

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

Complaint no.: 759 of 2023
Date of filing: 03.03.2023
Date of order: 15.07.2025

RWA ES Amstoria GGN 102" Through Its
President Mr. Surender Singh
Address - C-342, BPTP Amstoria, Sec-
102, Gurugram-122005

Complainant

Versus

1. M/s Countrywide Promoters Pvt. Limited
Registered Office: OT-14, 3RD floor, next door,
Parklands, Sector-76, Faridabad, Haryana -
121004
2. Business Park Maintenance Services Private
Limited
Registered Office: M-11, Middle Circle,
Connaught Circus, New Delhi-110001
3. Director, Town & Country Planning
Department, Haryana
Office at: Plot No.3, Sec-18A, Madhya Marg,
chandigarh-160018

Respondent

CORAM:

Shri Arun Kumar
Shri Ashok Sangwan

**Chairman
Member**

APPEARANCE:

Ms. Kaveri (Advocate)
Shri Harshit Batra (Advocate)

**Complainant
Respondent**

ORDER

1. This order shall dispose of the aforesaid complaint titled above filed before this
Authority under Section 31 of the Real Estate (Regulation and Development) Act,

2016 (hereinafter referred as “the Act”) read with Rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as “the rules”) for violation of Section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se between parties.

A. Project and unit related details

2. The particulars of the project, the details of sale consideration, the amount paid by the complainant(s), date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S. No.	Heads	Description
1.	Name of the project	‘Amstoria’, Sector 102 & 102A, Gurugram, Haryana.
2.	Nature of the project	Residential
3.	Project area	Cannot be ascertained
4.	DTCP license no. and validity status	i. 58 of 2010 dated 03.08.2010, valid up to 02.08.2025 ii. 45 of 2011 dated 17.05.2011, valid up to 16.05.2025
5.	Name of the license holder	Shivanand Real Estate Pvt. Ltd. and 12 others
6.	Part completion certificate	03.10.2017 (Page no. 23 to 25 of the reply)
7.	RWA ES AMSTORIA GGN 102 i.e., complainant herein (Through Sh. Surender Singh, President)	Registered vide no. HR-018-2022-02508 under Haryana Registration and Regulation of Societies Act, 2012

B. Facts of the complaint.

3. The complainant has made following submissions in the complaint:
- That the complainant who are allottees of residential plots in the respondent no. 1 underdeveloped project “Amstoria & 102 Eden Estate” at Sector 102

Gurugram, Haryana are aggrieved by the huge and inordinate delay and failure of the opposite parties to complete the project and provide all the amenities and facilities which they had promised and represented will be made available to them, in the newspaper advertisement, brochure and agreement. The project even today is hopelessly incomplete. The complainants are also aggrieved by the illegal levy of exorbitant maintenance charges which the opposite parties are levying on them without first completing the project and in violation of the agreement executed between the parties.

- ii. That as per license issued by DTCP, Chandigarh it is crystal clear that respondent no.1 is responsible for constructing the project and preparing drawings, clearance, approvals of drawing plans, and obtaining the completion certificate/occupation certificate of the project from the competent authority. However, respondent no. 1 had miserably failed to construct the basic amenities promised to the plot owners/allottees as per license clause issued by DTCP, as a result, respondent no. 1 did not obtain the completion certificate of the entire project from the DTCP Chandigarh. The strange corporate relations between the respondent no. 1 and respondent no. 2 are managing the affairs in terms of maintenance. Ironically, respondent no 2 is the designated maintenance agency appointed by respondent no. 1 under the purported maintenance agreement. Respondent no. 2 in nexus with respondent no. 1 is designated as maintenance agency, only with a malafide perspective to extort money from the plot owners by charging maintenance without providing the amenities and without obtaining an occupancy certificate.
- iii. That due to the lack of basic amenities, allottees are deprived to shift to the residential township wherein they have invested a huge amount of their hard-earned money and few have taken huge financials from the bank and are

paying installments but all in vain. Apart from the selling price, the respondent no. 1 have collected a huge amount on the account of IFMS (Interest free Maintenance security), IFMSD (Interest free Contingency deposit), Sinking fund that cost to between 2-3 Lakhs per plot/apartment which accumulates in crores and after several request made to the respondent no. 1 to provide the account details where this amount is kept and the rate at which the money on account of interest-free maintenance security (IFMS) was collected from allottees, the total amount so collected from the allottees and the bank account where the money collected on account of IFMS is lying along with the current available balance. Amount of money collected on account of the sinking fund or any other fund of a similar nature collected from the allottees and the bank account in which this money is lying along with the current available balance. The interest accumulated till date in the respective account. The account receivables on account of maintenance charges from allottees and the amount payable to the agency for having executed the maintenance work in the past. A statement of assets and liabilities with regard to the maintenance of the project but respondent refused to furnish any such details.

