.



**B. RELIEF SOUGHT BY THE COMPLAINANT ASSOCIATION**

7. Due to the facts and circumstances of the abovementioned complaint, the maintenance of the Sunshine County is not being done as per the terms of the Maintenance Agreement (vide Annexure-C/6) which is in terminus with the Conveyance Deed (vide Annexure-C/4), and the Respondent in a *malafide* manner had failed to provide the essential service to the residential of the Sunshine County. The decision of the Respondents to ignore the complaints of the Sunshine County Residents Welfare Association for rectifying and ensuring the proper way of providing the essential maintenance service, has caused danger to the life and health of the residents of the Society and further had caused mental agony and harassment to the Complainant.

Hence, the Complainant humbly prays that the Hon'ble Authority be graciously pleased to grant the following reliefs :

- a. To direct the Respondent authority to provide complete structure, facilities and amenities as promised under the agreement, and further to ensure the following below mentioned work at the Sunshine County:
  - i. To ensures proper maintenance of the drainage and sewerage connection lines and further to ensure its proper repair.
  - ii. To ensure proper maintenance of the motors used for lifting water to the overhead tanks.



- iii. To ensure the repair of expansion joints to avoid leakage and seepage.
  - iv. To ensure the proper working and maintenance of the street lights.
  - v. To ensure the proper maintenance and cleaning of the water reservoir, overhead tanks and further to ensure the proper repair of the water supply distribution system.
  - vi. To direct respondent authority to check and avoid any seepage in the residential compound of the Sunshine County Society, effluents from the Septic Treatment Plant as such endangers the life and health of the residents of the society.
- b. To handover the complete charge of maintenance to the Sunshine County Residents Welfare Association along with all valid account and original records.
- c. To handover the amount collected under the head of maintenance and service charges lying with the respondent in the shape of security deposits, parking charges and other money deposits along with interest to the Sunshine County Residents Welfare Association.
- d. To Hand over the original files and other documents related to the Sunshine County with the Sunshine County Residents Welfare Association.

A handwritten signature in blue ink, appearing to read "J. Kothari", is written over a horizontal line.

- e. To direct the respondent to establish a proper channel for the timely redressal of the grievances of the complaints from the Sunshine County Residents Welfare Association.
  - f. To refer to the Adjudicating Officer of the Hon'ble Authority for ascertaining :
    - i. The adequate compensation by the Respondent for considerably failing to provide the essential services as per the terms and conditions of the agreement.
    - ii. The adequate compensation for causing mental agony and other harassment to the Complainant owing to non-attendance by the Respondent through its nominated service agency to address the prevailing issues in the society owing to lack of maintenance service and failure to render other essential services.
    - iii. To adjudicate proper compensation under section 61 of the Act.
  - g. To pass such order(s) or direction(s), as may deem fit and proper, under section 37 and 38 of the Act, towards giving effect to any one or more of the above reliefs sought.
8. Complainant has filed various applications in the course of hearing and the same are being discussed in the succeeding paragraphs:
- i. Complainant has filed an application dated 09.02.2021, thereby submitting that Complainant Association is a registered Association



- under the Society Registration Act, 1860, registered in the year 2011 and the same was again re-registered under the Haryana Societies Act, 2012 in the year 2014.
- ii. Complainant Association has already opened a separate bank account bearing bank a/c No. 39576100126 at State Bank of India, NIFTM, Kundali, Haryana branch, which is operated by Col. Bhupendra Singh, President, Col. Jagdish Chandra, Secretary and Mr. Sunil Chopra, Treasurer.
  - iii. Has engaged services of Er. Ratan Dev Garg for assessing the status regarding deficiencies in infrastructure services, repair works of all towers.
  - iv. The members of the Association have been authorized to takeover the maintenance as well as IFMS by the Association, vide General Body resolution dated 25.11.2018.
  - v. As per the assessment of the Complainant-Association, a total amount of ₹3,45,42,956/- (Rupees Three Crores Forty Five Lakhs Forty Two Thousand Nine Hundred Fifty Six only) is collected by the Respondent/Promoter till date as IFMS.
9. An application in compliance of order dated 10.08.2021 was filed by the complainant where in it has been submitted that there are 639 flats in the projects Sunshine Country, of which 400 have been occupied. That, 321



of the said 639 odd allottees are members of the complainant Association. Therefore, it is clear that the majority of the allottees are members of the Complainant-Association. Further, in the said application report of local commissioner has been referred to by the complainants regarding STP being at the entrance of the project. In addition following has been submitted.

