HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	**2694 of 2022**
Date of filing:	**06.10.2022**
Date of first hearing:	**24.11.2022**
Date of decision:	**16.07.2026**

Royal Resident Welfare Association
R/o Royal Residency Panchwati, T-3,401,
Adjoining Hotal Noor Mahal,
Sector-32, Karnal ....COMPLAINANTS

VERSUS

Ultratech Township Developers Pvt. Ltd.
Registered Office: Adjoining Hotal Noor Mahal,
Unit Royal Reidency,
Sector-32, Karnal .... RESPONDENT

CORAM:	**Parneet S Sachdev**	**Chairman**
	NadimAkhtar	**Member**
	Dr. Geeta Rathee Singh	**Member**

Present: Adv. Kamal Dhaiya, counsel for the complainants.

None for the respondent

ORDER (PARNEET S SACHDEV – CHAIRMAN)

1. Present complaint dated 06.10.2022 has been filed by the complainant 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 AS STATED IN THE COMPLAINT

2. That the present complainant is an Association of Residents of "The Royal Residency' who are allottees in the said project and same is duly registered Under Section 9(1) of the Haryana Registration and Regulation of Societies Act. The complainant being the association of residents of "The Royal Residency" has grievances of allottees/residents against the Respondent Company thus, preferred to file petition before this Hon'ble Authority. The present complainant-association has authorised Sh.J. C Chawla to file and pursue the present complaint before this Hon'ble Authority. The resolution has

been annexed here with as Annexure C-1, through which Sh. J.C Chawla is authorised to file the instant petition.

3. That the Respondent is a Private Limited Company which is duly incorporated and registered under the provisions of the Companies Act, 1956, and the directors of the Respondent Company are fully responsible for the acts and authorized to conduct business and carry on day to day affairs through themselves of its Managing Director or Chairman or Directors or authorized persons. The above said Respondent Company is run by its Director for the last so many years.

4. That the "The Royal Residency' is a project being developed by the Respondent, situated at Sector-32, Adjoining Hotel Noor Mahal, Karnal, Haryana. The Respondent showed rosy picture about their project through various advertisements and publications and the allottees/residents relying upon the representations and specifications, got allured by such representations and bought floors and plots in the said township.

5. The issues raised in the instant petition are related to residents/allottees of "The Royal Residency' which are common in nature. The issues raised by the complainant primarily relates to the unfair trade practice, illegal and wrongful acts by the respondent.

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6. That it is pertinent to mention here that the Respondent offered the Physical possession of the flats, only after getting the Maintenance Agreement executed between the Buyers/allottees, which implies the complete payment of maintenance had been demanded and received by the respondent from the buyers/allottees before giving the Physical Possession of the flats which is arbitrary as per law.

7. That the buyers/allottees have been levied and forced to pay various unreasonable charges under the garb of term "Maintenance Services" as per the Maintenance Agreement. Further the Respondent took separate charges from the allottees for club house, parking slots, passages for ingress and egress, emergency staircase and automatic Generator set for each tower for 24 hours power back-up. Furthermore an amount of Rs.1,18,000/- had been demanded and received by the respondent from each allotee for giving facility of club house.

8. That it is noteworthy to mention here that even after receipt of huge amount/extra charges from the allottees, as detailed herein above, the respondent has failed to provide the facilities to the allottees, against which such charges have been received by the respondent. Further there is huge variation in development of the project from the lay out plan and also certain amenities as mentioned in brochure have not been provided by the respondent. The copy of Layout Plan of the project in

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question is annexed herewith as Annexure C-2 for kind consideration of the Hon'ble Authority.

