



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	52 of 2020
Date of filing:	14.01.2020
Date of first hearing:	05.03.2020
Date of decision:	06.03.2025

RWA, Omaxe Heights, through its president Rajesh Devgan son of Rameshwar Dayal, resident of 801, majestic Tower, Omaxe heights sector 8, Shahpur Turak (83), Sonipat, Haryana

....COMPLAINANT

VERSUS

M/s Omaxe Ltd., through its Managing Director 7, local Shopping Centre, Kalkaji, New Delhi-110019.

....RESPONDENTS

CORAM:	Parneet Singh Sachdev	Chairman
	Nadim Akhtar	Member
	Chander Shekhar	Member

Present: Mr. Ketan Antil, Counsel for the complainant-association through VC.
Mr. Akash Mehta, Proxy for Adv. Munish Gupta, Counsel for the respondent.

ORDER (PARNEET S. SACHDEV-CHAIRMAN)

1. Present complaint dated 14.01.2020 has been filed 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

2. That the present complaint is has been filed by the complainant against the opposite party, as the opposite party has rendered deficient services by not providing sufficient electricity energy voltage to the residents of '**Omaxe Heights, Sector-8, Sonipat**' as per the Electrification Scheme/plan issued by UHBVN. Still further, the opposite party has taken an amount of Rs. ₹60,000/- approx. from each residents in the form Interest Free Maintenance Security (IFMS). As of now no maintenance agency is functioning and the RWA is bearing all the cost of maintenance, this amount of IFMS be returned to said RWA as agreed by the opposite party as per compromise dated 03.11.2018.



3. That complainants are the residents of Omaxe City, Sector-8, Sonapat. That the complainant is the registered association having elected president, Sh. Rajesh Devgan. That the respondent company had entered into agreement with respondent and as per the agreement they had agreed to provide all the basic amenities and facilities as sanctioned by the competent authorities of the government. That the resolution of RWA has been annexed as Annexure C-1.
4. That the respondent has miserably failed to provide all the basic amenities to the residents of the project developed by them. That the residents of the Omaxe Heights are not getting proper electricity due to the non-installation of the sub-stations as per the electrification scheme sanctioned by UHBVN, Sonapat.
5. That various representations have been given to the opposite party but all has gone in vain. That the residents of the society have made representations to District Town Planner, District Commissioner and a number of meetings were held; the representatives of the opposite party/Omaxe ltd. were called upon and the grievances faced by the residents have been disclosed to the opposite party. However, despite assurances no steps have been initiated by the opposite party to resolve the grievances. In fact, the opposite party is sleeping over on the issues involved.



6. That a compromise was affected between the RWA and the representatives of the Omaxe Ltd. dated 03.11.208 in presence of Sh. Ramesh Chander Kaushik, the then MP and the Deputy Commissioner and the opposite party wherein opposite party admitted the grievances of RWA and agreed to take steps as per the compromise but still the opposite party failed to honor the compromise affected on 03.11.2018. A copy of minutes of meeting/ compromised dated 03.11.2018 is annexed as Annexure C-2.
7. That the complainant submits that opposite party has failed to provide basic amenities to the residents and even after the repeated requests they have failed to resolve the grievances of RWA. That the grievances of the complainant are as follows:-
 - i. That the opposite party had to install 2 Diesel Generator sets in the society for which the payment has already been made to the opposite party at the time of booking of flats by the residents. The opposite party had to install 1 DG set till 31.03.2019, but the opposite party has failed to do so.
 - ii. That the builder Omaxe Ltd. at the time of booking of flats has taken an amount of ₹60,000/- approximately from each of the residents in form of Interest Free Maintenance Security which is part of the Builder-Buyer Agreement. As per the terms of the agreement this amount was to be given to the maintenance agency but unfortunately the agency has left the maintenance



work and the said RWA is bearing all the expenses of maintenance. The said amount be refunded with interest with effect from 15.12.2015 to RWA which is the maintenance agency in Omaxe Heights.

That the audit of the then nominated maintenance agency be done by the builder and the maintenance charge be handed over to RWA, for the smooth functioning of the society.

iii. That the opposite party had to pay the difference in electricity bill of commercial charges and domestic rates from the very beginning and till date which comes out to be about ₹22 lakhs approximately.

iv. That the opposite party has failed to provide proper fire fighting system endangering the lives of the residents of the society and even failed to provide NOC to RWA from the concerned department.

v. That the Solar Water Heating system has not been installed as per the norms of license.

vi. That the Omaxe Ltd has failed to develop Rain Water Harvesting System which is a clear violation of the terms of the sanction of Building Plans.

vii. That the then Nominated Maintenance Agency, M/S Facility Plus Estate Management Pvt. Ltd has charged ₹100/- per



month, per flat (total 702 flats) from Nov, 2015 and till today this amount has also not been refunded to RWA.

