HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	**2205 of 2022**
Date of filing:	**24.08.2022**
Date of first hearing:	**18.10.2022**
Date of decision:	**15.10.2026**

Kenwood and Clifton Apartment Owners Welfare Association, Faridabad through its Secretary,
R/o Charmwood Village, Surajkund Road
Sector-39, Faridabad, Haryana

....COMPLAINANT

VERSUS

1. **Ajay Enterprises Private Ltd. through its Managing Director**
   Registered office: 8th Floor, Eros Corporate Tower
   Nehru Place, New Delhi-110019.

2. **Senior Town Planner, Faridabad**
   HUDA Office Complex, Sector-12, Faridabad.

3. **Raghuvendra Bhadana**
   R/o B5/B6 Lekwood City, Surajkund Road, Faridabad

4. **Kairos Hospitality Services LLP**
   Office at: 110 SFC Yusuf Sarai, New delhi-110049

....RESPONDENTS

CORAM:	**Nadim Akhtar**	**Member**
	Dr. Geeta Rathee Singh	**Member**
	Chander Shekhar	**Member**

Present: Mr. Nitin Kant Setia & Sanjeev Sahay, counsels for the complainant-association through VC.
Mr. Yash Pal Sharma for Adv. Ashish Chopra, counsel for the respondent through VC.

ORDER (NADIM AKHTAR-MEMBER)

1. Present complaint dated 24.08.2022 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. Facts of the complaint are such that the present complaint has been filed by Kenwood & Clifton Apartment Owners Welfare Association, Faridabad, registered under the Haryana Registration and Regulation of Societies Act, 2012, representing the apartment owners of Kenwood Towers D3, D4 and D5 and Clifton Tower A5, comprising 312 dwelling units, situated in Charmwood Village, Sector 39, Faridabad.

3. Respondent No. 1 was granted Licence No.116 of 1984 and Licence No.1 of 1995 for development of a housing colony over approximately 30.35 acres of land at Sector 39, Faridabad, known as Charmwood

Village. The complainant submits that the colony comprises several distinct blocks, including Kenwood and Clifton, which are separately demarcated and have separate access and common areas.

4. The complainant states that Kenwood Towers comprise 264 apartments in Towers D3, D4 and D5, whereas Clifton Tower A5 comprises 48 apartments. According to the complainant, these towers constitute a separate gated and walled complex having its own internal roads, parks, open spaces, parking and other common facilities, distinct from the other blocks of Charmwood Village.

5. The occupation certificate for Clifton Apartments was granted on 29.05.2001, while the occupation certificate for Kenwood Apartments was granted on 03.05.2013. The complainant relies upon the conditions of the occupation certificates to contend that Respondent No.1 was responsible for maintaining the internal services until the colony was handed over.

6. It is the case of the complainant that the Flat Buyer Agreements and conveyance deeds executed by Respondent No.1 contemplated maintenance of the common areas and facilities by the developer until their transfer to an association of apartment owners. The complainant further relies upon the provisions of the Haryana Apartment Ownership Act, 1983 and the Real Estate (Regulation and Development) Act, 2016 to contend that the management and maintenance of the

building/common areas were required to be transferred to the association of apartment owners.

7. The complainant association was constituted in 2016 and claims to be duly managing the affairs of the Kenwood and Clifton complex. It is stated that, despite the formation of the association and the occupation of the apartments, Respondent No.1 continued to retain control over the maintenance and administration of the complex.

8. The complainant alleges that Respondent No.1 collected various amounts from the apartment owners towards maintenance charges, Replacement Fund and Interest Free Maintenance Security (IFMS)/security deposit, but failed to render complete accounts regarding the utilisation, investment and interest accrued on such amounts. It is further alleged that the maintenance services provided by Respondent No.1 were deficient despite the charges being regularly collected from the residents.

9. The complainant further relies upon the communication dated 09.02.2017 addressed by Respondent No.1 to the District Town Planner, Faridabad, and the subsequent arrangement whereby maintenance of the Royal Retreat Complex, stated to be another block of Charmwood Village, was handed over to its RWA in 2017. On this basis, the complainant contends that the maintenance of separately identifiable blocks can similarly be handed over to their respective associations.

10. The complainant also relies upon the memorandum dated 10.10.2012 issued by the Director General, Town and Country Planning, Haryana, concerning transfer of administration of condominiums to the respective associations after grant of occupation/part occupation/completion certificate. According to the complainant, Respondent No.1 has failed to comply with the said requirement in respect of Kenwood and Clifton.

11. The complainant has accordingly sought, inter alia, rendition of accounts in respect of the amounts collected under IFMS, Replacement Fund and other maintenance-related heads, handover of administration, management and maintenance of the common areas and facilities of Kenwood and Clifton to the complainant association, transfer/accounting of the funds collected from the residents, and restoration of the community site allegedly converted into a banquet hall/hotel under the name "Royal Imperio".

B. REJOINDER ON BEHALF OF THE COMPLAINANT ASSOCIATION TO THE REPLY FILED BY RESPONDENT NO.1 DATED 01.05.2023

12. The contents thereof, being largely reiteration of the averments already made in the complaint and the subsequent written submissions, are not being reproduced herein for the sake of brevity.

The complainant reiterated its stand that Kenwood and Clifton constitute a distinct block having separate common areas and facilities and that the maintenance thereof is liable to be handed over to its registered association. The complainant further submitted that the DG sets serving the respective blocks are separately installed and were separately paid for by the concerned owners and that their connections can be segregated.

It was also submitted that the project was still under development and that the blocks which had already received Occupation Certificates ought not to remain under the maintenance of the promoter merely on account of the completion status of the remaining colony. With regard to Royal Retreat, the complainant stated that its RWA had taken over the internal maintenance and management, while the external/common services continued to be managed by Respondent No.1, and expressed its willingness to bear its proportionate share towards such external services.

The complainant accordingly reiterated its prayer for handing over the maintenance and management of the common areas and facilities pertaining to Kenwood and Clifton, along with the consequential financial and other reliefs sought in the complaint.

C. OBJECTIONS ON BEHALF OF THE COMPLAINANT SUBMITTED ON 01.09.2023 TO THE COMPLIANCE AFFIDAVIT FILED BY THE RESPONDENT NO.1

13. The complainant, in its objections to the compliance affidavit filed by Respondent No.1, substantially reiterated its earlier stand and disputed the respondent's claim that the common facilities of the colony are indivisible. It has been submitted that like Royal Retreat, Kenwood and Clifton have separate/restricted common areas and internal facilities which can be handed over to the complainant association without seeking partition of the colony-wide common areas, and relied upon documents regarding the earlier handover to Royal Retreat RWA. With regard to the financial accounts, the complainant disputed the respondent's claim that the Replacement Fund is maintained for the entire colony and asserted that the fund is collected from high-rise residents, including ₹332.21 lakh towards security deposit and approximately ₹230 lakh towards Replacement Fund from Kenwood and Clifton, and sought disclosure/transfer of the amounts along with accrued interest. It also disputed the respondent's proposed expenditure of about ₹8 crore towards electrical infrastructure and DG upgradation, relying upon DHBVN circulars and contending that alternative arrangements were available and that such expenditure could not be charged to the residents' funds. The complainant further alleged

irregularities in utilisation of the Replacement Fund and sought investigation/forensic audit under Section 35 of the Act. It also submitted that Respondent No.1 had failed to furnish the drawings constituting Exhibit-A to the Deed of Declaration and reiterated its grievance regarding non-disclosure of the components/utilisation of maintenance charges. The remaining objections are substantially a reiteration of the complainant's earlier pleadings and are not being reproduced for the sake of brevity.

D. APPLICATION FILED ON 05.08.2024 FOR PLACING ON RECORD UP TO DATE REPORT ON SECURITY DEPOSIT AND REPLACEMENT FUND DEPOSITED BY MEMBERS/RESIDENTS OF COMPLAINANT ASSOCIATION

14. The applicant, for facilitating the adjudication of the complaint, sought to place on record a detailed statement/report of the amounts collected by Respondent No.1 from the members of the complainant association under various heads, including security deposit, replacement fund and capital expenditure for Kenwood Towers, as Annexure A-1, stating that the same would assist the Authority in determining the exact amount, if any, refundable upon transfer of administration, management and maintenance of the common areas and facilities. The applicant further sought to place on record the order dated 12.07.2024 passed by the

Hon'ble Appellate Tribunal in Appeal No.263 of 2024 as Annexure A-2, and prayed that both documents be taken on record.

E. WRITTEN SUBMISSONS ON BEHALF OF THE COMPLAINANT ASSOCIATION SUBMITTED DURING THE HEARING DATED 17.09.2026

15. The Complainant submits that the dispute is narrow. According to the association, Respondent No.1 does not dispute its obligation to hand over administration, management and maintenance and to account for IFMS/IBMS and Replacement Fund. The principal dispute is whether such handover can be made to the Complainant Association representing Kenwood and Clifton, or only to one association representing the entire licensed colony.

16. **Status of Complainant and concerned apartments:** The Complainant states that it is a registered association representing 312 apartments, comprising 264 apartments in Kenwood Towers D-3, D-4 and D-5 and 48 apartments in Clifton A-5. It asserts that these Towers constitute a separately identifiable and demarcated block having a separate boundary wall, entry and exit, internal roads, open areas and tower-specific services.