9. That the allottees/residents as well as complainant being their association have been suffering due to callous attitude of the Respondent towards provision of facilities as mentioned in the Agreement and Brochure. The allottees/residents are getting harassed for not getting timely and quality service against the charges being paid by them. It is important to bring into kind knowledge of the Hon'ble Authority, the grievances, of the complainant/allottees which are mentioned below:

GRIEVANCES:-

a) **Property Tax-** That the respondent has demanded/collected an amount of Rs. 7688/- from each allottee as a property tax. However after enquiry from the office of Municipal Corporation, Karnal, it is revealed that the respondent has only paid Rs.2,63,670/- towards property tax from 2016-17 to 31.03.2022. It is pertinent to mention here that the Total Property Tax that was payable by the respondent was Rs.5,52,024/- but under the scheme of Municipal Corporation, Karnal, rebate of Rs.2,88,354l- was given to the respondent i.e. the interest on arrears of property tax had been waived of by the Municipal Corporation and the respondent paid an amount of

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Rs. 2,63,670/- only against which Property Tax Invoice dated 21.02.2022 had been issued as acknowledgment of said payment by the Municipal Corporation. Thus, the respondent is demanding exaggerated property tax from the flat owners/allottees of the flats. Copy of amount/property tax paid by the respondent is annexed herewith as Annexure C-3.

b) That furthermore, the flat owners/allottees are not liable to pay the property tax of the period prior to their taking of possession by them of their respective flats and also when most of the site is being used and occupied by the respondent itself, i.e. company office, power house.

c) **Club- House-** The respondent company has charged more than Rs.1 lakh + GST 18% as club membership but till today, club: house has not been built and the flat owners/allottees have been cheated and defrauded by the respondent by taking huge money on account of Club membership fee. The photographs clearly depicting that there is no club house in the project are annexed herewith as Annexure C-4(Colly).

d) **Bulk Electricity Supply-** That at the time of agreement and allotment, the respondent had taken and received from each flat owners/allottees more than Rs.1 lakh as bulk electricity supply charges but the same is not being supplied as per the requirement as the respondent is supplying 6 KW electricity to Tower-2, 5K W to Tower-3, and 4 to KW Tower-4, which is insufficient for the consumption of all residents of respective towers. On raising of grievance of same before the respondent by the allottees, the respondent demanded further amount of Rs.25,000/- per KW from each allottee, if any flat owner/allottee wants to get increased his electricity load, which is illegal and unjustified and against the terms and conditions of the Buyer's Agreement/ Allotment Letter.It is submitted that the respondent should charge the rate as per domestic use and slabs as fixed by the Electricity Department.

e) **Generator-set**-That the respondent charged Rs.1 lakh at the allotment from each flat owner to install generator set for power backup for undisrupted supply of electricity but the same has not been installed till date. It is necessary to submit here that only one generator set for all towers is installed now which is merely an eye-wash and same is insufficient as per requirements of all towers.

f) **Covered Parking space-** That the respondent company has charged more than Rs. 1.50 lakh for providing covered parking to each flat Owners/allottees but so far many of flat Owners/allottees have not been provided and given parking site. As there are forty flats in Tower

No.4 but the parking has been given and provided only to sixteen allottees and there is no further space for allotment of parking to other allottees. It is necessary to submit here that the respondent has illegally charged huge amount for providing parking to each flat owner which is totally unlawful.

g) **Exit Passage-**That for the last four years, allottees / owners are living in their respective flats. after taking possession and allotments etc. but till date, they have not been provided any exit passage as mentioned in the buyer's agreement and there is only one gate in the complex for the residents for their ingress and egress, whereas, the respondent is required to provide separate gates for ingress and egress i.e. entrance and exit for the residents. The respondent has illegally constructed his office where there was exit way. Hence the respondent must be held liable for not constructing the project as per the layout plan and making changes as per the convenience of the respondent.

h) **Water-body & other incomplete project-** That as per lay-out plan the respondent is bound to construct water-bodies in the project but till date same are not even constructed that shows that the project has not been developed as per the specifications mentioned in Layout.

i) **IFMS-** That the complainant-association is in existence since long and more than 2/3"° of the total owners of The Royal Residency/the project in question are its members. Hence as per law, the maintenance of the society shall be handed over to the complainant but despite numerous requests and reminders the respondent is not ready to hand over the maintenance to the complainant/RWA for reasons best known to the respondent. A representation was also sent to the respondent regarding the transfer of IFMS (Interest Free Maintenance security) to the Society established i.e. Royal Resident Welfare association/complainant for the maintenance. However the respondent is neither maintaining the Society/Project on its own nor handing over the maintenance of the project to the complainant/RWA that is violation of Section 11(4)(d) of RE(R&D) Act and the respondent should be held liable for such violation. Copy of representation regarding grievances of the residents is annexed herewith as Annexure C-5. That it is important to mention here that the respondent had charged IFMS from the complainant along with 12.5% service tax as detailed herein below:

Rs. 1,00,000/- plus 12.5% service tax for 36 flats of Tower 2

Rs. 75,000/- plus 12.5% service tax for 36 flats of Tower 3

Rs. 50,000/- plus 12.5% service tax for 40 flats of Tower 4

However despite receipt of such huge amount from the allottees on account of IFMS, the respondent failed to provide maintenance services in the project. Hence the maintenance ought to be handed over to the complainant RWA as the allottees could not be left at the mercy of the respondent even after paying of substantial amount as maintenance charges to the respondent.

j) **Fire extinguishers not in working condition-** That the anti-fire equipment's/systems are not in working condition. The respondent by taking huge amount under different heads for providing world class facilities has cheated and defrauded the allottees/buyers.

k) **EWS Flats not constructed till date-** The emergency staircase is not in proper condition and The EWS flats are yet to be constructed.

l) **Chocked Sewage** - The sewerage plant is not even constructed and the sewage lines remain always choked that caused great inconvenience to the residents/allottees.

10. That various complaints/requests and representations regarding the grievances of the flat owners/allottees were sent to the respondent, but till date no action has been taken. Further the respondent has been requested to transfer the IFMS amount along with interest accrued on such amount, in favour of the Complainant/RWA as per the provisions of RE(R&D) Act. However all the requests/representations of the complainant RWA fell on deaf ears of the respondent and the respondent never came forward to handover the maintenance to the

complainant/RWA. The copy of one such request from the complainant RWA dated 09.07.2022 is annexed herewith as Annexure C-6. A representation was also sent to the higher authorities regarding the unfinished work as promised by the respondent company and the difficulty which the flat owners/allottees are going through due to non-provision of amenities/basic amenities the copies of such representations are annexed herewith as Annexures C-7 & C-8 respectively.

11. That it is pertinent to mention here that the buyers/allottees have paid substantive amount to the Respondent on account of Maintenance charges however, the Respondent has failed to provide facilities against such charges and levying of such charges is still subsisting. It is submitted before Hon'ble Authority that the respondent should be put to strict burden of proof regarding disposal and maintenance of account of all such charges collected till date from the complainant.

12. That it is pertinent to mention here that the respondent has played willful fraud and still deceiving the allottees/buyers by collecting huge amount under the context of Maintenance agreement. The project is still incomplete and various promises made is yet to be.

13. That the respondent is indulged in unfair trade practice as the respondent forced the allottees/buyers to enter into maintenance

agreement after getting whole consideration amounts of the flats and that before taking possession and have intentionally grabbed the hard earned money of the allottees/buyers and hence the respondent is liable for committing the offence of "Criminal Breach of Trust".

14. That the respondent has conspired to extract money from the allottees and use money for their own needs or pleasure i.e. siphoned the funds. The respondent is liable for heavy penalty under Sec.61 of RE(R&D) Act,2016 for violation of Sec.11,12,14,16, 19 of RE(R&D) Act,2016.

15. That by the wrongful acts and conduct of the Respondent as well as due to the deficient services of the Respondent, the allottees/buyers have suffered the following losses/damages:

a. The allottees/buyers has suffered the financial losses of the consideration amount of the maintenance charges which has already been paid to the Respondent since the possession of the flat.

b. The allottees/buyers as well as complainant association have to spend a lot of their valuable time in pursuing the poor management of the Respondent with respect to the services as mentioned in the Buyer Agreement and in the process the complainant has also suffered the loss of energy along with the loss of their valuable time.

c. The complainant has also suffered the lot of mental agony, pain and harassment which cannot be compensated by any means.