- viii. That the Omaxe Ltd. has not deposited the maintenance amount w.e.f 15.12.2015 with regard to the flats which are still in possession of Omaxe Ltd. to RWA as per the orders of SDO (c), Sonapat.
- ix. That the Omaxe Ltd. has failed to complete green area.
- x. That as per the layout plan of Omaxe Heights, Sonapat approved by Haryana Govt., 775 Car Parking have been provided, but the builder has neither provided the allotment plan nor requisite car parkings. Due to this the residents are facing major difficulties. The residents have already paid ₹1.50 lakh for shelter parking and ₹ 75,000/- for open parking.
- xi. That the sewerage system has not been provided by the builder as per the norms and regulations.
- xii. That till date neither paint has been done by the builder nor any maintenance of the building has been done by the builder.
- xiii. That the Builder has failed to make the payment of the security guards which is ₹3,50,000/- approx.. till date.
- xiv. That portable water is not being provided by the builder as per the norms of license.

8. It is humbly submitted that due to the non installation of the sub-station now the residents are not getting sufficient electricity supply. That the electricity load has to be increased from 499 KW to 4000 KW as per the requirement of the society. That meeting were held of RWA and the all set of grievances against the Omaxe Ltd. were sent to their registered offices, the copies of minutes of meetings dated 14.04.2019 and 01.08.2019 are annexed herewith as Annexure C3 and Annexure C4 respectively.
9. That the respondent has failed to construct club for the residents for which a huge amount of money has already been charged and payment has been made by the residents.
10. That the Respondent has failed to develop the project in accordance with the sanctions of competent authorities and are misusing unilateral and one-sided terms of the Buyer's Agreement to further harassed the Complainant. Therefore, in terms of RERA, the Complainant and the residents are entitled for the resolution of their grievances.

B. RELIEFS SOUGHT

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

- i. In exercise of powers under section 35, direct the Respondent to place on record all statutory approvals and sanctions of the project:
- ii. In exercise of powers under Section 35 of RERA and Rule 21 of HRE (R&D), Rules, 2017, to provide complete details of EDC/IDC



and statutory dues paid to the Competent Authority and pending demand if any.

- iii. In exercise of powers under Section 34 and section 37 of RERA Act to direct and to ensure compliance of obligations cast upon the respondents.
- iv. To direct the respondent to install the sub-stations and the infrastructure of electrification as per government Scheme in a time bound manner?
- v. To direct the respondent to resolve all the grievances stated in Paragraph 6 (paragraph no. 7 mentioned above) and Annexure C4 (detail out same grievances as stated in paragraph 7) dated 01.08.2019 of the complaint.
- vi. Any other relief as this Hon'ble Authority may deem fit and appropriate in the facts and circumstances of the present case.

C. REPLY SUBMITTED ON BEHALF OF RESPONDENT ON 17.02.2020.

11. The complaint deserves to be dismissed as the same is not maintainable before this Hon'ble Authority. The project in question is not registered under the provisions of Real Estate (Regulation and Development) Act, 2016 and that completion certificate stands received. The allottees are residing in the units allotted to them from the year 2011-2012 onwards, i.e. , the units are occupied in the project for more than 8 years. Thus, the



complaint filed before this Hon'ble Authority is not maintainable and deserves dismissal.

12. That the complainant is the chronic litigant and has filed various complaints and suits before various authorities and courts based on false and baseless grounds which have been disposed in favour of the opposite party on merits. That the group housing complex of which the complainant claims to be the authorised RWA, has been developed strictly as per the approved plans and specification with respect thereto as approved by the concerned competent authorities and all services therein have been provided by the respondent as per the approved layout plant. It is further submitted that the amount of IFMS has been paid by the respective allottee strictly as per the agreed terms and conditions of the allotment. That the entire maintenance and upkeep of group housing complex is being taken care of and maintained by the RWA itself w.e.f 10.12.2015 and the maintenance charges are being collected by the RWA itself too on monthly basis from the residents/occupants of the individual units of the group housing complex which has also been duly authenticated by the order passed by the then worthy SDM, Shri Nishant Yadav, IAS in the meetings held on 11.05.2016 and 15.07.2016. Hence, it becomes crystal clear that RWA is not bearing any cost of maintenance of its own, it is being collected by the RWA from the residents/occupants of the complex on monthly basis. That the amount of IFMS after due reconciliation of



accounts at the time of execution of requisite documents with respect to handing over maintenance of the complex which the RWA has been avoiding for the last approx.. 5 years despite repeated requests from the respondent and directions of the competent authorities including the district administration.

13. It is further submitted that electricity and all other amenities have been provided in the project as per the approvals granted by the concerned competent authorities with respect thereto.
14. It is submitted that the DG sets of adequate capacities as per the present power load requirement have been installed in the complex which have been handed over to the RWA. The same are in the custody of RWA from the date of handing over of maintenance services and equipments installed in the complex to RWA, i.e, 10.12.2015. As submitted above, the IFMS has been paid strictly in agreed terms of the allotment and the same is to be returned or adjusted as the case may be, after adjustment of outstanding amount of maintenance charges, execution of requisite documents by RWA as directed by the authorities and reconciliation of accounts.
15. That the issue pertaining to electricity charges has been decided on several earlier occasions before various authorities including the District Consumer Disputes Redressal Forum, Sonapat according to which the respondent is not liable to refund any amount the complainant.