- iv. That in 2010 and 2011 the respondent no. 1 brought out lucrative advertisements in leading national newspapers and launched the residential project, i.e., "Amstoria" at Sector 102 Gurugram comprising residential plots, floors & villas with different sizes. The respondent no. 1, carried out massive advertisements and made assurances and representations regarding the project layout, project plan, the facilities, services such as clubs for social gatherings, playgrounds for children, community markets, primary healthcare, green areas, etc. Moreover, respondent no. 1 circulated brochures of the above promises and lucrative information. These rosy advertisements had attracted customers to spend their life-saving money in the plots.

- v. That the respondent no. 1 had promised a host of facilities and amenities in the brochure to attract and lure the allottees. These include educational, recreational and medical facilities. What was further promised was acres of landscaped greens and commercial zone for hotels, shopping malls and large corporate houses based on concept of walk to work, 3 tier security system and gated community. What was further promised in the brochure was Schools/colleges ranging from pre-nursery to post graduation level professional colleges, various facilities offered in these educational institutes are Gymnasium, Swimming, Pools, Auditorium, Playgrounds, Activity Courts, Music & Art Rooms, Library, and Lab Facilities with latest equipment's, Cafeteria / Dining Halls and Classes for Special Education etc. Malls housing several top line brands, Recreational facilities like meditation & spiritual centres, artists village , town centre with cultural galleries, restaurants, cafes, multiple & dedicated social clubs, sports facilities & kids play areas etc. leading to the creation of a memorable sense of place with a unique community aspect. Further a Super Specialty hospital- well equipped dispensary with the best of medical equipment's & healthcare services providing complete healthcare facilities was also promised.
- vi. That what was promised further in the brochure was Hi-Street Retail, Clubhouse and Social Clubs. In another brochure multiple outdoor and indoor sports facilities for tennis, badminton, squash, table tennis, kids play area, temple, discourse halls, yoga etc. was also promised. Retail shops, boutique and open bazaar, town center with facilities like cultural galleries, restaurants and cafes and high street retail were also promised. Power and water backup was also promised. That a host of amenities were also promised in the maintenance agreement like sewerage treatment plant, rainwater drainage,

firefighting services, water pumping and supply systems, water treatment systems and equipment's, roads, pathways.

- vii. That the respondent no. 1 was supposed to provide and make available all these amenities and facilities at the time of offer of possession started from the year 2014 as per license clause issued by DTCP in 2010. That in the year 2023, and majority of these amenities and facilities have not been provided by the respondent. The amenities and facilities which have not been provided till date are sewerage treatment plant, functional drainage system, landscaped parks and gardens, club house for social gathering, multiple outdoor and indoor sports facilities like tennis, badminton, squash, table tennis, kids play area, temple, discourse halls, yoga etc. are also not provided. Retail shops, boutique and open bazaar, town center with facilities like cultural galleries, restaurants and cafes and high street retail have also not been provided. Reliable and permanent Power supply and power backup also not provided.
- viii. That the whole township is low lying and approx. 5-10 ft. down from the main road access and the sand filling is not done due to which the water from surrounding accumulates in the township and it becomes a flooded area and moreover the plot is itself 5 ft. down from the internal circular road that needs to be filled by the respondent no. 1 which he refused to do so.
- ix. That further some part of the road is also not yet provided or constructed. 24*7 power and potable water backup as promised are also not available. 3 tier security system as promised are also not provided. Main Gate and the internal gates as promised are not provided. Fencing is also not provided. Shopping mall also not provided in the project. Schools/colleges ranging from pre-nursery to post graduation level professional colleges are also not provided. Various facilities like Gymnasium, Swimming Pools, Auditorium, Playgrounds, Activity Courts, Music & Art Rooms, Library, and Lab Facilities

with latest equipment are also not provided. Cafeteria / Dining Halls and Classes for Special Education etc. are also not provided. Meditation & spiritual centres, town centre with cultural galleries, temple are also not provided.

