



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	638 of 2019
Date of filing:	22.02.2019
Date of first hearing:	28.03.2019
Date of decision:	19.09.2024

Ansal Town Welfare Association through its General Secretary
Sh. Baldev Raj Kamboj S/o Sh. Sadhu Ram
R/o Flat No. A-020, Ansal Town Jagadhri
District-Yamunanagar

....COMPLAINANT(S)

VERSUS

1. Secretary, Department of Town and Country planning and Urban Estate Haryana Civil Secretariat, Chandigarh .
2. Secretary, Department of Urban Local bodies, Haryana Civil Secretariat, Chandigarh
3. Director General, Town and Country Planning Department, Haryana, SCO-71-75, Sector-17-C, Chandigarh
4. Director General Urban Local Bodies, Department Haryana Bays No.11-14, Sector-4, Panchkula
5. Deputy Commissioner, Yamunanagar
6. Municipal Corporation, Yamunanagar through its Commissioner.
7. Ansal Housing and Construction Ltd through its Authorised Signatory, Registered office: at 15-UGF, Inderprakash Building, 21, Barakhamba road, New Delhi
8. District Town and Country Planning Officer, Yamunanagar
9. M/s Sunrise Estate Management Services through its Authorized Signatory, Registered office at 110, Inderprakash Building, 21, Barakhamba road, New Delhi.

....RESPONDENT(S)

Complaint no.:	813 of 2019
Date of filing:	22.03.2019
Date of first hearing:	25.04.2019
Date of decision:	19.09.2024

Rajesh Goyal & Others:-

1. Rajesh Goyal
2. Baldev Raj Kamboj
3. Lal Chand Mittal
4. Yog Raj
5. Dinesh Puri
6. Darshan Lal Dhawan
7. Joginder Pal Gupta
8. Sanjeev Aggarwal
9. Poonam Goel
10. Dalip Chhatwal
11. Hemant Monga
12. J.K. Grover
13. Ashok Kumar
14. Rajesh Goyal
15. Dinesh Rishi

All residents of Ansal Town, Sector-20, Near Police Line, Ambala Road, Jagadhari, Yamuna Nagar, Haryana

....COMPLAINANT(S)

VERSUS

1. Sunrise Estate Management Services through its Authorized representative, Anal Galleria, Ansal Town, Sector-20, Near Police line Ambala Road, Jagadhri, Yamuna Nagar, Haryana.
2. Ansal Housing and Construction Ltd through its Authorized representative, Ansal Galleria, Ansal Town, Sector-20, Near Police line Ambala Road, Jagadhri, Yamuna Nagar, Haryana.

....RESPONDENT(S)

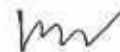
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CORAM: **Parneet Singh Sachdev** **Chairman**
 Nadim Akhtar **Member**
 Dr. Geeta Rathee Singh **Member**

Present: - Mr. Jitender Singh, Counsel for the complainants in both cases through VC.
 Mr. Ashish Verma, Counsel for the respondent no. 7 in both the cases through VC.
 None for all other respondents.

ORDER (PARNEET S SACHDEV-CHAIRMAN)

1. Above captioned complaints are taken up together for hearing as these complaints involve similar issues and are related to the same project of the respondents. This final order is being passed by taking complaint no. 638/2018 as the lead case.
2. Present lead complaint was filed on 22.02.2019 by the complainant's association 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 fulfil all the obligations, responsibilities and functions towards the allottee as per the terms agreed between them.



A. FACTS OF THE COMPLAINT

3. That the complainant is a Society Registered Welfare Association of the residents of residential colony, where more than 800 plots have been carved out by the respondent no. 7, in the name of **Ansal Township Sector-20, Yamunanagar.**

4. That the complainant is registered legal entity and acting for the Welfare of residents and plot owners. The complainant association is aggrieved by the Act of the respondents for not providing all basic facilities; not completed the agreed development works in the colony; failed to develop the infrastructure like proper roads, proper sewerage and water drainage and rain water harvesting, Community Buildings like Hospital, school, club, children park, shopping facilities, dedicated electric supply.

5. The respondent No. 7 (Developer) had made an agreement dated 02.12.2009 to set up a plotted colony with Governor of Haryana through Director Town and Country Planning, Haryana, Chandigarh, under Rule 11 of Haryana Development and Regulation of Urban Area Rules, 1976 to get a license for carrying out and completion of development works in accordance with license for setting up a colony in the Revenue Estate of Village Bhatoli, Teshil Jagadhari, District Yanunanagar, with the condition to fulfil all the terms/conditions in Rule 11 of Haryana Development and Regulation of



Urban Area Rules, 1976 and the condition of agreement. A copy of agreement dated 02.12.2009 is annexed as Annexure C/1.

6. That it was provided in the clause of VIII (e) of the said agreement that the owners shall construct at their own cost and get constructed by any other institute or individual at their own cost, schools, hospital, community centre and other community building on the project site and set apart for the purpose or undertake to transfer to the Government at any time free of cost within a specified period. It was further provided that the owners shall be responsible for upkeep of all the roads, open spaces, public parks and public health services for a period of 5 years from the date of issuance of completion certificate.

7. That it was further provided that in case of breach of terms and conditions of above said agreement or violation of any provisions of above mentioned Act and Rules then in such cases Director, Town and Country Planning, Haryana, i.e., respondent No. 3 will cancel the license of the developer and their Bank Guarantee(BG) shall stand forfeited in favour of the Director, Town and Country Planning, Haryana.

8. That thereafter Part Completion Certificate (PCC) dated 27.11.2015 was issued to the respondent developer with the conditions that the respondent developer is fully responsible for operation, up-keep and maintenance of all roads, open spaces, public parks, and public health



services like supply of potable water confirming to drinking water norms as per WHO, sewerage, functional sewerage treatment plant (STP) with primary and secondary treatment as per norms and drainage.

9. That the respondent No. 7, i.e., Ansal Company started demanding maintenance charges despite the fact that nothing has been done to maintain the colony except nominating their sister concern as maintenance agency namely; 'Sunrise Management Services' i.e., respondent no. 9 on the basis of the Tripartite Maintenance Agreement executed between members of the complainant's society and Ansal Housing Construction Limited, i.e., respondent No.7 and sister concern of respondent No. 7 namely; M/s Sunrise Estate management Service, i.e., Respondent No. 9.

10. That after duly approving the site plan maps from the concerned department many of the plot holders have duly constructed their houses. That even after passing of the time period given by the respondent No. 3, (Director) to respondent No. 7 (developer) to construct the community sites like school, hospital, children park with facilities like potable water, wash rooms, and seating arrangement etc. shopping facilities etc. and further failed to provide the facilities of gated community, boundary wall for the colony for security, proper entry and entry gates, fresh potable water supply like HUDA and dedicate electric supplies within a period of 4 years from



03.04.2012, i.e., upto 03.04.2016 and further number of representation in this regard have been given to the respondent authorities, but in vain.