- (i) It is pertinent to mentioned herein, that the respondent had collected ₹16,000/- and ₹25,000/- (as per applicability) apart from the per sq. ft rate as IFMS from the allottees. An exorbitant amount of ₹3,28,97,000/- has been collected from the allottees till date towards maintenance but still the Respondent No. 2 has failed to provide maintenance services leading to an uninhabitable situation. Promoter was also responsible to handover all the necessary documents and plans including common areas to the association in accordance with law but was never handed over to the Association.
- (ii) That the Respondent had collected replacement fund from the allottees at ₹0.30 per sq. ft. per month with effect from March, 2011 to October, 2019, i.e., for a total period of 104 months, the said amount has accrued to ₹3,45,42,956/- no replacement had taken effect within the said period at the instance of the Respondent and the aforementioned fund remains unutilized as regard the project.

  
G. Rathee

- (iii) Location of STP is not as mentioned in the approved layout plan dated 27.04.06. The actual location of the STP is absolutely inappropriate as the same is opposite to the entrance gate and thereby causing the residents of the nearby towers to undergo the agony of foul smell. Sewerage water is even flowing in the basement emanating foul smell and making it unutilizable.
- (iv) A total of ₹1,68,25,000/- has been collected from the allottees towards the Club Facilities. However, till date no Club Facilities have been provided, infact the area that was designated for Club Facilities has been made STP.
- (v) Respondent collected Electrical Connection Charges @ ₹60/- per sq. ft. from the allottees of the society amounting to ₹6,70,73,700/- and further Power Back Up Charges @ ₹120/- per sq. ft. amounting to ₹13,41,47,400/- whereas the actual expenses incurred are subject to the audit by this Ld. Authority.
- (vi) Basic amenities such as Pole Light Fixtures, Cooling Tower Installation have not been carried out. Further most of the water tanks in the project are leaking and have not been replaced. Installation of Transformers for 1000 KVA still remains pending. The Pumping Set has not yet been installed.





(vii) Several applicants in the said application namely, Mr. Satyadeve Singh, Ms. Rita Malik, Mr. Dinesh Malik, Mr. Balkrishan Chaudhary, Ms. Jyoti Thakur are paying maintenance fees towards the Complainant Association and are members of the present Complainant Association but are still filing frivolous applications and other proceedings to derail the present Complaint Proceeding. Applicants name Mr. Jagbir Singh, Indu Bala w/o Shri. Jagbir Singh, Rekha w/o Shri Dinesh Kumar Malik, Devki Nandan are either themselves belonging to the opposition or are directly related to the members of the opposition. Impleadment application is also one such attempt of the Respondent Builder in connivance with the applicants therein. There are 154 allottees who are making payments towards the maintenance fees of the Complainant-Association despite the fact that they have not become members officially due to logistical challenges and restrictions on travelling due to the ongoing pandemic Covid-19.

An application dated 23.07.2021 has been filed by Advocate Vikas Gulia, thereby requesting to implead the complainants No. 2 to 17 (Jagbir Singh; Veena Lamba; Y.L.Lamba; Daya Kaur; Virender Kumar Dahiya; Anupam Kukreja ; Indu Bala; Rajinder; Rekha; Rohit; Devki Nandan; Bal Krishan; Satbir Singh; Anita; Naresh Thakur and Promila) as mentioned



in this application as necessary parties in the present case. He has also informed that a civil suit for declaration of permanent and mandatory injunction is pending before the Additional Civil Judge (Senior Division), Sonipat for the same cause of action in which the Additional Civil Judge (Senior Division), Sonipat vide order dated 05.03.2015 has stayed transferring the administration of the group housing colony to any other agency till the disposal of the suit.

10. Application dated 10.05.2023 has also been filed by the complainant Association. Said application has been filed as reply to the application dated 10.10.2022 filed by the respondent. It is submitted that respondent has attempted to raise and reiterate the issues of IFMS and replacement fund and has represented twisted facts before this authority. Vide orders dated 24.11.2020, this authority had directed the respondent to state precisely the amount collected, however, the respondent utterly failed to do so. It was also recorded that the respondent failed to provide the amount, the promoter has some hidden agenda for not disclosing the IFMS amount. Further, the respondent was directed to deposit the said amount of ₹3.45 crores in an Escrow Account vide orders dated 09.02.2021.
11. Respondents have wrongly claimed that no amount @ ₹20/- per sq.ft. has been received as provided in the flat buyer agreement. Members of



Association have individually executed flat buyer agreement with respondent No. 1 and the respondent compelled the innocent allottee to pay ₹20/- as maintenance charges as per clause 24 of the flat buyer agreement. Clause 24 also substantiates the fact that respondent No. 1 had the sole discretionary right to appoint a maintenance agency from time to time. It has been submitted that clause 24 of the flat buyer agreement specifically states that maintenance charges @ 20/- per sq. ft. will be contributed to the replacement fund.

