



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	2671 of 2022
Date of filing:	10.10.2022
Date of first hearing:	06.12.2022
Date of decision:	09.10.2025

Omaxe Janhit Welfare Association through its authorised representative/President Ajit Kumar Jain, resident of flat no. 806, Fareka Tower 01, City Omaxe, North Avenue 1, Sector-15, Bahadurgarh, District Jhajjar, Haryana

....COMPLAINANT

VERSUS

1. M/s Omaxe Ltd., through its Managing Director/Authorised representative 7, local Shopping Centre, Kalkaji, New Delhi-110019.
2. Directorate of Town and Country Planning, Haryana, Sector-18, Chandigarh.

....RESPONDENTS

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

W

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

ORDER (PARNEET S. SACHDEV-CHAIRMAN)

1. Present complaint dated 10.10.2022 has been filed by the complainant's association under Section 31 of the Real Estate (Regulation & Development) Act, 2016 (for short Act of 2016) read with Rule 28 of the Haryana Real Estate (Regulation & Development) Rules, 2017 for violation or contravention of the provisions of the Act of 2016 or the Rules and Regulations made thereunder, wherein it is inter-alia prescribed that the promoter shall be responsible to fulfil all the obligations, responsibilities and functions towards the allottee as per the terms agreed between them.

A. FACTS OF THE COMPLAINT

2. That the present complaint is filed by Mr. Ajit Kumar Jain being authorised representative of the aforementioned complainant namely Omaxe Janhit Owners Welfare Association registered under the act vide registration no. 06/15/20120000634 duly authorised vide resolution passed by the Executive Committee of the complainant society.
3. That 'Omaxe North Avenue, Bahadurgarh' is a group housing project developed by respondent on total area of 10.25 acres. Respondent advertised the project in year 2004-2005 and majority of allottees booked



their flats from time to time and possession of the flats was supposed to be handed over to the allottees within a period of 30 months from the date of signing of the builder buyer agreement or within an extended period of 6 months. Allottees of 2BIHK, thereafter, formed an association by the name of Omaxe City, Resident Welfare Association which is a registered society under the Society Registration Act, 2014 and same was registered in year 2015.

4. That the buyers in the project entered into flat buyers agreement during the course some time after booking. In the the instant case, as sample, a flat buyer agreement of Veena Gupta and Vikas Gupta, buyers of a flat in the society is provided for elaborating on the terms and conditions of agreement. On 14.11.2007 flat buyer agreement was executed between Omaxe Ltd and Veena Gupta and Vikas Gupta wherein it has been mentioned that the respondent had received the license to develop the project from Haryana Government and possession was supposed to be offered within 30 months from the date of execution of the agreement. Copy of flat buyer agreement is attached as Annexure C-1.

5. That subsequently buyers were called upon by respondent for execution of conveyance deeds. A sample copy of one of deed executed on 14.12.2011 by the Omaxe limited in favor of the Veena Gupta and Vikas Gupta whereby promoter agreed to sell the residential flat bearing no. 301 having area 1165 sq. Ft is attached as Annexure C-2.

6. That the respondent obtained occupation certificate of Tower no.s 1 to 11 on 16.12.2010 from Directorate of Town and Country Planning Department and obtained occupation certificate of tower 12,13 and 14 on 30.03.2011. As per the conditions of occupation certificate issued by Town and Country Planning Department the respondent shall maintain the internal services to the satisfaction of the Director till the colony is handed over after granting final completion and the respondent shall be fully responsible to supply of water as per norms till such time the colony is handed over after final completion. Copy of occupation certificates are attached as annexure C-3 and C-4.
7. That the respondent thereafter handed over the maintenance of the society to its agency M/s Shanvi Estate Management Services Limited and the said agency entered into maintenance agreement with the allottees of unit. One of the maintenance agreement executed between maintenance agency with one of buyer namely Rajinder Kumar on 08.03.2013 is attached as Annexure C-5.
8. That the respondent in the year 2016 in connivance with the then President of the Omaxe Janhit Owners Welfare Association got the maintenance of society transferred from its agency to the RWA which is against the conditions by the Town and Country Planning Department and also in violation of the terms and conditions of the agreement executed between the parties. It is submitted that in the affidavit cum undertaking



given by the then president Mahipal Malik mentioned AGM date as 07.08.2016 and governing body meeting date as 24.09.2016. It is relevant to mention that the AGM date 07.08.2016 did not even have the agenda for handover of the management to RWA and how the Governing Body meeting held on 24.09.2016 after AGM whereas it has to be governing body which gives its recommendation to AGM. It proves that the respondent colluded with the then Executive Committee of RWA and in collusion with the then President wrongly and illegally handed over the maintenance services of the society to the RWA on 25.11.2016.