11. That the respondent No. 7 developer has collected the club membership/charges with addition of 3 times VAT charges and security much in advance from all the plot, flat and Villa holders at the time of possession/registration of house/flat/plot, but till date neither there is any sign of construction of Club nor likely to be and moreover above said collected amount with regard to club charges has not been refunded and same is liable to be refunded alongwith interest @ 24% PA.

12. Respondent no. 7 has constructed very poor houses and there is lack of expertise in design and construction and used substandard materials after taking all the money in advance. There is defect in floor tiling, seepage from roofs of houses due to use of poor material, defective and improper spacing of bathroom fitting resulting in difficulty in using the same and poor quality of plastering.

13. That neither the developer/colonizer, i.e., respondent No. 7, has got constructed school, hospitals, community centres and other community buildings like club etc. within a period of 4 years from March 2012 as further time period of 2 years has not been extended, nor the respondent State including Respondent no. 3, has tried to take over all the sites of Community Buildings etc. for developing these at the cost of developer as



stated above, or cancel the license of developer to take over the colony for proper development as per agreement, despite repeated requests and representations and legal notice dated 01.11.2017.

14. That the respondents are not taking any action to meet with deficiencies mentioned in Para 10 and to carry out the development works like community buildings etc. and not providing the basic amenities like maintenance and upkeep of all roads, open spaces, public parks and public health services, to the complainant and other plot holders and fail to discharge their official duties as envisaged under the Act of 1975 and Rules thereof and as such action on the part of respondents, is illegal unjust, unfair unconstitutional, arbitrary and is liable to be set aside.

C. RELIEFS SOUGHT

15. In view of facts mentioned above, complainant prays for the following relief(s):

- i. Allow the present complaint in favour of complainants and against the respondents.
- ii. Issue an appropriate order of direction directing the respondents to provide required infrastructure in colony/township (Ansal Town) of complainant like proper roads, maintenance and upkeep of all roads, open spaces, parks, sewerage, drainage, water drainage, water harvesting, and further provide community building like hospital, school, club, community centre, children park, boundary wall for security, facilities for gated community, proper security and fresh water supply like HUDA, as the respondent No. 7, has



failed to provide above said infrastructure, despite their agreement with respondent No. 3 and despite same has been agreed to construct the community sites within a period of 4 years from the date of amendment of section 3 of Act No. 8 of 1975, i.e., 03.04.2012 vide part completion certificate dated 27.11.2015

OR in alternate direction be issued to respondent No. 3 to cancel the license of respondent No. 7 and declare the part completion certificate as ab-initio and take over the Ansal township to carry out above mentioned development works at the cost of respondent No. 7 by forfeiting the bank guarantee as the colonizer-respondent No. 7, has committed the breach of terms and condition of bilateral agreement executed between him and respondent No. 3 to set up a colony and violated the provisions of Haryana Development and regulation of Urban Area Act, 1975 and Rules thereof, of 1976 as amended upto date and further condition of part completion certificate (Annexure P-2) has not been compiled with.

- iii. Issue an appropriate order or direction directing the respondent No. 7 and 9 not to charge any maintenance charges from the members of the complainant's society in view of agreement dated 02.12.2009 (Annexure P-1) and Haryana Development and Regulation of Urban Area (amendment and Validation) Act, 1975 vide which it was mandatory duty of the respondent No. 7 to maintain and upkeep of all roads, open space, sewerage, water draining, water harvesting, parks and security of the society etc. for a period of 5 years from the date of issue of completion certificate unless reliving of the responsibility by transferring all roads, open space, public parks, public health services free of cost to the local authorities as neither completion certificate has been



issued in favour of respondent No. 7 nor responsibility of public places has been relived in favour of local authority by declaring Tripartite Maintenance Agreement executed between members of the complainant's society, respondent No. 7 and sister concern of respondent No. 7, i.e., Respondent No. 9 as void ab-initio as the same is in violation of provision of Haryana Regulation of Urban Area Act, 1975 and rules thereof 1976 and agreement (Annexure P-1) and the same has been executed by playing fraud and withholding/hiding the agreement Annexure P-1.

- iv. Issue appropriate direction to respondents to meet with deficiencies mentioned in Para 10 of complaint.
- v. It is further prayed that the matter be handed over the CBI, for taking appropriate action against the present/past partner of respondent No. 7, add the officers of Local Bodies Department and Municipal Commissioner, Yamuna Nagar, who are hand in glove with the builder.
- vi. To direct the respondents to pay Rs. 10 lacs for causing mental agony. Harassment, pain and suffering due to above said non action on their part.
- vii. To direct the respondent no. 7 to refund the membership fee of club to each each plot/villa/flat holder amounting to Rs. 42,800/- along with interest @ 24% PA from date of receipt till realisation.
- viii. To direct the respondent to reimburse litigation cost of Rs. Two lac to complainant.
- ix. Any other order or direction, which this Hon'ble court may deem fit and proper as per the facts and circumstances of the case, may kindly be pain and suffering caused to complaints.



16. For the sake of clarity, reliefs sought by the complainants in complaint no. 813/2019 are reproduced below for reference:-
- a. This authority may review the matter of maintenance of this colony and of the maintenance charges and evaluate and take necessary action in this regard for the welfare of the allottees of this colony.
 - b. The Respondents may be directed to hand over the maintenance of the colony to the registered welfare and maintenance society of the allottees and transfer the balance funds collected as maintenance charges from the allottees of this colony to the registered welfare and maintenance society of the allottees.
 - c. The respondents may be directed to provide the transparent and exact break up of the expenditure incurred on maintenance of this colony in last four years and the amounts collected from the allottees as maintenance charges.
 - d. Respondent no. 2 may be directed to develop Club and set up Sewerage Treatment Plant as early as possible and in case of its failure to do the same within one month, Club Charges and STP Charges collected from the complainants may be directed to be refunded along with interest @ 18% per annum from the date of payment till its actual realization.
Or in the Alternative, any Govt. authority or the welfare society may be asked to do the same in supervision.
 - e. Respondents may be directed to refund the amount collected from the allottees as Interest Free Maintenance Security to the welfare society, as the respondent has miserably failed to provide any maintenance service to the allottees till date and the same may be ordered to be utilized in supervision of a committee appointed by this Ld. court.