**C. REPLY FILED BY THE RESPONDENT**

12. Respondents has filed its reply on 27<sup>th</sup> Feb. 2020, thereby making the following submissions :

- a. Respondent has taken a preliminary objection that this Hon'ble Authority is not having jurisdiction to try and decide the complaint filed by the complainant, since the provisions of the Real Estate (Regulation and Development) Act, 2016 RERA Act 2016, are not retrospective in nature and they do not apply to the projects that have already been completed. The project Sunshine County was not registered under the provisions of RERA Act 2016, as it was completed in the years 2011 and 2012, i.e., much before the enactment of RERA Act 2016. In this project occupation certificate for 12 Towers i.e. Towers 2A, 1F, 1G, 1B, 1E, 1C, 1H, 2F, 2G, 2E, 3A & 3B) with basement falling in group housing colony measuring



12.525 acre (licence No. 994-996 of 206 dated 14.06.2006) in Sector-63, Sonapat was issued vide letter dated 31.01.2011 and for rest 5 towers (1A, 1D, 2B, 2C & 2D area measuring 25031.96 sq. mtrs. and basement) was issued vide letter dated 31.08.2012.

- b. Respondents imposed maintenance charges as per actual costs incurred in maintenance.
- c. Respondent No. 2 is providing timely services as agreed vide maintenance agreement.
- d. Respondent no.2 is providing all the services as defined in maintenance agreement with full heart and soul and the amount charged is for meeting with the costs incurred in maintenance with the provisioning of unexpected emergencies, future exigencies requirements etc.
- e. It is submitted that the process of handing over the maintenance of Sunshine County was started by respondent at their end and an email was sent by the respondents to the complainant in this regard asking them to comply with necessary formalities and to furnish requisite documents, which are still pending at the end of the complainant.
- f. That in reply to the head "replacement fund", it is submitted that the respondents have replaced the equipments as per the requirement and utilising it.



g. With regard to the allegation of the complainant with respect to deficiency in service/maintenance, respondent has submitted the following:

- All the lifts are working properly.
- STP is maintained as per statutory requirements.
- Club room has been provided having gym, card room, TT room & billiards facilities. Apart from it one multipurpose hall is also provided.
- All roads inside the project are well maintained.
- Re-carpeting work has already been done.
- For removing leakage/seepage from basement work is going on. Earlier an agency was appointed for said work but due to unsatisfactory work another agency was appointed for the same and work is going on under the supervision of respondent No. 2.
- Horticulture services are up to the mark.

h. It is specifically denied that allottees are facing huge infrastructural problems due to inherent building defects. A contract is given to a professional agency to clean and remove garbage on daily basis from the basement garbage room and maintain it. Maintenance is a routine and daily work. At present there is no unresolved complaint. A meeting was convened on 21.12.2018 for RWA issues and most of the issues were resolved in a time bound manner.



- i. The handing over of maintenance work to RWA is also underway. RWA was informed about the formalities to be complied by them before handling over is to take place.
- j. As regards electricity billing to the allottees, the same is strictly as per the tariff stipulated by UHBVN only and electrical connection, capital installations and power backup charges are as per the builder buyer agreement. Adequate capacity of power backup is provided at site and accordingly 2000KV DG sets are installed.
- k. Club room has been provided at Sunshine County having gym, card room, TT room & billiards facilities. Apart from it, one multipurpose hall is also provided.
- l. Essential services are being provided to the residents by respondents, there is no uninhabitable living condition in and around the society and there is no failure on the part of respondents on account of failure of proper maintenances and management of society. It is denied that the project has any structural defects and there is compromise in workmanship and quality.

The relief sought in the complaint are completely wrong, baseless & hence denied & liable to be dismissed instantaneously/ out rightly. The provisions of RERA Act 2016 are not applicable on respondents and there is no need to refer this matter to the Adjudicating Officer of this Hon'ble Authority.



13. Respondent no. 2 also filed its reply on 07.10.2020 denying the allegations of the complainant and specifically submitted as follows:

(i) That the Hon'ble Authority is not having jurisdiction to try and decide the complaint filed by the complainant, since the provisions of RERA Act 2016, are not retrospective in nature and they do not apply to the projects that have already been completed.

(ii) Claims as alleged in the complaint are bogus and barred by law of limitation.

(iii) Handing over of maintenance work to RWA is underway. A meeting was convened on 21.12.2018, the issues raised by RWA were discussed and resolved in a time bound manner. During the year 2020, the respondent has got repaired/replaced necessary items in addition to the routine work in Sunshine County.

(iv) That an amount of ₹3,32,40,906/- is legally due and payable by the owners of Sunshine County. Respondents have replaced the equipments as per the requirement and utilising it. Respondent no. 2 has been providing timely services as agreed vide maintenance agreement.