9. That the respondent at the time of transferring of the maintenance services to the RWA has not transferred the entire IFMS amount. Only part payment from the total amount of Rs 4,26,49,500/-, the respondent gave only Rs 40 lacs to the RWA and the remaining IFMS money of about 3.85 crores is still lying with the respondent. Complainant had sent various legal notices and reminders for recovery of the remaining IFMS amount including interest but nothing was done by the respondent.
10. That the respondent used very low and inferior quality of material for constructing the flats and due to which wide open cracks appear in the beams in almost all the towers and peeling of concrete was also seen at various places and due to this reason the towers are very unsafe for residence purpose. The structure work of the pillars of the towers were not constructed as per building bye laws by the respondent. Thereafter, one of



the allottee submitted application in the CM window. On that application the Director Town and Country Planning Department Haryana sought report on inspection and non-descriptive testing of building exists in Omaxe City North Avenue from National Institute of Technology, Kurukshetra. The inspection was done by Dr. H.K.Sharma, Professor structure in presence of various officers of Town and Country Planning Department Haryana and also in presence of the allottees and the representative of the builder and he submitted his report to the Director Town and Country Planning. In the report various shortcomings were pointed out and also various measures were suggested for removing the shortcomings. Copy of the report submitted by Dr.H.K Sharma is annexed as Annexure C-8.

11. That the Director Town and Country Planning thereafter directed the respondent for doing structural rectification in the building as per the above mentioned report, annexure C-7, but despite that respondent was not doing the repair work satisfactorily and work continued in a very slow pace.

12. That the Senior Town Planner, Rohtak wrote a letter dated 24.02.2022 and letter dated 20.04.2022 to Director Town and Country Planning Department Haryana submitting that completion of major repair work in the colony made by coloniser firm is not correct, progress is not satisfactory and repair work done at site is also not upto the mark.



Colonizer firm is not serious to complete the repair work. Copy of letters dated 24.02.2022 and 20.04.2022 are annexed as annexure C-9 and C-10.

13. That the respondent has constructed club for the members of the society but the respondent is earning handsome amount by renting the said club to private persons for organizing various functions. Due to this reason the residents of the society are facing huge problems and even the income is kept by the respondent in his own pocket.
14. That the shops which were shown in the site plan were inside the premises of the society but respondent constructed these shops in violation of the site plan by constructing as per the approved lane of the DTCP and is thus clear violation of government norms. Approved shops are to be constructed within the premises as shown in approved plan by DTCP plan whereas the shops were constructed outside of the boundary wall of the society at different location and this invites notorious elements near the gate which is clear threat to the security of people living in society.
15. That despite paying such a huge amount the allottees have been facing huge structural problems due to building defects and incomplete project from the date residents started living in the society which had been brought to the notice of the respondent but no effort has been taken by it to resolve the issues.
16. That the respondent has provided electricity load of about 800 KVA sanctioned from UIIBVN whereas in summer, the total load exceeds



about 1300 KVA and due to which the heavy penalty is imposed by UHBVN upon the RWA. Complainant has requested the respondent many times to get sanctioned the load as per requirement of the society but despite writing various letters and reminders nothing has been done by the respondent. The complainant have written letters to the respondent for getting installed the second transformer as only one transformer is installed in the society but, the respondent has neither got the sanctioned load increased nor got install the second transformer which is very much necessary.

17. That even the respondent has not installed water treatment plant and the sewerage treatment plant is not as per sanctioned VKN in the society in which 726 flats are there and due to this reason the residents are facing acute problem due to malfunctioning. Even the drinking water is not available to all the residents of the society and despite writing various letters and reminders nothing has been done for providing these basic necessary facilities.