- x. That a super specialty hospital - well equipped with the best of medical equipment & dispensary providing complete healthcare facilities was also not provided in the project. As per the brochure all these amenities and facilities were to be provided inside the project. None of the above stated amenities and facilities have been provided yet by the respondent no 1.
- xi. That further these amenities were to be provided from 2014 and further the opposite parties have no intention to provide these amenities and facilities to the complainants. Therefore, the complainants have been taken for a complete ride and have been fooled and cheated by the respondent no. 1 and 2. Photographic images taken recently at the time of filing the case to show that the amenities have not been provided by the opposite parties till date in the project in dispute.
- xii. That numerous e-mails by RWA/allottees/plot owners, wrote to the respondent stating therein that a majority of the promised amenities and facilities have not been provided and each of the amenities which were not provided were enlisted therein.
- xiii. That, the respondent no. 1 and 2 surprisingly increased the maintenance charges by 300% approx. in 2 years with no proper justification and demanding illegal, unlawful and unjustified charges from my clients to meet their personal expenses and they have accepted the same that they have increased the maintenance charges by 171% through email. Initially the amount of maintenance imposed was Rs.4.80/- which was increased to Rs.10.35/- w.e.f. 1st April 2020 and then from 1 July 2022 it was further increased to Rs.17.75/- .

- xiv. That, the respondent no. 1 is committed & obligated to underground the high-tension electricity wire crossing the plotted township in consultation with DHBVN but the respondent no. 1 failed to fulfill their obligation. This is very risky for the residents as the electric iron pillars are standing in the kids playing area which is a life threat to all especially to small kids.
- xv. That, complainant has paid a huge maintenance charges to respondent no. 1 and 2 but the services provided by the maintenance agency is worst in all manners and despite the worst services they have increased the maintenance charges without proper justification of the same.
- xvi. That complainant had requested the respondent no. 1 and 2 to provide the details of the transactions of the school sold within the project and the maintenance charges charged from the school but respondent no. 1 refused to furnish. That complainant had requested respondent no. 1 and 2 to give justification on the increased maintenance charges but they could not provide any satisfactory reply and justification on the same.
- xvii. That the respondent no. 3 granted License no. 58 of 2010 dated 03-08-2010 & 45 of 2011 dated 17-05-2011, a layout plan (Drg. No. D.G, TCP – 2420 dated 16-03-2011) of 126.67 acre was approved in 2011 and subsequently plots and apartments were sold to complainant. After that, in 2016 the respondent no. 3 sanctioned the revised layout plan (Drawing no. DTCP-5618 dated 16.09.2016) And subsequently, in 2020 again layout plan (Drawing no. DTCP-7434 dated 15-06-2020) was revised without the consent of my client (allottees/residents) which is against the law. Here 13.47-acre land was added to the aforesaid plotted colony without abiding the statutory provision of law as well as in express breach of provision of RERA act 2016 (Revised Layout plan vide Memo No. ZP-650-Vol-II/AD(RA)/2020/16787 dated 22.09.2020). One more additional license is provided in favor of which 2 RERA certificates

are also provided that is unlawful because consent is not taken from the respective allottees.

- xviii. That respondent no. 3 has unlawfully granted additional license & approved revised plans in favor of respondent no. 1 without the 2/3 consent of the allottees. The respondent no. 1 is beneficiary of the project in the account of maintenance as respondent have got new additional license unlawfully without my clients consent and in fact not in accordance to the law as aforesaid mentioned and sold the plots on a higher rate and earned a hefty profit. Therefore, respondent is liable to bear the total maintenance expenses of the project till the final completion certificate of the whole project and the earned profit must be utilized for the betterment of the society.
- xix. That complainant has already paid a huge amount in the account of maintenance charges which he was not liable to pay and respondent no. 1 and 2 are getting personally benefitted from the amount accumulated from complainant.
- xx. That the respondent no. 1 is compelling the complainant to take dual source mtr. at the cost of Rs.21,200/- wherein the cost of mtr. is around Rs.5000/- approx. and they are blackmailing the complainant to disconnect the electricity in case of non-payment of Rs.21,200/- which is unlawful and unjustified.
- xxi. That the respondent no. 1 has not initiated the formation of Association of Allottees/RWA which the respondent is obligated to do so under section 11 (4) (e) of the Act, 2016.
- xxii. That complainant had requested respondent no. 1 to provide the details of the dispensary, crèche, commercial shops layout plans and the completion time of the aforesaid facilities but respondent no. 1 give no heed to this concern.

