BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no.	:	**1277 of 2018**
Date of complaint	:	**17.10.2018**
Date of decision	:	**13.05.2025**

Tatvam Residents Welfare Association
R/o: Villa No.88, Tatvam Villa, Sector 48, Gurugram — **Complainant**

Versus

1. M/s Vipul Ltd.
   Office at: Regus Rectangle, Level 4, Rectangle 1, D4, Commercial Complex, Saket, New Delhi-110017
2. Senior Town Planner, Gurugram
3. Executive Engineer, DHBVN
4. Executive Engineer, HSVP, Division III, Gurugram
5. Commissioner, MCG
6. Mr. Punit Beriwala, MD, Vipul Ltd.
7. Ms. Guninder Singh, CEO, Vipul Ltd. — **Respondents**

Coram:

Sh. Arun Kumar	**Chairperson**
Sh. Ashok Sangwan	**Member**
Sh. Vijay Kumar Goyal	**Member**

APPEARANCE:

Sh. Atul Aggarwal (Advocate)	**Complainant**
Sh. Rajesh Gopal Krishan (AR of respondent company)	**Respondent no. 1**

ORDER

1. The present complaint has been filed by the complainant-association under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in

short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provisions of the Act or the Rules and regulations made there under or to the allottees as per the agreement for sale executed *inter se*.

A. Facts of the complaint:

2. The complainant has made the following submissions in the complaint:

a. That the present complaint is being filed by Tatvam Residents Welfare Association (TRWA) which is a registered body under Haryana Registration and Regulations of Societies Act, 2012 and the instant complaint is filed on behalf of TRWA through Mr. Ajay Gupta, who is authorized by resolution of the society dated 03 Oct., 2018, to file case and represent the complainant before this Hon'ble Authority. The respondent no.1 and its associated companies had purchased and acquired lands situated in revenue estates of Fazilpur Jharsa and Tikri, Tehsil, District Gurgaon, spreading over 150 acres of land(approx.), with the objective to promote and develop a residential colony over the same known as "Vipul World". Thereafter, the respondent obtained licence(s) under the provisions of Haryana Development and Regulation of Urban Areas Act, 1975 and rules thereunder for the development of a residential colony over the said land.

b. That the respondent no.1 has been developing well planned Residential Villas over land admeasuring 50 acres forming part of Vipul World. It is specifically submitted that Respondent had separated such 50 acres of land and got sanction of separate zoning plan for such Villa Complex. Such Villa Complex has been developed by the respondent specifically

adhering to the terms and conditions of the above referred separate Zoning and under name and style of "Tatvam Villas". The respondent no.1 has claimed in their brochures and conveyance deed, such Villa Complex as exclusive project and claimed all the rights to develop, advertise and sell, lease, transfer, or deal with in any manner such exclusive project. Thereafter the respondent no.1 got the layout plan, for the development of the entire residential colony over the land of Vipul World, duly sanctioned and started construction of the integrated township. However, the respondents had revised the layout plan in September 2012 without abiding the statutory provisions of law as well as in express breach of provision of RERA Act, 2016.

c. The respondent widely advertised the said project of residential villas, i.e. Tatvam Villas as a gated, community/colony and further made representations that it is entitled to develop, advertise and sell, lease, transfer or deal in any manner the said project together with appurtenant spaces comprising of various residential villas, parking spaces, community sites, angsana spa and facilities and other utilities forming part of the said project. On the basis of said project and thereafter executed various documents to that effect including Buyer's Agreement. That subsequent to the aforesaid formalities the respondent handed over the possession of the said Villas to the respective Allottee(s) and also executed the sale/conveyance deed for such villas. The purchasers/Allottee(s) amongst themselves formed a Resident Welfare Association with the name of "Tatvam Residents Welfare Association-TRWA".

d. That the Tatvam Villas Complex (herein after referred as "Complex") consist of 254 villas and since year 2010 till 2014 more than 60 per cent

of villas were sold and occupied by the residents. That after constitution of new governing body of TRWA the officials of the TRWA requested the respondent to hand over maintenance, Interest Free Maintenance Security (IFMS) and also to recognize the RWA for each and every purpose. However, the respondent denied for manipulative reasons and does not give any scope for further talks. That it has been decided in general body meeting of TRWA dated 16.10.2016 that the respondent no.1 should hand over the essential services to TRWA and to give effect to such decision of General Body Meeting (GBM) resolution dated 09.01.2017 was sent to respondent and it was specifically requested to hand over the essential services to TRWA.

e. That the respondent had denied to hand over the maintenance and essential services to TRWA without assigning any valid reasons thereof which is not only arbitrary but also gross violation of Principal of Natural Justice and Rule of Law. That TRWA had approached the Deputy Commissioner, Gurgaon vide letter dated 25.12.2016, wherein, TRWA has raised all their grievance, including but not limited to, issues related to IFMS, non-recognition of TRWA by respondent, and failure to provide essential/non-essential services or maintenance to residents of TRWA.

f. That Deputy Commissioner, Gurgaon acted on the request of TRWA and issued direction to Senior Town Planner (STP), Town and Country Planning, Gurugram vide letter dated 25.12.2016. That Senior Town Planner (STP), Town and Country Planning, Gurugram had acted on the direction of the Deputy Commissioner, Gurugram and submitted the detailed report of action taken and suggestions made by him against the grievances raised by TRWA to DGTCP vide letter dated 27.01.2017. That it is pertinent to mention here that it has been specifically observed by

officials of Town and Country Planning, Gurugram vide letter dated 27.01.2017, that TRWA is a registered society. Furthermore, it has been observed in such report that gross violation of law has been done by the respondent wherein prominent are under mentioned.