17. **Chronology relied upon:** The Complainant relies upon the DTCP licences of 1984 and 1995, Clifton OC dated 29.05.2001, Deed of

Declaration dated 04.07.2002, Maintenance Agreements dated 29.09.2008, DTCP/DCP communications regarding transfer of administration, Kenwood OC dated 03.05.2013, registration of the Complainant Association in 2016, Respondent No.1's letter dated 09.02.2017 and subsequent MOU concerning Royal Retreat, repeated representations between 2019–2022, and the filing of Complaint No.2205 of 2022.

18. **Earlier proceedings before the Authority:** The Complainant relies upon the Authority's orders dated 20.12.2022, 04.05.2023 and 03.10.2023, Respondent No.1's compliance dated 01.03.2023, the Local Commissioner's inspection and report dated 16.11.2023, the financial directions dated 29.02.2024, the application dated 05.08.2024, the Financial Audit Report dated 03.03.2025 and the subsequent proceedings before the Appellate Tribunal and the Hon'ble High Court.

19. **Classification of facilities:** The Complainant particularly relies upon Respondent No.1's own compliance, wherein facilities were allegedly classified as common to several blocks, restricted to particular towers and tower-specific facilities, including water tanks, DG sets and STP. It submits that this itself demonstrates that the entire colony is not incapable of functional or administrative segregation.

20. **Local Commissioner's report:** The Complainant relies upon the Local Commissioner's report recording a separate boundary wall,

demarcation, entry and exit gates, internal roads, block-specific parks/open spaces, building-specific lifts, DG sets and electrical facilities, besides identifying certain facilities which genuinely serve the entire colony.

21. **First legal issue- unit for formation of association:** The Complainant contends that neither RERA, 2016 nor the Haryana Apartment Ownership Act, 1983 provides that a licence granted under the Haryana Development and Regulation of Urban Areas Act, 1975 is the unit by reference to which an association must necessarily be formed.

22. **Section 11(4)(e) of RERA:** Reliance is placed upon Section 11(4)(e), which requires the promoter to facilitate formation of an association/society/co-operative society of allottees "or a federation of the same." According to the Complainant, the reference to a federation necessarily contemplates the possibility of constituent associations and therefore militates against the proposition that every licensed colony must necessarily have one single association.

23. **Haryana Apartment Ownership Act:** The Complainant relies upon Sections 3(a), 3(f), 3(l), 6 and 16 of the Haryana Apartment Ownership Act, 1983, particularly the statutory recognition of "limited common areas and facilities", i.e. facilities reserved for the use of particular apartments to the exclusion of others. It argues that the distinction between general common areas and limited/restricted common areas

demonstrates that all facilities within a development need not necessarily be administered identically.

24. **Other State Apartment Ownership laws:** The Complainant refers comparatively to the apartment ownership legislation of Delhi, Uttar Pradesh, Karnataka, Tamil Nadu, Punjab, Maharashtra, West Bengal, Rajasthan, Bihar, Jharkhand, Gujarat, Andhra Pradesh and Kerala. It relies particularly upon provisions recognising associations with reference to buildings, blocks, pockets or demarcated areas and submits that there is no uniform legislative principle requiring one association for an entire licensed colony.

25. **Delhi/Rajasthan/UP provisions:** Specific reliance is placed upon the Delhi Apartment Ownership Act, 1986, including provisions concerning multi-storeyed buildings designated as blocks/pockets; Section 13 of the Rajasthan Apartment Ownership Act, 2015; and corresponding provisions of the Uttar Pradesh, Bihar, Jharkhand, Kerala and Gujarat enactments. The Complainant argues that the legislative pattern supports the proposition that the relevant unit may be a building, block or demarcated pocket rather than the DTCP licence itself.

26. **Section 17 of RERD Act, 2016:** The Complainant relies upon Section 17 of RERA, particularly the promoter's obligation to transfer title in common areas and, after obtaining the OC and handing over possession,

to hand over necessary documents, plans and common areas to the association of allottees or competent authority as per local laws.

27. **Continuing obligation:** According to the Complainant, Sections 11(4) and 17 impose continuing statutory obligations upon the promoter. It submits that mere passage of time after grant of OC does not extinguish the promoter's obligation to complete the statutory handover.

28. **Judgments on continuing obligations and handover:** The Complainant relies upon Jewel of India-I Resident Welfare Association v. M/s Suncity Projects Pvt. Ltd., Complaint No. RAJ-RERA-C-N2025-8413, of the Rajasthan RERA Authority, for the proposition that non-handover of common areas, retention of maintenance control and non-transfer/reconciliation of IFMS can constitute continuing obligations under Sections 11(4) and 17 and remain amenable to RERA jurisdiction. It further relies upon Diplomatic Greens Resident Welfare Association v. M/s Puri Constructions Pvt. Ltd. & Ors., Complaint No.2537 of 2021, decided by Haryana RERA, Gurugram, particularly the observations concerning IFMS, the promoter's responsibility to maintain essential services until takeover by the association, and Section 17(2). The Complainant relies upon the directions therein requiring handover of maintenance, transfer of unutilised IFMS and handing over of necessary documents/plans including common areas.

29. **Judgments concerning handover of common areas:** The Complainant relies upon M/s Sethi Buildwell Pvt. Ltd. v. State of U.P., Writ-C No.24671 of 2020, decided on 04.01.2021, where the Allahabad High Court considered the statutory consequence of formation of an association and transfer of management of common areas/facilities to the association under the U.P. Apartment Act, 2010, including transfer of IFMS. Reliance is also placed upon Hawelia Valencia Home Apartment Owners Association v. State of U.P. & Ors., Writ-C No.26155 of 2024, decided on 09.08.2024, for the similar proposition concerning transfer of common areas/facilities to the apartment owners' association. The Complainant further cites Designarch Infrastructure Pvt. Ltd. & Anr. v. Vice Chairman, Ghaziabad Development Authority & Ors., Civil Misc. Writ Petition No.33826 of 2012, 2013 SCC OnLine All 14815, concerning statutory rights of apartment owners in common areas and facilities and obligations of promoters regarding disclosure and sanctioned plans. It also refers to Shipra Sristhi Apartment v. State of U.P. & Ors., Writ-C No.13298 of 2020, 2021 SCC OnLine All 43, as further support for the rights of apartment owners and obligations concerning common areas/facilities.

30. **Application of these principles to the present case:** The Complainant submits that it is not seeking exclusive control over facilities which genuinely serve the entire colony. Its case, as stated, is that block-

specific/restricted facilities should be handed over to the Complainant Association, whereas genuinely colony-wide facilities may continue to be administered collectively or through a federation.

31. **Respondent's own documents:** The Complainant argues that Respondent No.1's own Deed of Declaration and its compliance affidavit demonstrate that Kenwood/Clifton constitute a separately identifiable condominium/block and that various facilities are capable of separate identification and administration. It therefore contends that Respondent No.1 cannot simultaneously rely upon such demarcation and claim complete indivisibility.

32. **Estoppel/approbation and reprobation:** The Complainant raises a separate issue based upon Respondent No.1's letter dated 09.02.2017 and the subsequent MOU concerning Royal Retreat Residents Association. It argues that Respondent No.1, having agreed to hand over administration/maintenance in respect of another part of the colony, cannot now contend that such segregation or separate association is legally impermissible.

33. **Replacement Fund:** The Complainant submits that the Replacement Fund was collected under the Maintenance Agreements at ₹0.27 per sq. ft. per month for replacement of capital assets and allied requirements. It contends that the fund collected from Kenwood residents cannot be

treated as an unrestricted corpus of Respondent No.1 or adjusted against expenditure allegedly incurred for the entire Charmwood Village.

34. **Audit findings on Replacement Fund:** The Complainant relies upon the Financial Audit Report and submits that the Auditor quantified the Replacement Fund attributable to the concerned project up to 31.03.2024 at ₹2,26,46,306/-, with accrued interest of ₹1,78,33,966/-, aggregating to ₹4,04,80,272/-. It further relies upon the Auditor's observation that the expenditure furnished by Respondent No.1 appeared to relate to the larger Charmwood Village and that expenditure specifically relating to replacement of lifts, fire-fighting equipment, DG sets and water pumps in Kenwood was recorded as "NIL"/unsupported in the audit material.

35. **IFMS/IBMS:** The Complainant separately submits that Respondent No.1 collected ₹3,32,21,000/- towards IFMS/IBMS from Kenwood and Clifton residents and relies upon the Audit Report's calculation of ₹5,40,67,178/- as accrued interest up to 31.03.2024, calculated at 10.85% simple interest pursuant to the Authority's clarification dated 19.02.2025.

36. The Complainant submits that Respondent No.1 cannot indefinitely retain these amounts without furnishing a complete account of the amounts collected, their utilisation and interest accrued thereon,

particularly when the proceedings concern transfer of maintenance and administration.

37. **Non-cooperation with audit:** The Complainant relies upon the Audit Report's observations regarding repeated requests for information/documents and alleged non-cooperation by Respondent No.1. It submits that the Auditor consequently had to rely upon material available from the RWA and the Authority and seeks an adverse inference against Respondent No.1 for alleged non-disclosure.