(v) In reply to para 25 it is submitted that



- Lifts- Lifts are working properly and under comprehensive maintenance contract with O&M with M/s Kinetic Hyundai Elevators Movement technology Ltd.
- Location of STP- Installed as per the approved drawing from the competent authority.
- Club Facilities- Club and multipurpose hall have been provided.
- Link road and internal road- Roads are well maintained and re-carpeting has already been done.
- Leakage and seepage in basement- Work is going on under the supervision of respondent no. 2.
- Horticulture- Services are upto the mark.
- Poor housekeeping- All maintenance and housekeeping is in very safe hands.
- Structural defects- Contact is given to a professional agency to clean and remove garbage on daily basis. Maintenance is routine work and there is no unresolved complaint with respect to maintenance.
- Electricity- Electricity billing to the allottees is strictly as per the tariff stipulated by UHBVN and electrical connection, capotal installations and power backup charges are as per the agreement. Adequate capacity of power backup is provided at site and accordingly 200 KV DG sets are installed.





14. Respondents also filed an application dated 30.09.2020. In the said application it has been submitted by the respondents that maintenance has already been handed over by the respondents to the RWA. RWA is raising maintenance bills to flat owners. Respondent vide said application has submitted the details of IFMS, Replacement fund, capital expenses and the amount recoverable by them from the flat owners. It has been submitted that respondent has collected IFMS amounting to ₹1,16,74,602/-, Replacement fund amounting to 84,32,263/- and has incurred capital expenses amounting to ₹ 25,67,948/-. Respondent has also mentioned that an amount of ₹3,37,82,730/- is recoverable by them from the flat owners /-. Respondents have approached their bankers namely HDFC bank, Kundli, Haryana for attestation for IFMS and replacement fund statements and relevant documents and their request was declined by their bankers for want of knowledge, being unaware about break-up of amount deposited with them and delay is occasioned due to above said reason, covid-19 and kisan aandolan etc.

15. Respondent has also filed an application dated 10-10-2022 and submitted as follows.

(i) Complainant has alleged that the respondents have claimed amount of Interest Free Maintenance Security (IFMS) twice from the allottees, one @ ₹20 per sq ft and the other at fixed rate of ₹13000/16000/25000. The



complaints have also alleged that the respondents have claimed an amount @ ₹0.30 per sq ft per month on account of Capital Replacement Fund (CRF) since March 2011 till October 2019. On the other hand the respondent's case is that they have claimed IFMS only at fixed rate of ₹13000/16000/25000 and no amount @ ₹20 per sq ft have been received from the allottees while offering possession to them. It is also the case of respondents that the amount of CRF was claimed only up to 31.03.2014 and thereafter it has been discontinued.

(ii) It has been mentioned in clause no 24 of the agreement that the allottee agrees to pay ₹20 per sq ft as IFSD and maintenance charges as determined by the company or its appointed maintenance agency.

(iii) Respondents after discussion and for the benefit of the residents, decided that amount of IFMS should be reduced from the agreed rate of ₹20/- per sq ft and the fixed amount of the IFMS in three categories, which shall be much less than the previously agreed rate of ₹20/- per sq ft, be levied/charged from the residents. It is clear from the statement of accounts that the respondent no 1 has categorized the IFMS in three ways according to the area of the flats and demanded the amount of ₹13000/16000/25000 accordingly. Respondent no 2 has received IFMS only as per maintenance agreement and statement of account sent along with offer of possession letter and no amount @ ₹20 per

  
J. K. Lathee

sq ft, which was initially agreed between the buyer and respondent no 1, was ever charged.

(iv) Maintenance charges applicable for the residents for the initial period of 01.04.2011 to 31.03.2014 are specifically mentioned in the maintenance agreement. It is clearly mentioned that the respondent no 1 will collect CRF in addition to the maintenance charges for the above mentioned period for the purpose of replacement/repair of major items of plant and machinery etc. Company has raised Capital Replacement Fund (CRF) bills of ₹87,88,425/- only up to 31.03.2014, out of which total amount of ₹84,32,263/- were received and thereafter respondents have discontinued to claim CRF from the residents. Respondents have claimed the amount of CRF only up to 31.03.2014 @ ₹0.20, ₹0.25 and ₹0.30 for the respective years and thereafter it has been discontinued. Claim of the complainant that the respondents have claimed the amount of ₹0.30 per sq ft per month on account of CRF since March 2011 till October 2019 is totally false and bogus. Complainant has neither placed on record any statement of account, receipt or proof of any kind to show that any of the allottee/member of association has paid the IFMS twice to the respondent no 2 though no maintenance bill or receipt after 31 March 2014 are placed on record to show that the CRF was claimed @ ₹0.30 by the respondent no 2 after April 2014. The complainant has submitted only certain bogus calculations based on conjectures and surmises



without any authenticity and supporting documents. Complaints may kindly be directed to prima facie prove their allegations by filling affidavit of 3 residents supporting their allegations that the respondents have claimed IFMS twice from them and they have paid the same to the respondents and also that they have paid CRF @ ₹0.30 even after April 2014 till Oct 2019, along with the supporting documents.