- f. Respondent may be directed to provide justification of the amount of Rs. 1,52,075/-, which has been charged in the name of utility charges from each of the allottees, as the complainants are unable to understand for which facilities and on what count these charges have been collected and these seem to be unjustified and in condition of the resp. no. 2 failing to explain and justify the same, it be directed to refund the extra amount collected from the complainants along with interest @ 18% per annum from the date of payment till its actual realization.
- g. Respondent may be directed to provide justification of the amount of Rs. 1,38,250/- collected in the name of VAT and Rs. 1,24,847/- collected from the complainants in the name of service charges, as the complainants do not know whether this amount was legally imposable on them and the same has been paid to the government as Tax or not and be directed to refund the extra amount collected from the complainants along with interest @ 18% per annum from the date of payment till its actual realization.
- h. Respondent may be directed to Pay the compensation of Rs. 15,00,000/- for the mental agony and financial loss suffered by the Complainant; Rs. 15,00,000/- on account of deficiency in the services of Respondent and also Rs. 1,00,000/- towards the litigation charges; and/or
- i. Any other relief/s which this Hon'ble Tribunal may deem fit and proper in the interest of justice.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENTS

17. Reply filed by Amit Madholia, District Town Planner, Yamuna Nagar on behalf of respondent no. 1,3 & 8 on 02.04.2019:

18. That the main grievance raised by the complainant in this complaint is that respondent no. 7, i.e., Ansal Housing & Construction Ltd. has not provided the required infrastructure like proper roads, maintenance and upkeep of all roads, open spaces, parks etc. in the colony being developed by the company in Yamunanagar. It has also been alleged that the State respondents have not taken any action against the colonizer for its failure to fulfil the terms and conditions of the licence and the provisions of the Act of 1975 and the Rules made therein.

19. That regarding construction and maintenance of the internal roads, open spaces etc., it is submitted that as per terms and conditions of the LC-IV agreement executed by the colonizer with the Director, Town & Country Planning, Haryana at the time of grant of licence 'internal development works' as defined in Section 2 (i) of the Act of 1975 have to be executed by the colonizer. The internal development works includes:-

- (i) Metalling of roads and paving of footpaths;
- (ii) Turfing and plantation with trees of open spaces;
- (iii) Street lighting;
- (iv) Adequate and wholesome water supply;
- (v) Sewers and drains both for storm and sullage water and necessary provision for their treatment and disposal; and
- (vi) Any other work that the Director may think necessary in the interest of proper development of a colony;



20. Further, at the time of issue of completion/part completion certificate, it is ensured by the answering respondents that the services like water supply, sewerage system, electrification, road network has been completed at site. The block of plots, open spaces/parks is as per approved layout plan/demarcation plan at site. All the open spaces/parks have been developed at site by the colonizer in the area for which part/full occupation certificate is being sought.

21. That respondent no. 7 has been granted Licence No. 75 of 2009 dated 02.12.2009 under Section 3 of the Act of 1975 for setting up of a Residential Plotted Colony for 59.362 acres falling in the revenue estate of village Bhatoli and Khera, District Yamunanagar. The licence no. 75 of 2009 is renewed upto 01.12.2019. **The part completion certificate in respect of the above said licence was issued by respondent no. 3 vide office letter dated 27.11.2015 (annexure C-2). Before issuing the part completion certificate, a report from the field offices about completion of the internal development works and Chief Administrator, HSVP, Panchkula regarding provision of public health service was also obtained.** It was reported by the field office that services like water supply, sewerage system, electrification; road network has been completed at site. The block of plots, open spaces/parks is as per approved layout plan/demarcation plan at site. All the open spaces/parks have been developed at site by the colonizer in the area. The Chief Administrator, HSVP,



Panchkula also reported that the water supply, sewerage disposal system, storm water drainage, internal roads have been completed at site and the services are functional. **Thus, at the time when part completion certificate was granted by the Respondent no. 3 in the year 2015 for the colony in question, the internal road network, water supply, electricity, sewerage system was functional. Thereafter, it is the responsibility of the colonizer i.e. respondent no. 7 to maintain these services till the services are handed over to the Municipal Corporation.**

22. That the aforesaid colony has been inspected to check the positions of internal development works and at present status of services are notices as under: -

- 1) The roads stand constructed at site but as on date the upper layer of black top is not in good condition at various locations, which required maintenance.
- 2) Open spaces are well maintained.
- 3) Street light are functional.
- 4) Adequate water supply is being provided.
- 5) Sewage system and storm drains are functioning.

23. That the issue raised by the complainant, regarding recovery of the charges for maintenance of internal services of the colony are of bilateral nature and have to be decided in accordance with the terms and conditions of the Plot Buyer Agreement executed by and between the allottees and the

colonizer, i.e., respondent no. 7. The answering respondents cannot interfere in such matters in view of the law laid down by the Hon'ble Supreme Court in Civil Appeal no 550, 551 and 1611 of 2003 titled as DLF Universal Ltd. & Another Vs. Director, Town & Country Planning Haryana & Others decided on 19.11.2010 (reported as 2010 (2) HLR page 575) wherein, it was observed that:

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

24. That the above said case was related to issue of instruction by the Department of Town & Country Planning, Haryana to all the colonizers for not recovering the extension fee and maintenance charges in some cases. However, the Hon'ble Supreme Court observed that *"there is no provision in the Act or the Rules empowering the Director to sit in judgment on the perceived fairness of any clauses incorporated in the agreement entered by the parties. The terms and conditions in the licence granted by the Director do not prohibit incorporation of such a clause in the agreement to be entered between the owners and the purchasers"*. Thus, the answering respondents cannot interfere in such matters.



25. In view of the submissions made in forgoing paras, the complainant has no cause of action to file the present complaint against the answering respondents. It is therefore, humbly prayed that the complaint qua the answering respondent (s) may kindly be dismissed.

Application dated 24.06.2019 filed by respondent no. 6 Municipal Corporation Yamuna Nagar for deleting the name of the applicant arrayed as respondent no. 6 in the above titled case.

26. That the matter in dispute is between complainant and respondent no. 7- M/s Ansal Housing & Construction Ltd. who is promoter of the project in question and the respondent no. 6 has no concern with the project in question until, unless the same is not transferred to the respondent no. 6 for the purpose of maintenance.

27. The defendant no. 7 is to developed the colony in terms of the license granted to the respondent no. 7 and to provide all the necessary facilities to the plot holders of the project developed by the respondent no. 7.

28. That there is no agreement between respondent no. 7, complainant and respondent no. 6 for providing the facilities by the defendant no. 6 to the complainant as asked by the complainant in the complaint.

29. That the provisions of the Real Estate (Regulation and Development) Act 2016 are not applicable to the respondent no. 6 in regard to the project in question.



30. The complainant can get its grievances redressed only from the respondent no. 7 who is the promoter of the project in question as provided in Section 19 (4) of the Real Estate (Regulation and Development) Act 2016.

31. That under the circumstances mentioned above the respondent no. 6 is not necessary party and has been unnecessary dragged in this case.

Written Statement on behalf of Municipal Corporation Yamuna Nagar, District Yamuna Nagar, Respondent 6 filed on 24.06.2019.

32. That the petitioner has filed this Complaint, under the provisions of the Haryana Development and Regulation of Urban Areas Act 1975, for issuances of direction to respondent no. 7.