38. **UP RERA Regulations**: The Complainant additionally refers to the 12th Amendment to the U.P. RERA (General) Regulations, 2019, notified on July 13, 2026, concerning collection, management, transfer and utilisation of IFMS. It relies upon the provisions requiring separate maintenance/investment of IFMS and transfer of the corpus with accrued interest to the RWA/Association upon handover of common areas. This is relied upon as a comparative/persuasive regulatory framework, rather than as the governing Haryana statutory provision.

39. **Final relief sought:** On the basis of the above submissions, the Complainant seeks, inter alia, (i) handover of administration, management and maintenance of D-3, D-4, D-5 and A-5 to the Complainant Association; (ii) handing over of relevant documents/plans and common areas falling within the scope of such handover; (iii) accounting and transfer of unutilised IFMS/IBMS and Replacement

Fund with accrued interest; and (iv) restoration of the community site allegedly converted into the banquet hall/hotel styled "Royal Imperio."

40. **Overall legal proposition advanced by the Complainant:** The Complainant's final case is that RERA does not equate a DTCP licence with the mandatory unit of association, that the statutory reference to a federation recognises constituent associations, that Haryana Apartment Ownership Act, 1983 recognises limited/restricted common facilities, and that the actual unit of administration can therefore be determined by the physical and functional characteristics of the development. On that basis, it submits that the block-specific facilities of Kenwood and Clifton can be handed over separately while genuinely colony-wide facilities may remain under a common/federated arrangement.

F. RELIEFS SOUGHT

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

i. Call for records of the amount collected by respondent no. 1 under various heads, particularly under interest free maintenance security, replacement fund, repair fund, etc. and supply the accounts detailing utilization, deposit and interest accrued thereon;

ii. Direct respondent no. 1 to handover the administration, management and maintenance of common areas and facilities in

the block consisting of tower D3, D4, D5(Kenwood Tower); and A5 (Clifton Tower) in the society "Charmwood Village", Sector 39, Faridabad;

iii. Direct respondent to restore the possession of the community site which has illegally been converted to banquet hall and hotel and is being operated under the name and style "Royal Imperio"

iv. Direct respondent no. 1 to not to interfere with the management & maintenance of Kenwood and Clifton Towers after handing over the management and maintenance of the towers to the complainant association;

v. Any other relief which the Applicant is entitled for under the Real Estate (Regulation and Development) Act, 2016 and the Haryana State Real Estate (Regulation & Development) Rules, 2017.

G. REPLY SUBMITTED ON BEHALF OF RESPONDENT NO. 1

Respondent No.1 has filed its reply on 19.10.2022 stating as follows:

42. That the Respondent No.1 has contested the maintainability of the complaint, alleging that the same is false, baseless and devoid of cause of action. It has further contended that the project had already received Occupation Certificates for Clifton Apartments in 2001 and Kenwood Towers in 2013, and possession had been handed over prior to the enactment of the Real Estate (Regulation and Development) Act, 2016, and therefore the Authority lacks jurisdiction to entertain the complaint.

43. That the Respondent No.1 has also challenged the locus and constitution of the Complainant Association, contending that it is a society registered under the Societies Registration Act and has not complied with the requirements of the Haryana Apartment Ownership Act, 1983, including the registration of Deeds of Apartment and other statutory requirements. It has further questioned the authority of Shri Shiv Charan Gupta to institute the complaint in the absence of any resolution or minutes authorising him to do so.

44. That Respondent No.1 has submitted that Charmwood Village is an integrated Group Housing Colony spread over 30.35 acres, developed under Licence Nos.116 of 1984 and 1 of 1995, comprising several residential blocks including Clifton, Royal Retreat, Mayfair, Sterling, Belvedere, Woodbury, Brentwood, Kenwood, Southend and EWS Flats. According to the Respondent, the blocks form an indivisible part of the colony and are governed by a common layout and common infrastructure.

45. That at the time of handing over possession, Respondent No.1 entered into separate Maintenance Agreements with apartment owners for provision of various services, including cleaning and lighting of common areas, security, maintenance of lifts, pathways, painting and repairs, water supply, tanks, street lights, generators, tube wells and fire-fighting equipment. It has stated that maintenance, water, sewerage and

power-backup charges are being collected in terms of the said agreements and that alternative sources of water have also been arranged due to inadequate Government supply.

46. That Respondent No.1 has relied upon the Haryana Apartment Ownership Act, 1983 and contended that common areas and facilities are required to remain undivided and to be managed through an Association of Apartment Owners representing the colony as a whole. It has therefore opposed block-wise handover to separate RWAs, asserting that such arrangement is contrary to the statutory scheme and impracticable in view of the interconnected infrastructure.

47. That in support of its contention regarding indivisible common services, Respondent No.1 has stated that the underground and fire-water tanks, DG sets, STP, drinking water, sewerage and drainage, internal roads, street lights, electrical feeder and switching station, environmental consent and certain supervisory, security and maintenance services are common to multiple blocks or the entire Charmwood Village and cannot be segregated on a block-wise basis.

48. That Respondent No.1 has further relied upon the provisions of the Haryana Development and Regulation of Urban Areas Act, 1975, particularly the provisions relating to colonies, development works, group housing, internal and external development works and the obligations of a colonizer, to contend that the licensed colony cannot be

bifurcated at the instance of the Complainant. It has maintained that the common areas and facilities can only be handed over together to a duly constituted association representing the entire colony.

49. That Respondent No.1 has stated that it is willing to hand over the maintenance of common areas and facilities of the entire Charmwood Village to a duly constituted Association/Federation representing the whole colony. It has also expressed willingness to hand over such maintenance to the Municipal Corporation Faridabad or DTCP, subject to their acceptance, but has opposed handing over the same to the Complainant Association or any other block-wise association.

50. That Respondent No.1 has denied the allegations of deficient or sub-standard maintenance, excessive charges, lack of repairs and poor upkeep. It has asserted that repairs and replacements are undertaken as and when required and has attributed certain deterioration of the buildings to acts of residents, including unauthorised balcony coverings and flower pots. It has further stated that more than ₹2 crore is outstanding towards maintenance dues from residents of Kenwood and Clifton.

51. That Respondent No.1 has denied the allegations regarding inadequate water supply, stating that the colony has a valid water connection but the quantity supplied by the Government authorities is inadequate. It has further stated that the sewer connection has been laid but not

operationalised by the Government and that storm-water lines have also not been provided by the Government, and therefore such deficiencies cannot be attributed to the Respondent.

52. That Respondent No.1 has denied that it failed to constitute an RWA or that the Maintenance Agreements were one-sided or lacked accountability. It has also disputed the Complainant's reliance upon the communications concerning handover and the example of Royal Retreat, stating that the said RWA had allegedly taken over internal maintenance without a proper handing-over/taking-over arrangement, while external and colony-wide services continued to be maintained by Respondent No.1.

53. That Respondent No.1 has denied the allegation that it converted the Community Centre site into a hotel/"Royal Emperio" illegally. It has contended, relying upon the Haryana Development and Regulation of Urban Areas Act, 1975 and the Haryana Apartment Ownership Act, 1983, that the community site was owned by the colonizer and did not form part of the common areas and facilities of the apartment owners. It has stated that the Community Centre was constructed pursuant to the approved zoning, obtained an occupation certificate and was subsequently transferred to a third party, and that the Complainant has no right, title or interest therein except the right to use the facility on payment of applicable charges.

54. That Respondent No.1 has denied any misappropriation or non-accounting of maintenance amounts and has stated that the Complainant has suppressed the fact that several residents have remained in default of maintenance charges for years despite availing the services. It has also denied charging inflated maintenance charges and stated that GST collected on such charges is deposited with the Government.

55. That Respondent No.1 has further relied upon the pending proceedings before the Hon'ble NCDRC arising from the same dispute and alleged that the Complainant is pursuing parallel proceedings before different forums. It has denied the allegation that essential services were withdrawn from Kenwood and Clifton from December 2017 and has characterised the complaint as an attempt to pressurise the Respondent and avoid payment of outstanding maintenance dues.

56. That accordingly, Respondent No.1 has prayed for dismissal of the complaint and has maintained that, if the Complainant or the alleged Federation of RWAs is willing to take over the administration and maintenance of the entire Charmwood Village, the Respondent is prepared to hand over the same, but not the common services and facilities of Kenwood and Clifton alone on a block-wise basis.

II. REPLY SUBMITTED ON BEHALF OF RESPONDENT NO. 1 ON 02.03.2023 TO QUERIES RAISED BY THE AUTHORITY VIDE ITS ORDER DATED 20.12.2022

57. In compliance with the directions issued by this Authority vide order dated 20.12.2022, Respondent No.1 furnished clarifications regarding the common amenities and facilities in Charmwood Village and the facilities, if any, confined to individual towers or blocks. Respondent No.1 reiterated that Charmwood Village is an integrated Group Housing Colony developed under consolidated licences and that the existence of a separate boundary wall around certain towers does not, by itself, make such towers independent in respect of common infrastructure.