(iv) An amount of Rs 3,37,72,831/- is still due and recoverable by respondent no. 2 on account of maintenance charges.

**D. ARGUMENTS OF LEARNED COUNSELS FOR COMPLAINANT AND RESPONDENT**

16. During oral arguments both parties reiterated their arguments as were submitted in writing. Complainant has referred to the order of the Authority dated 07.12.2021 wherein the Authority has given a tentative view that this matter deserved to be disposed of by giving directions to the respondent company to handover the IFMS/Replacement funds and the money collected on account of maintenance of the project to RWA. In the said order it was also recorded that the principle grievance of complainant is handing over IFMS/replacement funds amounting to ₹3,45,42,956/- and maintenance charges amounting to ₹3,28,97,000/-. Ld. Counsel for the complainant insisted upon handing over the aforementioned amount to the Association. He also referred to page 119

  
G. Ramesh

of the complaint wherein an excel sheet is annexed to show the amount of IFMS collected by the respondent no. 2. As per the said table total IFMS, {IFMS(as per agreement) and IFMS( at the time of allotment)} works out to be ₹3,28,87,900/-. On the other hand, ld. Counsel for the respondent referred to his application dated 30.09.2020, wherein it has been submitted

that respondent has collected IFMS amounting to ₹1,16,74,602/-, Replacement fund amounting to ₹ 84,32,263/- and has incurred capital expenses amounting to ₹ 25,67,948/-. Respondent has also mentioned in regard to the amount recoverable by them from the flat owners ₹3,37,82,730/-.

**E. ISSUES FOR ADJUDICATION**

- i. Whether the complaint is maintainable or not?
- ii. Whether complainant-association is entitled to the reliefs sought or not?

**F. OBSERVATIONS OF THE AUTHORITY**

17. On perusal of record and after hearing both the parties, Authority observes that the respondent has raised an objection that the provisions of RERA Act, 2016 cannot be applied retrospectively. Reference can be made to the case titled M/s Newtech Promoters & Developers Pvt. Ltd. vs. State of UP & O Etc. (supra), wherein the Hon'ble Apex Court has held as under:-



"41. *The clear and unambiguous language of the statute is retroactive in operation and by applying purposive interpretation rule of statutory construction, only one result is possible, i.e., the legislature consciously enacted a retroactive statute to ensure sale of plot, apartment or building, real estate project is done in an efficient and transparent manner so that the interest of consumers in the real estate sector is protected by all means and Sections 13, 18(1) and 19(4) are all beneficial provisions for safeguarding the pecuniary interest of the consumers/allottees. In the given circumstances, if the Act is held prospective then the adjudicatory mechanism under Section 31 would not be available to any of the allottee for an ongoing project. Thus, it negates the contention of the promoters regarding the contractual terms having an overriding effect over the retrospective applicability of the Act, even on facts of this case.*" "45. *At the given time, there was no law regulating the real estate sector, development works/obligations of promoter and allottee, it was badly felt that such of the ongoing projects to which completion certificate has not been issued must be brought within the fold of the Act 2016 in securing the interests of allottees, promoters, real estate agents in its best possible way obviously, within the parameters of law. Merely because enactment as prayed is made retroactive in its operation, it cannot be said to be either violative of Articles 14 or 19(1)(g) of the Constitution of India. To the contrary, the Parliament indeed has the power to legislate even retrospectively to take into its fold the preexisting contract and rights executed between the parties in the larger public interest.*" "53. *That even the terms of the agreement to sale or home buyers agreement invariably indicates the intention of the developer that any subsequent legislation, rules and regulations etc. issued by competent authorities will be binding on the parties. The clauses have imposed the applicability of subsequent legislations to be applicable and binding on the flat buyer/allottee and either of the parties,*



*promoters/home buyers or allottees, cannot shirk from their responsibilities/liabilities under the Act and implies their challenge to the violation of the provisions of the Act and it negates the contention advanced by the appellants regarding contractual terms having an overriding effect to the retrospective applicability of the Authority under the provisions of the Act which is completely misplaced and deserves rejection. 54. From the scheme of the Act 2016, its application is retroactive in character and it can safely be observed that the projects already completed or to which the completion certificate has been granted are not under its fold and therefore, vested or accrued rights, if any, in no manner are affected. At the same time, it will apply after getting the ongoing projects and future projects registered under Section 3 to prospectively follow the mandate of the Act 2016."*

The provisions of the Act are retroactive in nature and are applicable to an act or transaction in the process of completion. Thus, the rule of retroactivity will make the provisions of the Act and the Rules applicable to the acts or transactions, which were in the process of the completion though the contract/ agreement might have taken place before the Act and the Rules became applicable. Hence, it cannot be stated that the provisions of the Act and the Rules made thereunder will only be prospective in nature and will not be applicable to the agreement for sale executed between the parties prior to the commencement of the Act.