- Villa No.52 has been constructed illegally at site without approval under layout plan.
- The boundary wall towards Badshahpur Drain has been constructed beyond the licence area and thereby developing open land and springs and play area.
- The revenue rasta passing through the site are blocked by raising wall, although it was not possible for him to ascertain whether these rastas were further connected to other roads/rastas.
- The Basketball court in front of Villa No.57 and Cricket Net in between Green Pocket of Villa No.71 has been constructed. Thus, converting green area into hard surface
- The respondents are charging exorbitantly high maintenance service charges from Tatvam Villa holders to the tune of more than Rs.40 per sq. yard.
- The respondent had not shared or provided information about expenditure on maintenance matter of Tatvam Villa.

g. That it is pertinent to mention here that officials of Town and Country Planning, Gurugram has observed vide letter dated 27.01.2017, that respondent are willing to hand over the entire township i.e. Vipul World, which spreads over 150 acres of land, to Government/MCG for maintenance purposes as per provision of Act No.8 of 1975 instead of TRWA. However, it is worth mentioning that TRWA is a body of residents of the Tatvam Villa which spreads over only 50 acres of land

out of total land of Vipul World i.e. 150 acres. The respondent had shown their willingness to hand over the maintenance of entire colony i.e. 150 acres of land to Government. However, they could have agreed to hand over the maintenance of residential colony i.e. Tatvam Villa which spreads over only 50 acres out of 150 acres of land. But just to take undue benefit and purposefully defeat the object of law the respondent had not agreed to handover the maintenance to TRWA. It is also pertinent to note that for area of Vipul world, excluding area of Tatvam Villa Complex, the respondent no.1 is Charging only Rs. 0.5 per sq. ft. for maintenance, per month, however, the same respondent no. 1 is charging, Rs. 4 per sq. ft. of super built-up area per month from Tatvam Villas Residents, which is discriminatory, unreasonable and illegal by every standard of law. In view of such circumstances, it would not out of context to mention that respondent no. 1 has separately demarcated the land of Tatvam Villa Complex and also got approved separate Zoning plan for the same land, which clearly establishes that Tatvam Villa Complex is separable and distinct entity from Vipul World. The respondent had malafidely created grounds for handing over the entire complex i.e. Vipul World which spreads over 150 acres to Government/MCG just to harass the residents of TRWA. The respondent act was malafide and wrongful since inception as they do not want to give democratic rights to TRWA and this is the sole reason of non-recognition to registered body i.e. TRWA.

h. That as per provisions of section 11 (4) (d) of RERA Act, 2016, the promoter i.e. the respondent shall be responsible for providing and maintaining essential services, on reasonable charges, till the taking over of maintenance of the project by the association of allottees. That

the Complainant has made numerous complaints to competent authorities about exorbitant high maintenance service charges to the tune of Rs 4 per sq. ft. i.e., ₹3,645/- per sq. yards. from villa owners which is 3 times higher than normal maintenance charges paid by similar situated colonies /persons. It is pertinent to mention that STP Gurugram vide letter dated 27.01.2017 has observed that respondent is charging ₹4/- per sq. ft. Maintenance charge on super area per month which becomes more than ₹40/- per sq. yards. of the covered area, which is extremely excessive and highly unreasonable by any standard of law. The respondent has expressly violated the duty cast upon the promoter by charging exorbitant and most unreasonable service charges for providing essential maintenance services. The relevant portion of section 11(4)(d) is reproduced herein below for kind consideration of this authority.

i. That as per section 11 (4) (e) of RERA Act, 2016, the promoter i.e. respondent shall enable the formation and association or society or cooperative society. However, despite the fact that TRWA is a registered body or association of allottees and being acknowledged by official of Town and Country Planning Department, Haryana vide letter dated 27.01.2017, still the respondent does not recognize the association of allottees which has been constituted voluntarily by the residents of Tatvam Villa and duly incorporated by the statutory provisions of law.

j. That it has been specifically mentioned in section 11 (4) (d) and (e) of RERA Act, 2016 that the respondent shall enable the formation of association and it has been expressly mandated on the part of the respondent that they would recognize the registered body or association, which in the instant case is the TRWA. Moreover, after

recognition of such association by the respondent it is obligatory on the part of the respondent that all the maintenance services of the project shall be handed over to association of allottees i.e. TRWA in the instant case. The respondent has not only violated the express provision of section 11 (4) (d) and (e), rather has defeated the purpose of law by not recognizing TRWA as authorized and valid association of allottees. It has been specifically observed by STP, Gurugram vide letter dated 27.01.2017, that TRWA is a registered body, still the respondent never recognized such association of allottees and denied their sacrosanct rights to maintain the essential services, which are basically for the welfare of the residents of the colony. The respondent-promoter has no role to play in maintenance of essential services of the colony once the registered body comes into existence. In fact, the residents themselves may determine their own way to live and maintain their premises as per their own wishes and convenience. The respondent has debarred the valuable rights of the complainant in most arbitrary, discriminatory and illegal manner. The denial of basic right of TRWA by respondent proves the nefarious designs and mala-fide intentions of respondent and also proves that respondent is gaining wrongfully and causing wrongful loss to TRWA. which per-se is criminal act.

k. That as per the report of STP, Gurugram dated 27.01.2017, there has been blatant violation of statutory provision as mentioned under section 14 (3) of RERA Act, 2016. It has been specifically mentioned in para 5 of such report that there has been illegal construction of one Villa i.e. Villa 52, Illegal conversion of green area into hard surface took place on the site i.e. in the area of Tatvam Villa. It is pertinent to mention that there has been major defect in workmanship, quality or provision of

services as well as major structural and infrastructure defects since from the inception of the colony which have not been rectified / adhered to by the respondent no.1, some of which are underlying as under:

- There is incessant water logging inside the complex as well as on the approach road of the colony even after 5 minutes of rain, which proves the fact that drainage and sewage system are not properly installed or are in poor condition.
- The Boundary walls of the Tatvam Villas have collapsed four times and further in danger of collapsing during rains. The respondent no.1 refused to build concrete retaining wall which is the only remedy to cure such defect.
- The plaster and paint on boundary wall is always falling and the respondent no.1 refused to provide a permanent solution.
- The respondent no.1 has not made any provision for underground diesel storage tank which is a potential fire hazard and is endangering the lives of residents.
- The rain water harvesting pits are inadequate and not able to cater the requirements of the residents of Tatvam Villa Complex.
- The floors in some villas are sinking and despite of repeated reminders the respondent no.1 refused to rectify the same, just to harass the residents of Tatvam Villa Complex.