- xxiii. That respondent no. 1 allured complainant by promising a 2-acre club house in the project with swimming pool, gym, pool, table tennis, marriage hall and much more indoor facilities which is under construction from last 10 years and yet not completed and respondent no. 3 is giving extension with no relevant grounds & no timeline is set for said complex.
- xxiv. That without giving any heed to the concerns and enquiries made over call and email, complainant is getting reminders of non-payment of the maintenance charges which is unlawful. That respondent no. 1 and 2 are claiming interest on the unlawful and illegal demands through emails and letters to which complainant is not liable to pay.
- xxv. That complainant even wrote a mail, regarding this issue, to respondent no. 1 and 2 sent legal notice through counsel but till now no response has been received. The respondent no. 1 is solely liable to bear the cost of maintenance charges till the final completion and handover of the project.
- xxvi. That complainant has paid surplus amount in the maintenance charges to respondent no. 1 and 2 that must be secured and to be kept in the security account till the disposal of the case and must be refunded back to the prospective allottees along with 18% interest till the final completion of the project.
- xxvii. That complainant cancel and terminate any such maintenance agreement signed and executed by my client on the ground of Breach of Contract and respondent no. 1 and 2 are solely responsible of the whole amount kept in the account of maintenance agency and must be returned back with 18 % interest.
- xxviii. That respondent no. 1 misguided the allottees that this is a gated township whereas there are multiple openings and in the absence of proper security, the township is really not safe. If additional license is granted then it would lead to higher ratio of occupancy and become burden on the current and

promised infrastructure to the allottees and the entire system will collapse in the course of the time and respondent no. 1 and 2 will be nowhere to hold for such infrastructure collapse.

- xxix. Therefore the respondent no. 1 is liable to refund to the complainants the maintenance charges which they have illegally collected from the complainants with 18 % interest and further till the time the completion certificate is obtained by the developer and the project including the promised amenities and facilities is completed in all respects, they should be restrained from imposing any maintenance charges on the complainants and maintenance of the project should be directed to be undertaken exclusively at the cost and expense of the respondent no. 1 till the project is complete and all the promised amenities have been provided and the completion certificate is obtained by the opposite party.
- xxx. That since the fully completion certificate of the entire township is not obtained by the developer till date and the project is in a hopelessly incomplete state and majority of the promised amenities have not been provided, the complainants are therefore entitled to compensation for delay @ 18 % per annum till the time the full completion certificate is obtained and the project is completed in all respects including all promised amenities and facilities.
- xxxi. That the act of the respondent no. 1 and 2 is imposing exorbitant maintenance charges on the complainants without providing the promised amenities and without completing the project, amounts to restrictive trade practices especially in view of the fact that for projects of a similar nature and similar area, in surrounding localities, other builders are charging much lesser amounts towards maintenance charges, that too after getting

occupancy/completion certificate & providing all the promised amenities and facilities in a functional state

- xxxii. That the respondent no. 1 coerces the plot owners to subscribe to the above-said maintenance agreement at Rs.17.75/- per sq. yd., which is unlawful, forcefully bounded and overpriced, and it is several times more than the prevailing rate of maintenance charges as compared to better maintained plotted societies in Gurugram. For comparative study, for example, in the case of the project "Alameda" being promoted by real estate major DLF in Sector 73 Gurgaon, Haryana, the maintenance rate is Rs.7.00/- per sq. yard per month.
- xxxiii. That the act and conduct of the respondent no. 1 and 2 amounts to grave deficiency in service and unfair trade practice of the highest degree. The respondent has caused huge financial loss, great mental agony and physical harassment to the complainant. The complainant has paid such a huge amount after collecting life's savings with hope to move into a better residential society.

C. Relief sought by the complainant

4. The complainant has sought the following relief(s):

- I. Direct the respondent no 1 & 2 to provide the bank details & account statement of the security deposited in the name of IFMS, IFMSD, Sinking fund, Contingency charges and any other amount so collected from complainant and keep this account secure by opening a joint escrow account either with HRERA or RWA/AOA to safeguard the collected amount of the allottees.
- II. Declare the above said demand letters in the name of maintenance & interest null, void, ab-initio, nonest, inoperative and not binding upon the right, title or interest of the Complainant.
- III. Direct the respondent no. 1 to bear the cost of the maintenance till the final completion and handover of the said project and to initiate the process of engaging RWA/AOA in all safety, security and basic amenities as committed.