33. That the present complaint of the complainant is nothing, except to harass the answering respondent no. 6, as the matter in dispute is just between the complainant and respondent no. 7, who is a private organization and the answering respondent is not responsible for any wrong act and conduct of other respondents. But the complainant has dragged the answering respondent in the present litigation without any cause of reason. The complainant is legally not entitled for any relief from this Hon'ble Authority against the answering respondent. Thus, in view of the above-mentioned Preliminary Objections, this complaint of the complainant deserves dismissal and hence, the same may kindly be dismissed with costs in favour of answering respondent.



Written reply on the behalf of respondent no. 7 through authorised signatory Vaibhav Choudhary, Ansal Housing Limited, Regd, office 15 UGF, Indra Parkash Barakhamba road, New Delhi-110001 filed on 30.04.2019

34. That the present complaint is not maintainable as per sub-clause '3' of Section 19 of "Real Estate (Regulation And Development) Act, 2016" as the Act clearly states that the association of the allottees can claim only the possession of common areas.
35. That the present complaint deserves to be dismissed as the complainant has no locus-standi to file the present complaint as being not an elected body because as per the provisions of Haryana Apartments Ownership Act, 2012, the complainant has not supplied the list of members who are associated with the complainant and by merely filing a bare list of members does not intend them to legally represent as an association, which can file a complaint through the proper authorization.
36. That the present complaint is hopelessly time barred. The plots in the present project were sold to the allottees about 8-9 years ago. The registrations of plots were done to most of the allottees in year 2014. Some of the registries are collectively annexed as Annexure R-7/2. After the registry was done and physical possession of the plots were taken, the clock of limitation had started. The present complaint filed after more than 5 years is barred by limitation, thus, is liable to be dismissed.



37. That this Hon'ble Authority do not have jurisdiction to entertain the present complaint as the present project does not fall under the definition of ongoing project. Since the part completion certificate has already been issued to the answering respondent for this project, the provisions of Real Estate (Regulation and Development) Act, 2016 does not apply.
38. That the competent authority has already issued a part completion certificate dated 27.11.2015 after thorough verification. A copy of part completion certificate dated 27.11.2015 is annexed as Annexure R-7/3.
39. That the allegations and photographs mainly show alleged requirement of repair of roads/building etc. This stand of the complainant, supports the answering respondent because it shows that while developing the project, all infrastructure was created. The repair and maintenance is continuous requirement of a civil structure and for this reason only a maintenance agency has been appointed. The residents have to contribute the maintenance charges for maintaining the colony as per law. However, the complainants herein wants everything for free and do not want to contribute for maintenance of the colony which is their obligation.
40. That through the present complaint the complainant has prayed for the refund of club membership charges to each plot/villa/flat holder. However, since no proper procedure was followed while formation of the association, then how can an invalid association pray for the such relief on behalf of a person who is not a member of the association.

41. That the sewerage work, storm water drainage work has been carried out as per sanction drawings. It is further submitted that the sewerage line is connected to STP and storm water drain is connected to rain water harvesting pits as per sanction drawings. The STP is fully functional with proper hypo dozing which is a part and process of STP System.

42. That no rain water drain line is connected to sewer line. Rainwater harvesting system has already been developed at the site as per the sanctions. A picture of the rain water harvesting unit along with the sanctioned drawing showing the location of the rain harvesting unit is annexed as Annexure R-7/5 (Colly).

43. That all the common amenities and facilities have been provisioned for as per the license and sanctioned layout plan.

44. That the electrical infrastructure is good and better materials and machinery have been used in building the same. It is further submitted that the electricity facility has been installed and energized as approved by UIIBVN authority.

Application to place on record facts in compliance to order dated 27.11.2019 by respondent no. 7.

45. Further there are no specific averments in the compliant regarding the excessive or unjustified charges collected for maintenance of colony by the respondent. That the case of the complainant is that they should be provided free maintenance services.



46. Further, the present complaint filed by a welfare association, whom the residents of the colony do not recognise as a legally elected body to take charge of affairs of the colony on behalf of every resident. That there are more than 800 dwelling units in the colony and the present complaint is filed by an illegal body of residents which was self-created by them when the population of the colony was very less. That as on date this association does not enjoy confidence of majority of people which does not represent the mandatory majority of the resident to seek directions for whole of the colony.

47. As already on record, the respondent no. 7 had procured the part completion certificate in November, 2015. That the completion certificate or part completion certificate is issued by the authority after the colony is developed as per the approved layout plan and internal development works have been executed according to the approved designs and specification.

Short reply by Sunrise Estate Management Services for setting aside ex parte orders and dismissal of complaint qua the respondent no. 1 and 2 filed on 29.10.2020

48. That this Hon'ble Authority has passed an ex parte order dated 14.01.2020 vide which the answering respondent has been restrained from further recovery of maintenance charges from the allottees till the entire issue of maintenance charges is settled.



49. That it is submitted that the answering respondent, i.e., sunrise Estate Management Services had entered into Tripartite separate maintenance agreements with the allottees, and as per the terms of the agreement the allottees are under obligation to deposit the monthly maintenance charges regularly directly to the Sunrise Estate Management.
50. That the Sunrise Estate Management Services is engaged in providing the maintenance services and is not in any case involved in any construction or development activity of the township and neither is a real estate agent.
51. That by perusal of the above provision it is clear that the answering respondent is not a promoter and he is only an Agency who is maintaining the society as per Tripartite Agreement. It is further submitted that the promoter is under an obligation to maintain the area and the cost of maintenance charges is to be paid by the allottees. Further the cost of expenditure is hard to meet by the collection of maintenance charges from the allottees. Many allottees including the petitioner are not making any payment towards maintenance charges.
52. That without prejudice to the above submissions, the Sunrise Estate Management is maintaining the society at a very marginal price from last many years. The cost of expenditure incurred by the sunrise is hard to meet by the collection of maintenance charges from allottees. The detail of collection and cost of maintenance charges and expenditures is annexed as Annexure-A.

53. That further there is no specific averment in the complaint regarding the excessive or unjustified charges collected for maintenance of colony by the respondent. That the case of the complainant is that they should be provided free maintenance services, despite of fact that they have signed a specific Tripartite Maintenance Agreement with the answering respondent and agreed to pay the maintenance charges. The complainants have not knocked the door of this Hon'ble Authority with clean hands and they do not want to pay the maintenance charges and they are expecting the maintenance of the area free of cost.

54. That on the one hand the complainants/allottees had prayed for well maintained colony and on the other hand they are praying to restrain the answering respondent from collecting the maintenance charges.

55. That the complainants want free maintenance of colony, while relying on Section 3 of the Haryana Development and Regulation of Urban Development Act, 1975. However, nowhere in the act it is mentioned that the colony will be maintained free of cost.

56. That, even if it is presumed that the maintenance agreements were signed by them under pressure at the time of sale of the plot in the year 2012, the complainants have miserably failed to make any protest or retraction in this regard, in all these years. The inaction on part of the complainants for a long period of 7 to 8 years proves that the contracts were signed by them with free consent and after understanding their contractual obligations.



