

**BEFORE THE HARYANA REAL ESTATE APPELLATE
TRIBUNAL**

**Appeal No.238 & 1317 of 2019
Date of Decision: 23.12.2020**

(1) **Appeal No.238 of 2019:**

M/s Vipul Limited having its registered office at Regus Rectangle, Level 4, Rectangle 1, D4, Commercial Complex, Saket, Gurugram-122009.

2nd Address:

Vipul Tech Square, Golf Course Road, Sector 43, Saket Gurugram-122009.

Appellant

Versus

1. Tatvam Residents Welfare Association, Villa No.138, Tatvam Villas, Sector-48, Gurugram.
2. Senior Town Planner, Gurugram.
3. Executive Engineer, Dakshin Haryana Bijli Vitran Nigam (DHBVN), Gurugram.
4. Executive Engineer, HSVP, Division III, Gurugram.
5. Commissioner, Municipal Corporation, C-1, Info City, Sector 34, Gurugram.
6. Mr. Punit Beriwalla, Managing Director, Vipul Ltd., Vipul Tech Square, Golf Course Road, Sector-43, Gurugram, Haryana.
7. Ms. Guninder Singh, Chief Executive Officer (CEO), Vipul Tech Square, Golf Course Road, Sector 43, Gurugram, Haryana.
8. Haryana Real Estate Regulatory Authority, new PWD Rest House, Civil Lines, Gurugram, Haryana.

Respondents

(2) **Appeal No.1317 of 2019**

Tatvam Residents Welfare Association, through its President Mr. Somesh Jawarani s/o C.N. Jawarani, aged 54 years, Resident of Villa No.36, Tatvam Villas, Rohna Road, Gurugram, Haryana-122018.

2nd Address:

Villa No.138, Tatvam Villas, Sector-48, Sohna Road, Gurgaon-122002.

Appellant

Vs.

1. M/s Vipul Limited through its Managing Director/ Chairman/ Director.
having its registered office at Regus Rectangle, Level 4, Rectangle 1, D4, Commercial Complex, Saket, Gurugram-122009.
2. Senior Town Planner, HUDA Office Complex, 3rd Floor, Sector-14, Gurugram.
3. Executive Engineer, Dakshin Haryana Bijli Vitran Nigam (DHBVN), Maharaja Agrasen Road, Sohna, Gurugram.
4. Executive Engineer, HSVP, Division III, Gurugram.
5. Commissioner, Municipal Corporation, Gurugram, C-1, Info City, Sector 34, Gurugram.
6. Mr. Punit Beriwal, Managing Director, Vipul Ltd., Vipul Tech Square, Golf Course Road, Sector-43, Gurugram, Haryana.
7. Ms. Guninder Singh, Chief Executive Officer (CEO), Vipul Tech Square, Golf Course Road, Sector 43, Gurugram, Haryana.

Respondents

CORAM:

Justice Darshan Singh (Retd.)
Shri Inderjeet Mehta
Shri Anil Kumar Gupta

Chairman
Member (Judicial)
Member (Technical)

Argued by:

Shri Aashish Chopra, Advocate, with Ms. Rupa Pathania, Advocate, learned counsel for M/s Vipul Limited-appellant in appeal no.238/2019 and respondent no.1 in appeal no.1317/2019.

Dr.Farukh Khan, Advocate with Sh. Pradeep Singh, Advocate & Ms. Ridhima Goyal, Advocate, ld. counsel for Tatvam Residents Welfare Association-respondent no.1 in appeal no.238/2019 and appellant in appeal no.1317/2019.

Shri Manoj Kaushik, Advocate, Executive Engineer, DHBVN-respondent no.3 in both the appeals.

None for remaining respondents.

ORDER:

JUSTICE DARSHAN SINGH (Retd.) CHAIRMAN:

This judgment of ours shall dispose of both the appeals referred above which have arisen out of the same impugned order dated 02.05.2019 passed by the ld. Haryana Real Estate Regulatory Authority, Gurugram (hereinafter called the Ld. Authority) in complaint no. 1277 of 2018 titled as Tatvam Residents Welfare Association Vs. M/s Vipul Ltd.