58. Respondent No.1 specifically submitted that the water tank facility is common to Kenwood Towers D3, D4 and D5 and Clifton Block A5, along with Woodbury Tower D1, Brentwood Tower D2, Mayfair Apartments C1 and Belvedere Apartments C2. It further submitted that the Diesel Generator Set facility is common to the entire colony, except Royal Retreat Blocks B1, B2 and B3, and that the Sewerage Treatment Plant, internal roads and electricity infrastructure are also common facilities. Accordingly, Respondent No.1 maintained that no common service could be identified as exclusive to the complainant association and that the common services were indivisible and could not be segregated.

59. Respondent No.1 also placed on record copies of the Deeds of Declaration dated 04.07.2002 and 20.05.2013 pertaining to Kenwood and Clifton Apartments, respectively, and referred to its earlier reply and communication dated 20.02.2020 submitted before the Senior Town Planner, Faridabad.

60. The remaining submissions are substantially a reiteration of the stand already taken by Respondent No.1 and are, therefore, not being reproduced herein for the sake of brevity.

I. COMPLIANCE REPORT SUBMITTED BY RESPONDENT NO.1 TO QUERIES RAISED BY THE AUTHORITY VIDE ITS ORDER DATED 04.05.2023

61. In compliance with the directions issued by this Authority vide order dated 04.05.2023, Respondent No.1 reiterated that the common areas and facilities of Charmwood Village are integrated and indivisible and that the common infrastructure, including water tanks, fire-fighting infrastructure, DG sets, STP, roads, street lights and electrical infrastructure, cannot be segregated for Kenwood and Clifton alone. Respondent No.1 further stated that it was willing to hand over the maintenance of the common areas and facilities of the entire colony to a duly constituted Association/Federation, but not to the complainant association representing only Kenwood and Clifton. It also relied upon

Section 6(3) of the Haryana Apartment Ownership Act, 1983 in support of its stand. Respondent No.1 stated that the common facilities were being maintained by it and that no separate list of facilities being maintained by individual RWAs was available with it.

62. With regard to the financial information sought by the Authority, Respondent No.1 stated that it had not received any amount directly from the complainant association, as the Maintenance Security Deposits and Replacement Fund had been collected from individual apartment owners under separate Maintenance Agreements. It submitted that the accounts of the Replacement Fund were maintained for the colony as a whole and placed on record an audited statement as on 31.03.2023, showing a net balance of approximately ₹789.98 lakh under the heads of Maintenance Security Deposit and Replacement Fund. It further stated that substantial expenditure was required towards upgradation of the electrical infrastructure and DG sets and that the said expenditure would result in a shortfall. Respondent No.1 also placed on record the missing Exhibit-A to the Deeds of Declaration.

63. The remaining submissions, including those relating to the MOU dated 20.04.2017, are substantially reiterations of the stand already taken by Respondent No.1 and are not being reproduced herein for the sake of brevity. Respondent No.1 also sought waiver of the penalty of ₹50,000/- imposed by the Authority on 05.07.2023, stating that preparation of the

financial statement was a voluminous exercise requiring examination of accounts since 1996-97.

J. OBJECTIONS TO THE REPORT OF LOCAL COMMISSIONER DATED 16.11.2023 ON BEHALF OF THE RESPONDENT NO.1

64. The Respondent No.1 objected to the Local Commissioner's Report dated 16.11.2023, contending that it failed to properly answer the issues for which the Local Commissioner was appointed. It was submitted that the entire 30.35-acre Group Housing Colony is an integrated project and that mere existence of boundary walls/grills around Kenwood and Clifton does not establish that the said portion can be separated for the purpose of handing over maintenance. The Respondent stated that the boundary walls/grills were provided for safety and security along the public road/revenue rasta and not for subdivision of the project.

65. The Respondent further submitted that the report ignored the common and interdependent infrastructure and facilities serving multiple towers/blocks, including water and fire tanks, pump rooms, firefighting system, electrical sub-stations, DG sets, roads, sewerage, water supply, streetlights and other common facilities. It was also contended that the Local Commissioner exceeded his mandate by classifying services as "internal" and "external" and suggesting a mechanism for handing over internal maintenance to the Complainant Association. Reliance on the

Royal Retreat MOU was also disputed, and Section 6(3) of the Haryana Apartment Ownership Act, 1983 was relied upon against subdivision of common areas and facilities.

66. The Respondent further stated that the Deeds of Declaration dated 04.07.2002 and 20.05.2013 covered several blocks of the colony and not merely Kenwood and Clifton. Referring to the DGTCP instructions dated 10.10.2012 and the Occupation Certificates granted for all 21 towers, the Respondent maintained that it was willing to hand over the colony and its common areas/facilities to a duly constituted association representing all stakeholders, and prayed that the Local Commissioner's Report, being materially defective and beyond his scope, not be relied upon.

K. WRITTEN SUBMISSIONS FILED ON 02.09.2026 ALONG WITH OBJECTIONS TO THE AUDIT REPORT DATED 03.03.2025 ON BEHALF OF RESPONDENT NO.1:

67. That the matter was last listed on 14.05.2026, when this Ld. Authority directed the parties to file relevant documents along with Written Submissions, specifying the amounts paid and collected under various heads in respect of different units/towers. In compliance thereof, Respondent No.1 has filed the present Written Submissions along with

objections to the Audit Report dated 03.03.2025 and relies upon its earlier Replies/Objections already on record.

68. That Respondent No.1 is the developer of Charmwood Village, an integrated Group Housing Project at Sector-39, Faridabad, comprising various high-rise and low-rise residential towers, including Kenwood Towers (D3, D4 and D5) and Clifton Apartments (A5). The Project was developed pursuant to the licences granted by the Department of Town and Country Planning, Haryana, and the Occupation Certificates for Clifton and Kenwood Towers were issued in 2001 and 2013 respectively.

69. That at the time of handing over possession of the apartments, Respondent No.1 entered into separate Maintenance Agreements with the apartment owners for providing maintenance services in respect of common areas and facilities, including security, lifts, water supply, electrical generators, fire-fighting equipment, street lights, common areas, repairs, painting and other allied services. According to Respondent No.1, the said agreements were voluntarily executed by the apartment owners.

70. That Respondent No.1 contends that in terms of Sections 6(3) and 11 of the Haryana Apartment Ownership Act, 1983, the common areas and facilities of the Project are required to remain undivided and are to be managed by an association representing the apartment owners.

Respondent No.1 states that it has repeatedly expressed its willingness to hand over the maintenance and administration of the entire Project to a duly constituted association representing all the apartment owners, but no such association has come forward to take over the same.

71. That according to Respondent No.1, the Complainant is a self-styled RWA representing only certain towers and is seeking transfer of the management, maintenance and financial corpus pertaining exclusively to Kenwood and Clifton Towers. Respondent No.1 submits that such segregation is neither permissible nor practicable, particularly since essential facilities such as underground water tanks, fire-water tanks, DG sets, STP, drinking-water facilities, roads, streetlights and electrical infrastructure are common to the entire Project or serve multiple towers.

72. That Respondent No.1 further relies upon the Written Statement of Respondent No.2/STP, wherein it has been stated that the maintenance, administration and services/facilities of the entire Group Housing Colony are to be handed over to an RWA comprising residents of all the towers of the Project.

73. That the Authority had vide order dated 29.02.2024 sought certain financial information from Respondent No.1 and appointed a Financial Auditor. The said order was challenged before the Haryana Real Estate Appellate Tribunal. Respondent No.1 submits that during the proceedings before the Appellate Tribunal, the Complainant itself stated

that the information sought under certain financial heads was not relevant for adjudication of the complaint. Thereafter, vide order dated 21.04.2025, the Appellate Tribunal observed that there was no legal impediment to furnishing the information confined to the specified financial heads.

74. That Respondent No.1 thereafter approached the Hon'ble Punjab and Haryana High Court against the order dated 21.04.2025. Vide order dated 11.02.2026, the Hon'ble High Court directed Respondent No.1 to furnish only the information relating to the total corpus of Interest Free Maintenance Security and Interest Bearing Maintenance Security collected at the time of handing over possession of apartments from the residents of Kenwood and Clifton Apartments, along with interest accrued thereon till 31.03.2024.

75. That on the strength of the aforesaid orders, Respondent No.1 contends that the wider basis on which the Financial Audit was undertaken no longer survived and, consequently, the Audit Report dated 03.03.2025 has no legal sanctity. Respondent No.1 submits that it has already furnished audited statements relating to IFMS/IBMS and Replacement Fund along with its earlier Reply dated 22.08.2023 and has also placed on record an updated audited statement up to 31.03.2026 as Annexure R/3.

76. That Respondent No.1 further objects that the Auditor travelled beyond the scope of its appointment by undertaking a site inspection and recording observations regarding external painting, damaged flooring and plaster, lighting, water quality, availability of maintenance staff, security, CCTV coverage, seepage, waterlogging and greenery. It is submitted that the Auditor was not authorised to undertake such an assessment and, therefore, the observations contained in Para 2 of the Audit Report are liable to be disregarded.

77. That Respondent No.1 submits that in any event, the aforesaid observations involve specialised technical issues relating to civil, structural, electrical, plumbing, water quality, drainage and fire-safety matters, whereas the Auditor is a Chartered Accountant. It is further pointed out that no report or assistance of any qualified technical expert was obtained before recording such observations and, therefore, the same cannot be treated as conclusive expert findings.