57. As per the provisions of the Haryana Apartments Ownership Act, 1983 and Haryana Registration and Regulations of Societies Act, 2012 no list of members of the association is supplied with the present complaint.

D. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENTS

58. Learned counsel for complainants submitted that respondent no. 7 and 9 are in hands in gloves with each other by not performing maintenance activities at project site despite collection of maintenance charges from allottees. Further he sought time to file list of deficiencies in a tabular form in compliance of order dated 18.01.2024. On the other hand, Id. Counsel for respondent no. 7 referred to application filed in registry on 17.09.2024 seeking waiver of cost of Rs 1,00,000/- imposed by the Authority for not filing documents in compliance of order dated 18.01.2024. He stated that earlier engaged counsel did not handed over the briefs/relevant documents neither to company nor to him. So, the delay in filing of requisite documents is neither intentional nor deliberate. So, cost be waived off.

E. ISSUES FOR ADJUDICATION AND OBSERVATION OF THE AUTHORITY.

59. Whether the complaint is maintainable or not?
60. Whether the complainants are entitled to the reliefs as sought in the complaint or not?

61. With respect to the objection of respondent no. 7(Ansal) that the complaint is barred by limitation as complaint has been filed after taking possession by allottees 8-9 years ago, i.e., 2011-2012, the reference is made to the judgement of Apex court Civil Appeal no. 4367 of 2004 titled as M.P Steel Corporation v/s Commissioner of Central Excise. It is to mention here that the promoter has till date failed to fulfil his obligation pertaining to handing over of maintenance of project in question to RWA because of which the cause of action is continuing. RERA is a special enactment with particular aim and object covering certain issues and violations relating to housing sector. Provisions of the limitation Act 1963 would not be applicable to the proceedings under the Real Estate Regulation and Development Act, 2016 as the Authority set up under that Act being quasi-judicial and not a Court. So, objection raised by respondent on ground of limitation does not have any merit and is therefore rejected.
62. With respect to objection raised by respondent no. 7(Ansal) that the jurisdiction of the Real Estate Regulatory Authority, Panchkula, is barred because the project in question is not an 'on-going project' for the reason that project was completed before the RERA Act, 2016 came into force and had also received part completion certificate on 27.11.2015. In this regard, it is observed that the issue as to whether

project shall be considered as “ on-going project” has been dealt with and settled by the Hon’ble Supreme court in **Newtech Promoters and developers Pvt. Ltd Civil Appeal no. 6745-6749 of 2021** herein reproduced:

“ 37. Looking to the scheme of Act 2016 and Section 3 in particular of which a detailed discussion has been made, all “ongoing projects” that commence prior to the Act and in respect to which completion certificate has not been issued are covered under the Act. It manifests that the legislative intent is to make the Act applicable not only to the projects which were yet to commence after the Act became operational but also to bring under its fold the ongoing projects and to protect from its inception the inter se rights of the stake holders, including allottees/home buyers, promoters and real estate agents while imposing certain duties and responsibilities on each of them and to regulate, administer and supervise the unregulated real estate sector within the fold of the real estate authority.”

Wherein Hon’ble Apex Court held that the projects in which completion certificate has not been granted by the competent authority, only such projects are within the ambit of the definition of on-going projects and the provisions of the RERA Act, 2016 shall be applicable to such real estate projects. Furthermore, as per section 34(e) it is the function of the Authority to ensure compliance of obligation cast upon the promoters, the allottees and the real estate agents under this Act, and the rules and regulations made thereunder.

63. In light of aforesaid observations, Authority observes that respondent no. 7(Ansal) had received part completion certificate on 27.11.2015 not the



completion certificate. Moreover, the receipt of part completion certificate does not absolve the respondent no. 7(Ansal) of its obligations cast upon it pertaining to handing over of maintenance of project to RWA. The RERA Act, 2016 was enacted to ensure that both parties, i.e., respondent-promoter as well as complainant-allottee duly fulfil their respective obligations as per agreement for sale executed between them. Herein, the obligation of respondent to deliver maintenance of project still lies with respondent which is reoccurring cause of action and the allottee is well within its right to avail relief/remedy under the RERA Act, 2016.

64. Furthermore, it has been clarified by this Authority in its numerous orders that the term 'on-going project' is only used in Section 3 of RERA Act,2016 which deals with only one of the obligation of the promoter under RERA Act,2016, i.e., to get the project registered. There are various other obligations of promoter illustrated in the RERA Act and under those provisions it is nowhere provided that those obligations are only limited to registered projects.

65. Respondent no. 7 has raised an objection that complainants have not provided list of allottees/ proving that they are having majority of allottees. Though, majority of allottees is in doubt as complaint no. 638/2019 was filed by General Secretary of Association, i.e. Sh. Baldev Raj Kamboj and complaint no. 813/2019 was filed by 15 allottees who were resident of same

project, including Sh. Baldev Raj Kamboj as one of complainant. Said fact is established as signatures matches on both complaint petitions. However, promoter is responsible for maintenance under RERA Act,2016 as well as under Haryana Development and Regulation of Urban Areas Act,1975.

Relevant provisions are reproduced below for reference:-

Section 11(4) (d) & (e) of RERA Act,2016

(d) be responsible for providing and maintaining the essential services, on reasonable charges, till the taking over of the maintenance of the project by the association of the allottees.

(e) enable the formation of an association or society or co-operative society, as the case may be, of the allottees, or a federation of the same. Provided that in the absence of local laws, the association of allottees by whatever name called shall be formed within a period of three months of the majority of allottees having booked their plot or apartment or building, as the case may be, in the project.

Section 3 (3)(iii) of Haryana Development and Regulation of Urban Areas Act,1975, which reads as under:

"The responsibility for the maintenance and upkeep of all road, open spaces, public park and public health services for a period of five years from the date of issue of the completion certificate unless earlier relieved of this responsibility and thereupon to transfer all such roads, open spaces, public parks and public health services free of cost to the government or the local authority as the case may be."

66. It is relevant to mention here that during the proceedings of the case, few of the issues involved in it had already been decided by the Authority. Said details are incorporated in this final order for proper adjudication of the case. Vide order dated 26.09.2019, Authority had decided that



Municipal Corporation, Yamunanagar has no role to play in present complaint so name of respondent no. 6 stands deleted. Relevant part of order dated 26.09.2019 is reproduced below for reference:-

"The Authority observes that Municipal Corporation, Yamunanagar does not have any role to play at present since it is a licensed colony wherein the development of infrastructural services within the project is the sole responsibility of promoter whereas external development services are to be provided by the State agencies as decided by the department of Town and Country planning. Therefore, the Authority is of view that Municipal Corporation, Yamunanagar has no role to play as a respondent party and prayer of Id. Counsel of Municipal Corporation, Yamunanagar to delete its name from list of respondents has been accepted "

67. Vide order dated 04.02.2020, Authority had decided that respondent-promoter no. 7 does not owe the responsibility to allottees for construction of community buildings. Said view got further confirmed vide order dated 16. 06.2020. Relevant part of order dated 04.02.2020 reproduced below for reference:-

"Regarding non-construction of community building, the complainant could not show any provisions of the agreement to the effect that promoters owe this responsibility towards the allottees. All that they have shown is an agreement between the promoters and the state government that the community sites will be caused to be constructed and transferred to the state government. This agreement is not enforceable by this Authority."