16. That the green area has been developed as per the approved layout plan with respect to the complex. The complainant has deliberately and intentionally concealed the fact that the issue raised by it in its complaint has formed the part of the writ petition filed by the complainant before Punjab & Haryana High Court. The car parking in the complex has been provided as per the approved layout plan and charges with respect thereto have been paid as per the agreed terms and conditions of the allotment. The sewage system has been installed as per the approved plans and STP along with other equipment has been handed over to the RWA to its entire satisfaction. So far as payment to security guards and paint & maintenance of the buildings are concerned, it is the RWA itself which is solely and exclusively liable and responsible for the same as the maintenance are being carried out and charges are being collected on monthly basis by itself. Till the time, one-point upto the periphery of the project is provided by HUDA (HSVP), the potable water as per the approved norms is being provided by the respondent.

D. Additional documents filed by the parties:-

17. Complainant by way of application filed in registry on 15.09.2020 has placed on record the photographs of the Omaxe Heights society developed by the respondent which shows the present state of development done by the respondent. Photographs are annexed as Annexure C-6.



18. Complainant has filed written submissions in registry on 24.11.2021 reiterating therein the deficiencies in the project which are detailed out in para 7 of this order.

19. Respondent in reply to the grievances submitted his submissions in registry on 15.02.2022 which are as follows:-

20. Grievances raised by complainant and point wise reply of respondent is as under-

S. No.	Complainants' Grievances	Respondents' Reply
1	That total 4 D.G sets were to be installed by the respondent builder as per the sanctioned layout plan placed on record by the respondent.	That DG sets are always installed as per occupancy. Accordingly, 2 DG sets (750 KV and 400 KV) had been installed at the site. As regards balance DG sets, the Respondent will re-calculate the power load as per current occupancy and is committed to provide accordingly.
2	<u>IMFS</u> - That the respondent builder has charged ₹29,850- ₹ 29,125 per flat as IMFS. It is submitted that the maintenance agency appointed by the respondent has left the working of maintenance w.e.f. 15.12.2015. since this date all the maintenance has been done by RWA, therefore the said amount be refunded back to RWA.	That the Respondent is committed to refund IFMS to RWA but the same shall be refunded after reconciling the account with RWA under the terms and conditions as mutually agreed between RWA and the Respondent and as mentioned in Handing Over Agreement.
3	<u>Difference in electricity bill</u> for period 01.07.2016 to 31.08.2017- That the residents have been wrongly charged for the said period. The residents have paid the electricity bill for commercial connection instead of domestic connection.	That the RWA has been looking after the maintenance operations including Electricity Bills since Dec.2015 and the issue raised pertains to the period of July 2016-Aug. 2017, hence RWA can reconcile their Electricity Bills with resident and/or UHBVN.
4	<u>Fire Fighting System</u> not available to the residents. NOC and Renewal of the fire fighting system be provided to the complainant.	That at the time of handing over in Dec. 2015, the Fire Fighting System was very much operational and functional and the same may be ratified with their correspondence in which no such issue has ever been raised by RWA since handing over in Dec. 2015. NOC of fire Fighting was also renewed.
5	<u>Solar water heating</u> system not at all installed and functional. The pictures of the same have already been appended.	That Solar Water Heating system is not mandatory as per Haryana Government.

6	Rain Water Harvesting System not working and it has been installed on symbolically.	At the handing over in Dec.2015, Rain Water Harvesting System were operational and functional.
7	The maintenance amount per month till date with regard to the flats still in possession of builder be given to RWA.	That the Respondent is committed to refund IFMS to RWA but the same shall be refunded after reconciling the account with RWA under the terms and conditions as mutually agreed between RWA and the Respondent and mentioned in
8	No green area has been made and the construction of club is illegal. Notice from District Town and country planning have been received by the builder.	Green area has been developed by Respondent in society as per approved plan. Club building is the part of FAR and the same has been constructed as per approvals of the concerned authorities.
9	Car Parking – no requisite car parking space has been provided by the builder inspite of taking advance with regard to the car parking from each of the flat owner.	Total area of car parking in society is as per approved plan.
10	Sewage TREATMENT Plant installed by the respondent is not in a functional condition and time and again several complaints have been made to builder.	At the time of handing over in Dec. 2015 the STP was fully operational and functional.
11	That the respondent builder has failed to provide proper electricity infrastructure as per the sanctioned plan and therefore the proper load for electricity is not available to the residents.	That 2 Nos. of transformers (1600 KV and 630 KV) were installed as per required load at the time. The Respondent will re-calculate the power load as per current occupancy and is committed to provide proper electricity infrastructure to the residents as per the sanctioned plan.