18. That the respondent has violated the terms of Section 14(1) of the Act, by not completing the project in accordance with the sanctioned plans, layout plans. Relevant extract of Section 14(1) of the Act is presented below:

"14. Adherence to sanctioned plans and project specifications by the Promoter,-

(1) The proposed project shall be developed and completed by the promoter in accordance with the sanctioned plans, layout plans and specification as approved by the competent authorities."



19. That the respondent has violated the terms of Section 14(3) of the Act by not rectifying the structural defects, workmanship, quality and not provided services promised despite of being notified by the Allottees.

"Section 14(3) of the Act is represented below:

14. Adherence to sanctioned plans and project specifications by the Promoter,-

(3) In case any structural defect or any other defect in workmanship, quality or provision of services or any other obligations of the promoter as per the agreement for sale relating to such development."

(B.) RELIEF(S) SOUGHT:

a. To direct the respondent to complete the structural rectification of the building within a fix timeframe and in accordance with the suggestions submitted in the report dated 02.11.2019.

b. To direct the respondent to provide a complete structure, facilities and amenities as promised under the agreement, and further to ensure the following below mentioned work at the Sunshine Country:

i. To ensure the proper maintenance of the drainage and sewerage connection lines and further to ensure its proper repair.

ii. To ensure the proper maintenance of the motors used for lifting water to the overhead tanks.



- iii. To ensure the repair of the expansion joints to avoid leakage and seepage,
 - iv. To ensure the proper working and maintenance of the street lights,
 - v. To ensure the proper maintenance and cleaning of the water reservoir, overhead tanks and further to ensure the proper repair of the water supply distribution system and sewerage system.
 - vi. To direct the respondent authority to check and avoid any seepage in the residential compound of the Society, effluents from the Septic Treatment Plant as such endangers the life and health of the residents of the society.
- c. To handover the complete charge of maintenance to the complainant along with all valid account and original records.
- d. To handover the amount collected under the head of maintenance and service charges lying with the respondent in the shape of security deposits, parking charges and other money deposits along with interest to the complainant.
- e. To direct the respondent to establish a proper channel for the timely redressal of the grievances of the complaints from the complainant.
- f. To refer to the Adjudicating officer of the Hon'ble Authority for ascertaining.



- i. The adequate compensation for causing mental agony by the respondent for considerably falling to provide the essential services as per the terms and conditions of the agreement.
 - ii. The adequate compensation for causing mental agony and other harassment to the Complainant owing to non-attendance by the respondent through its nominated service agency to addresses the prevailing issues in the society owing to lack of maintenance service and failure to render other essential services.
 - iii. To adjudicate proper compensation under section 61 of the Act.
- g. To pass such orders(s) or direction(s), as may deem fit and proper, under section 37 and 38 of the Act, towards giving effect to any one or more of the above reliefs sought.

C.REPLY SUBMITTED ON BEHALF OF RESPONDENT NO. 1 ON 19.10.2023.

20. The complaint deserves to be dismissed as the same is not maintainable before this Hon'ble Authority. The project in question is not registered under the provisions of Real Estate (Regulation and Development) Act, 2016. That occupation certificate stands received on 16.12.2010 and 30.03.2011 and project has already been handed over to the complainant association in year 2016. Now, complainant has approached the Authority after lapse of 8 years of handing over.

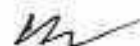


Thus, the complaint filed before this Hon'ble Authority is barred by Limitation, being not maintainable and deserves dismissal.

21. That the complainant has raised multiple issues in the complaint in hand, without disclosing before this Hon'ble Authority that some of the issues, especially structural rectification work/building repair work is already under consideration/umbrella of respondent no. 2, which appointed retired senior officer namely; Mr. Rakesh Garg to monitor the retrofitting works and inspections were conducted two times a month, in the presence of complainant-association. Inspection reports have been submitted with respondent no. 2 showing satisfaction regarding the work done. Copy of inspection reports are not readily available with answering respondent and direction can be given to respondent no. 2 for producing the same before this Hon'ble Authority.
22. That the complainant has not impleaded the Maintenance Agency, which transferred the maintenance to RWA, which is a distinct and separate entity. That by alleging the said agency to be an agency of answering respondent, the reliefs have been sought qua maintenance against the answering respondent which is totally uncalled for and unwarranted. Maintenance agency being a separate entity can only reply to the allegation raised in this regard.
23. That the allegations of connivance have been levelled against the maintenance agency and also the erstwhile President of association but

neither the maintenance agency nor the erstwhile President have been impleaded as party.