18. Authority vide its order dated 14.10.2020 has appointed Ld. Chief Town Planner of the Authority as local commissioner to visit the site and submit comprehensive report of the deficiencies pointed out by the complainant-



association. Accordingly, site was visited by Ld. CTP on 13.11.2020 and report was submitted on 23.11.2020. Said report was duly taken on record in the order dated 24.11.2020. In the report of local commissioner, it has been specifically stated that the 'maintenance of the overall colony is satisfactory; however two major issues are the supply of portable water and disposal of sewer'. Further, two major issues are being argued by complainant-association which are handing over of IFMS charges and replacement funds. All the issues are being adjudicated one by one.

19. To deal with the issues, detailed order dated 07.12.2021 already passed by this Authority is reproduced below for reference:-

*1. This matter was last heard on 09.02.2021 when arguments of both parties were recorded. The matter was adjourned for 04.05.2021 on the request of both the parties, as settlement talks were going on between them. On 10.08.2021, learned counsel for complainant had apprised the Authority that parties could not arrive at any settlement, therefore, he sought time to argue the matter on merits. After consideration of the matter Authority had directed both parties to file their written submissions along with relevant documents in support of their claims. Accordingly, complainant association had filed their written submission on 30.09.2021 in the court.*

*2. Today, Sh. Rajiv K. Bhatia, learned proxy counsel for respondent appeared and sought adjournment on the ground that settlement talks are still going on between the parties. Learned counsel for complainant opposed the request and prayed for hearing the matter on merit.*

*For proper adjudication of the matter, Authority had granted one last opportunity to the respondent to file their written submissions within a period of one week failing which the*





*matter will be decided on basis of facts available in file. The respondents have chosen not to file their written submissions. Accordingly, the matter is being disposed of on the basis of available record.*

*3. Learned counsel for complainant in his written submissions has stated that complainant association is a registered association duly constituted by allottees of the project in question namely, "Sunshine County". A gist of grievances of the complainant was recorded vide order dated 14.10.2020, the relevant portion of which is reproduced below:*

*1. "Present complaint involves three major grievances as follows:*

*-*

*(i) Complainant-association alleges that the promoter has failed to maintain the colony. Precise allegation is that lifts are in poor condition, STP is situated at the entrance of colony and the foul smell emanating from it causes inconvenience to the residents, roads are in dilapidated condition, plaster of the walls is coming off.*

*(ii) Despite several requests, promoter has failed to handover the complete charge of maintenance of colony to Resident Welfare Association.*

*(iii) Promoter has not refunded the amount collected in lieu of maintenance and service charge in shape of security deposit to Resident Welfare Association along with interest."*

*4. Further, grouse of the allottees is that the colony now should be handed over to RWA after carrying out requisite repair and maintenance work along with already deposited amounts of ₹ 3,45,42,956/- collected as IFMS and Replacement Fund, and of ₹ 3,28,97,000/- taken on account of Maintenance charges along with interest. Complainants also referred to report submitted by local commissioners appointed by this Authority vide order dated 24.11.2020, wherein the deficiencies pointed out by the complainant association were accepted and recorded.*

*5. On the other hand, respondent's case is that the project had received Occupation Certificate in respect of 12 towers on*

*Jathee*

31.01.2011 and remaining towers on 31.08.2012. The colony is properly maintained and allegations by complainant regarding non-maintenance of colony are denied ...lifts and roads are in proper condition and there is no infrastructural problem in the colony. Further, maintenance of the colony was taken over by RWA on 1<sup>st</sup> November 2020 and now, same is being maintained by RWA.

6. Upon perusal of documents placed on file by both parties and careful consideration of oral arguments put forth by learned counsels, Authority observes that present matter has been heard fourteen times. On each date findings of the Authority were duly recorded and orders thereof have been uploaded on the website of the Authority. The five important orders are dated 21.08.2020; 14.10.2020; 24.11.2020; 23.12.2020; 09.02.2021. All these five orders shall be read as a part of this final order. A gist of all the orders and the final directions of the Authority in this matter are as follows:

- I. The disputes between the parties pertain to maintenance of the colony in question. Precise allegation is that lifts are in poor condition, STP is situated at entrance of colony and the foul smell emanating from it causes inconvenience to the residents, roads are in dilapidated condition, plaster of the walls is coming off.
- II. The promoter has failed to handover complete charge of maintenance of colony to Resident Welfare Association. Promoters have not refunded the amount of ₹ 3,45,42,956/- collected as IFMS and Replacement Fund and an amount of ₹ 3,28,97,000/- on account of Maintenance charges to RWA along with interest.
- III. This Authority in Para 4, 6 of the order dated 24.11.2020 and Para 4- 5 of the order dated 23.12.2020 had observed as follows:

Order dated 24.11.2020

4. "Further fact remains that various facilities of the project are in shambles. The main reason for this is that the State



*Government despite having received the entire EDC from the promoters and allottees have failed to install requisite services like water supply system, storm water drainage system, sewage system etc. For having not provided these facilities the sewerage of the project is flowing in the open land which is making living for the allottees extremely difficult.*

- 6. The Authority is of the considered view that till such time as the colony remains under the charge of the developer, the developer has to maintain properly and for which he is entitled to recover maintenance charges from the allottees. He could not have been allowed the facilities to deteriorate to an extent that the colony becomes un-inhabitable. If any extra cost was to be incurred for strengthening the infrastructure etc; that cost could have been borne either out of IFMS or by asking the allottees to pay additional money.*

*Now the allottees are entitled to take possession of their colony but before that the developer should repair all the facilities make them functional. The respondent is directed to prepare an action plan for carrying out all the repair works to be completed within a period of 3 months. He should discuss the plan of action with the Association of Allottees.*

*It was briefly mentioned that an amount of Rs.3,45,42,956/- has been collected by the respondent towards IFMS and Replacement Fund. Respondent shall state precisely the amount collected in this regard. That amount shall be handed over to the association. Respondent should take action accordingly and report compliance to the Authority on the next date of hearing. Further, respondent should hold a meeting with the governing body of the association and discuss further modalities for handing over the project to Association finally."*

**Order dated 23.12.2020:**

- 4.** *"After hearing both the parties, Authority is of the considered view that various facilities of the project are in shambles and allottees are entitled to take possession of their colony in good condition. So, respondent/developer should repair all the*



*infrastructure & other facilities and make them functional to the satisfaction of all allottees. Authority further observed that certain directions were passed by the Authority on the last date of hearing but respondent fails to comply with the same. Therefore, he is burdened with an exemplary cost of ₹25000/- payable to the Authority for non-compliance of the said order.*

*As far as issues of handing over IFMS amount and maintenance charges to the Association is concerned, Authority directs the complainant-association to go through the following steps and submit documentary evidence that they are now a registered Association and can take over the project in interest of the allottees.*

- I. All the members shall form an association at the earliest and get themselves registered as per the Statute.*
  - II. when an association is so formed, they may open a bank account to be operated by at least three joint signatories to be nominated by the association. Association shall then engage a technical team preferably comprised of an Engineer, an Architect and a Chartered Accountant to prepare detailed status regarding deficiencies in Infrastructure services, repair works of all towers of the project and tentative estimate for repairing of all the deficiencies.*
  - III. All members will pay their respective charges of maintenance as well as IFMS to the association. Further, members of Association will submit affidavits accordingly.*
  - IV. As per their assessment, total amount of IFMS collected by the respondent/promoter till date and whether any money given to Association by promoter/ respondent.*
- 5. Complainant- Association shall take further action on these directions and submit their report to the Authority on the next date of hearing. Thereafter, Authority will issue necessary direction with regard to collection of maintenance charges. Further, respondent is directed to submit precise statement and relevant documents attested by the concerned bank for amount of ₹3,45,42,956/- collected towards IFMS and Replacement Fund by promoter atleast fifteen days before next date of*



hearing failing which penal action under Section 63 of the RERA Act 2016 may be initiated against the promoter/respondent for non-compliance of the order. He is also directed to submit repair plans in the registry of the Authority at least fifteen days before the next date of hearing and supply its advance copy to the complainants-association as well."

7. The Authority has perused the documents placed on record as well as various orders passed in the past, some of which have been reproduced above.
8. It can be summarized that on one occasion, the Authority had expressed its views that the respondents should maintain the project properly and then handover the same to the allottees. Another time it has been noted that Residents Welfare Association (RWA) of the project has already taken over the project for maintenance. The fact of EDC works having not been done by the State Government Agency despite lapse of 10 years period has also been recorded. The principle grievance of complainant at this stage is handing over of IFMS/replacement funds amounting to Rs.3,45,42,956/- and maintenance charges amounting to ₹3,28,97,000/- to the association to enable them to maintain the project at their own level.
9. The Authority observes that there are some contradictions in the observations made by the Authority on various dates. It takes note of the fact that the project was completed more than 10 years ago and the occupation certificate of the same had also been obtained at that time. Obviously, the infrastructure would get worn out during this period. Maintenance charges, IFMS/Replacement funds have been collected to repair such worn out facilities. If the aforesaid funds are placed at the disposal of RAW, they may carry out the requisite repairing and maintenance works at their own level.
10. Keeping in view above observations, the Authority is of the tentative view that now this matter deserves to be disposed of by giving directions to respondents company to handover the IFMS/Replacement funds and the money collected on account