E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT

21. During the course of oral arguments, Id. Counsels appearing on behalf of both parties reiterated their submissions as made in pleadings. Id. Counsel for complainant relied upon the report of Local Commissioner to press upon that project lacks basic amenities at site. It is the stand of Id. counsel for the respondent that maintenance is being carried out by RWA only w.e.f year 2015 and at the very initial stage all the amenities were handed over in proper form to the RWA.



**F. ISSUES FOR ADJUDICATION AND OBSERVATION OF THE
AUTHORITY ON THE VARIOUS RELIEFS OUGHT BY THE
COMPLAINANT.-**

(a) Whether the complaint is maintainable or not?

22. With respect to the objection raised by the respondent regarding the maintainability of the complaint on the ground that the occupation certificate (OC) for the project was obtained before the enactment of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as "the Act"), it is observed that the provisions of the Act are retroactive in nature. The Hon'ble Supreme Court in *M/s Newtech Promoters & Developers Pvt. Ltd. vs. State of UP & Ors. Etc.* has categorically held that:

"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."

23. It is further clarified by the Hon'ble Apex Court in the same judgment that:

"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 pre-existing contract and rights executed between the parties in the larger public interest."

Hence, the objection of the respondent that the provisions of the Act cannot be applied retrospectively is untenable in view of the settled position of law that the Act is retroactive in nature and covers ongoing projects at the time of its enactment.

24. Objection raised by respondents that project is not registered therefore provision of RERA Act not apply on respondent

Authority observes that the respondent has taken a stand that present complaint is not maintainable for the reason that it pertains to an unregistered project of the respondent and the reliefs sought does not fall within the jurisdiction of this Hon'ble Authority. In this regard it is observed that there is nothing on record to prove that respondent has obtained the completion certificate on the date of the commencement of the RERA Act, 2016, therefore on the commencement of RERA Act, 2016, project in question was within the ambit of the definition of ongoing project. Further, as per proviso to Section 3(1) of the RERA Act, 2016 only those project shall be excluded from ongoing project for which completion certificate was received prior to commencement of RERA Act, 2016. In present complaint respondent had not received completion certificate before commencement of RERA Act, 2016. Therefore, project is in ambit of ongoing project and registrable. Furthermore, issue that whether this Authority has jurisdiction to entertain the present complaint as the



project is not registered has been dealt and decided by the Authority in complaint no. 191 of 2020 titled as *Mrs. Rajni and Mr. Ranbir Singh vs Parsvnath Developers Ltd.* Relevant part of said order is being reproduced below:

"14. RERA is a regulatory and protective legislation. It is meant to regulate the sector in overall interest of the sector, and economy of the country, and is also meant to protect rights of individual allottee vis-a-vis all powerful promoters. The promoters and allottees are usually placed at a highly uneven bargaining position. If the argument of learned counsel for respondents is to be accepted, defaulter promoters will simply get away from discharging their obligations towards allottees by not getting their incomplete project registered. Protection of defaulter promoters is not the intent of RERA Act. It is meant to hold them accountable."

Also, Section 11(4) and Section 18 of the RERA Act, 2016 provides for obligations of the promoter, does not distinguish between registered and unregistered project nor does it provides that the remedy u/ section 18 will be available/applicable only to the allottees of a registered project. Therefore, provision of RERA act, 2016 will apply to respondent. 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. Therefore this Authority has complete jurisdiction to entertain the captioned complaint entertain and objection raised by the respondent regarding maintainability of the present complaint is rejected.

(b) Whether the complainant is entitled to the reliefs as sought in the complaint or not?



25. Before proceeding on merits of the case, it is pertinent to refer to detailed order passed by the Authority in captioned complaint. Vide order dated 26.07.2023, it was observed by the Authority that in order to ascertain the current status of project and to ascertain the deficiencies in the project, local commissioner be appointed at the cost of complainant. Accordingly, local commissioner was appointed to inspect the site and check the deficiencies in project. Further Authority had directed the complainant to pay ₹41,300/- to the Authority through online mode within one week as fees to be paid to local commissioner. Accordingly, complainant had paid cost of local commissioner via reference number-RERA-PKLC1696956532 on 10.10.2023. On receipt of said payment, local commissioner was appointed vide order dated 19.10.2023. Local commissioner had visited the site on 03.01.2024 and submitted its final report on 23.01.2024 in registry. Said report is reproduced below for ready reference:-

"Omaxe Heights campus located in sector-8 Sonipat has a single entrance/exit gate available on western side of the campus. Another gate on north side was though erected but was locked reportedly by HSVP authorities. There were 13 towers each having G+9 floors and in total 702 flats. Ground floor of each tower was parking area. Out of these 702 approximately 600 (about 86%) flats are inhabited/occupied.