78. That Respondent No.1 disputes the Auditor's assertion that it failed to provide the requisite financial information. It states that audited statements concerning maintenance, security deposits and replacement fund, including block-wise security deposits and outstanding dues, had already been furnished along with its Reply dated 22.08.2023. It further states that the updated audited statements relating to IFMS/IBMS and

Replacement Fund up to 31.03.2026 have also been filed before the Authority.

79. That Respondent No.1 further submits that the Audit Report was prepared substantially on the basis of information and representations supplied by the RWA, without proper independent verification of the records and statements already furnished by Respondent No.1. Reliance is placed upon the Auditor's own statement that the alleged deficiencies in the Project were pointed out by the office-bearers of the RWA during the site visit. On this basis, Respondent No.1 alleges that the report is selective, biased and lacks independent verification.

80. That Respondent No.1 also refers to its Deed of Declaration, wherein the general, common and restricted common facilities have been identified, and submits that the facilities existing in and around Kenwood and Clifton Towers form part of the common facilities of the integrated Group Housing Project. It is accordingly contended that the Complainant cannot seek separate control or management of such facilities by treating them as exclusive to Kenwood and Clifton Towers. That in view of the aforesaid submissions, Respondent No.1 has prayed for dismissal of the complaint with exemplary costs; taking its objections to the Audit Report on record; declaring the Audit Report dated 03.03.2025 void ab initio on the ground that the basis of its appointment had subsequently been set aside/dispensed with;

disregarding the observations regarding the physical and infrastructural condition of the Project as being beyond the Auditor's mandate; and rejecting the Audit Report on the ground that it is factually incorrect, selective, biased and unsupported by independent verification.

L. REPLY SUBMITTED ON BEHALF OF RESPONDENT NO. 2

Respondent No. 2 has filed its reply on 14.12.2022 stating as follows:

81. That Respondent No.2 has submitted that the Complainant Association represents only the residents of Towers D3, D4, D5 and A5 and is not the representative body of the entire Group Housing Colony, namely Charmwood Village, developed over 30.35 acres under Licence Nos.116 of 1984 and 1 of 1995. It has therefore contended that the Complainant has no cause of action to seek block-wise handover of administration and maintenance.

82. That as per the approved building plans, the Group Housing Colony comprises 21 residential towers/buildings, and Occupation Certificates have been granted in respect of the various towers by the Department of Town and Country Planning, Haryana. According to Respondent No.2, the common services and facilities, including parks and community buildings, were sanctioned having regard to the area, density and FAR of the entire project, and are consequently intended for the residents of the colony as a whole.

83. That Respondent No.2 has stated that the administration and maintenance of the common services and facilities of the Group Housing Colony ought to be handed over to an RWA representing the residents of all the towers, rather than to separate RWAs representing individual blocks. It has accordingly opposed the Complainant's request for handing over maintenance of Towers D3-D5 and A5 exclusively to the Complainant Association.

84. That Respondent No.2 has further referred to Section 3(3)(a)(iv) of the Haryana Development and Regulation of Urban Areas Act, 1975, submitting that the licensee is required to construct schools, hospitals, community centres and other community buildings on the land set apart for such purposes, and has contended that the licensee is entitled to transfer such facility for its development and operation.

85. That Respondent No.2 has stated that as per the approved layout plan, an area measuring approximately one acre was earmarked for a club/community building in the colony, for which the building plan was approved and Occupation Certificate was granted. It has thus submitted that the issue concerning the said community building is governed by the applicable provisions of the Development Act.

86. That Respondent No.2 has further submitted that the issue relating to collection, audit and utilisation of maintenance charges arises out of the bilateral Maintenance Agreements between the licensee and the

apartment owners and, according to it, the Department is not required to intervene in such contractual matters.

87. That with regard to the status of the colony, Respondent No.2 has detailed the licences, revised building plans and Occupation Certificates granted from time to time, including the Occupation Certificate for A5, C2, E5, E6, F5 and F6 dated 29.05.2001 and for B1, D2-D5 and the Community Building dated 03.05.2013, besides the other blocks for which Occupation Certificates were subsequently granted.

88. That Respondent No.2 has referred to DTCP memo dated 10.10.2012, stating that the administration of a condominium is to be transferred to the Association after grant of the requisite Occupation/Completion Certificate for the relevant part of the Group Housing Colony and common areas. It has, however, relied upon the stand of Respondent No.1 that the Complainant Association is not representative of the entire colony and therefore cannot seek transfer of only D3-D5 and A5.

89. That Respondent No.2 has ultimately submitted that the complaint is without merit and deserves dismissal, with a direction to the Complainant to constitute an RWA representing the entire Group Housing Colony, whereafter the administration and maintenance of the occupation-certified towers may be handed over to such duly constituted RWA. It has further sought exemption from further proceedings,

particularly in matters concerning maintenance charges governed by bilateral agreements.

M. REPLY SUBMITTED ON BEHALF OF RESPONDENT NO. 3

Respondent No.3, M/s Royale Blue Club Pvt. Ltd., through its Director Raghubir Badhana, filed its reply dated 18.10.2022, primarily contesting the maintainability and jurisdiction of the present complaint qua the community centre site as follows:

90. Respondent No.3 submitted that the Community Centre Site in Charmwood Village had been conveyed to it by Respondent No.1 through a registered Conveyance Deed dated 10.01.2019. It was contended that the complainant had sought relief concerning the said site without impleading the present owner and had incorrectly alleged that the site had been sold to another individual.

91. It was further contended that the complainant had relied upon the judgment of the Punjab and Haryana High Court in DLF Qutab Enclave Complex Educational Charitable Trust v. State of Haryana, which, according to Respondent No.3, had subsequently been set aside by the Hon'ble Supreme Court in DLF Qutab Enclave Complex Educational Charitable Trust v. State of Haryana & Ors., reported as 2003 (5) SCC 622. Respondent No.3 relied upon the said judgment to contend that a colonizer holding a licence could develop community sites itself or

transfer/lease/sell the same for development by a third party, subject to applicable building and regulatory laws.

92. Respondent No.3 also raised a jurisdictional objection, submitting that the occupation certificates in respect of Clifton and Kenwood Towers were granted on 29.05.2001 and 03.05.2013, respectively, i.e. prior to enactment of the RERA Act, 2016. It was therefore contended that the present complaint, particularly insofar as it sought relief against Respondent No.3 concerning the community centre site, was not maintainable before the Authority.

93. On merits, Respondent No.3 denied that the community centre site had been illegally converted into a hotel or banquet hall. It submitted that the site was being used as a Community Centre for social functions and public gatherings, in accordance with the purpose for which the site was earmarked and conveyed, and that the facility was being operated in accordance with the applicable governmental and local-authority guidelines.

94. Respondent No.3 further submitted that the complainant association had no ownership or independent right over the community centre site and could not seek transfer of the same in its favour. It relied upon the registered Conveyance Deed dated 10.01.2019 and maintained that the conveyance in its favour was neither illegal nor liable to be set aside in the present proceedings.

95. Respondent No.3 also disputed the complainant's contention that a separate RWA of Kenwood and Clifton had an independent right to claim benefits or common facilities of the colony, contending that the relevant association under the applicable law was required to represent the colony as a whole. Accordingly, Respondent No.3 prayed for dismissal of the complaint qua it, particularly the relief seeking restoration/transfer of possession of the Community Centre Site, and for dismissal of the complaint with costs.

N. ADDITIONAL DOCUMENTS

Report of Local Commissioner dated 16.11.2023:

96. The Local Commissioner, pursuant to the Authority's order dated 03.10.2023, inspected the site on 07.11.2023 in the presence of the Association and the Promoter to examine whether the licensed land had been developed as a compact block or in different pockets and whether the portion comprising Kenwood and Clifton could be identified and separated for handing over maintenance. The Report records that the 30.35-acre Group Housing Colony was developed under Licences No.116 of 1984 and No.1 of 1995, comprising 21 residential towers, all of which had been granted Occupation Certificates between 21.11.1995 and 12.08.2014. Kenwood comprises 264 units in Towers D3-D5 and Clifton comprises 48 units in Tower A5.

97. The Report records that the Promoter maintained that the common areas and facilities of the Group Housing Colony were indivisible and inseparable and that it was willing to hand over maintenance to a single association of all residents. However, on inspection, the Local Commissioner observed that the licensed land was segregated by boundary walls/grills and that Kenwood and Clifton could be clearly identified and separated, with the enclosed area being approximately 4.80 acres. The Report also referred to the DGTCP instructions dated 10.10.2012 regarding transfer of administration after grant of Occupation Certificate and the precedent of Royal Retreat Residents Association, where internal maintenance of approximately 4.88 acres had been handed over under MOU dated 05.04.2017.

98. The Local Commissioner further recorded the proposed division of responsibilities, under which the Promoter would continue to maintain external services such as the main road, street lights, sewerage and storm-water management, while the Association would undertake internal services, including firefighting equipment, subject to collection and payment of proportionate charges for external services to the Promoter. The Report also noted the pending issue of completion certificate and the relevant Deeds of Declaration dated 04.07.2002 and 20.05.2013 showing the total Group Housing Colony area as 30.35 acres.