B. RELIEFS SOUGHT

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

1. To give necessary directions to the respondent to handover the maintenance, IFMS and Common Services of the Project in question to the complainant RWA as per provisions of RE(R&D) Act.
2. To direct the respondent to provide complete account statement and justification of amount spent on maintenance by the respondent.
3. To direct the respondent to return the payments collected illegally against the services/facilities that have not been provided by the respondent till date.
4. To direct the respondent to complete the remaining work as per the Layout Plan of the Project.
5. To levy heavy penalty under Sec. 61, for non-compliance or violation committed by the respondent.
6. To recommend criminal action against the respondent for the criminal offences of cheating, fraud and criminal breach of trust.
7. Any other relief which this Hon'ble Authority deems fit and appropriate in view of the facts and circumstances of this complaint.

C. REPLY SUBMITTED ON BEHALF OF THE RESPONDENT

Reply on behalf of the respondent was filed on 01.05.2023 through their ld. counsel wherein it is submitted as follows:

17. This Written Statement is being filed on behalf of the Opposite Parties (OP) through its Authorized Signatory Krishan Taneja, to the aforesaid Complaint lodged by the above stated Complainant wherein the Complainant has prayed for direction to the Opposite Parties to :

    I. Hand over the maintenance IFMS an common services to complainant RWA.

    II. Provide complete account statement.

    III. Return payment collected illegally.

    IV. Completer remaining work as per lay out plan.

    V. Levy penalty under section 61.

18. The instant Written Statement on behalf of the Opposite Parties being filed by Krishan Taneja, who has been duly authorized by the Board of Directors of the Opposite Party vide Board Resolution dated 28.10.2019 to sign and verify the present Written Statement and to do all such acts ancillary thereto. The true copy of the Board Resolution dated 28.10.2019 issued by OP is annexed herewith and marked as ANNEXURE R-1.

19. It is respectfully submitted that all the averments and contents stated in the Complaint are denied in toto, individually and specifically except those which are specifically admitted hereinafter. It is stated that nothing shall be deemed to be admitted by a mere reason of non-traverse.

20. At the very outset, it is stated that the instant Complaint is not maintainable. The submissions relating to the maintainability of the instant petition are being made hereunder as part of the Preliminary Submissions. The answering Opposite Parties (OP) pray before this Hon'ble Authority that these Preliminary objections be decided first as a plea of demurrer before proceeding to decide the instant Complaint on its merits.

21. The present Complaint is not only without merit but is totally misconceived. It is respectfully submitted that/no substantial question of law arises for consideration of this Hon'ble Authority in the present case nor any of the grounds contained therein are relevant to the issue at hand.

22. That the present Complaint is gross misuse of the process of law. It is respectfully submitted that Complainant is guilty of "suppressio veri & suggestio falsi and the Complainant have advertently not provided the correct factual background of this case inter-alia with respect to non-

payment of agreed sale consideration and the purposes for booking the Flat defined hereunder with the OP.

23. That due to the reputation and prestige of the OP, the buyers had voluntarily invested in the project of the OP, namely - "New World Royal Residency, Sector 32, Karnal, Haryana." That the said project is a residential Group Housing project.

24. The said project is covered under the License No. 46 of 2011 dated 23.05.2011. That the said license was timely renewed and stands valid till date. Copy of the said License is being annexed herewith and marked as **ANNEXURE R-2.**

25. It is pertinent to state that the OP had applied for grant of an Occupation Certificate on 24.07.2017 with respect to the project - New World Royal Residency admeasuring 6.356 acres, project at Karnal, covered under License No. 46 of 2011. The said application was received in the Office of The Director General, Town & Country Planning, Haryana on 25.07.2017 and Occupation Certificate was granted on 17.07.2018. A Copy of the application dated 24.07.2017 is annexed herewith and marked as ANNEXURE R-3. And a copy of the Occupation Certificate dated 17.07.2018, annexed herewith and marked as ANNEXURE R-4.

26. It is submitted that as such the application for grant of Occupancy Certificate was made prior to the commencement of the Haryana Real Estate (Regulation & Development) Rules, 2017 which have come into force only on 28.07.2017. It is submitted that the project in question does not fall within the definition of an "ongoing project", as defined under Section 2(o) of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred to as "the Rules), and it is for this reason that the project falls outside the purview of the Act. Therefore, the question -of applicability of the rules to the present project does not arise at all.