l. That it is pertinent to mention that Respondent no.1 has illegally taken and retained the Interest Free Maintenance Security (IFMS) of Rs. 200 per sq. ft. of Super built up area from every Villa in the complex at the time of giving possession to the residents, and never used such money for the upkeep and maintenance of the Complex. It is shocking that, in some cases of residents of complex, respondent no. 1 is retaining such

IFMS money, even after 8 years of possession, which is totally illegal and arbitrary on the part of the respondent no. 1. That to add on the miseries of the residents, respondent no. 1 is charging monthly maintenance in addition to IFMS from individual allottee, which is per se illegal and not supported by any provision of law. It is interesting to note that on one hand respondent no. 1 has charged huge sum of amount from residents of the complex under head of IFMS, and also the respondent denies to pay the interest on such collective amount to the resident, while on other hand, respondent no.1 uses such money of interest amount as well as principal amount for their own vested purposes or personal gains. The respondent no.1 failed time and again to give audited statement of accounts of such amount to TRWA, for reasons known best to them.

m. That the respondent no. 1 is using such amount of money for their personal gains and not for the designated purposes, which amounts to Criminal Breach of Trust and Cheating on part of the respondent no.1. That the respondent has revised the layout plan/Zoning Plan in Sept., 2012 without taking the consent of 2/3 residents which is against the policy of respondent no.2 as well settled principles of law. The respondent no.1 has expressly violated the provisions of Sec. 14(2)(i)(ii) of RERA Act, 2016, by changing the sanctioned lay out/zoning plan without taking the consent of the allottees.

n. That it is pertinent to mention that on 30.06.2018, a joint meeting took place in the presence of representative of respondent no. 1, representative of complainant and representative of maintenance agency i.e. JLL, which is appointed by respondent no. 1. The minutes of the meeting were recorded and shared with respondent no.1. The copy of such minute of meeting is annexed herewith as Annexure C-9. It is

pertinent to mention that in such joint meeting, various deficiencies or shortcomings in basic infrastructure facilities to be provided by respondent no.1 were pointed out specifically, which the representative of respondent no.1 committed to comply with within due course of time. However, till date nothing substantive has happened from the respondent's end.

o. That there are various deficiencies or shortcomings in basic infrastructure facilities to be provided by respondent no.1 and such facilities were committed by respondent no.1 through advertisement and through their marketing staff at the time of launch of the project. Such facilities/services are lacking in the complex and such facilities have not been provided to Tatvam Villas Complex till date by the respondent no. 1 despite repeated calls, letters and requests by the TRWA. The point wise submissions would crystalize the factual position which exist as on date.

p. The requisite electrical load is close to 2200 KW, however, the respondent no. 1 has got sanctioned only for 1950 KW but shockingly, till date the respondent no. 1 is providing only 950 KW. The respondent no.1 made temporary arrangements to fill the gap of sanctioned electrical load and actual supplied electrical load by switching on the Diesel Generator (DG) sets and charges the DG usage rate at the rate of Rs. 22 per unit, which is not only unreasonable rather unjustified by any standard of law. It is pertinent to mention that as per Haryana Electricity Regulatory Commission (HREC) regulations Maximum Rs. 7.1 per unit could be charged if power arrangements are made through DG sets, in case of adequate sanctioned load is available from respondent no 3. Thus the respondent no. 1 has failed miserably to fulfil its obligation of

providing the adequate load. The residents of Complex wrote a letter dated 13.07.2018 to respondent no. 1 for excessive and unnecessary use of DG Sets and also complained about frequent power cuts due to faulty cable laid down by the respondent no. 1.

q. The respondent no. 1 has installed only 3 DG sets of 750 KVA each in the complex. The DG sets are inadequate to meet the overall demand of the complex as the collective demand of the complex requires 4 DG sets of 750 KVA each to generate 1950-2000 KW of power. The respondent no. 1 has not supplied potable water to Tatvam Villas Complex which has been provided by Government Agency and forced the residents to use unhealthy and substandard quality of underground water thus endangering the health and life of residents of Complex. The copy of water test report is annexed herewith as Annexure C-13. which clearly establishes the fact that water supplied by respondent no.1 is not fit for human consumption. It is pertinent to mention that Haryana Shehari Vikas Pradhikaran (HSVP) i.e. respondent no.4 has provided water connection to Vipul World and the same water has not been supplied to the residents of Complex, which proves the malafide intention of respondent no. 1, for not supplying the potable water to Tatvam Villa Complex, which has been released by respondent no.4, for the residents of Tatvam Villa Complex. The residents of Tatvam Villa Complex wrote a letter to Executive Engineer, HSVP, Div-III, Gurugram regarding such grievances of the residents. The O/o EE, HSVP wrote a letter dated 02.08.2018, to respondent no. 1 for redressal of the grievances of the residents of Complex. The residents of Complex wrote letter dated 19.09.2018 to respondent no. 1 about their grievances and also about enforcement of order of E.E, HSVP dated 02.08.2018, but the respondent

no.1 has not replied till date. The respondent no. 1 has not connected the sewage line of the complex from its Sewage Treatment Plant (STP) to the sewage line of Municipal Corporation Gurugram (MCG) i.e., respondent no.5.