68. Vide order dated 03.11.2020, Authority had decided that tri-partite agreements executed between allottee, promoter(respondent no. 7) and maintenance agency (respondent no. 9) in respect of maintenance of project



cannot be declared null and void. Accordingly, the charges taken by the maintenance agency cannot be declared as illegal. Further, Authority had directed the complainant to provide detailed and precise facts in respect of issue of STP and rain water harvesting. Relevant part of said order is reproduced below for reference:-

“2. In brief, the complainants are alleging that a proper sewerage treatment plant has not been installed, there is overflow and leakage, rain harvesting system is non-functional, there is only one septic tank made by the respondent builder for the whole colony, boundary walls of the colony is not complete, the roads of the colony are not maintained and different maintenance rates are being charged from different allottees by the maintenance agency.

3. Further fact of the matter is that a tripartite agreement was executed between the promoters, allottees and the maintenance agency in the year 2011. That agreement is still valid and the colony for the last 10 years is being maintained by the said maintenance agency, the Respondent No. 2 in this complaint. On the basis of the allegations of the complainants that the colony is not maintained properly, the Authority had stayed further payments of maintenance charges by the allottees to the maintenance agency vide order dated 14.01.2020. Another fact to be noted is that the project was granted part completion certificate in the year 2015 and the case of the respondent is that the relevant agency of the State Government had duly certified that all the facilities including sewerage treatment plant have been installed properly. The respondents are, therefore, refuting the allegations of the complainants that the sewerage treatment plant has not been installed or it is deficient in any manner.

4. The Authority after consideration observes that at this stage, the issue to be adjudicated upon are as follows: -

i) Whether the prayer of the complainants with regard to annulling the tripartite maintenance agreement executed in the year 2011 can be accepted or not?

ii) Whether the complainants should pay the due maintenance charges which they had been paying from the year 2011 upto 14.01.2020 when further recovery of which was stayed by this Authority?

iii) What course of action should be adopted to ensure that the colony is

iv) Determination of facts whether requisite facilities including the sewerage treatment plant were installed by the respondents in accordance with the approved service plans?

5. The Authority observes and directs as follows: -

i) Regarding the first prayer for annulling the tripartite maintenance agreement, the Authority observes that the said agreement was executed in the year 2011. No legal recourse for its annulling or amendment was taken by the complainants' association from 2011 to 2019 i.e. till filing of this complaint. The tripartite maintenance agreement was executed with the due consents of the allottees, therefore this Authority is not inclined to sit in judgment over the lawfully executed agreement after 10 years of its execution. Now, till such time as another course of action for maintenance of the colony is evolved, the said maintenance contract has to continue and the Authority has no judicial power to annul the same. Complainants may however approach the Consumer Court for deficiency in the services on the part of maintenance agency.

(ii) For the foregoing reasons, the Authority cannot stay the payment of maintenance charges by the complainants to the maintenance agency (i.e. Respondent No. 2). The stay already granted by this Authority vide order dated 14.01.2020 is accordingly vacated. The Authority observes that without the payment of the maintenance charges, condition of the colony will further deteriorate. It is in the interest of the allottees to pay the maintenance charges to the maintenance agency and to get best work from them.

(iii) With regard to future course of action for proper maintenance of the colony, as per provisions of the RERA Act, 2016, respondent No. 1 promoter, is under an obligation to handover the colony to the association



of the allottees. The Authority considers it appropriate to direct the respondent to re-initiate the process of handing over the colony to the association. They shall issue a notice giving atleast three weeks' time to all the residents of the colony to form an association and elect their governing body. The respondent shall also disclose to the residents the amount of money collected in the form of IFMS. The said money shall be handed over to the association. Once an association is formed, they will be fully entitled to execute a fresh maintenance contract with the agency of their own choice.

(iv) Regarding deficiency in the installation of sewerage treatment plant, the complainants have made a broad statement without giving detailed facts as to how services have not been installed properly? Now, the complainants as well as the respondent are directed to submit detailed facts in regards to the size of sewerage treatment plant which was to be installed as per the approved service plan estimates and the capacity of the sewerage treatment plant actually installed. If the actually installed STP capacity is lower than the capacity approved in the service plan, then the respondents shall be liable to provide the additional facility at his own cost. Similar detailed information will be provided in respect of rain harvesting status."

69. Vide order dated 01.04.2021, Authority had observed that none of the parties have complied with directions of the Authority passed in order dated 03.11.2020. So, parties were again directed to make compliance of order dated 03.11.2020 and complainants were specifically directed to file written submissions in relation to their grievance pertaining to deficiencies for Sewerage Treatment Plant and to submit an affidavit which specifically states that present complainant association is a registered association having a majority of 2/3rd allottees of project. Relevant part of order dated 01.04.2021 is reproduced below for reference:-

"After hearing both the parties, Authority observes that none of the parties have complied with the directions of the Authority, therefore, Cases are adjourned to 20.05.2021 with a direction to the respondent/ promoter for compliance of orders dated 03.11.2020 in letter and spirit and submit a fact based report in the form of affidavit with regard to all above said directions atleast two weeks before next date of hearing and supply its advance copy to the complainants. Further, complainant is also directed to file their written submissions in relation to their grievances pertaining to deficiencies especially for Sewerage Treatment Plant and also submit an affidavit which specifically states that present complainant association is a registered Association having a majority of 2/3 members/ allottees of the project before next date of hearing."

70. Vide order dated 11.04.2023, Authority had observed that both parties never proved their respective claims with necessary documents. Accordingly, both parties were again directed to submit requisite documents. Relevant part of order is reproduced below for reference:-

4. After hearing both parties and going through records, Authority put specific question to respondent that if the project was completed in the year 2015, then, as per law respondent was bound to handover the charge of colony to the RWA, however till date why the same was not handed over to the RWA by the respondent? Respondent counsel stated that there are multiple associations existing in the project and none of them have majority. Therefore, respondent was unable to handover the charge of colony to any of the RWA. However, complainant counsel argued that till date only this Association is registered for the project in question.