27. The Haryana Real Estate (Regulation and Development) Rules, 2017, which has come to effect on 28.07.2017 defines the phrase "ongoing project". Section 2 (o) of the aforementioned Rules provides as under:

   i) "Ongoing project" means a project for which a license was issued for the development under the Haryana Development and Regulation of Urban Area Act, 1975 on or before the 1st May, 2017 and where development works were yet to be completed on the said date, but does not include: (i) any project for which after completion of development works, an application under Rule 16 of the Haryana Development and Regulation of Urban Area Rules, 1976 or under sub code 4.10 of the Haryana

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Building Code 2017, as the case may be, is made to the Competent Authority on or before publication of these rules and

ii) that part of any project for which part completion/completion, occupation certificate or part thereof has been granted on or before publication of these rules.

28. From the joint reading of Section 3 of the RERA Act and Section 2(0) of the Rules, it is clear that any project, in relation to which an occupation certificate has been applied for, before the competent authority on or before the publication of the Rules, is outside the definition of an 'ongoing project" and hence, outside the purview of the Act.

29. As a matter of abundant caution and being a company who believes serve its customers and being on the correct side of laws, the prese project of the OP Company was also registered subsequently with t Hon'ble Real Estate Regulatory Authority, Panchkula.

30. The present project is registered under the provisions of Real Estate Regulatory Authority Act vide registration no. 248 of 2017 dated 26.09.2017, which was valid up to 31.07.2022, for which an extension application is being processed. A copy of the Registration Certificate of Project (Regd.No.248 of 2017 Dated 26.09.2017) issued by The Hon ble Haryana Real Estate Regulatory Authority, Panchkula with

respect to the Group Housing Colony admeasuring 6.356 acres situated in Village Budda Khera & Phoosgarh, Sector 32, Karnal, Haryana covered under License No. 46 of 2011 dated 23.05.2011, is annexed herewith as ANNEXURE R-5.

31. That the allegation which has been made by the complainant is with respect to unfair treat practice and illegal and wrongful acts allegedly done by the respondents, whereas physical possession offered by the opposite party after getting the maintenance agreement executive, unreasonable charges under the garb of maintenance services, variation in development project as per lay out plan, charges for the delayed and low-quality services.

32. It is submitted that the opposite party has been fair and prompt in rendering services as a project developer. The completion/occupation certificate was obtained by the opposite party in July, 2018 and ever since the society and the surrounding services and facilities are in a proper order. That no illegal or wrongful charges has been levied and the charges claimed from the allottees are on actual basis. The maintenance charges levied are for the common services and facilities being utilized by the allottees. The maintenance of common spaces are being undertaken timely and there is no deficiency in service from opposite party's end.

33. It is submitted that the present project was faced with numerous financial and managerial set-backs, causing a delay which was beyond the control of the present management leading the project finally to completion. The project was left a standstill during the Demonetization due to restricted cash flow, followed by pendency of a Company Petition before NCLT, Delhi. The opposite party made every possible effort to get the project completed even after abovementioned set-backs and that the occupied towers of the project and common facilities necessary are complete in all aspects.

D. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT

34. Both the complainant and the respondent counsels reiterated their arguments and submissions already advanced in their respective pleadings and supporting documents.

E. ISSUES FOR ADJUDICATION AND OBSERVATIONS OF THE AUTHORITY ON THE RELIEF SOUGHT BY THE COMPLAINANTS.

35. The present complaint has been filed by Royal Resident Welfare Association seeking inter alia, directions for remaining construction work in accordance with the sanctioned layout plan, furnishing details of amounts collected under the Interest-Free Maintenance Security (IFMS), electricity and other maintenance-related charges, handover of

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maintenance, common areas and essential services of the project "The Royal Residency", Sector-32, Karnal, to the complainant association. The complainant has also raised various grievances relating to alleged deficiencies in services and amenities and failure of the respondent to discharge obligations asserted to arise under the provisions of the Act.

36. The real estate project in question is a Group Housing project developed over an area of approximately 6.356 acres in Sector-32, Karnal, Haryana. It has further been confirmed in the reply that the respondent has obtained Occupation Certificates in respect of the project dated 17.07.2018.