24. In respect of construction of shops in contradiction to approved plan, it is submitted that no such deviation from the approved plan has been done by the answering respondent and after development, approval/sanction in the shape of Occupation Certificate qua the said shops has also been granted in favour of answering respondent by the competent Authority.
25. In respect of issue of electricity load, it is submitted that the sub-station from which the electricity is being supplied to the Group Housing, is not having extra load available and the company is already paying MDI charges to the electricity department regularly. As and when load shall be available with the sub-station, the company will apply for enhancement of the load and it would not be out of place to mention here that the company has already approached UIIBVNL for enhancement of load. Moreover, as per the required load, the required transformer was installed by the company, however, since occupancy in the group housing has increased, work order for the second transformer has already been placed and the same shall be installed soon. Copy of work order is attached as Annexure R-1/1.
26. That WTP/STP has been installed as per the approved estimate by DICP and the capacity/operational/functional reports have already



been verified by the concerned department, at the time of grant of occupation certificate of the project. The society already stands handed over to the complainant-association in 2016, including WTP/STP and other services in full working condition. Drinking water is being supplied by HSP through its waterlines. Now, after lapse of 7 years, issues are being raised which are beyond the ambit of jurisdiction by this Hon'ble Authority as the project in question, admittedly stands handed over prior to coming into force of RERA Act.

27. That the allegation that amount of IFMS has not been shifted to complainant-association is wrong and denied.
28. It is to mention here that no one has appeared on behalf of respondent no. 2 nor had filed any reply till date.

D. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT

29. During the course of oral arguments, Id. Counsels appearing on behalf of both the parties reiterated their submissions as made in pleadings. It is the stand of Id. counsel for the respondent that maintenance of the society already stands handed over to the complainant-association in year 2016 itself and same has been admitted by complainant-association.



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

(a) Whether the complaint is maintainable or not?

30. With respect to the objection raised by the respondent no. 1 regarding the maintainability of the complaint on the ground that the occupation certificate (OC) for the project was obtained before the enactment of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as "the Act"), it is observed that the provisions of the Act are retroactive in nature. The Hon'ble Supreme Court in *M/s Newtech Promoters & Developers Pvt. Ltd. vs. State of UP & Ors. Etc.* has categorically held that:

"The clear and unambiguous language of the statute is retroactive in operation and by applying purposive interpretation rule of statutory construction, only one result is possible, i.e., the legislature consciously enacted a retroactive statute to ensure sale of plot, apartment or building, real estate project is done in an efficient and transparent manner so that the interest of consumers in the real estate sector is protected by all means and Sections 13, 18(1) and 19(4) are all beneficial provisions for safeguarding the pecuniary interest of the consumers/allottees."

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

"Merely because enactment as prayed is made retroactive in its operation, it cannot be said to be either violative of Articles 14 or 19(1)(g) of the Constitution of India. To the contrary, the



Parliament indeed has the power to legislate even retrospectively to take into its fold the pre-existing contract and rights executed between the parties in the larger public interest."

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

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

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



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

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

Also, Section 11(4) and Section 18 of the RERA Act, 2016 that provides for obligation of the promoter does not distinguish between registered and unregistered project nor does it provides that the remedy u/ Section 18 will be available/applicable only to the allottees of a registered project. Therefore, provision of RERA act, 2016 will apply to respondents. Furthermore, as per Section 34(c) it is the function of the Authority to ensure compliance of obligation cast upon the promoters, the allottees and the real estate agents under this Act, and the rules and regulations made thereunder. Therefore this Authority has complete jurisdiction to entertain the captioned complaint entertain and objection raised by the respondent regarding maintainability of the present complaint is rejected.