B. Relief sought by the complainant:

3. The complainant has sought following relief(s).

a. To direct the respondents to recognize complainant as a valid resident welfare association for each and every purpose.

b. To direct the respondents to furnish audited account statement of IFMS funds as well as monthly maintenance funds since from the formation of TRWA that is year 2011.

c. To direct the respondents to furnish audited account statement of monthly maintenance paid by the residents since from the formation of TRWA that is year 2011.

d. To direct the respondents to hand over IFMS funds to the complainants.

e. To direct the respondents to get electricity supply of complete sanction load from respondent number three at their own expenses.

f. To direct the respondents to supply complete electricity load to the residents of complex.

g. To direct the respondents to stop using the DG sets as main source of power.

h. To direct the respondents to pay the additional/access charges accrued due to use of DG sets instead of main power supply.

i. Direct the respondents to stop over charging for inflated bills of electricity.

j. To direct the respondents to make purchase of 1 unit of DG set at their own expense and handover it to the complainant.

k. To direct the respondents to construct underground diesel storage tank for DG sets.

l. Direct the respondent to transfer physical possession of all assets being used to run various services in the complex.

m. Direct the respondents to make arrangements of supply of portable water to the residents of complex which has been provided by respondent #4.

n. To direct the respondents to connect STP of complex with sewage line provided by a respondent #5.

o. Direct the respondent number one to pay all outstanding before it transfers the physical possession and maintenance to TRWA as per provisions of section 11.

p. To remove the defects/shortcomings in structure of the complex as mentioned in para 20 of the complaint.

q. Direct the respondent number one to share and handover all sanction plans, compliances, NOCs, licenses, approvals, technical audit report related to the set project including but not limited to movable immovable tangible and intangible assets.

r. To impose penalty upon respondent as per provisions of section 61 of Rera Act for contravention of section 12, 14 and 16 of the Rera Act.

s. Two issue directions to make liable every officer concerned that is director manager Secretary or any other officer of the respondent's company at whose instance convenience acquaintances neglect any of the offences have been committed as mentioned in section 69 of Rera Act 2016.

t. To recommend criminal action against the respondents for the criminal offence of cheating fraud and criminal breach of trust under section 420, 406 & 409 of IPC.

4. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

C. Reply by the respondent no. 1.

5. The respondent has contested the complaint on the following grounds:

a. That the Complaint is shown to have been made by an entity named 'Tatvam Residents Welfare Association', who is claiming to be the resident's welfare association of the allottees of 'Tatvam Villas'. However, the Complainant does not have any locus to file the above-mentioned complaint or even raise the issues raised in the Complaint. Further, the Complaint is devoid of any details with respect to the constitution and membership details of the Complainant. Consequently, the Complaint is liable to be rejected on that ground alone.

b. That it is pertinent to submit that 'Tatvam Villas' is not an independent colony but forms part of 'Tatvam World', a 150 acres Residential Colony in Sector 48, Gurugram, for which License(s) has/have been granted under the provisions of Haryana Development and Regulation of Urban Areas Act, 1975 ('1975 Act') and Haryana Development and Regulation of Urban Areas Rules, 1976 ('1976 Rules'). 'Tatvam Villas' is part of Block X, Y & Z of 'Vipul World'. A perusal of the Complaint leads to the inescapable conclusion that the Complainant has sought to give an erroneous and misconceived projection with respect to the 'Tatvam Villas' being an independent complex, when clearly such a projection is contrary to the record. Thus, if at all, there can be, a residents welfare

association, it cannot be only for residents of 'Tatvam Villas' to the exclusion of the other residents of 'Vipul World'. As such the filing of the Complaint by the Complainant, more so when it seeks to raise issues pertaining to the entire Colony i.e. 'Vipul World', is erroneous, misconceived and the same cannot be filed or maintained by the Complainant much less before this Ld. Authority.

c. That without prejudice to the aforesaid, the Complaint under reply is nothing but an abuse of process of law and is also an endeavour on the part of the Complainant to indulge in forum-shopping. The Complainant has approached this Ld. Authority with unclean hands without disclosing complete factual matrix. The Complainant has, deliberately and intentionally, not disclosed that it had already approached the Director, Town and Country Planning, Haryana, Chandigarh, (hereinafter referred to as 'DTCP') for its purported grievances against Respondent No.1 by filing a representation/ complaint dated 31.01.2016, wherein most of the points/issues sought to be agitated in the present Complaint, amongst others, had been agitated by the Complainant. The DTCP passed an order on 31.07.2017 on the said complaint, which was conveyed vide Memo dated 08.08.2017 to the answering Respondent herein. The said order had been passed apparently on the basis of a Memo/Report dated 27.01.2017 of Senior Town Planner ('STP'), Gurugram, though without even giving an opportunity to the answering Respondent herein, to respond/to object to the said report. The said order was assailed by filing a statutory appeal under the provisions of 1975 Act before the Principal Secretary, Town and Country Planning Department, Haryana. The Appellate Authority passed an order dated 24.01.2018. In the said order the

Appellate Authority, while placing reliance upon the law laid down by the Hon'ble Supreme Court in the case of DLF Universal Limited and another versus Director, Town and Country Planning Haryana and others decided on 19.11.2010 reported as (2010)14 SCC 1, inter alia, quashed the directions passed by the DTCP regarding recovery of maintenance charges and further observed that the DTCP is not authorized to interfere with agreements voluntarily entered into by and between the owner/colonizer and the purchaser of plots/flats. The agreed terms and conditions by and between the parties do not require the approval and ratification by the DTCP and the DTCP is not even authorized to issue any directions to amend, modify or alter any of the clauses of the agreement. Further, the order that had been passed by the Appellate Authority, has been assailed before the Hon'ble Punjab and Haryana High Court (hereinafter referred to as 'the Hon'ble High Court') in a Writ Petition bearing CWP No. 6921 of 2018, which is pending for further consideration and is now listed on 22.08.2024. The writ has been filed only to the extent of grievance of the answering respondent regarding the findings rendered and/or directions issued in paragraph numbers 10a, 10b, 10c and 10d of the said order. It is pertinent to mention that the finding regarding maintenance charges was not assailed by the complainant before the Honorable High Court. Evidently, in the complaint filed before this Ld. Authority, not only the issues, as raised in the Complaint filed before DTCP, have been raised, but even reliance is sought to be placed by the Complainant on Report dated 27.01.2017 of STP, Gurugram, on basis whereof the DTCP had already passed an order. Evidently, the aforementioned facts assume importance and ought to have been disclosed before this Ld. Authority.