- IV. Direct the respondent to refund the maintenance charges which is illegally charged from the complainant with 18% interest.
 - V. Direct the respondent to give compensation of the delayed possession charges of the basic amenities at the rate of 18% per annum of the total cost of the apartment/plot (Basic amenities i.e. club house, crèche & dispensary, gym, swimming pool, medical shop, milk booth, vegetable shop etc.) and a committed timeline of the completion.
 - VI. Direct the respondent no. 3 to cancel the additional license granted not in accordance to RERA Act & also restrain from granting any other additional license or layout plans without adhering the section 14 sub section (2) (ii) The Real Estate (Reg. & Development Act, 2016).
 - VII. Restrain the respondent no. 1 to further sale any plots/apartment lying in the revised sanction plan which is unlawful & not in accordance to the section 14 sub section (2) (ii) The Real Estate (Reg. & Development Act, 2016).
 - VIII. Direct the respondent no. 4 to initiate the shifting/underground of the high-tension wire/poles to prevent any accident which may cause to life threat & expenses to be beard by the respondent no. 1
 - IX. Direct the respondent to make township free from water logging by sand filling in the plots as well.
 - X. Cost of Litigation of Rs.2,00,000/-
5. 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.

D. Reply by the respondent no.1 and 2.

6. The respondent no.1 and 2 has contested the complaint on the following grounds.
- i. That the complainant alleges to be an "RWA" of "Amstoria & 102 Eden Estate", however, has not been registered under any applicable statute. That no proof of the complainant being an RWA or being a registered association has been annexed. Moreover, complaint is alleged to be filed by the purported president Mr. Surender Singh, however, neither any Memorandum of Association,

Articles of Association, list of members of the purported RWA, authority letter, etc. have neither been filed nor any information with regards to the same has been disclosed by the alleged RWA. Hence, the complaint should be dismissed at the very outset

- ii. That respondent no. 1 is the promoter of the project in question, however, the respondent no. 2 is the maintenance agency. The entire colony is spread over three license bearing no. 58 of 2010 dated 03.08.2010 for 108.068 acres, License no. 45 of 2011 dated 17.05.2011 for 18.606 acres and License No. 41 of 2021 dated 23.07.2021 for 7.031 acres. The respondent has developed the colony at large and had received a part completion certificate for area admeasuring 66.5 acres arising out of license no. 58 of 2010. Thereafter, the respondent no. 1 had applied for approval of service plan and for grant of completion certificate on 07.10.2022.
- iii. However, neither has the complainant disclosed the details of the allottees/residents, nor their unit numbers, for respondent no. 1 to ascertain the status of their respective units or any detail pertaining to the same. That under the project in question, the development of Plots, and Floors have taken place, however, it cannot be ascertained whether the purported RWA pertains to the Floors or Plots.
- iv. That the respondent no. 2 is a Maintenance Agency who has a bilateral agreement with the respective allottees and being a Maintenance Agency, the respondent no. 2 does not come within the ambit of the Act, 2016. That the entire Act deals with the regulation of the conduct and affairs of the three stake holders, as explained in the Act, which are: the allottee, the promoter, and the agent. Under, no circumstance whatsoever, can the present case be

entertained against the Maintenance agency, for which, the Authority has no jurisdiction.

- v. That the Act being a special statute, cannot be extended to incorporate the scope of a maintenance agency within its ambit when the legislature, in fact, never intended to do so. The literal rule of interpretation has to be followed in such a circumstance which directs that a judge has to see what the statute says 'literally', i.e., plain simple meaning without any ambiguity. In the literal rule of interpretation, the law has to be considered as it is and the judges cannot go beyond 'litera legis'.
- vi. The provisions of the Act enunciate various powers and functions of the Authority and categorically notes that the same is in respect to and limited to only allottees, developer, and agents. Any complaint can be filed under section 31 of the Act against only three stakeholders and not any maintenance agency. Hence, respondent no. 2's name should be deleted from the array of parties.
- vii. That the Authority has the power to adjudicate upon the violations of the Act or agreement to sale, which, in terms of Section 2 of the Act, is any agreement executed between the promoter and the allottee. However, in the present matter, the agreement has been executed with the maintenance agency, which does not fall within the definition of a promoter. Hence, the Authority has no power to adjudicate upon any issue that may be arising with the maintenance agency or out of any maintenance agreement.
- viii. That the development of the project is complete and all the amenities of the project are available and functioning in the project. That reference to a plot buyer's agreement dated 01.10.2016 for Plot No. C-261 executed with Rajpal Singh Soklani and Anil Soklani has been made at this instance.
- ix. That all the essential service in the project has been made available. That the following can be categorically noted:

- **Water pumping and Supply System:** The water lines have been laid and connected to water supply. That the Respondent no. 1 had received exemption from adopting Roof Top Rain Water Harvesting System from the Central Ground Water Authority on 04.01.2012.
 - **STP:** 2 STPs of 100KLD and 150KLD have been working at site and have been meeting the demands of the residents. In addition, STP of 1700 KLD for the entire township is under construction.
 - **Rainwater Drainage:** The Stormwater drainage has been completed by the Respondent No. 1. HUDA has not laid the infrastructure to which the line of the project is to be connected.
 - **Firefighting services:** All the norms have been complied which, after which the Completion certificate has also been made available.
 - **Power backup:** DG of 1500KVA is operation which is meeting all demands at site.
 - **Road pathways:** Roads in the entire township of 13 acres have been completed.
- x. That all the developments, as noted in the layout plan, have been provided as can be seen from a list of required/provided community sites. Moreover, the facilities, as alleged by the complainant, are present in the project site, as were promised. That it is reiterated that the complainant has failed to show any evidence in regards to assurances of such services having been given.
- xi. That it was agreed in accordance with clause 4 of the PBA that the respondent no. 1 shall nominate a maintenance agency to provide adequate maintenance services and upkeep of common services and areas till the time the colony is taken over by Local Authorities. That as on date, the maintenance is undergone by the respondent no. 2 who has executed bilateral agreement for charging of maintenance services from the respective residents. One such bilateral Maintenance and Service Agreement dated 17.12.2021 executed between BPMS and Jony Kharb & Renu.

- xii. Hence, there is privity of contract with an individual resident and the respondent no. 2 and alleged issue that may be arising out of an individual agreement, need to be individually dealt with and cannot be clubbed with the collective issues of the alleged RWA.
- xiii. That if the same is collectively dealt with, no regard will be left to the inherent right of privity of the contract and specific allegations and contentions against the respective residents that the respondent no. 2 may have, cannot be brought to light before the Authority for a fair adjudication. That the same need to be categorically seen in light of the fact that the list of the members of the alleged RWA has not been provided and hence, the specific details qua the outstanding charges or any other details cannot be noted.
- xiv. That at the outset, it needs to be specifically noted that the Authority does not have the power to deal with the issues of maintenance, charge of maintenance or adjudicate upon the maintenance agreement executed between the resident and the maintenance agency. The respective resident is bound to pay the maintenance charges as per the terms of the MSA.
- xv. That in accordance with clause 4.4 of the MSA, the cost certificate for the last financial year, i.e., the period between 01.04.22 to 31.03.2023, duly certified by MRKS and Associates, Chartered Accountants was also provided. The said certificate notes the actual expenditure incurred in providing the maintenance services.
- xvi. That the demand of Maintenance charges has been raised as incurred, in accordance with the above and in terms. Apart from the Maintenance Charges, the complainant has challenged the payment of IFMS, Sinking Fund, Contingency Deposit, all of which were duly agreed between the respective residents. Hence, all the charges have been demanded as per the agreed terms and conditions only and when the terms of the agreement with R2 have not

been challenged, no challenge can be made to the demands arising thereof. Hence, the complaint is liable to be dismissed.

- xvii. Further, the complainant challenges the revision of the plans. That any contention, allegation of the complainant in this regard is wrong and denied. The layout plan of the township has been revised in 2017 and 2020. The revision has been done after following the due process of law.
- xviii. The layout plan was sought to be revised for 126.674 acres. Upon the request having been made, the plan was in-principally approved on 11.05.2017 after which, the respondent invited objections from the allottees and also issued public notices in newspaper on 21.05.2017. Thereafter, after considering the 19 objections raised, the competent authority finally approved the layout.
- xix. Thereafter, revision was sought to be done in 2020 and upon the request of the respondent no. 1, the layout plan was in-principally approved on 08.07.2020 after which, the respondent invited objections from the allottees and also issued public notices in newspaper on 15.07.2020. That thereafter, the layout plan was finally approved on 22.09.2020.

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

E. Written submissions by respondent no.2.

8. The respondent no. 2 filed written submissions on 08.07.2025 and made following submissions:

- a) That the complainant, alleged to be an "RWA" of "Amstoria & 102 Eden Estate", however, has not been registered under any applicable statute. Moreover, that complaint is alleged to be filed by the purported president Mr. Surender Singh, however, neither any Memorandum of Association, Articles of Association, list of members of the purported RWA, authority letter, etc.,

have neither been filed nor any information with regards to the same has been disclosed by the alleged RWA.