2. In order to avoid the confusion M/s Vipul Ltd., the appellant of appeal No.238 of 2019, shall be referred as the promoter. Tatvam Residents Welfare Association, the appellant of Appeal No.1317 of 2019, shall be referred as TRWA.

3. TRWA filed the complaint under Section 31 of Real Estate (Regulation and Development) Act, 2016 (hereinafter called the Act) read with Rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter called the Rules) against the promoters and the other official respondents on the grounds *inter alia* that the promoter has developed well-planned residential villas over the land admeasuring 50 acres forming part of 'Vipul World'. The promoter had separated 50 acres of land and got sanctioned separate zoning plan for such villa complex. The villa complex

has been developed by the promoter specifically adhering to the terms and conditions of the above referred separate zoning and under name and style of the "Tatvam Villas". Even in the brochures and conveyance deed, the villa complex was mentioned to be the exclusive project. The purchaser/allottees formed a resident welfare association with the name of the "Tatvam Residents Welfare Association- TRWA". The said association was duly registered under the Society Registration Act, 1860. The officials of TRWA requested the promoter to handover the maintenance, Interest Free Maintenance Security (IFMS) and also to recognize the RWA for each and every purpose. TRWA had decided in its general meeting held on 16.10.2016, that the promoter should hand over the essential service to it but the promoter denied to hand over the maintenance and essential service to TRWA without assigning any valid reason.

4. It was further pleaded that TRWA approached the Deputy Commissioner, Gurugram vide letter dated 25.12.2016. The Deputy Commissioner issued direction to the Senior Town Planner, Gurugram who submitted his report and suggestion vide his letter dated 27.01.2017, wherein it was observed that villa No.52 has been constructed illegally without approval, that the boundary wall towards the Badshahpur drain has been constructed beyond the licenced

area, that the revenue passage through the site was blocked by raising wall, that the basketball court in front of villa no. 57 and cricket net in the green pocket of villa no. 71 have been constructed converting green area into hard surface, that the promoter was charging exorbitantly for the maintenance charges and that the promoter had not shared or provided information about expenditure on maintenance of Tatvam Villas. It was also mentioned that the promoter was willing to hand over the entire township i.e., 'Vipul World', which spreads over 150 acres of land, to government/MCG for maintenance purposes as per provisions of Haryana Development and Regulation of Urban Area Act 1975 (hereinafter called the Act no. 8 of 1975) instead of TRWA just to take undue benefit of exorbitantly charging the maintenance charges. The maintenance charges @ Rs. 4 per sq. ft. of the super built area per month from the Tatvam Villa Residents was also discriminatory, unreasonable and illegal by every standard of law. The promoter had malafidely created grounds for handing over the entire complex i.e. 'Vipul World' to Government/MCG just to harass the residents of TRWA.

5. It was further pleaded that as per section 11 (4)(d) of Act, the promoter shall be responsible for providing and maintaining essential service, on reasonable charges, till the taking over of maintenance of the project by the association of

the allottees. It is further pleaded that as per Section 11 (4)(e) of the Act, the promoter shall enable the formation of association or society or cooperative society of the allottees but the promoter did not recognise the TRWA which has been duly constituted and is registered body. Thus, the promoter has violated mandatory provisions of the Act. The maintenance services of the project were required to be handed over to the TRWA and the promoter had no role to play in maintenance of essential services of the colony once the registered body of the allottees came into existence. The denial of the basic rights of TRWA proves the nefarious designs and mala-fide intentions of the promoter.

6. It was further pleaded that the report of the Senior Town Planner dated 27.01.2017 shows the violation of the Section 14(3) of the Act as there were major defects in workmanship, quality and the provisions of the service as well as the major structural and infrastructure defects which have not been rectified by the promoter. Some of those defects have been detailed in para no. XX of the complaint.