The factum regarding the complaint and the writ petition pending before the Hon'ble High Court has been concealed by the Complainant with a mala fide intent. It is submitted that the Complainant, accordingly, cannot get its claims adjudicated under the provisions of The Real Estate Authority (Regulation and Development) Act, 2016 (hereinafter referred to as '2016 Act') and Rules framed thereunder, inter alia, keeping in view the fact that the issues as raised in the Complaint under Reply are sub-judice and are subject matter of Writ Petition pending before the Hon'ble High Court.

d. That the complaint had come up before this learned authority on 17.01.2019 and on the said date while adjourning the matter, this learned authority had directed that till the matter was sub judice, no threatening postures would be adopted by either party. The matter was decided vide order dated 02.05.2019, whereby it had issued certain directions and rendered certain findings, and proceeded to, without any reasons, authorize the complainant to take care about the essential issues with respect to security, horticulture, power back up and garbage collection, with the costs being borne by the complainant.

e. That the said order was made subject matter of challenge by the answering respondent in appeal–238–2019 before the learned Appellate tribunal. The complainant in garb of order dated 02.05.2019 had even forcibly and illegally took over the building/office/project office of the answering respondent stated to have been situated in the electric substation compound (ESS) on 09.05.2019. Respondent had filed an application dated 04.06.2019. On the said application, the learned tribunal had been pleased to appoint a local commissioner through 11.06 2019. The LC had prepared its report dated 09.07.2019.

swamp per of the report, it became evident that the complainant would not have taken over the building/project office of the answering respondent as also the material lying at the ESS compound, which was in substantial quantity and even valuable.

f. That after the report of the LC, the Tribunal had asked the Municipal Corporation, Gurugram to file an affidavit regarding its stand with respect to taking over the maintenance services of Tatum Vilas. Further, the complainant was directed to file an affidavit of its President, as to when and in which manner the possession of the building and compound was taken over by it and under what authority.

g. That the Answering Respondent is also enclosing the short affidavit filed by XEN, Municipal Gurugram before HREAT wherein he has referred to Section 3(3)(a) of the 1975 Act and stated that it is the responsibility of the answering respondent to maintain all amenities, such as roads, public parks, and public health services. Further, he has mentioned that condition number seven of the completion certificate gives conditions to be complied by the Answering Respondent such as supply of water supply, disposal of sewage and water, roads, rain water harvesting system as they were the responsibility of the answering respondent. That the Ld. HREAT vide its order dated 16.09.2020 even directed the complainant to file an affidavit through its President as to what type of services were being maintained by it.

h. That thereafter the Appeal was disposed of by HREAT vide order dated 23.12.2020 vide which HREAT was pleased to set aside order dated 02.05.2019 and remand the matter for retrial. That being aggrieved of a part of the order, the answering respondent had filed RERA APPL-1-2022 before the Hon'ble High Court. The Complainant had also assailed

the said order vide RERA APPL- 36-2022 and RERA APPL- 37-2022. The Hon'ble High Court was pleased to pass order dated 27.09.2022 in the said appeals, inter alia, disposing of the said appeals.

i. That further without prejudice, it is submitted that the Complaint filed by the Complainant before this Ld. Authority, is even otherwise not maintainable and is as such untenable in the eyes of law. The Complainant besides filing a misconceived, misplaced and erroneous Complaint, has further misdirected itself in filing the above captioned Complaint before this Ld. Authority as the same cannot be said to even fall within the realm of jurisdiction of this Ld. Authority as also cannot be said to fall under the ambit of the 2016 Act.

j. That Section 3 of 2016 Act, which had come into force with effect from 01.05.2017, provides that no 'Promoter' shall advertise, market, book, sell or offer for sale, or invite person to purchase in any manner, any plot, apartment or building, as the case may be, in any Real Estate Project or part of it, in any planning area, without registering the Real Estate Project with RERA, established under the 2016 Act. The first proviso of Section 3 provides that the Projects that are ongoing on the date of commencement of the 2016 Act and those Projects for which Completion Certificate has not been issued, the Promoter shall make an Application to the Authority for registration of the said Project within a period of three months from the date of the commencement of the 2016 Act. As such, proviso to Section 3 inter alia, provides that the projects that were ongoing would make an Application to RERA for registration of the said project within a period of three months from the date of commencement of the 2016 Act.

k. Further, the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred to as '2017 Rules') define 'ongoing projects' under Rule 2(1)(o) to mean a project for which a license was issued for the development under 1975 Act on or before the 01.05.2017 and where development works are yet to be completed on the said date but does not include inter alia, that part of any project for which Part Completion/Completion, Occupation Certificate or part thereof has been granted on or before publication of the 2017 Rules.

l. Pertinently, it is to the knowledge of the Complainant that Respondent No.1 has been granted more than 250 Occupation Certificates for each of the Villas in 'Tatvam Villas' from 2011 to 2014. Further, the answering Respondent had even applied for completion certificate on 19.11.2015 followed by another application on 31.11.2017 and was granted part Completion Certificate on 20.07.2018, which included the area of 'Tatvam Villas'. Evidently, the Occupation Certificate as also the part Completion Certificate stood granted prior to publication of 2017 Rules. As such, the Project in question does not fall under the definition of 'ongoing projects', as defined under Rule 2(1)(o). Consequently, there was no requirement for getting the Project registered. As, the Project of Respondent No.1 did not require registration for the purposes of 2016 Act, the Project of Respondent No.1 falls out of the purview of provisions of 2016 Act.

m. Even though the Project falls outside the purview of RERA, Complainant has filed an illegal, misconceived and erroneous Complaint before this Ld. Authority, which accordingly has no jurisdiction to adjudicate upon any Complaint/Claim raised by the Complainant. Even on this count, no indulgence much less as claimed by the Complainant, can be granted.