On the basis of the order of the Authority dated 19.10.2023 following points were required to be ascertained at site during the visit for which the pointwise position is as explained here under:



1. Provision of 4 DG Sets.

Number of DG sets depends on load, requirement of four DG sets is a matter of calculation. However, there were three sets at site out of which one was too old, out of order and non-working, one set was hired by RWA which was in working condition and one set was provided by the builder which was also working (Annexure-I, photo 1, 2, 3). Taking 4 (four) DG sets as agreed, there is clear deficiency on the part of builder.

2. Position of party undertaking maintenance

Apparently, maintenance was being carried out by RWA as representatives of the builder did not object to residents' assertion in this regard. If builder has charged on this account he is short in providing services and RWA is right in claiming back the IMFS charges.

3. Position of electricity bills- commercial or domestic

It is a matter of record hence no verification was required at site.

4. Position of Fire-fighting system

Pipes for fire fight system were visible and a system thus was in place for it. The supply to system was stated to be regulated from underground drinking water tank as no separate source was existing at site. Condition of pipes was also disputed by residents but no test running was possible during the visit. No NOC or renewal was available with the representative of respondents. This service was thus also deficient on two counts, one- no



separate source of water was made available for firefighting and two- no NOC/renewal was made available to the residents.

5. Position of Solar water heating system

No solar panels were visible on top of any tower. Some frames in scrap form were however seen, hence there was no provision of solar water heating system. Taking provision of solar water heating system as agreed to by the builder, a clear deficiency is depicted at site.

6. Position of Rain water harvesting system

The representatives of builders were asked to provide an approved layout site plan showing location of rain harvesting systems but they could not provide any plan. However, the residents supplied copy of a site plan of 2006 which was signed by various authorities but not approved by any competent authority (Annexure-II). It was stated that flats had been offered on the basis of that plan only. No proper scientific rain water harvesting system was found erected anywhere in the campus except one make shift rain water harvesting point in front park reportedly constructed by the residents themselves (Annexure-I photo-4). Apparently, it was not a systematic rain water harvesting structure. Moreover, single system can not serve campus of such a size. There was clear deficiency of scientific rain water harvesting system on the part of the builder.

7. Maintenance amount in possession of builders

No physical verification required at site being a matter of record.



8. No green area developed, Club construction illegal

Patches of green areas were existing and claimed to be maintained by RWA. Going by the provided site plan deviations have been done in green areas reducing the initial proposed percentage of green area in the campus (Annexure-I, photo-5). No green area was available on southern side where Fire and Domestic water tanks are shown. This area now stands included in another sideby campus separated by a boundary wall. A club house stands constructed in proposed front side green area (Annexure-I photo-8, 9, 10). It was locked and not open to use by residents reportedly under orders of DTP Sonipat of 2015 (Annexure-III). The green area shown in North-East corner of the campus stood changed to underground water tank being used for domestic as well as firefighting water reserve. This tank is filled both by HSVP water connection from north side and by an open tube well erected nearby on berm of the road. The tube well water was being stored as untreated (Annexure-I, photo-6, 7). The green area was thus not found provided to the required extent by the builder.

9. Car parking

Car parking space was available only in the stilt area of every tower which was not earmarked for any specific flat (Annexure-I, photo 11). It was stated by the residents that number of parking spaces was less than number of flats. No additional covered area was provided anywhere in the



campus as parking lot to provide parking for every flat. Parking area was thus clearly short of requirement and hence deficient.

10. Sewage treatment plant functioning.

STP had been constructed in front area where primary school had been proposed. There were two motors installed in the STP to lift the treated water but only one was functional. Stink prevailed in it indicating improper treatment of waste water. However, it was also being run and maintained by RWA at this time (Annexure-1, photo 12, 13). Deficiency in STP was visible as for location at wrong site and also for capacity.

11. Electricity infrastructure

A transformer was installed in a space near DG sets (Annexure-I, photo-14). The 33 KV station was some where outside the campus on northern side. No connection of transformer was visible from this station. It was alleged by the residents that it caused less voltage and frequent tripping of electricity, a statement not refuted by the representatives of the builder. As connection of campus has not been taken from 33 KV station it is also improper and deficient.

12. Execution of conveyance deed

It was also a matter of record and no verification at site was required.

Submitted before the Authority please."

26. In respect of cost of local commissioner, it is to mention here that bill dated 08.01.2024 for payment has been filed by local commissioner in



registry on 11.01.2024. However, payment against said bill has not been made till date. As per office record, cost of Rs 41,300/- stands received vide reference number-RERA-PKLC1696956532 dated 10.10.2023. Office is directed to remit amount of Rs 41,300/- as cost of local commissioner against bill dated 08.01.2024 bearing no. PTC/139 in the account details provided in said bill.