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

33. Before proceeding on merits of the case, it is pertinent to refer to order passed by the Authority in captioned complaint. Vide order dated 06.03.2025, it was observed by the Authority that complainant has not placed on record the documents revealing that complainant is a registered welfare association bearing majority of 2/ 3rd of allottees. Details of elected members along with elections taken place in the complainant's society be placed on record to prove the authenticity of complainant-association. Respondent was also directed to place on record documents, if any, in support of their case. Parties did not file any documents. Therefore, vide order dated 17.07.2025, one more opportunity was granted to parties to file requisite documents by 27.08.2025. However, no documents have been filed by the parties till date. Now, complaint is being adjudicated on merits on the basis of available documents on record as stated in previous order dated 17.07.2025. Relevant part of the order is reproduced below for reference:-

*"As per office record, complainant has not placed on record any document in compliance of previous order.
Today, no one has appeared on behalf of complainant.
In these circumstances, last opportunity is granted to complainant to place on record documentary proving majority of 2/3rd allottees in compliance of directions issued vide previous order by 27.08.2025. Failing which case will be decided on basis of the available documents on next date.
Case is adjourned to 18.09.2025, for further arguments and consideration."*



34. On merits, Complainant association, through the present complaint, has sought various reliefs as elaborated in Para B of this order, in respect of certain deficiencies alleged on the part of the respondent. In light of the extensive nature of these reliefs, they are being adjudicated one by one, simultaneously, based on the documents already/placed on record and submissions of parties and arguments presented during the hearing in response to the relief sought by the respondent.

35. **Relief no. (a):** To direct the respondent to complete the structural rectification of the building within a fix timeframe and in accordance with the suggestions submitted in the report dated 02.11.2019.

Relief no. (b): To direct the respondent to provide a complete structure, facilities and amenities as promised under the agreement, and further to ensure the following below mentioned work at the Sunshine Country:

- i. To ensure the proper maintenance of the drainage and sewerage connection lines and further to ensure its proper repair.
- ii. To ensure the proper maintenance of the motors used for lifting water to the overhead tanks.
- iii. To ensure the repair of the expansion joints to avoid leakage and seepage.
- iv. To ensure the proper working and maintenance of the street lights.



v. To ensure the proper maintenance and cleaning of the water reservoir, overhead tanks and further to ensure the proper repair of the water supply distribution system and sewerage system.

vi. To direct the respondent authority to check and avoid any seepage in the residential compound of the Society, effluents from the Septic Treatment Plant as such endangers the life and health of the residents of the society.

36. In respect of these two reliefs, Authority after carefully examining the record available and perusal of file, observes that no sanctioned service plan or approved cost estimates have been placed on record by the complainant in support of the contention that any of the aforementioned facilities or services are not in conformity with the sanctioned layout or approved technical requirements. In the absence of any such material, it would be beyond the competence of this Authority, which is primarily a regulatory and quasi-judicial body under the Real Estate (Regulation and Development) Act, 2016, to engage in a technical fact-finding exercise regarding the adequacy or inadequacy of services existing at site. However, the respondent is directed to ensure that all such provisions are made strictly as per the sanctioned layout and approved service plans. Authority is not vested with technical advisory or infrastructure planning functions nor can it issue directions for execution of specific construction works unless there is a demonstrated deviation from sanctioned plans or

violation of the terms and conditions of registration of the project under the Act. The proper authority to examine such issues remains the Directorate of Town and Country Planning (DTCP), Haryana, which grants approval of layout plan, building plan sanctions, service estimates, and Occupation Certificates. Moreover, after handing over of maintenance in year 2016, it is difficult to ascertain the status of each of the facility after filing of complaint in year 2022.

37. Therefore, in the absence of any documentary record substantiating the claims made by the complainant, Authority cannot grant blanket directions in this regard. However, the complainant is at liberty to seek the necessary records from the competent authorities and take appropriate legal recourse for any non-compliance, if established. As regards issues related to electricity supply and transformers, these fall within the domain of Uttar Haryana Bijli Vitran Nigam (UHBVN) and are governed by separate sectoral regulations including those issued by the Haryana Electricity Regulatory Commission (HERC).