n. That evidently, the activity carried out and/or to be carried out by a person and/or any development authority, who is being referred to as a promoter, is for the purpose of selling all or some of the apartments or plots. It is in this context, that Section 3 provides that no promoter shall advertise, market, book, sell or offer for sale or invite persons to purchase in any manner any plot, apartment or building, as the case may be, in any real estate project or part of it, in any planning area, without registering the real estate project with this Ld. Authority. As such, reference to the obligations of the promoter, under 2016 Act, would be to a person and/or development authority, who is carrying out the activities as mentioned in Section 2(zk) for the purpose of sale of the apartment or plot, which can only be done if the promoter register the real estate project. Thus, it cannot be said much less even remotely suggested that an obligation of a promoter would be de hors of registration of the real estate project by such promoter. Consequently, the provisions of 2016 Act with reference to promoter would become applicable only if the real estate project is registered.

o. In furtherance of the above, it may be mentioned that section 4(1) provides that every 'promoter' shall make an Application to the Authority for registration of a real estate project in such form, manner, within such time and accompanied by such fee, as may be prescribed. Evidently, the 'promoter' is the one as defined under Section 2(zk) and on whom, an embargo has been put by virtue of Section 3 and it is keeping this in view that Section 4 provides that 'every promoter' shall make an Application to the Authority for registration of the real estate project. Thus, the word 'promoter', wherever used in 2016 Act, is in reference to the promoter, who has got the real estate project registered

and/or is required to get the real estate project registered in accordance with the 2016 Act. On this count also, it cannot be said that the 2016 Act would be applicable to the project, which did not require registration. That the perusal of the aforementioned provisions and/or the Rules and conjoint reading of the same, substantiates the submissions made by Respondent No.1 that the provisions of the 2016 Act do not apply to the project of Respondent No.1.

p. That without prejudice to the aforementioned, it is submitted that this Ld. Authority cannot be said to be vested with jurisdiction to adjudicate upon the issues as sought to be raised in the Complaint. Even if it is assumed that the Complainant has locus to raise the issues, as raised in the Complaint and assuming, though not admitting, that the provisions of 2016 Act are applicable to the Project in question, the adjudication in that event would lie before the Adjudicating Officer appointed under the 2016 Act. Looking at the nature of some of the allegations as made in the Complaint coupled with prayer clause(s), it would be evident that the same would fall within the jurisdiction of the Adjudicating Officer in terms of the 2016 Act and not with this Ld. Authority. Assuming, though not admitting, this Ld. Authority could be said to be vested with jurisdiction to decide certain issues and/or grant certain reliefs, even then the same are not liable to be considered and decided till such time the Complainant, by withdrawing the present Complaint and filing a fresh Complaint, restricts its averments and also the relief clause in respect of those issues, which could be said to be falling within jurisdiction of this Ld. Authority.

q. That without prejudice to the submission that this Ld. Authority has no jurisdiction to entertain the Complaint made by the Complainant and

that the allegations made by the Complainant are erroneous, misconceived and untrue, it is further submitted that the Complainant has sought various reliefs/directions from this Ld. Authority and the said reliefs are beyond the jurisdictional competence of this Ld. Authority as circumscribed by the provisions of 2016 Act and 2017 Rules. This Ld. Authority is not empowered by the provisions of 2016 Act to grant the reliefs sought by the Complainant. The reading of the Complaint and the reliefs sought thereunder leave not even an iota of doubt that the present Complaint has been filed to arm-twist Respondent No.1 and its officials to agree to all the illegal, erroneous and misconceived demands of the Complainant. In the humble submission of Respondent No.1, the provisions of 2016 Act cannot be misused in the manner as is being sought to be done by the Complainant in the present case.

r. That the Ld. Authority, which is to perform administrative functions, can only enjoy such powers, which have been provided to it specifically under the Statute i.e. the 2016 Act. It cannot assume the power which otherwise cannot be said to be vested in it, merely on a misconceived notion that the aggrieved person may not have any other remedy.

s. That further, without prejudice to the aforementioned, assuming, though not admitting, that this Ld. Authority has the jurisdiction and that the Complainant could seek direction for imposition of penalty for alleged violations, under the provisions of 2016 Act, the same cannot be claimed much less granted for any action carried out prior to coming into force of 2016 Act and/or Rules framed thereunder. The provisions of 2016 Act have prospective operation and cannot operate retrospectively, especially when it inter alia, seeks to impose new

burden. It is well settled law that a Statute shall operate prospectively unless retrospective operation is clearly made out in the language of the Statute. Only a procedural or declaratory law operates retrospectively as there is no vested right in the procedure. In the absence of any express legislative intendment of the retrospective application of the 2016 Act, and by virtue of the fact that the 2016 Act creates a new liability of penalty, the 2016 Act cannot be construed to have retrospective effect. The penalty in terms of the 2016 Act, if can accrue, the same can only be in respect of Sale Agreements executed after the date of commencement of the 2016 Act. Without prejudice to the submission that Respondent No.1 is not in violation of any provisions of 2016 Act, it is stated that the provisions of 2016 Act cannot be resorted to for opening proceedings against Respondent No.1 for actions that were completed much prior to enactment of the said Act. The enactment of 2016 Act cannot be made an open-ended till for perpetuity with respect to the actions that had been completed much prior to its enactment. It is trite law that Statutes are to be interpreted prospectively unless the language makes them retrospective and statutes creating penalties for new offences are always prospective. Thus, on this ground also, relief as being claimed by the Complainant, is unsustainable in the eyes of law and liable to be rejected.

t. That the Answering Respondent seeks to place on record the Written Statement filed by STP in RERA Appl 1/2021 before the Hon'ble High Court, wherein it has been stated that maintenance of roads, open spaces, parks, and public health services, etc., in a residential plotted colony after its completion, is to be transferred to the government or the local authority and not to the association. It was mentioned that only in

case of Group housing colony, that after obtaining occupation certificate, maintenance of common areas, and facilities, is transferred to a residents' welfare association, and this provision is not applicable to plotted colonies and as per 1975 Act that maintenance of none of the services is to be handed over to resident welfare association.

u. That it further transpires that the TRWA is not even the association of all the allottees of the villas. The Answering Respondent is placing on record a settlement agreement executed with one of the villa owners regarding IFMSD dues. Similar agreements have been executed by 28 others villa owners. That apparently, the Complaint filed by the Complainant is abuse and misuse of process of law and is liable to be dismissed. No relief much less any interim relief, as sought for, is liable to be granted to the Complainant.

6. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of those undisputed documents and submissions made by the complainants.

D. Jurisdiction of the authority

7. The respondent has taken the plea that the present matter does not lie under the jurisdiction of the Authority since the respondent No.1 has been granted more than 250 Occupation Certificates for each of the Villas in 'Tatvam Villas' from 2011 to 2014. Further, the answering Respondent had even applied for completion certificate on 19.11.2015 followed by another application on 31.11.2017 and was granted part Completion Certificate on 20.07.2018, which included the area of 'Tatvam Villas'.

8. It is however relevant to refer to the proviso to Section 3(1) of the Act which provides as under:

3(1) .....

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

Admittedly, the completion certificate of the project was received on 20.07.2018 which is clearly after commencement of Act, 2016.

9. Further, the authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

D.I. Territorial jurisdiction

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

D.II Subject-matter jurisdiction

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

> ***Section 11.....***
>
> *(4) The promoter shall-*
>
> *(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;*
>
> ***Section 34-Functions of the Authority:***
>
> *34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.*

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

13. In the present complaint, the complainant-association has sought relief against M/s Vipul Ltd, Senior Town Planner, Gurugram, Executive Engineer, DHBVN, Executive Engineer, HSVP, Division III, Gurugram, Commissioner, MCG, Mr. Punit Beriwala, MD, Vipul Ltd. & Ms. Guninder Singh, CEO, Vipul Ltd. The grievance arises from the respondent no. 1 to fulfil its contractual obligation to complete the project as per the BBA executed individually by the members of the complainant association. Consequently, the complainant has approached this Authority seeking the reliefs.

14. Upon examination of the documents placed on record, it is evident that respondent no. 1 is the developer, while respondents no. 2-5 are the government organisations and do not fall under the purview of Section 31 of the Act, 2016, wherein a complaint can be filed only against a promoter, allottee and a real estate agent for any violation or contravention of the provisions of the Act or the Rules and Regulations. Further, respondents no. 6 and 7 are merely directors and/or authorised representatives of respondents no. 1.

15. Moreover, there exists no privity of contract between the complainant and respondents No. 2-7. In light of the foregoing, their names are liable to be deleted from the array of parties to the present proceedings.

16. The complainant & respondent no. 1 has filed multiple written submissions along with the documents for kind consideration of the authority, the same

have been taken on record and has been considered by the authority while adjudicating upon the relief sought by the complainant.

17. The said complaint was being disposed of by the authority vide order dated 02.05.2019 wherein the authority held that since the matter is sub judice before Hon'ble High Court of Punjab & Haryana in CWP no. 6921/2018 therefore it is advisable to the parties to wait till the final judgement of Hon'ble High Court over the issues involved and raised by the RWA. Thereafter the provisions of law shall come into force immediately after the decision of High Court. However, it was also observed by the Authority that the RWA is authorized to take care of about their essential issues w.r.t security, horticulture, power back-up and garbage collection and the cost shall be borne by the RWA.

18. The said order of the authority dated 02.05.2019 was challenged before the Appellate Tribunal by respondent no. 1 and the same was remanded back by the Hon'ble Tribunal for retrial vide order dated 23.12.2020. Again, respondent no. 1 as well as the complainant both preferred appeal before the Hon'ble High Court of Punjab & Haryana against the order dated 23.12.2020 passed by the Ld. Tribunal. The Hon'ble High Court on 27.09.2022 passed an order disposing of the said appeals directing the authority to conclude the proceedings within a period of 6 months.

19. An application for restoration was filed by the complainant on 16.01.2024 and the said matter was restored by the Authority on 20.02.2024 and the matter was adjourned to 09.04.2024.

20. On 09.04.2024 the counsel for the respondent No.1 sent a request that senior counsel Shri Ashish Chopra Advocate is engaged in the Hon'ble High Court of Punjab and Haryana and is seeking an adjournment. The request was allowed and the matter was fixed for 07.05.2024. During the proceedings

thereafter, adjournments took place due to certain exigencies and request of both the parties from time to time. Final Arguments were held on 11.03.2025 and the matter was fixed for 22.04.2025 for pronouncement of orders. On 22.04.2025 the counsel for the complainant-association requested for placing on record the copy of written submissions which earlier could not be filed due to medical exigency. Request was allowed and the matter was fixed for 13.05.2025 for pronouncement of orders. From the foregoing, it is seen that sufficient opportunity was granted to the parties to put forth their contentions.

E. Findings on the relief sought by the complainant.

E.I. To direct the respondents to recognize complainant as a valid resident welfare association for each and every purpose.

21. The Authority is of the view that in terms of Section 11(4)(e), the promoter is obligated to enable the formation of an association of society as the case may be, of the allottees, under the laws applicable. The present complaint has been filed by an association of allottees and the same is maintainable in terms of Section 2(zg) of the Act, 2016. So far as the fact whether one RWA should manage the whole licensed colony or separate RWA's can be registered within the same area, does not fall under the domain of this Authority.

E.II. To direct the respondents to furnish audited account statement of IFMS funds as well as monthly maintenance funds since from the formation of TRWA that is year 2011.

E.III. To direct the respondents to furnish audited account statement of monthly maintenance paid by the residents since from the formation of TRWA that is year 2011.

E.IV. To direct the respondents to hand over IFMS funds to the complainants.

E.V. Direct the respondent number one to pay all outstanding before it transfers the physical possession and maintenance to TRWA as per provisions of section 11.

E.VI. Direct the respondent number one to share and handover all sanction plans, compliances, NOCs, licenses, approvals, technical audit report related

to the set project including but not limited to movable immovable tangible and intangible assets.