27. Complainant association, through the present complaint, has sought various reliefs as elaborated in Para B of this order, in respect of certain deficiencies alleged on the part of the respondent. In light of the extensive nature of these reliefs, they are being adjudicated one by one, simultaneously, based on the report of local commissioner and submissions of parties and arguments presented during the hearing in response to the relief sought by the respondent.
28. **Relief no. (i):** In exercise of powers under section 35, direct the Respondent to place on record all statutory approvals and sanctions of the project:
- Relief no. (ii):** In exercise of powers under Section 35 of RERA and Rule 21 of HRE (R&D), Rules, 2017, to provide complete details of EDC/IDC and statutory dues paid to the Competent Authority and pending demand if any.
- Relief no. (iii):** In exercise of powers under Section 34 and section 37 of RERA Act to direct and to ensure compliance of obligations cast upon the respondents.



29. In respect of these three reliefs, it is pertinent to mention here that said reliefs are neither been argued nor pressed upon during course of arguments/submissions. So, no direction is passed in respect of these reliefs.
30. **Relief no. (iv):** To direct the respondent to install the sub-stations and the infrastructure of electrification as per government Scheme in a time bound manner?
31. In respect of this relief, Authority observes that the complainant has sought directions for the installation of sub-station and electricity setup as per sanctioned plans and government approvals. As per report of local commissioner, 33KV sub-station and transformer was available on northern side of project site, however no connection was taken from it for the project in question.
32. It is a settled principle that any infrastructural obligation of the promoter must be in accordance with the duly sanctioned plans, approved service plans and service estimates as approved by the competent authorities. In the absence of such documentary evidence on record, it is not possible for the Authority to determine whether the relief sought align with the approved project specifications or whether any deviation has occurred.
33. Furthermore, as per the provisions of the Real Estate (Regulation and Development) Act, 2016, the promoter is bound to develop the real estate project in accordance with the sanctioned plans and approved



specifications. Any non-compliance with the approved plans and service estimates can be raised before the competent planning or regulatory authority, such as the Town and Country Planning Department or the concerned Electricity Regulatory Commission.

34. Therefore, in the absence of any documentary record substantiating the claims made by the complainant, Authority cannot grant blanket directions in this regard. However, the complainant is at liberty to seek the necessary records from the competent authorities and take appropriate legal recourse for any non-compliance, if established.
35. Authority observes that the subject matter of electricity supply, load management and infrastructural setup is primarily within the domain of UHBVN, HERC and the Department of Town and Country Planning (DTCP), which are the competent authorities to regulate such matters as per approved service plans and approved service estimates. The issues raised by the complainant, including the establishment of a 33 KVA power station and the adequacy of electricity supply, are highly technical in nature and fall under the jurisdiction of these specialized departments. RERA, being a regulatory body for real estate development, does not have the statutory mandate to adjudicate upon matters related to electricity infrastructure, load distribution, or compliance with UHBVN electricity policies.
36. However, since the respondent has an obligation to ensure that the real estate project is developed as per sanctioned plans, the respondent is hereby



directed to clear all pending dues, if an related to electricity infrastructure and approach UHBVN for necessary compliance and regularization of electricity supply in the project. The complainants, if aggrieved by any deficiency in electricity infrastructure, are at liberty to approach UHBVN, HERC or DTCP, as the competent authorities, for necessary redressal of their grievances.

37. **Relief no. (v)** To direct the respondent to resolve all the grievances stated in Paragraph 6 (paragraph no. 7 mentioned above) and Annexure C4 (detail out same grievances as stated in paragraph 7) dated 01.08.2019 of the complaint.

Grievances of the complainant as detailed out in the pleadings and submissions are as follows:-

- a. **DG sets**-As per complainant respondent had to install 2 DG sets till 31.03.2019 but respondent did not do so. In reply to it, respondent stated that *'DG sets are always installed as per occupancy. Accordingly, 2 DG sets (750 KV and 400 KV) had been installed at the site. As regards balance DG sets, the Respondent will re-calculate the power load as per current occupancy and is committed to provide accordingly.'*, As per report of local commissioner, two DG sets are working at project site. It is relevant to state here that as per sanctioned electrical plan submitted by complainant, the respondent is bound to provide total 4 DG, out of which three DG/ sets are of 750 KV and one is of 400 KV. Out of said



DG sets, two DG sets, one of 750 KV and another of 400 KV are working at project site. Respondent is directed to provide two more DG sets- each of 750 KV at project site as per above referred sanctioned electrical plan in not later than two months.

- b. **IFMS amount**-Complainant is claiming that IFMS be refunded by the respondent. Respondent is admitting the fact of refunding the amount of IFMS to complainant only after mutual reconciling. Upon perusal of file, it is revealed that complainant claims to have paid an amount of ₹60,000/- from each of the resident but no documentary evidence has been placed on record to substantiate this claim. In the absence of any proof, it is not possible for the Authority to determine the exact IFMS amount and the expenses that have already been incurred from it for the maintenance of the project.