- b) That it is also unclear as to which license land does the alleged RWA/allottees belong to. Unless and until such clarification is attained, no issue of merit can be decided. That allottees of one project cannot be allowed to raise any objections or file the present case, as against any other project which is separately registered before the Ld. Authority.
- c) That it was agreed in accordance with clause 4 of the PBA that the respondent no. 1 shall nominate a maintenance agency to provide adequate maintenance services and upkeep of common services and areas till the time the colony is taken over by Local Authorities. As of the date, the maintenance is being undertaken by respondent no. 2, who has executed a bilateral agreement for charging maintenance services from the respective residents.
- d) Hence, there is privity of contract with an individual resident and respondent no. 2, and the alleged issue that may be arising out of an individual agreement needs to be individually dealt with and cannot be clubbed with the collective issues of the alleged RWA.
- e) That if the same is collectively dealt with, no regard will be left to the inherent right of privity of the contract and specific allegations and contentions against the respective residents that respondent no. 2 may have, cannot be brought to light before the Authority for a fair adjudication. The same needs to be categorically seen in light of the fact that the list of the members of the alleged RWA has not been provided, and hence, the specific details regarding the outstanding charges or any other details cannot be noted.
- f) That the Authority does not have the power to deal with the issues of maintenance, charge of maintenance, or adjudicate upon the maintenance agreement executed between the resident and the maintenance agency.

Without prejudice to the same, it is submitted that the respective residents are bound to pay the maintenance charges as per the terms of the maintenance agreement.

- g) That in accordance with clause 4.4 of the M, the cost certificate for the last financial year, i.e., the period between 01.04.2022 to 31.03.2023, duly certified by MARKS and Associates, Chartered Accountants, was also provided, which is annexed at page 100 of the reply. The said certificate notes the actual expenditure incurred in providing the maintenance services.
- h) That the demand for Maintenance charges has been raised as incurred, in accordance with the above, and in accordance with the Maintenance Agreement executed by the individual allottees.
- i) That apart from the Maintenance Charges, the complainant has challenged the payment of IFMS, Sinking Fund, and Contingency Deposit, all of which were duly agreed upon between the respective residents.
- j) That, hence, all the charges have been demanded as per the agreed terms and conditions only, and when the terms of the agreement with respondent no. 2 have not been challenged, no challenge can be made to the demands arising thereof. Hence, the complaint is liable to be dismissed.

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

F. Jurisdiction of the Authority

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

F.I Territorial jurisdiction

11. As per notification no. **1/92/2017-1TCP dated 14.12.2017** issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory

Authority, Gurugram shall be entire Gurugram District for all purposes with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram District. Therefore, this authority has a complete territorial jurisdiction to deal with the present complaint.

F.II Subject matter jurisdiction

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

Section 11....

(4) The promoter shall-

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

Section 34-Functions of the Authority:

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

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

G. Findings on the relief sought by the complainant/association.

- G.I Direct the respondent no 1 & 2 to provide the bank details & account statement of the security deposited in the name of IFMS, IFMSD, sinking fund, Contingency charges and any other amount so collected from complainant and keep this account secure by opening a joint escrow account either with HRERA or RWA/AOA to safeguard the collected amount of the allottees.**
- G.II. Declare the above said demand letters in the name of maintenance & interest null, void, ab-initio, nonest, inoperative and not binding upon the right, title or interest of the Complainant.**

14. The complainants have sought a direction to respondent no. 1 and 2 to provide the bank details and account statements of all amounts collected towards IFMS, IFMSD, sinking fund, contingency charges, and other similar heads and to safeguard these funds by placing them in a joint escrow account under the control of HRERA or RWA/Association of allottees.
15. As per Section 17(2) of the Act, 2016 the respondent/promoter is obligated to hand over all necessary documents to the association of the allottees or the competent authority after obtaining occupation certificate. Accordingly, respondent no.1 and 2 are liable to provide the complete bank details and statements of the said funds to the complainant/association within 30 days of this order.

G.III Direct the respondent no. 1 to bear the cost of the maintenance till the final completion and handover of the said project and to initiate the process of engaging RWA/AOA in all safety, security and basic amenities as committed.