7. It was further pleaded that the promoter had illegally taken and retained IFMS of Rs. 200 Per. Sq. ft of the super built-up area from every villa in the complex and the said amount is being retained even after the lapse of eight years of the delivery of the possession, which is totally illegal

and arbitrary. The promoter had also failed time and again to furnish the statement of accounts of the amount of IFMS and the interest accrued thereon. The said amount is being used by the promoter for their personal gains and not for the designated purposes, which amount to criminal breach of trust and cheating.

8. It was further pleaded that the promoter has revised the layout and zoning plan in September, 2012 without taking the consent of 2/3 of residents and thereby violated Section 14(2)(i)(ii) of the Act. It is further pleaded there are various deficiencies or shortcoming in the basic infrastructure facilities to be provided by the promoter which were committed through advertisement and their marketing staff at the time of launching the project. The promoter has also got sanctioned less electric load than required. The temporary arrangement for the Diesel Generator sets has been made and the promoter is charging @ 22 Per unit which is not only unreasonable rather unjustified by any standard of law. As per Haryana Electricity Regulatory Commission (HREC) regulations maximum Rs. 7.1 Per. unit can be charged if the power arrangements were made through DG sets. Thus, the promoter had failed miserably to fulfil the obligation of providing the adequate load. The promoter has also installed only three DG sets which are inadequate to meet the overall

demand of the complex. The promoter has also not supplied the potable water to the complex which has been provided by the Government Agency and the residents were compelled to use unhealthy and substandard quality of underground water. The promoter has also not connected the sewage line of the complex to the sewage line of the Municipal Corporation, Gurugram. With the aforesaid pleas, TRWA, in its complaint, raised as many as XXIX issues to be determined and sought the following reliefs: -

Relief Sought:

- I. To direct the respondent to recognize complainant as valid resident's welfare association for each and every purpose.
- II. To direct the respondents to hand over maintenance of essential services to the complainant.
- III. To direct the respondents to furnish audited account statement of IFMS funds as well as monthly maintenance funds since from the formation of TRWA i.e. year 2011.
- IV. To direct the respondents to furnish audited account statement of monthly

maintenance paid by the residents since from the formation of TRWA i.e. year 2011.

- V. To direct the respondents to hand over IFMS funds to the complainant.
- VI. To direct the respondents to get electricity supply of complete sanctioned load from respondent no. 3, at their own expenses.
- VII. To direct the respondents to supply complete electricity load to the residents of complex.
- VIII. To direct the respondents to stop using the DG sets as main source of power.
- IX. To direct the respondents to pay the additional/excess charges accrued due to use of DG sets instead of main power supply.
- X. To direct the respondents to stop over charging for inflated bills of electricity.
- XI. To direct the respondents to make purchase of one unit of DG set, at their own expense and hand over it to the complainant.
- XII. To direct the respondents to construct underground diesel storage tank for DG sets.

- XIII. To direct to transfer physical possession of all assets being used to run various services in the complex.
- XIV. To direct the respondents to make arrangements of supply of potable water to the residents of complex, which has been provided by respondent no. 4.
- XV. To direct the respondents to connect STP of complex with the sewage line provide by respondent no. 5.
- XVI. To direct the respondent no. 1 to pay all outgoings before it transfers the physical possession and maintenance to TRWA as per provisions of sec. (g) of RERA Act, 2016.
- XVII. To remove the defects/shortcomings in structure of the complex as mentioned in para XX of the complaint.
- XVIII. To direct the respondent no. 1 to share and hand over all sanctioned plans, compliances, NOCs, licenses, approvals, technical audit reports related to the said project, including but not limited to, movable, immovable, tangible and intangible, assets.

XIX. To impose penalty upon the respondents as per the provisions of section 61 of RERA Act for contravention of sec 12, sec 14 and sec 16 of RERA Act.

XX. To issue direction to make liable every officer concerned i.e. Director, Manager, Secretary, or any other officer of the respondent's company at whose instance, connivance, acquiescence, neglect any of the offences has been committed as mentioned in Sec 69 of RERA Act, 2016 to be read with HRERA Rules, 2017.