*of maintenance of the project to RAW. Thereafter, RWA will become fully incharge of the project and they may deal with maintenance issues as they deem appropriate. Both parties will be hard before finalizing this order on these lines.*

*11. Adjourn to 31.03.2022."*

20. It is pertinent to mention here that the complainant-association has specified various deficiencies in the project in their complaint and had sought relief of directing the respondent to repair/remove those deficiencies. But as per report of local commissioner the maintenance of the project was overall satisfactory except supply of portable water and disposal of sewer. Moreover, the complainant association has already taken over the maintenance of the project w.e.f 01.11.2020 so as already observed in para 5 of aforesaid order dated 07.12.2021, the association can carry out the repair works at its own level out of the funds-IFMS, maintenance as being assigned for said repair/maintenance works. Therefore, no other direction is required to be passed pertaining to removal of deficiencies or to carry out repair works at project by respondent.

21. In order dated 07.12.2021, Authority had expressed its tentative view that *'this matter deserves to be disposed of by giving directions to respondents company to handover the IFMS/Replacement funds and the money collected on account of maintenance of the project to RWA. Thereafter, RWA will become fully incharge of the project and they may deal with*



*maintenance issues as they deem appropriate. Both parties will be heard before finalizing the order on these lines.* Thereafter, respondent had filed its written submissions on 10.10.2022 and complainant had filed reply to it on 10.05.2023. Both these documents pertains to issues of funds-IFMS, replacement, maintenance charges only. No deficiencies/repair work was pointed out after order dated 07.12.2021.

22. Respondent in its written submissions dated 10.10.2022 has submitted that they have claimed IFMS only at fixed rate of ₹13000/16000/25000 and no amount @ ₹20 per sq ft have been received from the allottees while offering possession to them. It is the case of respondents that the amount of CRF was claimed only up to 31.03.2014 and thereafter it has been discontinued. In respect of CRF, it is stated that respondent-company has raised common replacement Fund (CRF) bills of ₹87,88,425/- only up to 31.03.2014 out of which total amount of ₹84,32,263/- received and thereafter the respondent has discontinued to claim CRF from the residents. Respondent have claimed the amount of Capital Replacement Fund (CRF) only up to 31.03.2014 @ ₹0.20, ₹0.25 and ₹0.30 for the respective years and thereafter it has been discontinued and claim of the complainant that the respondents have claimed the amount of ₹0.30 per sq ft per month on account of CRF since March 2011 till October 2019 is totally false and bogus. Moreover, an amount of



Rs 3,37,72,831/- is still due and recoverable by respondent no. 2 on account of maintenance charges.

23. Complainant in reply to it has stated that respondent was time and again directed to disclose the amount of IFMS but due to some hidden agenda respondent did not do it. As per version of complainant, Rs 3.45 crores is the IFMS amount but in the hearing dated 04.05.2022 counsel for the respondent opposed the amount. Further, it has been stated that Rs 20/- per sq ft was taken by respondent from the innocent allottees under garb of clause 24 as IFSD. It has been pointed out that respondent no. 2 has not substantiated its claim of not receiving Rs 20 per sq ft towards IFSD with any documentary evidence.

24. In present case, it is important to peruse the application of the respondent dated 30.09.2020 wherein it has been submitted by the respondents that maintenance has already been handed over by the respondents to the RWA. RWA is raising maintenance bills to flat owners Respondent has submitted the precise details of IFMS, Replacement fund, Capital expenses and amount recoverable by them from the flat owners. Details of the same are shown in the table below:

Sr. no.	Particulars	Amount(₹)
1	IFMS	1,16,74,602/-
2	Replacement fund	84,32,263/-
3	Capital expenses incurred	25,67,948/-
4	Amount recoverable by respondents from the flat	3,37,82,730/-





owners	
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On perusal of the annexures appended to such application it has been observed that the stance taken by the respondent in such application is correct. Authority confirms the tentative view expressed in order dated 07.12.2021 and accordingly IFMS amount of Rs. 1,16,74,602/- is directed to be transferred to the RWA along with interest accrued. Further amount of replacement fund shall also be transferred to the RWA after deducting the amount of capital expenses incurred. Therefore an amount of Rs.58,64,315/-(84,32,263-25,67,948) on account of replacement fund will be transferred to the RWA along with interest accrued on such amount. Order dated 07.12.2021 stands confirmed and amount of IFMS and Replacement fund have been directed to be transferred to the RWA vide this order.

**Disposed off.** File be consigned to record room after uploading order on the website of the Authority.

  
 .....  
 NADIM AKHTAR  
 [MEMBER]

  
 .....  
 DR. GEETA RATHEE SINGH  
 [MEMBER]