5. Authority observes that captioned matters were heard for 23 times but both parties never proved their respective claims with necessary documents. So, Authority deems appropriate to direct both parties to submit following documents in the registry of the Authority for the better adjudication of the cases :



i. Respondent is directed to submit all necessary details of the project such as total area of the project along with copy of sanctioned plans and lay out plans, details of licensed area along with copy of license, list of total no of allottees along with their addresses and phone numbers.

ii. Respondent is directed to submit documents showing steps or efforts taken by respondent for handing over of the colony to RWA.

iii. As per statement given by learned counsel for respondent that there is existence of multiple associations in the project due to which colony was not handed over till date. Respondent is directed to place on record proves for existence of said multiple associations.

iv. Copy of advertisement given by respondent for inviting residents/allottees to come forward to constitute a RWA as per relevant laws.

v. Complainants are directed to place on record documents showing that present association is a registered association and represent the majority of allottees/residents.

6. Cases are adjourned to 12.07.2023 with above directions. Further, complainants are at liberty to file written submissions/rebuttal with regard to maintainability of the captioned complaints. "

71. Vide order dated 18.01.2024, Authority had directed the parties to file supporting documents in respect of their claim so that issues can be adjudicated. Detailed order was passed on 18.01.2024 and is reproduced below for reference:-

- 1. Captioned cases were listed for hearing on 07.03.2024. However, due to the constitution of benches, cases are being taken up today for hearing.*
- 2. On the last date of hearing, i.e., 29.11.2023 Authority had directed the respondents to place on record certain additional documents as*

mentioned in the order dated 11.04.2023 in registry for the better adjudication of the case which are as follows:

- a. Copy of sanctioned plans and layout plans;
 - b. Copy of license with details of licensed area along with copy of license;
 - c. Copy of advertisement given by respondent for inviting residents/allottees to come forward to constitute a RWA as per relevant laws.
 - d. Copy of part occupation certificate;
 - e. Copy of certificate of registration of society;
 - f. Copy of public notice in the Tribune.
 - g. List of total no. of allottees along with their addresses and phone numbers;
 - h. Proof of existence of multiple associations;
 - i. Document showing steps or efforts taken to hand over the operations of colony to Resident Welfare Association;
 - j. Location details of site office;
 - k. Inform the RWA about the date of conduct of General Body Meeting
3. Further, it was observed that the notice/advertisement in the newspapers for elections was issued by the respondent no. 1 on 18.07.2023 and elections were conducted on 29.07.2023, i.e., within time frame of 10 days. It implied that provisions of Haryana Registration and Regulation of Societies Act, 2012 have not been complied with by respondent while calling General Body Meeting and elections of the RWA. So, Authority directed the respondents to re-conduct the elections by following due procedure and duly supplying the copy of the notice/advertisement to all the interested parties including individuals and association. Authority had also directed the respondent to submit minutes of the meeting that took place of the General Body during the conduct of previous elections in the registry.
4. As per office record, respondent has not filed any document in compliance of directions issued vide previous order in registry till date. Today, no one appeared on behalf of any of the party at the time of hearing.
5. Perusal of complaint file of 638/2019 reveals that complainant has impleaded 9 respondents whereas specific relief against each of respondent has not been detailed out in relief clause. Therefore, complainant is directed to clarify the role/responsibilities of each of respondent vis-a-vis relief sought against each of them. Said clarification be filed atleast two weeks prior to next date of hearing

with an advance copy supplied to opposite party. Further, for better adjudication of the issues involved in these cases, complainants are directed to file list of discrepancies/deficiencies in the project in a tabular form so that precise report upon each deficiency from respondent can be tracked. Said list be filed within next 3 weeks in registry with an advance copy supplied to respondents.

6. *With the aforesaid directions, cases are adjourned to 14.03.2024."*

72. Vide order dated 09.05.2024, Authority had observed that respondent has not filed documents in compliance of directions passed by the Authority vide order dated 29.11.2023 and 18.01.2024. So, cost of Rs 1,00,000/- was imposed upon respondent. Even the complainant has not also not complied with the order. So, once again parties were directed to file the documents in support of their claims. Relevant part of the order is reproduced below for reference:-

"As per office record, respondent has not filed any document/details in compliance of the directions issued by this Authority vide its order dated 29.11.2023. Today, ld. counsel respondent again sought time to file requisite documents.

Perusal of file reveals that respondent was directed vide order dated 29.11.2023 to file details of documents as mentioned in para 1 of this order and case was adjourned to 07.03.2024. But due to constitution of benches, the case was got fixed for hearing on 18.01.2024. On said date, respondent had changed its counsel and Adv. Ashish Verma has put in appearance. He sought time to comply with the order dated 29.11.2023, Accepting his request, the case was adjourned to 14.03.2024. On 14.03.2024, matters were not taken up for hearing due to non-completion of quorum and case got adjourned for today. In the meantime, time period of around 5 months have passed but respondent has not provided detail of documents sought vide order dated 29.11.2023. There is no reasonable justification provided by respondent for not filing the details. Said conduct of respondent is not justified as it amounts to intentional defiance of directions passed by the

Authority. Therefore, an exemplary cost of Rs 1,00,000/- is imposed upon respondent-Ansal Housing and construction Pvt Ltd for non-compliance in each case.

Respondent is again directed to file requisite documents/details sought vide order dated 29.11.2023 and to file vakalatnama of his counsel with no objection certificate of previous engaged counsel within next 2 weeks.

Vide order dated 18.01.2024, it was also observed by the Authority that:

"Perusal of complaint file of 638/2019 reveals that complainant has impleaded 9 respondents whereas specific relief against each of respondent has not been detailed out in relief clause. Therefore, complainant is directed to clarify the role/responsibilities of each of respondent vis-a-vis relief sought against each of them. Said clarification be filed atleast two weeks prior to next date of hearing with an advance copy supplied to opposite party. Further, for better adjudication of the issues involved in these cases, complainants are directed to file list of discrepancies/deficiencies in the project in a tabular form so that precise report upon each deficiency from respondent can be tracked. Said list be filed within next 3 weeks in registry with an advance copy supplied to respondents."

Complainants are also directed to comply with the directions issued vide order dated 18.01.2024 by filing requisite documents before the next date of hearing.

Cases are adjourned to 18.07.2024 for arguments."

73. It is pertinent to mention here that none of the parties have filed any documents in compliance of directions passed by the Authority w.e.f order dated 03.11.2020. Last document filed was a reply on 29.10.2020 and as on latest, respondent had filed waiver application seeking exemption from paying cost of Rs 1,00,000/- in registry on 17.09.2024. As per office record, both parties have not filed documents in respect of alleged deficiencies and its current status; specifically relating to Sewerage treatment plant, rain water harvesting system, approved plans, majority of complainant-

association and existing of multiple associations in project. So, remaining issues are dealt with on the basis of available record.