XXI. To recommend criminal action against the respondents for the criminal offence of cheating, fraud and criminal breach of trust under section 420, 406 and 409 of the Indian Penal Code.

XXII. Any other relief which this Hon'ble authority deem fit and appropriate in view of the facts and circumstances of this complaint.

9. Hence the complaint.

10. Respondent no. 2, Senior Town Planner, Respondent no. 3, the Executive Engineer, Dakshin Haryana

Bijli Vitran Nigam (DHBVN) Gurugram, Respondent No. 5. Municipal Corporation, Gurguram, Respondent no. 6. Mr. Punit Beriwal, Managing Director, Vipul Ltd. and Respondent No. 7 Ms. Guninder Singh, Chief Executive Officer (CEO) did not file their replies to contest the complaint. Respondent no. 4, the Executive Engineer, HSVP Division III, Gurugram, submitted the letter dated 04.12.2018 mentioning therein that the points raised in the complaint do not pertain to their office.

11. The promoter contested the complaint filed by TRWA on the grounds inter-alia that Tatvam Villas was not an independent colony but forms part of "Tatvam World" a residential colony of 150 acres. The TRWA has sought to give an erroneous and misconceived projection with respect to Tatvam Villas being an independent complex, which is contrary to law. It is further pleaded that TRWA deliberately and intentionally did not disclose that it had already approached the Director Town and Country Planning (for short 'DTCP'), Haryana, Chandigarh, by filing a representation dated 31.01.2016, raising its grievances. The DTCP passed an order on 31.07.2017 on the said complaint. The said order was apparently passed on the basis of the report dated 27.01.2017 of Senior Town Planner, Gurugram. The aforesaid order was assailed by the promoter by filing a statutory appeal under the

provisions of Act No. 8 of 1975 before the Principal Secretary Town and Country Planning, Haryana (for Short 'PSTCP'). The Appellate Authority passed an order dated 24.01.2018. The said order has been assailed by the promoter by filing writ petition bearing CWP No. 6921 of 2018 before the Punjab and Haryana High Court, which is pending for consideration. The TRWA has concealed all these material facts from the learned Authority. The factum regarding pendency of the writ petition has also been concealed with mala-fide intention. The issues raised in the complaint under reply are sub-judice and are subject matter of the writ petition pending before the Hon'ble High Court. It was further pleaded that it was in the knowledge of TRWA that the promoter had been granted more than 250 Occupation Certificates for each of the villas in "Tatvam Villas" from 2010 to 2017. The promoter had even applied on 19.11.2015 followed by another application on 31.03.2017 and was granted the part completion certificate on 20.07.2018, which included the area of Tatvam Villas. The Occupation Certificate stood granted prior to the publication of the rules. As such the project in question does not fall under the definition of 'on-going project' as defined under rule 2(1)(o) of the Rules. Consequently, there was no requirement for getting the project registered. It was further pleaded that as the project of the promoter did not require registration, hence it falls out of the provisions of 2016 Act. It was further pleaded

that the respondent in the complaint could not be considered to be a promoter in terms of the definition of the promoter under Section 2(zk) of the Act. As such reference to the obligations of the promoter under the Act, would be to a person who is carrying out the activities as mentioned in section 2(zk) for the purpose of sale of the apartments or plot, which can only be done if the promoter registers the Real Estate Project. It was further pleaded that it cannot be said much less even remotely suggested that an obligation of the promoter would be *de-hors* of registration of the real estate project by such promoter. Thus, it was pleaded that the provisions of the Act with reference to promoter would become applicable only if the real estate project is registered. The word promoter wherever used in the Act, is in reference to the promoter, who had got the real estate project registered and/or is required to get the real estate project registered in accordance with the provisions of the Act. It was further pleaded that the provisions of the Act would not be applicable to the project, which do not require registration.