16. The complainants have sought a relief to direct respondent no. 1 to bear the cost of maintenance till the final completion and handover of the project and to initiate the process of engaging the RWA/AOA to ensure safety, security, and provision of basic amenities.
17. The Authority observes that in terms of Section 11(4) (d) and (e) of the Act, 2016, the promoter is under a statutory obligation to provide and maintain the essential services on reasonable charges till the maintenance of the project is taken over by the association of allottees/local authorities. In the present matter, it is noted that the part completion certificate was issued on 03.10.2017. However, it is not brought on record whether the maintenance has formally been handed over to the association/local authorities. Accordingly, till such time as the association/local authorities takes over the maintenance as per the applicable local laws, the promoter shall remain responsible for providing and maintaining the essential services on reasonable charges.

G.IV Direct the respondent to refund the maintenance charges which is illegally charged from the complainant with 18% interest.

G.V Direct the respondent to give compensation of the delayed possession charges of the basic amenities at the rate of 18% per annum of the total cost of the apartment/plot (Basic amenities i.e. club house, crèche & dispensary, gym, swimming pool, medical shop, milk booth, vegetable shop etc.) and a committed timeline of the completion.

18. In the present complaint, the complainant-association is seeking refund of maintenance charges illegally charged and delay possession charges under Section 18(1) of the Act, 2016 through various allottees but have not provided any details as to any individual agreement and other documents therefore the relief under Section 18(1) cannot be adjudicated.

19. The Act of 2016 makes it clear that only the individual buyer can approach RERA with a complaint related to delayed possession, refund of any payment and compensation claim by filing the complaint under Section 31 before the Authority. Thus, in such a scenario, no case for delay possession charges would be made out by the association.

G.VI. Direct the respondent no. 3 to cancel the additional license granted not in accordance to RERA Act & also restrain from granting any other additional license or layout plans without adhering the Section 14 sub section (2) (ii) The Real Estate (Reg. & Development Act, 2016).

20. The complainants are seeking relief w.r.t directing the respondent no.3 to cancel the additional license and to restrain from granting any other additional license to the respondent. The Authority observes that the Act, 2016 does not confer any power upon this Authority to cancel licenses or interfere with statutory approvals granted by the competent authority. Accordingly, this relief cannot be adjudicated by this Authority, and the complainants are at liberty to approach the appropriate competent forum for redressal regarding the cancellation of the license.

G.VII. Restrain the respondent no. 1 to further sale any plots/apartment lying in the revised sanction plan which is unlawful & not in accordance to the Section 14 sub-Section (2) (ii) The Real Estate (Reg. & Development Act, 2016).

21. The complainants are seeking relief to restrain respondent no. 1 from selling any plots/apartments falling under the revised sanctioned plan, alleging that such revisions are unlawful and contrary to the provisions of the Act. The Authority observes that the approval and validity of any revised sanctioned plan do not fall within the adjudicatory powers of this Authority. Accordingly, this relief cannot be adjudicated by the Authority, and the complainant is at liberty to approach the appropriate competent forum for redressal regarding the validity of the revised sanctioned plan.

G.VIII. Direct the respondent no. 4 to initiate the shifting/underground of the high-tension wire/poles to prevent any accident which may cause to life threat & expenses to be beard by the respondent no. 1

G.IX. Direct the respondent to make township free from water logging by sand filling in the plots as well.

22. The complainants seek a direction to respondent no. 4 for shifting/undergrounding the high-tension wires/poles and for the expenses to be borne by respondent no. 1 and direct respondent to make township free from water logging by sand filling in the plots. The Authority observes that the promoter is required to complete the project strictly as per the approved plans and the completion certificate issued by the competent authority. If the completion certificate mandates safety measures, including shifting or undergrounding of high-tension wires, respondent no. 1 is bound to comply. Accordingly, respondent no. 1 is directed to ensure compliance as per the occupation certificate/completion certificate issued by the competent Authority.

G.X. Cost of Litigation of Rs.2,00,000/-

23. The complainants are seeking relief w.r.t litigation expense. *Hon'ble Supreme Court of India in case titled as M/s Newtech Promoters and Developers Pvt.*

Ltd. V/s State of Up & rs. 2021-2022(1) RCR (C), 357 held that an allottee is entitled to claim compensation & litigation charges under Sections 12, 14, 18 and Section 19 which is to be decided by the adjudicating officer as per Section 71 and the quantum of compensation & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in Section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses

24. The complaint is accordingly decided in terms of the findings contained in para 13 to 23 above.
25. The complaints stand disposed of.
26. Files be consigned to the registry


(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram


(Arun Kumar)
Chairman

Dated: 15.07.2025