22. The Authority observes that the Act mandates under section 11(4)(d), that developers would be responsible for providing and maintaining the essential services, on reasonable charges, till the time the same is taken over by the association of the allottees. Further, section 11(4)(g), provides that the developer will be responsible to pay all outgoings until it transfers the physical possession of the real estate project to the allottees or the association of allottees, as the case may be, which it has collected from the allottees, for the payment of outgoings (including land cost, ground rent, municipal or other local taxes, charges for water or electricity, maintenance charges, including mortgage loan and interest on mortgages or other encumbrances and such other liabilities payable to competent authorities, banks and financial institutions, which are related to the project. It is further provided that where any promoter fails to pay all or any of the outgoings collected by it from the allottees or any liability, mortgage loan and interest thereon before transferring the real estate project to such allottees, or the association of the allottees, as the case may be, the promoter shall continue to be liable, even after the transfer of the property, to pay such outgoings and penal charges, if any, to the authority or person to whom they are payable and be liable for the cost of any legal proceedings which may be taken therefore by such authority or person.

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

> ***17. Transfer of title.***—*(1) .....*
> *(2) After obtaining the occupancy certificate and handing over physical possession to the allottees in terms of sub-section (1), it shall be the responsibility of the promoter to handover the necessary documents and plans, including common areas, to the association of the allottees or the competent authority, as the case may be, as per the local laws:*
> *Provided that, in the absence of any local law, the promoter shall handover the necessary documents and plans, including common areas, to the association of the allottees or the competent authority, as the case may be, within thirty days after obtaining the [completion] certificate.*

24. By virtue of these provisions, the respondent no.1/promoter *ipso facto* becomes liable to transfer the amount which it has collected from the allottees on account of IFMS along with the interest accrued thereon to the association. The promoter cannot treat this money as his own or is not free to utilize it for any purpose which he considers appropriate. However, if any money out of this is spent on the project, an account thereof along with justifications has to be provided to the association of allotees. The authority considers that the IFMS collected by the developer from the allottees of the project is not a part of the sale consideration of the apartment/plot. This is charged in addition to the consideration of the unit for future contingencies of the project which is meant to be handed over to the association whenever a lawful association is created, and the project is handed over to them. In so far as, the amount that has been spent by the promoter from the IFMS so collected from the allottees is concerned, the promoter shall give the justification with respect to such expenditure incurred and if any such expenditure is found to be in conflict with the permissible deductions as per law, the same shall also be transferred to the association. It is further clarified that the amount so collected under the head of IFMS is concerned, no amount can be spent by the promoter for the expenditure it is liable to incur to discharge its liability under Section 14 of the Act.

25. Further, in terms of Section 19(1) of the Act, the respondent/promoter is obligated to provide information relating to sanctioned plans, layout plans along with the specifications, approved by the competent authority and such other information as provided under the Act or Rules and Regulations.

26. In view of the above, the promoter is directed to comply with the above provisions.

E.VII. Direct the respondent to transfer physical possession of all assets being used to run various services in the complex.

27. So far as the issue of handing over physical possession of all assets being used to run various services in the complex is concerned, it has been brought on record by the respondent no.1 in its reply that services including roads, water supply, sewerage system, storm water drains, street lights and their control panel, electricity meter for street lights and park lights have been taken over by the MCG, Gurugram in the year of 2022 in terms of the order of DTCP, Haryana dated 09.05.2022, which is after filing of the present complaint. In view of the above, the complainant-association may approach the MCG/DTCP in case any further grievance is pending.

E.VIII. To remove the defects/shortcomings in structure of the complex as mentioned in para 20 of the complaint.

28. In terms of Section 14(3), the promoter is liable to rectify any structural defect or any other defect in workmanship, quality or provisions of services or any other obligations of the promoter if the same is brought to the notice of the promoter by the allottee within a period of five years from the date of handing over possession. As per facts on record, the completion certificate for the project was received on 20.07.2018 and the matter in issue was raised by the complainant-association in the complaint filed in the year 2018 itself. Therefore, the respondent was liable to rectify the said defects raised by the complainant in terms of Section 14(3). Failure to do so makes him liable for

compensation for which the complainant-association may approach the Adjudicating Officer.

E.IX. To impose penalty upon respondent as per provisions of section 61 of Rera Act for contravention of section 12, 14 and 16 of the Rera Act.

E.X. Two issue directions to make liable every officer concerned that is director manager Secretary or any other officer of the respondent's company at whose instance convenience acquaintances neglect any of the offences have been committed as mentioned in section 69 of Rera Act 2016.

E.XI. To recommend criminal action against the respondents for the criminal offence of cheating fraud and criminal breach of trust under section 420, 406 & 409 of IPC.

29. The complainant-association neither produced any specific documents pertaining to the above reliefs nor were they pressed for during the arguments. In view of the above no findings are returned in this regard.

E.XII. To direct the respondents to get electricity supply of complete sanction load from respondent number three at their own expenses.

E.VI. To direct the respondents to supply complete electricity load to the residents of complex.

E.XIII. To direct the respondents to stop using the DG sets as main source of power.

E.XIV. To direct the respondents to pay the additional/access charges accrued due to use of DG sets instead of main power supply.

E.XV. To direct the respondents to make purchase of 1 unit of DG set at their own expense and handover it to the complainant.

E.XVI. To direct the respondents to construct underground diesel storage tank for DG sets.

E.XVII. Direct the respondents to make arrangements of supply of portable water to the residents of complex which has been provided by respondent #4.

E.XVIII. To direct the respondents to connect STP of complex with sewage line provided by a respondent #5.

E.XIX. Direct the respondents to stop over charging for inflated bills of electricity.

30. The provision of amenities in the licensed colony are regulated in terms of the license as well as the sanctioned building plans for which the complainant-association may approach the DTCP, Haryana.

31. The complaint is accordingly decided in terms of the findings contained in para 21 to 29 above.

32. Complaint as well as applications, if any, stands disposed of accordingly.

33. File be consigned to registry.

(Ashok Sangwan)
Member

(Vijay Kumar Goyal)
Member

(Arun Kumar)
Chairperson
Haryana Real Estate Regulatory Authority, Gurugram
Dated: 13.05.2025