Financial Audit Report of Kenwood & Clifton Towers:

The Financial Audit Report in respect of Kenwood Towers (D3, D4 & D5) and Clifton Tower (A5), Charmwood Village, Sector-39, Faridabad, submitted by M/s Anuj Goyal Associates, Chartered Accountants, dated 03.03.2025, is reproduced as under:

99. It is submitted that this Financial Audit has been conducted as per the Appointment Letter dated 22.04.2024 issued by the Haryana Real Estate Regulatory Authority, Panchkula ("Authority") under reference no. HRERA-PKL/ED/COMP/2024/7187-89 for the financial audit of Kenwood Towers (03, 04, 05) and Clifton Tower (A5) in "Charmwood Village," Sector 39, Faridabad, Haryana.

Key Findings of the Audit

a) **Non-Cooperation by the Auditee Company:** Despite multiple attempts through calls, emails, and speed post letters, the Auditee Company failed to provide any financial documents. The matter was regularly reported to the Authority. Due to the lack of cooperation, the audit report had to be prepared based on documents provided by the RWA and those available from the Authority.

b) **Site Visit & Infrastructure Deficiencies:** The audit partner, CA Anuj Kumar Goyal, visited the project site on 25.01.2025. The visit revealed multiple deficiencies, including lack of whitewashing, damaged common area flooring, inadequate illumination, poor water

quality, insufficient service staff, weak security, and seepage issues. A detailed list of deficiencies was documented and supported by photographic evidence (Annexure-I).

c) **Financial Audit Analysis:** Due to the Auditee Company's non-cooperation, aspects such as fund utilization, diversion of project funds, and bank transactions (as per Para 8(a) to 8(f) of the appointment letter) could not be verified. However, an analysis based on available records revealed the following:

i. **Replacement Fund, Para 8(g):** As per the 92-page document submitted by the Auditee Company before the Authority on 23.08.2023 (Annexure-II), the total Replacement Fund collected for the entire Charmwood Village was ₹7,74,24,612/-. Based on the area of the project and discussions with the RWA, the computed Replacement Fund for Kenwood Towers (03, 04, 05) and Clifton Tower (A5) amounts to ₹5,30,76,087/-, inclusive of accrued interest up to 31.03.2024.

ii. **Interest-Free Maintenance Security (IFMS) & Interest-Bearing Maintenance Security (IBMS), Para 8(h):** The amount of IFMS collected from allottees for Kenwood Towers (03, 04, 05) and Clifton Tower (A5) was calculated as ₹6,93,77,872/-. The IBMS collected along with accrued interest stood at ₹4,21,88,463/-.

iii. **Annexures Attached:** Annexure-I: Photographs of project site deficiencies. Annexure-II: A 92-page document submitted by the Auditee Company before the Authority. Annexure-III: Computation sheets for Replacement Fund, IFMS, and IBMS based on available data.

d) **Conclusion:** The Financial Audit highlights significant non-compliance by the Auditee Company, particularly regarding financial transparency and maintenance fund transfers. The audit findings, primarily derived from available records and RWA submissions, indicate that substantial sums collected under Replacement Fund, IFMS, and IBMS remain unaccounted for or untransferred.

O. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT

100. During the course of oral arguments, ld. counsel for the complainants reiterated his arguments as were submitted in writing during the hearing dated 17.09.2026. On the other hand, ld. counsel for the respondents has also advanced his arguments on the hearing dated 17.09.2026 and reiterated those submissions in his written arguments along with objections to the audit report dated 03.03.2025 filed on 02.09.2026.

P. ISSUES FOR ADJUDICATION AND OBSERVATION OF THE AUTHORITY ON THE VARIOUS RELIEFS OUGHT BY THE COMPLAINANTS.

(a) Whether the complaint is maintainable or not?

101. With respect to the objection raised by the respondent regarding the maintainability of the complaint on the ground that the occupation certificates (OC) for the Kenwood and Clifton towers were 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."*

102. 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.

103. Furthermore, the respondent's contention that the complaint is not maintainable due to the completion of the project and execution of conveyance deeds is also unsustainable. The failure of the promoter to fulfil obligations under the builder-buyer agreement gives rise to a continuing cause of action, which is well within the purview of the Act. Authority is mandated to ensure that the rights and interests of the allottees are protected, even after possession has been handed over, until all obligations under the agreement are fulfilled.

Accordingly, the objections raised by the respondent regarding the maintainability of the complaint are hereby rejected.

(b) Whether the complainants are entitled to the reliefs as sought in the complaint or not?

104. The complainant association, through the present complaint, has sought various reliefs as elaborated in Para F of this order. In light of the extensive nature of these reliefs, they are being adjudicated one by one, simultaneously, based on the respondent's oral submissions and

arguments presented during the hearing in response to the relief sought by the respondent.

Relief no. (i): Call for records of the amount collected by respondent no. 1 under various heads, particularly under interest free maintenance security, replacement fund, repair fund, etc. and supply the accounts detailing utilization, deposit and interest accrued thereon;

105. With respect to Relief (i) as enumerated in Para F of this order, the complainant has sought production of the records and accounts of the amounts collected by Respondent No.1 under various heads, particularly Interest Free Maintenance Security (IFMS), Interest Bearing Maintenance Security (IBMS), Replacement Fund, Repair Fund etc., along with details of their utilisation, deposits and interest accrued thereon. The financial aspect of the matter was considered by this Authority during the proceedings. Vide order dated 29.02.2024, the Authority directed Respondent No.1 to furnish certain information and records. The relevant directions from (a) to (i) included the following:

> *"4. Therefore, the Authority deems it appropriate to get a financial audit of the accounts of the project conducted. Accordingly, the following directions are issued to the respondent no.1:*
>
> *a. To get conducted a financial audit from the Chartered Accountant firm appointed by the Authority. The respondent company shall make all the documents and records available to the audit party as necessary for carrying out proper audit.*
>
> *b. To provide bank account statements in which the proceeds received from the flats/plots applicants/allottees were*

deposited and withdrawn for the development of the project and the supporting documents in support of the receipts/collections from the applicant/allottees and details when received in the above bank statements and details/ reconciliation of the receipts/collections received in cash and subsequently deposited in the above Bank Accounts.

c. *To provide the details of the expenses incurred on the project along with the supporting documents that will enable the auditor to verify that the payments made are for the projects and are in proportion to the development work carried out.*

d. *To also provide the audited financial statements of the project along with the books of accounts since the inception of the project.*

e. *Details of the total flats/plots, allotted, resumed/ surrendered and lying unsold/un-allotted and layout and zoning plans of the project along with approval letters/ documents from the relevant authorities to be provided.*

f. *To place on record related Certificates of Engineer/Architect/ Chartered Accountant in support of the claims made by the promoter regarding withdrawals made from the dedicated bank account for the purpose of utilization in the project. In case loan/s have been obtained from Banks/Finance Institution towards the construction of the project, necessary loan account statement/s and loan utilization to be provided.*

g. *Total corpus of replacement fund collected until 31.03.2024 (mentioned as ₹0.27 per sq. ft. per month as per the BBA) from the residents of three towers of Kenwood Apartments (Blocks D3, D4, D5 of Charmhood village) through the maintenance bills raised by AEPL on quarterly basis including the accrued interest thereon till 31.03.2024.*

h. *Expenditure incurred on replacement of any capital assets like lifts, Fire-fighting equipment, DG sets, and water pumps for three towers of Kenwood Apartments (Blocks D3, D4 &D5 of Charm wood Village) till 31.03.2024. with the clear demarcation of capital expenditure spent on (Blocks D3, D4 & D5, in case the spend is for entire charmwood)*

i. *Total corpus of the Interest free maintenance security and the Interest bearing maintenance security collected at the time of*

possession handover from the Apartment Owners/Residents of Kenwood and Cliffton Apartments (Blocks D3, D4, D5 and A5 of Charmwood Village) along with the interest accrued thereon till 31.03.2024".

106. Respondent No.1 challenged the aforesaid directions before the Haryana Real Estate Appellate Tribunal in Appeal No. 263 of 2024. The Hon'ble Tribunal, vide order dated 21.04.2025, considered the challenge and noted that the information sought under paragraphs 4(a) to 4(f) was no longer pressed by the complainant. The Tribunal further observed:

"Only question that survives for adjudication by the authority is as to whether information sought in para 4(g) to 4(i) is relevant for the purpose of adjudication of the matter pending before the Authority."

The Hon'ble Tribunal further held:

"There is no legal impediment in case the information sought by the Authority in paragraph 4(g) to 4(i) is furnished by the promoter. This is necessary for expeditious disposal of the case pending before the Authority."

The Tribunal also observed that even if the challenge to the information-seeking order were accepted, the Authority possessed power under Section 35(1) of the RERA Act to initiate proceedings within the parameters of that provision. Accordingly, the Hon'ble Tribunal, while partly allowing the appeal, passed the following operative direction:

"In view of the above, the appeal is partly allowed with the observation that the appellant need not to submit information sought by the Authority in paragraph 4(a) to 4(f) of the order. However, rest of the information be furnished to the Authority within two weeks of uploading of the order."