74. In respect of refund of charges claimed on account of club membership, VAT, STP and utility, it is observed that said relief cannot be awarded in form of common relief as each individual allottee must have paid different amounts that too on different dates. So, facts of each individual case need to be taken, even if this relief has to be allowed or rejected then the equation of each individual pertaining its own individual facts with respect to dates, circumstances, paid amounts etc. have to be taken into consideration for adjudication of issues involved between the parties i.e., individual allottee and respondent. So, the reliefs which are specifically sought for each individual-allottee pertaining to agreement, quashing of illegal demands etc. cannot be dealt together in this bunch of complainants as every case is fact dependent. The situation would have been different if any common legal question was involved in this case but herein facts of each allottee is relevant to adjudicate the claim of allottee vis-à-vis the obligations/fulfilment of duties cast upon respondent builder. Therefore, the complaint is being decided only qua the common reliefs sought by complainant-Resident Welfare Association which does not require evaluation of facts of each individual-complainant allottee. For the individual reliefs, the aggrieved allottee-complainants are at liberty to file separate

complaint for the adjudication of issues involved with the respondent-promoter.

75. With regard to waiver application filed by respondents in registry on 17.09.2024 wherein it is stated that 'the respondent company had already provided documents to the earlier engaged counsel, however the brief of cases were handed over back to the company nor to the new engaged counsel. Due to some miscommunication, the documents could not be produced on the date of hearing when the Authority imposed exemplary cost upon the respondent. Action of respondent was neither deliberate nor intention so cost be waived off.' In this regard, it is observed that respondent was directed vide order dated 29.11.2023 to file relevant documents whereas its been around 6 months till 09.05.2024, but documents have not been placed on record by respondent. For time period of 6 months, respondent was not able to file documents due to miscommunication in engaging of different counsels. Said plea is nothing but a time buying trick as nothing stopped the respondent company to file documents directly on their own. There was no such need to file it only through counsel. So, valid/reasoned explanation has been neither provided by respondent for not filing documents till date nor by complainants. So, application for waiver of cost deserved to be rejected and is therefore, dismissed with a direction to



respondent to submit the cost of Rs 1,00,000/- within 4 weeks of uploading of the order.

76. As observed in the aforesaid paragraphs and discussions, both parties have failed to file requisite documents in furtherance of orders passed by this Authority on 03.11.2020. In absence of relevant documentary evidences, the whole/remaining of claim/issued except from the already decided (reiterated in aforesaid paragraphs of this order) involved in the complaint cannot be adjudicated at length. Admittedly, project in question got part completion certificate on 27.11.2015 and that time services were laid down in place and were operational at site. With time, services must have got deteriorated due to climatic conditions and obligation of maintenance which was cast upon respondent, was not sincerely fulfilled by respondent as alleged by the complainant in pleadings. Now, issue is that complainants are not satisfied with the performance of maintenance agency even after paying agreed maintenance charges, so the complainant has come up to the Authority seeking direction against respondent to maintain the colony or direct to state authorities/government to take over maintenance of colony. In respect of direction to state government is concerned, the Authority is of view that respondent nos. 1,2,3,4,5 and 8 are neither promoter, allottees or real estate agents rather they are statutory bodies under different departments of Govt. of Haryana. Further, it is relevant to point here that DTCP works and govern

licensing of project and its related issues like maintenance and handing it over to concerned Municipal Corporation under the provisions of the Haryana Development and Regulation of Urban Area Act, 1975 and rules and regulations framed thereunder and is itself the monitoring Authority. If any violation is committed by respondent-promoter, then respondent-promoter will itself get penalised under the said Act for not performing act/obligations cast upon it. Further, the orders of DTCP Haryana are appealable before Secretary to Government, Haryana, Town and Country Planning Department under rule-30 of Haryana Development and Regulations of Urban Areas Rules, 1976. Also, as per **Section 37 of RERA Act of 2016**, Authority for the purpose of discharging its functions under the provisions of said Act or rules or regulations made thereunder, *issue directions to the promoters or allottees or real estate agents*, as the case may be, as it may consider necessary and such directions shall be binding on all concerned. Meaning thereby, under RERA Act, 2016, directions can be issued to *promoters or allottees or real estate agents* and not to the Government. To conclude, complainant should directly approach the appropriate forum for redressal of its grievances against the government agencies.

77. Another issue which remains to be adjudicated is the overall maintenance of the project. In this regard it is observed that complainant-

allotee as well as non-complainant allottees should form a registered association with atleast 2/3rd majority and take over the maintenance of colony from respondent no. 7 and 9 in their own hands. Deficiencies existing in project can be rectified by the association itself after utilizing the IFMS funds. Meaning thereby that, respondent no. 7 and 9 are now liable to refund the IFMS amount collected by them from allottees to the RWA so that RWA shall take charge of maintenance of project. In order to determine the IFMS amount, both parties, i.e. respondent no. 7 and 9 and complainant have to conduct a meeting, wherein respondent shall handover the requisite documents for ascertaining the amount of IFMS including bills of expenditure, i.e. maintenance charges collected and utilized therefrom towards the project. After receipt of documents, the RWA shall appoint a certified chartered accountant who can verify the exact amount of IFMS available with respondent no. 7 and 9. Said amount be transferred to the RWA by the respondents, in a separate account maintained by RWA for maintenance of project. Thereafter, RWA shall operate as complete incharge for maintenance of project and can deal with maintenance issues as they deem appropriate. Accordingly, respondent no. 7 and 9 are directed to handover documents (within next 6 weeks) alongwith IFMS amount to complainant (within 6 weeks of being ascertained by CA) to RWA, which will be formed after completion of prevailing process within 4 weeks of uploading of this order. Further, it is pertinent to mention here that as per



Section 11 (4)(e) of the RERA Act,2016, the promoter is responsible to enable the formation of an association within 3 months of the majority of the allottees having booked their units. Section 11 (4) (e) of the Act is reproduced below for reference:-

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

Provided that in the absence of local laws, the association of allottees, by whatever name called, shall be formed within a period of three months of the majority of allottees having booked their plot or apartment or building, as the case may be in project.

Hence, the respondent no. 7 is directed to fulfill this obligation by cooperating with allottees to form a association of allottees which will ultimately benefit the respondent in handing over the project to association for maintenance.

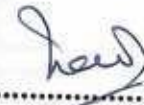
78. The complainants are seeking cost of litigation and compensation on account of mental harassment and agony. It is observed that Hon'ble Supreme Court of India in Civil Appeal Nos. 6745-6749 of 2027 titled as "M/s Newtech Promoters and Developers Pvt Ltd. V/s State of U.P. & ors." (supra), has held that an allottee is entitled to claim compensation & litigation charges under Sections 12, 14, 18 and Section 19 which is to be decided by the learned Adjudicating Officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the

learned Adjudicating Officer having due regard to the factors mentioned in Section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses. Therefore, the complainant is free to approach the Adjudicating Officer for seeking the relief of litigation expenses and compensation.

79. With the aforesaid directions, present complaint is **Disposed of**. File be consigned to the record room after uploading of the order on the website of the Authority.



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DR .GEETA RATHEE SINGH
[MEMBER]



.....
NADIM AKHTAR
[MEMBER]



.....
PARNEET SINGH SACHDEV
[CHAIRMAN]