12. The promoter further pleaded that the learned Authority had no jurisdiction to entertain the complaint and the allegations made therein are erroneous, misconceived and untrue. The reliefs/directions sought by the TRWA are beyond the jurisdictional competence of the learned Authority and it

cannot assume the powers which otherwise are not vested in it. Merely on misconceived notion, the aggrieved person may not have any other remedy. It was further pleaded that if it is assumed, though not admitted, that the learned Authority had jurisdiction, even then the TRWA cannot seek the directions for imposition of penalty for the violation under the Act for the action carried out prior to Act or the rules framed thereunder came into force. The provisions of the Act have only prospective operation. The penalty in terms of the Act, if can accrue, the same can only be in respect of the sale agreements executed after the commencement of the Act. It was further pleaded that the promoter is not in violation of any provisions of the act. It was further pleaded that the provisions of the Act cannot be resorted to for opening the proceedings against the promoter for actions completed much prior to the enactment of the Act. It was further pleaded that on these grounds also, reliefs claimed by the TRWA, were unsustainable in the eyes of law and were liable to be rejected. The promoter had also raised certain legal and preliminary objections. All other pleas raised in the complaint were controverted.

13. After hearing learned counsel for the parties and perusing the record of the case, the learned Authority vide impugned order dated 02.05.2019 (uploaded on 10.06.2019) disposed of the complaint with the following observations: -

“68. Accordingly, both the parties have to wait till the final decision of the Hon’ble High Court, till then the status-quo shall prevail and the provisions of law shall come into force immediately after the decision of the Hon’ble High Court. Both the parties are advised to pursue the matter before the Hon’ble High Court on the date fixed.

69. However, RWA is authorised to take care about their essential issues w.r.t. security, horticulture, power back up and garbage collection. However, the costs shall have to be borne by the RWA.

70. The complaint is disposed of accordingly.”

14. Aggrieved with the aforesaid order, the promoter as well as TRWA have preferred their separate appeals.

15. In appeal no. 238 of 2019, the promoter has pleaded for setting aside the impugned order dated 02.05.2019, whereas the TRWA in appeal no. 1317 of 2019 has pleaded for modification of the order dated 02.05.2019 and sought following reliefs: -

“(a) To direct the Respondents to recognize complainant/Appellant herein as valid

Residents Welfare Association for each and every purposes.

(b) To direct the Respondents to not hinder the proper provision of the essential maintenance services being provided by the Appellant herein.

(c) To direct the Respondent no. 1 to furnish audited account statement of Maintenance Security funds worth approximately Rs. 23 Crore since the formation of TRWA i.e. year 2011.

(d) To direct the Respondent no. 1 to furnish audited account statement of monthly maintenance paid by the residents since the formation of TRWA i.e. year 2011.

(e) To direct the Respondent No. 1 to hand over Maintenance Security funds to the complaint.

(f) To direct the Respondent No. 1 to get electricity supply of complete sanctioned load from Respondent No. 3 at their own expenses.

(g) To direct the Respondent no. 1 to supply complete electricity load to the residents of complex.

(h) To direct the Respondent No. 1 to pay the additional/excess charges accrued due to us of DG sets instead of main power supply when Respondent No 1 was in charge for supply of electricity.

(i) To direct the Respondent no. 1 to make purchase of two units of DG sets of 500 KVA

each at their own expense and hand over it to the complainant.

(j) To direct the Respondents to construct underground Diesel Storage Tank for DG sets.

(k) To direct to transfer of physical possession of all the assets being used to run various services in the complex. A non-exhaustive list of such assets is attached herewith as Schedule-A.

(l) To direct the Respondent to connect STP of complex with the Sewage line provide by Respondent No. 5.

(m) To direct the Respondent no. 1 to pay all outgoings before it transfer the physical possession and maintenance to TRWA as per provisions of sec. 11(g) of RERA Act, 2016

(n) To remove the defects/shortcomings in structure of the complex as mentioned in para XX of the complaint.