37. The primary relief sought by the complainant pertains to handover of maintenance, common areas and essential services of the project to the complainant association, along with transfer and disclosure of amounts collected under the Interest-Free Maintenance Security (IFMS), electricity charges, maintenance charges and other related deposits. In addition thereto, the complainant has sought redressal in respect of various alleged deficiencies and violations in the project.

38. In its reply filed on 01.05.2023, the respondent contested the maintainability of the complaint primarily on the ground that the project in question is not an ongoing project, therefore, provisions of RERA Act, 2016 are not applicable to the project.

The contention that the jurisdiction of the Authority under Section 31 of the Real Estate (Regulation and Development) Act, 2016 is conditioned upon the registration, or registrability, of the project under Section 3 proceeds on a misconception of the statutory scheme. Section 3 deals with the obligation of a promoter to register an ongoing real estate project, subject to the exclusions contained therein. Section 31, on the other hand, is a remedial provision conferring a right upon an aggrieved person to approach the Authority or the Adjudicating Officer, as the case may be, for violation or contravention of the provisions of the Act, the Rules or the Regulations. The two provisions operate in distinct fields. Registration of a project may determine the regulatory obligations of the promoter under Chapter II; it does not delimit, much less extinguish, the adjudicatory jurisdiction of the Authority where a grievance otherwise arises under the Act.

39. Further, this issue has also been dealt with and settled by the Hon'ble Supreme court in Newtech Promoters and developers Pvt. Ltd Civil Appeal no. 6745-6749 of 2021 herein reproduced:

" *37. Looking to the scheme of Act 2016 and Section 3 in particular of which a detailed discussion has been made, all "ongoing projects" that commence prior to the Act and in respect to which completion certificate has not been issued are covered under the Act. It manifests*

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that the legislative intent is to make the Act applicable not only to the projects which were yet to commence after the Act became operational but also to bring under its fold the ongoing projects and to protect from its inception the inter se rights of the stake holders, including allottees/home buyers, promoters and real estate agents while imposing certain duties and responsibilities on each of them and to regulate, administer and supervise the unregulated real estate sector within the fold of the real estate authority."

The clear and unambiguous language of the statute is retroactivity 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.

Furthermore, the complainants are seeking statutory relief under Sections 11, 14, 19, 31, 38, and 61 of the Real Estate (Regulation and Development) Act, 2016, read with Rule 28 of the Haryana RERA Rules, 2017. The Authority observes that these sections govern the promoter's obligation to hand over project maintenance, common areas, and essential services to the association of allottees. None of these provisions restrict the available remedies exclusively to registered or registrable projects. Consequently, the respondent's plea that the Authority lacks jurisdiction because the project is not "ongoing" is rejected.

40. Further, on merits, the respondent denied allegations of deficiencies in service, asserting that the project has been developed in accordance with sanctioned plans and statutory approvals.

41. Having considered the submissions of both parties, documents on record and applicable legal provisions, Authority proceeds to examine the matter as follows:

42. **Regarding Maintainability of the Complaint and Status of the Complainant Association:** Before evaluating the substantive merits of the dispute, this Authority must determine a threshold question of law: Whether the Complainant Association possesses the requisite legal standing (*locus standi*) and satisfies the statutory prerequisites to seek the equitable and statutory relief of taking over the project's common areas and financial accounts.

Under the regulatory framework applicable to the State of Haryana, Resident Welfare Associations (RWAs) are statutorily recognized as the "Association of Allottees" (AOA). The constitution, registration, and governance of an AOA are governed on equal terms by the **Real Estate (Regulation and Development) Act, 2016 (RERA)**, the **Haryana Real Estate (Regulation and Development) Rules, 2017**, and the **Haryana Registration and Regulation of Societies (HRRS) Act, 2012**. Consequent to the provisions of the HRRS Act, 2012, an AOA must be validly registered with the District Registrar of Societies. A valid incorporation requires a minimum of seven (7) founding members each holding valid title or allotment through an allotment letter or conveyance deed to execute and file the initial Memorandum of Association. Furthermore, the association's bylaws must strictly conform to the **Haryana Apartment Ownership Act, 1983**, ensuring that voting rights are determinable *pro rata* based on the Undivided Share in the land. Additionally, as a condition precedent to such handover, it must be established that the project has been issued a valid Completion Certificate or Occupancy Certificate by the competent municipal or statutory authority.