Thus, after the order of the Hon'ble Tribunal, the directions contained in paragraphs 4(g), 4(h) and 4(i) remained operative, whereas the directions contained in paragraphs 4(a) to 4(f) were no longer required to be complied with.

107. Thereafter, Respondent No.1 challenged the aforesaid decision of the Hon'ble Tribunal before the Hon'ble Punjab and Haryana High Court. Vide order dated 11.02.2026, the Hon'ble High Court disposed of the proceedings and specifically directed disclosure of the corpus of IFMS and IBMS collected from the residents of Kenwood and Clifton, together with the interest accrued thereon up to 31.03.2024. The relevant direction of the Hon'ble High Court reads:

> *"i. Total corpus of the Interest Free Maintenance Security and the Interest Bearing Maintenance Security collected at the time of possession handover from the Apartment Owners/Residents of Kenwood and Clifton Apartments (Blocks D3, D4, D5 and A5 of Charmwood Village) along with the interest accrued thereon till 31.03.2024."*

108. Thus, the financial issue before this Authority is required to be considered in the light of the aforesaid orders. Pursuant to the order dated 21.04.2025 passed by the Hon'ble Appellate Tribunal, the information sought under paragraphs 4(a) to 4(f) of the order dated 29.02.2024 no longer survives for consideration. Thereafter, vide order dated 11.02.2026, the Hon'ble High Court specifically directed Respondent No.1 to furnish the information contemplated under

paragraph 4(i), i.e. the corpus of IFMS and Interest Bearing Maintenance Security collected from the residents of Kenwood and Clifton, along with the interest accrued thereon till 31.03.2024. During the course of proceedings before this Authority, Ld. Counsel for the complainant association submitted that the said information is already available on record. Accordingly, the financial issue now surviving for consideration is primarily confined to the information directed to be furnished under paragraph 4(i), in terms of the directions of the Hon'ble High Court.

109. As regards the information contemplated under paragraph 4(i), it is relevant to note that pursuant to the directions issued by this Authority, the financial records were subjected to audit and the Audit Report dated 03.03.2025 was placed on record. Thereafter, during the proceedings dated 14.05.2026, both parties addressed their submissions regarding the amounts collected towards IFMS/Interest Bearing Maintenance Security and the manner of accounting thereof. Respondent No.1 relied upon the audited statements and maintained that the requisite financial information had already been furnished, whereas the complainant relied upon the audit report and asserted that the amounts collected from the residents of Kenwood and Clifton, along with the interest accrued thereon, were liable to be duly accounted for. Respondent No.1 subsequently filed its objections to the Audit Report on 02.09.2026,

disputing, inter alia, the scope and findings of the audit, while the complainant association submitted its concluding written submissions on 17.09.2026 and reiterated its claim regarding the IFMS/IBMS corpus and the interest accrued thereon. Thus, the information and material relevant to paragraph 4(i), including the Audit Report dated 03.03.2025 and the respective submissions of the parties, are already available on record for consideration by this Authority.

110. Accordingly, Relief No.1 is disposed of to the aforesaid extent, keeping in view directions given by the Hon'ble High court. The extent of handover of the common areas and facilities is being determined separately under Relief No.2. The amounts, if any, found relatable to the facilities directed to be handed over under Relief No.2 shall be dealt with consequentially in accordance with the directions contained therein.

Relief no. (ii): Direct respondent no. 1 to handover the administration, management and maintenance of common areas and facilities in the block consisting of tower D3, D4, D5(Kenwood Tower); and A5 (Cliffton Tower) in the society "Charmwood Village", Sector 39, Faridabad;

111. With respect to Relief (ii), the principal issue is whether Respondent No.1 is required to hand over the administration, management and

maintenance of the common areas and facilities pertaining to Kenwood D3-D5 and Clifton A5 to the complainant Association, or whether, as contended by Respondent No.1, such handover can be made only to one association/federation representing the apartment owners of the entire Charmwood Village.

112. Respondent No.1 has contended that Charmwood Village is one integrated group housing colony developed over approximately 30.35 acres under Licence Nos.116 of 1984 and 1 of 1995 and that Kenwood and Clifton form part of the same licensed colony. It has relied upon the Haryana Apartment Ownership Act, 1983 and has contended that the common areas and facilities are required to remain undivided and that their administration and maintenance can be handed over only to an association representing the entire colony. Respondent No.1 has, however, expressed its willingness to hand over the maintenance of the entire colony to a duly constituted association/federation representing all the apartment owners. Respondent No.1 has further submitted that several services and installations, including water infrastructure, underground and fire-water tanks, DG sets, STP, sewerage/drainage, internal roads, street lighting, electrical infrastructure, security and other services, are common to the entire colony and cannot be divided for the purpose of block-wise maintenance.

113. Respondent No.2 has also taken the broad position that the development constitutes one integrated colony and that maintenance should ultimately be handed over to an association representing the apartment owners of the entire development. Respondent No.3 has also opposed fragmentation of maintenance arrangements, though its principal objection in the present complaint concerns the Community Centre site.

114. The complainant Association, on the other hand, has submitted that it does not seek to take over facilities which are genuinely common to the entire Charmwood Village. Its case is that the common areas and facilities specifically serving Kenwood D3-D5 and Clifton A5 can and ought to be handed over to the Association representing the apartment owners of those blocks. It has relied upon the physical configuration of the concerned blocks, the separate access and internal arrangements, the building-specific facilities and the report of the Local Commissioner appointed by this Authority. The complainant has also relied upon the fact that a similar arrangement was already adopted in respect of the Royal Retreat Residents Association. It has been pointed out that Respondent No.1 itself had, vide its letter dated 09.02.2017, proceeded towards handing over the maintenance of Royal Retreat to its Residents Association and that the maintenance arrangement was thereafter taken over pursuant to the arrangement/MOU of 2017. The complainant therefore submits that Respondent No.1 cannot, on the one hand, accept

a separate maintenance arrangement for Royal Retreat and, on the other hand, contend that a separate association for Kenwood D3-D5 and Clifton A5 is legally impermissible.

115. Authority observes that the said submission is relevant not because the Royal Retreat arrangement, by itself, determines the statutory rights of the present complainant, but because it demonstrates that in the same development, Respondent No.1 has itself recognised and acted upon a model whereby maintenance responsibility of an identifiable portion can be transferred to an association representing the residents of that portion. The present complainant seeks handover substantially on the same lines and terms, subject to the nature of the facilities concerned.

116. The Local Commissioner was appointed vide order dated 03.10.2023 precisely to examine whether the concerned portion of the licensed land could be identified and whether Kenwood and Clifton could be clearly identified/separated for purposes of maintenance and handover. The Local Commissioner's report dated 16.11.2023 is therefore an important piece of material for deciding the present issue. The said report records the existence of identifiable physical features and facilities relating to the concerned blocks, including the separate boundary/demarcation, access arrangements, internal roads, parks/open spaces and building-specific installations/facilities. At the same time, the report also recognises that certain services are common to the larger colony. The

report therefore does not support an absolute proposition either that the entire Charmwood Village is incapable of any differentiated maintenance arrangement or that every facility can be exclusively handed over to the complainant Association.

117. In particular, the water tank/infrastructure identified in the Local Commissioner's report is a facility which requires to continue to be maintained by Respondent No.1, being a common facility serving the larger colony. The Authority, therefore, considers it appropriate that such water tank/infrastructure shall remain with Respondent No.1 for maintenance and shall not form part of the block-specific handover. The other facilities which are identifiable as pertaining to and serving Kenwood D3-D5 and Clifton A5 can, however, may be considered for handing over to the complainant Association for their maintenance and administration.

118. The above approach is also consistent with the statutory scheme of the Haryana Apartment Ownership Act, 1983. Section 3(f) defines *"common areas and facilities"* with reference to the declaration, while Section 3(l) separately recognises *"limited common areas and facilities"*, i.e. common areas and facilities designated in the declaration for use by a particular apartment or group of apartments to the exclusion of others. Section 6(1) of the Haryana Apartment Ownership Act provides:

"Each apartment owner shall be entitled to an undivided interest in the common areas and facilities in the percentage expressed in the declaration. Such percentage shall be computed by taking as a basis the value of the apartments in relation to the value of the property; and such percentage shall reflect the limited common areas and facilities".

Further, Section 6(5) provides:

"The necessary work of maintenance, repair and replacement of the common areas and facilities and the making of any addition of improvements thereto shall be carried out as provided herein and in the bye-laws".

119. Thus, the Act itself recognises that common facilities may have a different scope and may include facilities associated with particular apartments or groups of apartments. The mere fact that the concerned buildings form part of one larger development does not, therefore, mean that every facility must necessarily be administered in exactly the same manner.