38. **Relief no. (c):** To handover the complete charge of maintenance to the complainant along with all valid account and original records.

Relief no. (d): To handover the amount collected under the head of maintenance and service charges lying with the respondent in the shape of security deposits, parking charges and other money deposits along with interest to the complainant.



In respect of these two reliefs, it is observed that admittedly maintenance of the group housing already stands handed over in year 2016 as is established from submissions of parties. No documentary evidence, as to what were the terms and conditions at the of time of handing over, has been placed on record. However, it is the contention of complainant that IFMS amount of Rs 3.85 crores is still lying with respondent ad only Rs 40 lacs was transferred at time of handing over in year 2016. Besides this, there is no detail of parking charges or other money deposits mentioned in pleadings. In these circumstances, it cannot be figured as to what all is left for complete handing over of maintenance. Nor the same has been explained by complainant in its pleadings. So, no direction is passed against these relief except on IFMS amount. Regarding the Interest-Free Maintenance Security (IFMS), the Authority hereby directs both parties to mutually appoint a neutral and independent third party, preferably a Chartered Accountant (CA), who shall:

- i. Examine the financial records including IFMS received from shop owners,
- ii. Verify the expenditure incurred on maintenance,
- iii. Calculate the corpus currently available under IFMS, if any.

This exercise shall be carried out in the presence of representatives from both parties, and the Chartered Accountant shall certify the actual amount, if any, recoverable or refundable after adjustment of verifiable



maintenance expenses. The said process shall be completed within 90 days from the date of uploading of this order. The cost of engaging the Chartered Accountant shall be borne equally by both parties. Upon such determination, the respondent shall pay the due amount to the complainant association within the next 30 days. Compliance with this direction is essential to ensure that the IFMS amount is properly accounted for and transferred in accordance with its intended purpose.

39. **Relief no. (e):** To direct the respondent to establish a proper channel for the timely redressal of the grievances of the complaints from the complainant.

In respect of this relief, it is pertinent to mention here that said relief is neither been argued nor pressed upon during course of arguments/submissions. So, no direction is passed in respect of this relief.

40. **Relief no. (f):** To refer to the Adjudicating officer of the Hon'ble Authority for ascertaining,

- i. The adequate compensation for causing mental agony by the respondent for considerably falling to provide the essential services as per the terms and conditions of the agreement.
- ii. The adequate compensation for causing mental agony and other harassment to the Complainant owing to non-attendance by the respondent through its nominated service agency to addresses the



prevailing issues in the society owing to lack of maintenance service and failure to render other essential services.

iii. To adjudicate proper compensation under section 61 of the Act.

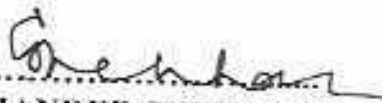
41. In respect of this relief, it is observed that Hon'ble Supreme Court of India in Civil Appeal Nos. 6745-6749 of 2027 titled as "M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of U.P. & ors." (supra.), has held that an allottee is entitled to claim compensation & litigation charges under Sections 12, 14, 18 and Section 19 which is to be decided by the learned Adjudicating Officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the learned Adjudicating Officer having due regard to the factors mentioned in Section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses. Therefore, the complainant is advised to approach the Adjudicating Officer for seeking the relief of litigation expenses by filing separate complaint.

42. Since the complainant association has sought reliefs for completing/rectifying/repair work of certain facilities, as such it is within their prerogative to undertake such works using the IFMS amount, which has been collected for precisely such purposes. In view of the above, Authority holds that the complainant association is at liberty to undertake repair of facilities and other necessary maintenance works utilizing the IFMS amount. The association may plan and execute such works as per its



discretion and as and when required, keeping in view the wear and tear of the building and prevailing weather conditions. The respondent, in the absence of any proven obligation, cannot be held liable for undertaking such maintenance work indefinitely.

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


CHANDER SHEKHAR
[MEMBER]


DR. GEETA RATHEE SINGH
[MEMBER]


NADIM AKHTAR
[MEMBER]


PARNEET S. SACHDEV
[CHAIRMAN]