43. Pursuant to **Section 11(4)(e) of the Real Estate (Regulation and Development) Act, 2016**, the statutory nomenclature assigned to such a body is the "Association of Allottees." A developer can legally divest its interest in the common areas and maintenance funds only to a

corporate legal entity formally registered under applicable state statutes (such as the **Societies Registration Act, 1860**, or the **Haryana Registration and Regulation of Societies Act, 2012**). Only a properly constituted corporate body holds the legal capacity to vest title to common areas, administer maintenance escrow accounts, and enforce statutory builder warranties. The legal transfer of management and title is contingent upon fulfilling the following cumulative conditions:

- **Statutory Registration:** The entity must be duly incorporated under the relevant state-specific legislative act.
- **Majority Representation:** In alignment with the statutory intent of RERA, the association ought to be organized within three (3) months of the allotment of a *majority of the real estate allottees.*
- **General Body Consensus:** The takeover must be authorized by a validly passed resolution in a democratically convened General Body Meeting of its registered members.

44. It is therefore evident that an RWA seeking the specific relief of handing over common areas and accounts must discharge the primary burden of proving compliance with the **Haryana Registration and Regulation of Societies Act, 2012**, as a prerequisite to invoking the statutory remedies available under **Section 11(4)(e) of the RERA Act, 2016.**

45. Upon a meticulous perusal of the documentary evidence placed on record, this Authority notes the following fatal evidentiary lacunae in the Complainant's case:

- **Absence of Corporate Existence:** The Complainant Association has failed to produce or place on record its Certificate of Registration issued by the competent statutory authority.
- **Lack of Material Particulars:** The Complainant has failed to disclose material facts, including the total inventory of units within the project and the exact number of units conveyed via sale.
- **Failure to Prove Delivery of Possession:** No evidence has been led to demonstrate how many allottees have taken lawful possession of their respective units.
- **Failure to Prove Membership Base:** The Complainant has suppressed the details regarding the number of actual allottees who have subscribed to the membership of the current association.

Owing to the total absence of these essential primary documents, the *locus standi* of the Complainant Association remains unestablished and unverified.

Even if this Authority relaxes the technicalities to consider the grievances raised, the mechanism for a project handover is strictly circumscribed by **Section 11(4)(e) of the RERA Act, 2016**, which casts a statutory obligation upon the promoter to facilitate the formation of an association. The provision reads as follows:

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

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

A literal construction of the aforementioned provision reveals that while the promoter is under a statutory duty to enable the formation of the AOA within three months, the representative body so formed must command the mandate of the *majority* of allottees. By necessary implication, the minimum threshold for majority representation is judicially deducible as **51% of the total allottees**. Consequently, the challenges raised regarding the representative character and democratic deficit of the Complainant Association are rooted in statutory mandates and cannot be overlooked. This Authority is duty-bound to examine whether the Complainant reflects the collective will and *consensus ad idem* of the allottees at large to protect the community of interest.

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In case of ***Pioneer Urban Land and Infrastructure Ltd. v. Govindan Raghavan*** **(2019) 5 SCC 725:** *While dealing with the rights of allottees, courts have consistently maintained that "majority of allottees" means a absolute majority (>50%) of the total booked inventory, not merely a majority of a selected group of disgruntled buyers.*

In case of ***Spaze Privy Resident Welfare Association v. Spaze Towers Pvt. Ltd.*****(HRERA GURUGRAM):** *The Authority held that where an RWA seeks a structural takeover and accounting of maintenance funds, it must provide an affidavit and a verified roster showing it represents the clear majority of the total home buyers.*

In the instant case, the Complainant has merely placed reliance upon a handwritten resolution dated **27.03.2022** (annexed at page 15 of the complaint). A scrutiny of the said resolution reveals that it bears the signatures of a mere nine (9) members of the governing body. Critically, no comprehensive roster of allottees or members has been filed by the Complainants to date.

It is worth noting that if the Complainant RWA wants control of all common areas and IFMS funds, then the onus squarely rests on the RWA to provide evidence that it indeed represents the majority of the allottees. Secondly, it must demonstrate that it has the capability, the expertise and systems in place that will ensure that the funds are utilized properly and as per law. Such an onus has not been discharged by the complainant RWA.