It is well understood that the amount of IFMS is not part of the sale consideration of an apartment or plot but rather a security deposit collected in addition to the sale price to ensure the future maintenance of the project. This amount is contributed by all allottees and is meant to be handed over to the Association of Allottees upon its constitution. If any portion of this amount has been utilized for maintenance or other expenses, a separate account of such expenditure must also be handed over to the Association of Allottees. The promoter cannot treat this amount as its own or utilize it for any purpose at its discretion. Viewed



in this context, the entire amount of IFMS collected by the promoter must be deemed to be held in trust, with the promoter acting as a trustee of the said amount, which is ultimately to be transferred to the Association of Allottees.

In view of the above, Authority directs both parties to mutually appoint a neutral third party, preferably a Chartered Accountant (CA), who shall examine the relevant financial records in the presence of both parties and determine the actual amount payable as IFMS after deducting the expenses already incurred for maintenance. This entire exercise is to be completed in next two months from the date of uploading of this order. Upon such determination, the respondent shall pay the due amount to the complainant association within the next 30 days. Compliance with this direction is essential to ensure that the IFMS amount is properly accounted for and transferred in accordance with its intended purpose.

- c. **Respondent to pay ₹22 lakhs as difference in electricity bill of commercial and domestic rates-** With respect to this relief, the learned counsel for the respondent submitted that *'the RWA has been looking after the maintenance operations including Electricity Bills since Dec.2015 and the issue raised pertains to the period of July 2016-Aug. 2017, hence RWA can reconcile their Electricity Bills with resident and/or UHBVN.'* This submission of respondent has neither been



rebutted nor denied by the complainant. Moreover, the present complaint has been filed by the complainant association in a representative capacity and no specific details have been provided regarding the individual claims of allottees, such as the date of payment, the amount paid, or any specific grievances concerning electricity charges. Given that such claims involve individual rights and liabilities, they must be assessed on a case-to-case basis with specific details.

In view of the foregoing, the relief sought by the complainant association on this issue cannot be adjudicated in its entirety within the present complaint. Individual members of the complainant association who seek relief in respect of electricity difference charges are at liberty to approach this Authority by filing separate complaints with relevant details for proper adjudication of their claims.

- d. **Fire fighting system, Solar Water heating system, rain water harvesting system and sewerage treatment plant-** As per complainant these systems have not been installed at project site as per norms of the license. Report of local commissioner details out that these facilities are not available in the proper form at project site. However, it is the stand of respondent that fire fighting, sewerage system and rain water system were available and functional at the time of handing over to RWA in December 2015. Thereafter, it is being maintained by RWA. Solar water heating system is not mandatory by Haryana government. As such, the



position of these systems as on December 2015 cannot be ascertained from submissions/report available on record. It is pertinent to note that neither party has placed on record sanctioned plans approved service plans or service estimates that would substantiate the specific obligations alleged by complainant against respondent. It is a settled principle that any infrastructural obligation of the promoter must be in accordance with the duly sanctioned plans, approved service plans, and service estimates as approved by the competent authorities. In the absence of such documentary evidence on record, it is not possible for the Authority to determine whether the relief sought align with the approved project specifications or whether any deviation has occurred. Any non-compliance with the approved plans and service estimates can be raised before the competent authority, such as the Town and Country Planning Department. Therefore, in the absence of any documentary record substantiating the claims made by the complainant, Authority cannot grant blanket directions in this regard. However, the complainant is at liberty to seek the necessary records from the competent authorities and take appropriate legal recourse for any non-compliance, if established.

- e. **Nominated maintenance agency**-M/s Facility Plus Estate Management Pvt Ltd had charged ₹100/- per month from nov,2015 and till today this amount has not been refunded to RWA and Omaxe has not deposited



the maintenance amount w.e.f 15.12.2015 to RWA -In this regard, respondent has stated that *'the Respondent is committed to refund IFMS to RWA but the same shall be refunded after reconciling the account with RWA under the terms and conditions as mutually agreed between RWA and the Respondent and mentioned in handing over agreement.'*

Perusal of file reveals that complainant has not specified the exact amount paid by each allottee, alongwith details of date and paid amount on record. However, respondent admits refund to be made after reconciling the account. So, parties are directed to get it mutually reconciled/verified by Chartered Accountant alongwith IFMS amount.

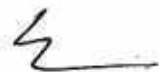
- f. **Omaxe failed to complete green area-** It is the stand of respondent that green area has been developed as per approved plans. As per report of local commissioner, patches of green area was there at site. However, deviations were found in the green area. Fact remains that sanctioned plan has not been placed on record by the parties and in absence of it fault of respondent cannot be proved. Hence, complainant is at liberty to approach proper forum/authority for redressal of this grievance.