120. Section 11 of the Haryana Apartment Ownership Act, 1983 is also material which talks about *"the contents of declaration"* as the declaration is required to contain the description of the common areas and facilities and, where applicable, the limited common areas and facilities and the apartments to which their use is reserved. The declaration is consequently an important document for determining whether a particular facility is general to the entire development or limited to a particular building or group of apartments. The same

principle is reflected in the Haryana Apartment Ownership Rules, 1987. The prescribed form of declaration specifically contemplates:

> *"(a) General facilities, for all apartments of the scheme;*
> *(b) Common facilities for dwelling units of individual block; and*
> *(c) Restricted common facilities ..."*

121. The statutory Rules, therefore, themselves contemplate different categories of facilities within an apartment/group housing scheme. Section 6(3) of the Haryana Apartment Ownership Act, 1983 provides:

> *"The common areas and facilities shall remain undivided and no apartment owner or any other person shall bring any action for partition or division of any part thereof..."*

In the present matter, the direction, however, does not amount to partition or division of the common areas. No separate title in any portion of the land or common infrastructure is being created in favour of the complainant Association in the present case. What is being directed is only transfer of maintenance, management and administration of the identifiable common facilities pertaining to towers D3-D5 and A5. The ownership and undivided character of the common areas shall remain unaffected.

The position is also supported by the scheme of the Real Estate (Regulation and Development) Act, 2016. Section 11(4)(d) provides that the promoter is responsible for maintenance of essential services until

the taking over of maintenance by the association of allottees. Section 11(4)(e) further requires the promoter to enable formation of:

> *"an association or society or cooperative society, as the case may be, of the allottees, or a federation of the same..."*

The provision, therefore, expressly recognises an association as well as a federation as possible bodies for the purposes of the allottees' collective administration. The use of the expression *"or a federation of the same"* is significant. A federation, by its very nature, may consist of constituent associations representing different groups of apartment owners. Therefore, the statutory reference to a federation cannot be read to mean that a separate association representing an identifiable group of apartments is prohibited unless and until a federation of the entire colony is first constituted.

The same principle is reflected in Section 19(9) of the RERA Act, which requires the allottee to participate towards the formation of:

> *"an association or society or cooperative society of the allottees, or a federation of the same."*

The statute thus recognises both levels of organisation. A federation may be constituted where common interests extend beyond one association; however, the existence of such a possibility does not take away the independent existence of an association representing its own apartment owners. Section 17 of the RERD Act, 2016 further provides:

"The promoter shal..... hand over the physical possession .... and the common areas to the association of the allottees or the competent authority, as the case may be....."

Sub-section (2) further requires the promoter, after obtaining the occupancy certificate and handing over possession, to hand over the necessary documents and plans, including those relating to common areas, to the association of the allottees or the competent authority, as the case may be.

122. The Occupancy Certificates in respect of Clifton A5 and Kenwood D3-D5 had already been granted on 29.05.2001 and 03.05.2013, respectively. Thus, the development had long crossed the stage at which the promoter's continuing control over maintenance could be justified merely on the ground that the buildings were awaiting completion or possession. The statutory scheme contemplates that, after the relevant stage of completion and possession, the common areas and the corresponding maintenance responsibility are to be handed over to the apartment owners' body in accordance with law.

123. The record further shows that Respondent No.1 has continued to collect maintenance charges and other maintenance-related amounts from the apartment owners. The complainant has also placed on record grievances regarding the condition and upkeep of the concerned premises and has contended that despite collection of substantial amounts, the internal/common facilities have not been maintained and

replaced to the required extent. The Authority is not required, for deciding the present relief, to undertake a fresh technical adjudication of each individual grievance regarding painting, flooring, seepage, lighting, security, water quality or other maintenance deficiencies. The broader issue is whether the promoter can continue indefinitely with control over maintenance when the statutory scheme contemplates takeover by the association of apartment owners.

124. The present matter also has to be viewed in the context of the arrangement with the Royal Retreat Residents Association. The record shows that maintenance responsibility in respect of an identifiable portion of the larger development was transferred to the said residents' association. The complainant seeks a similar arrangement for Kenwood D3-D5 and Clifton A5 and has clarified that it does not seek control over facilities which genuinely serve the entire colony.

125. The Authority is therefore of the considered view that the objection of Respondent No.1 that the entire Charmwood Village must first be handed over to one association/federation cannot, by itself, defeat the present relief. At the same time, genuinely colony-wide infrastructure cannot be placed under the exclusive control of the complainant Association. Accordingly, the handover in the present case shall be confined to the identifiable common areas and facilities pertaining to

Kenwood D3-D5 and Clifton A5, while the facilities serving the entire Charmwood Village shall remain outside the scope of such handover.

126. In this regard, the water tank/infrastructure identified in the report of the Local Commissioner as a common facility shall continue to be maintained by Respondent No.1 and shall not form part of the handover to the complainant Association. The identifiable internal/common facilities serving D3-D5 and A5, as established from the Local Commissioner's report, declaration, sanctioned plans and other material on record, shall, however, be handed over to the complainant Association for administration and maintenance.

127. The handover shall be carried out substantially on the same lines and terms as the maintenance handover undertaken in respect of the Royal Retreat Residents Association, to the extent applicable to the facilities pertaining to D3-D5 and A5. The purpose is to ensure an orderly transfer of maintenance responsibility from the promoter to the residents' body, while preserving the common infrastructure which necessarily requires a colony-wide arrangement.

128. It is clarified that such handover shall not amount to partition of, or creation of any separate title in, the common areas or facilities. The complainant Association shall only assume responsibility for the administration, operation, maintenance, repair and replacement of the facilities falling within its lawful domain.

129. The Authority further observes that the promoter's obligation under the RERA Act, 2016 is not merely to permit an association to be formed but to facilitate the actual handover of maintenance and common areas in accordance with the statutory framework. Section 11(4)(d) places the maintenance obligation upon the promoter until the association takes over maintenance, while Section 17 provides for handing over of the common areas and necessary documents/plans to the association or competent authority.

130. In the present matter, therefore, Respondent No.1 cannot indefinitely retain maintenance and administrative control over the identifiable internal/common facilities pertaining to D3-D5 and A5 merely on the ground that the larger colony has not yet formed a single federation. The existence of a duly constituted residents' association representing the concerned apartments, coupled with the maintenance handover earlier undertaken in respect of Royal Retreat, supports an orderly transfer of such responsibility.

131. The Authority accordingly holds that the complainant Association is entitled to take over the administration, management and maintenance of the identifiable common areas and facilities pertaining to Kenwood D3-D5 and Clifton A5. The water tank/infrastructure identified as a colony-wide facility shall remain with Respondent No.1 for maintenance. Other genuinely colony-wide facilities shall likewise remain outside the

present handover. Respondent No.1 shall facilitate the handover and shall provide the relevant maintenance records, plans, inventories, details of installations, service arrangements and other documents reasonably necessary for the Association to assume effective maintenance responsibility.

132. The transfer of maintenance responsibility shall also be accompanied by appropriate accounting and consequential transfer of the maintenance-related funds attributable to the facilities and apartments being handed over, subject to the financial directions which survive in terms of the order of the Hon'ble High Court. This aspect has been dealt with separately under Relief No.1.

133. In view of the above discussion, Relief No.2 is allowed to the aforesaid extent. Such handover shall not amount to partition of, or creation of separate title in, any common area or facility.

Relief no. (iv): Direct respondent no. 1 to not to interfere with the management & maintenance of Kenwood and Clifton Towers after handing over the management and maintenance of the towers to the complainant association:

134. As a consequential relief, the complainant has also sought a direction under Relief No.4 restraining Respondent No.1 from interfering in the administration, management and maintenance of the common areas and

facilities after their handover. Once the aforesaid facilities are handed over to the complainant Association, Respondent No.1 shall not interfere with the lawful administration and maintenance thereof. Accordingly, Relief No.4 is allowed to this limited extent and shall operate only in respect of the facilities and areas directed to be handed over under Relief No.2.

Relief no. (iii): Direct respondent to restore the possession of the community site which has illegally been converted to banquet hall and hotel and is being operated under the name and style "Royal Imperio".

The Authority has considered the relief seeking restoration of the Community Centre site, which the complainant alleges has been converted into/being used as "Royal Imperio". This relief does not sustain before this Authority due to the reasons stated below:

135. The Department of Town and Country Planning, Haryana (DTCP) is the competent authority in matters relating to the approval of layout plans and building plans, permissible use of the site and grant of Occupation/Completion Certificates in respect of a licensed colony. Any permission or approval relating to the use or development of the Community Centre site, including its use as a hotel/banquet or other commercial establishment, is therefore required to be dealt with by the

competent planning authority in accordance with the applicable planning laws and regulations.

136. The question whether the use of the Community Centre site is in accordance with the sanctioned plans, zoning provisions and permissions granted by the competent planning authority is not a matter which this Authority can independently determine under the RERA Act. RERA does not confer upon this Authority the power to grant, modify or invalidate planning permissions or to direct restoration of a site on the ground of alleged violation of sanctioned land use. If the complainant is aggrieved by any permission, approval or order relating to the said site, the appropriate remedy would be to approach the competent authority/appellate forum under the applicable law. The complainant may accordingly avail such remedy in accordance with law.

137. Further, Respondent No. 3, in his reply dated 18.10.2022 has claimed rights over the said site pursuant to the registered Conveyance Deed dated 10.01.2019. The validity and effect of such conveyance, and any consequential claim for restoration of the property, are also not matters which can appropriately be adjudicated in the present RERA proceedings. Accordingly, Relief No.3, being beyond the scope of the jurisdiction of this Authority under the RERA Act, is not maintainable and is hereby declined.

138. 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.

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CHANDER SHEKHAR
[MEMBER]

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

.....
NADIM AKHTAR
[MEMBER]