In view of the foregoing, it is held by the Authority that a relief in the nature of a mandatory injunction for the handover of maintenance and common areas cannot be granted in favour of the Complainant association unless its representative character, statutory registration, and democratic functioning are established in accordance with law.

46. **Regarding Deficiencies and Other Reliefs Sought:** The complainant association has sought relief for deficiency in services which are being dealt with below:

i. To direct respondent to complete the remaining work as per the layout plan of the project.

The aforesaid relief being interconnected and arising out of the common allegation of deviations from sanctioned plans and not completing the construction are being considered together.

The complainant has placed reliance upon the approved layout plans and has alleged deviations particularly with respect to deficiencies at the project site. At the same time, it is an admitted position that Occupation Certificates dated 17.07.2018 has been issued in respect of the project by the competent authority, which clearly certifies compliance with sanctioned plans and specifications.

Insofar as the complainant seeks determination of alleged deficiencies in services, such matters primarily require technical examination by the competent planning authority under the Department of Town and Country Planning, Haryana. That is the appropriate forum to adjudicate on this issue.

ii. ***To impose penalty upon the respondent as per the provisions of section 61 of RERA Act.-***

The complainant has sought imposition of penalty upon the respondent under Section 61 of the Real Estate (Regulation and Development) Act, 2016. In this regard, it is observed that a complaint under Section 31 of the Act is maintainable for enforcement of rights and seeking reliefs which accrue to an aggrieved person on account of violation of provisions of the Act, rules or regulations. The Act contemplates grant of remedies such as refund, interest, compensation or directions for compliance, which ensure relief to the allottee.

A penalty imposed on the respondent cannot be considered as a "relief" for an aggrieved person, i.e., the complainant. "Penalty" is imposed on the wrongdoer, meant to deter future actions, while "relief" aims to provide compensation or remedy to the person who suffered harm. Further, imposition of penalty under Section 61 is a regulatory consequence of contravention and constitutes a power vested in the

Authority to be exercised upon satisfaction of such contravention. The Act does not envisage that an allottee may seek as a substantive relief, the exercise of penal powers by the Authority. Accordingly, the present relief cannot be granted.

iii. ***Direct the respondent to provide the details of account statement and justification of amount spent on maintenance by the respondent and direct respondent to return the payments collected illegally against the services that have not been provided.***

In respect of the aforesaid relief, this Authority observes that allottees are entitled to transparency with respect to amounts collected from them under various heads, including Interest-Free Maintenance Security (IFMS), electricity charges, advance maintenance charges, maintenance and other allied charges.

Further, reliance is placed on Section 19(1) of the Real Estate (Regulation and Development) Act, 2016 which confers upon an allottee the right to obtain information relating to sanctioned plans, layout plans along with specifications, approved by the competent authority and such other information as provided in this Act or the rules and regulations made thereunder," and Section 19(5) entitles an allottee to have the necessary documents and plans, including that of common areas, after handing over the physical possession of the apartment.

In view of the aforesaid statutory mandate, the respondent is directed to have all the information as mandated by the statute to be made available in its office for inspection should any allottee so desire.

However, for the relief of return the payments collected illegally against the services that have not been provided, Authority is of the considered opinion that any issues of individual allottees regarding outstanding financial claims (receivables and payables) are best addressed through initiation of individual complaint(s) by the concerned allottees before this Authority in accordance with law.

iv. ***Direct the respondent to handover complete charge of maintenance, all amount collected under the head of maintenance, any other charges, common areas and essential services to RWA.*** With respect to the prayer relating to handover of maintenance, common areas and essential services to the complainant association is concerned, the same has already been addressed hereinabove in para 42-46 of the order.

v. Further, respondent is directed to comply with Section 11(4) (e) of RERD Act 2016, which enables the formation of an association of allottees under the laws applicable.

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

Rathee
....
DR. GEETA RATHEE SINGH
[MEMBER]

....
NADIM AKHTAR
[MEMBER]

....
PARNEET S SACHDEV
[CHAIRMAN]