- g. **Club construction illegal and notice has been received from DTCP for it** -As per respondent, club has been constructed as per approved plans. Report of local commissioner do provide the fact that club house has been constructed but it was locked and not open to use by residents reportedly under orders of DTP Sonipat of 2015. It is relevant to



mention here that neither the complainant has placed on record notice of DTCP in respect of illegal construction of club nor report of local commissioner details out the order of DTP Sonipat of 2015. But these facts proves that issue is already pending before concerned authorities, i.e. DTP and DTCP. Moreover, RERA being a statutory body cannot adjudicate the dispute of illegal construction, if any raised at project site. It is the Department of Town and Country Planning which is the concerned authority to deal with violation of approved layout/ zoning plans. Complainant is directed to approach DTP Sonipat or DTCP, Haryana for redressal of this grievance.

- h. **Issue of car parking-** Total area of car parking in the society is as per approved plan whereas complainant is stating that respondent has charged for car parking from each of allottee but has not provided the space of car parking in respect of each flat. In this regard, Authority notes that the relief pertaining to parking allocation is inherently an individual right of each allottee and not a collective right of the association as a whole. The allocation of parking spaces is generally determined as per individual agreements executed between the allottees and the developer and any grievance regarding the same would require an individual claim rather than being adjudicated under a complaint filed by the association.



In view of the above, Authority finds that the relief sought cannot be granted in the present case as the association is representing the collective interests of its members, whereas the relief prayed for pertains to individual entitlements. The allottees who have specific grievances regarding parking allocation are at liberty to approach the Authority individually for redressal of their claims, subject to the terms and conditions of their respective allotment agreements and the sanctioned building plan.

- i. **Paint has not been done-** In this regard, Authority observes that the responsibility for repair, maintenance and whitewashing of the common areas in a real estate project primarily falls upon the association of allottees once it is duly constituted and maintenance functions are taken over from the promoter. The Interest-Free Maintenance Security (IFMS) amount collected from the allottees serves as a fund for future maintenance and unforeseen repair work and the association is within its rights to utilize this amount for necessary repair, whitewashing, and other maintenance activities as and when required.

Authority further observes that regular repair and renovation works are an ongoing necessity and are largely influenced by external factors such as natural weather conditions, general wear and tear, and the aging of the structure. In the present case, there is no maintenance agreement on record that places any specific obligation upon the respondent to



undertake repair or whitewashing of the common areas beyond the initial maintenance period. Furthermore, the complainant has not provided any documentary evidence to substantiate that such an obligation exists. However, it is a well-settled principle that after the handover of possession and maintenance responsibilities to the association, the promoter cannot be held liable for ongoing repairs and maintenance of the common areas, unless specifically provided under an agreement or applicable law. Since the complainant association has sought relief for whitewashing/paint, it is within their prerogative to undertake such works using the IFMS amount, which has been collected for precisely such purposes.

In view of the above, Authority holds that the complainant association is at liberty to undertake paint/whitewashing, and other necessary maintenance works utilizing the IFMS amount. The association may plan and execute such works as per its discretion and as and when required, keeping in view the wear and tear of the building and prevailing weather conditions. The respondent, in the absence of any proven obligation, cannot be held liable for undertaking such maintenance work indefinitely.

- j. **Builder failed to make payment of security guards of Rs 3,50,000/- and respondent has not provided portable water as per the norms of the license-**In this regard, it has been observed that complainant has not

referred to any document or clause/provision of RERA Act, 2016 or any other applicable law under which said duty is casted upon respondent. Complainant has failed to provide any convincing arguments as to why respondent be directed to do so. Hence, no direction is passed to the respondent.

- k. **Execution of Conveyance deed-** It has been orally argued by the complainant that respondent has not executed the conveyance deed. Respondent has not denied said submission. As per Section 11(4)(f) of the RERA Act, 2016, the promoter shall:

"execute a registered conveyance deed of the apartment, plot or building, as the case may be, in favour of the allottee along with the undivided proportionate title in the common areas to the association of allottees or competent authority, as the case may be, as provided under section 17 of this Act."

Further, Section 17(1) of the Act mandates that:

"The promoter shall execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of the allottees or the competent authority, as the case may be, and hand over the physical possession of the plot, apartment or building, as the case may be, to the allottees and the common areas to the association of the allottees or the competent authority, as the case may be, in a real estate project, and the other title documents pertaining thereto within specified period as per sanctioned plans as provided under the local laws:

Provided that, in the absence of any local law, conveyance deed in favour of the allottee or the association of the allottees or the competent authority, as the case may be, under this section shall be carried out by the promoter within three months from date of issue of occupancy certificate."



In light of the above-stated statutory provisions, Authority finds that respondent is duty bound to execute the conveyance deed, as statutorily required under Section 17(1) of the RERA Act, 2016. Therefore, Authority directs the respondent to execute the registered conveyance deed in favour of the complainant-allottees association in compliance with Section 11(4)(f) and Section 17(1) of the RERA Act, 2016.

38. In view of the aforesaid observations, the case is disposed of. File be consigned to the record room after uploading of this order on the website of the Authority.


CHANDER SHEKHAR
[MEMBER]


NADIM AKHTAR
[MEMBER]


PARNEET S. SACHDEV
[CHAIRMAN]