(o) To direct the Respondent no. 1 to share and hand over all Sanctioned Plans, Compliances, NOCs Licenses, Approvals, Technical Audit Reports related to the said project including but not limited to movable and immovable tangible and intangible assets.

(p) To impose penalty upon the Respondents as per the provisions of Section 61 of RERA, Act of contravention of Sec 12 Sec 14 and Sec 16 of RERA, Act.

(q) To issue directions to make liable every officer concerned i.e. Director Manager Secretary

or any other officer of the Respondent's company at whose instance connivance acquiescence neglect any of the offences has been committed as mentioned in Sec 69 of the RERA Act 2016 to the read with HREERA Rules 2017”

(r) To recommend criminal action against the Respondents for the criminal offence of cheating fraud and criminal breach of trust under Section 420, 406 and 409 of the Indian Penal Code.”

16. We have heard Shri Aashish Chopra, Advocate, learned counsel for the promoter, Sh. Faruk Khan, Advocate, learned counsel for respondent no. 1 (TRWA), Sh. Manoj Kaushik, Advocate, learned counsel for respondent no. 3 and have meticulously examined the record of the case. Learned counsel for the promoter and learned counsel for the TRWA have also filed the written arguments. In compliance of our order dated 16.11.2020, Sh. Farukh Khan, Advocate ld. counsel for TRWA has also filed the affidavit dated 23.11.2020 of Sh. Mukesh Mittal, the Vice-President of TRWA disclosing the names and the particulars of the then office bearers of TRWA on the date when the service of the ESS complex was taken over.

17. Initiating the arguments, learned counsel for the promoter contended that the impugned order has been assailed by both the parties by filing their respective appeals.

He contended that the directions issued by the learned Authority authorising TRWA to take care about the essential services with respect to the security, horticulture, power back-up and garbage collection are bereft of any reasoning. Learned Authority was required to pass the reasoned order. These directions have been issued even without framing the issues and advertent to the issues raised by the parties. He contended that it is well settled law that giving reasons while passing an order by the judicial or quasi-judicial body is essential. Mere, giving an opportunity of being heard is not enough. To support his contentions, he relied upon the case ***Kranti Associates Private Limited and another vs. Masood Ahmed Khan and others (2010) 9 SCC 496*** and ***State of Orissa vs. Chandra Nandi (2019) 4 SCC 357***.

18. He further contended that the directions with respect to the essential services issued by the learned Authority are contradictory to the earlier part of the impugned order. He contended that on one hand the learned Authority while acknowledging the order dated 24.01.2018 passed by the Principal Secretary Department of the Town and Country Planning has directed both the parties to wait till the final judgment of the Hon'ble High Court and ordered that till then status qua shall prevail, whereas on the other hand issued the directions authorising TRWA to maintain the essential

services. He further contended that there is another contradiction, on the one hand, it has been noted that handing over of the maintenance by the Developer to Municipal Corporation, Gurugram, is *sine qua non*, whereas on the other hand, the TRWA was authorised to take care of some of the services.

19. He further contended that Tatvam Villas is the part of the 'Vipul World' spread over 150 acres. TRWA is not the association of the whole 'Vipul World'. The promoter has developed the residential villas over the land admeasuring 50 acres forming part of the 'Vipul World', which is even evident from the reply filed by the Senior Town Planner in appeal no. 1317 of 2019. He further contended that as per the affidavit dated 08.08.2019 filed by the Municipal Corporation, Gurugram, it is the responsibility of the promoter to maintain and upkeep the amenities till the same are formally transferred to the Municipal Corporation, Gurugram as per the provisions of the Act No. 8 of 1975 and terms of completion certificate dated 20.07.2018. The same facts have been reiterated in the reply filed by the Senior Town Planner in appeal no. 1317 of 2019.

20. He further contended that as per the terms and condition of the buyer's agreement and maintenance agreement which have not been challenged at all by the TRWA,

the maintenance services are to be managed by the promoter. The directions issued by the learned Authority are contrary to law as nobody can interfere in the terms and conditions of the agreement executed *inter se* between the parties. To support his contentions, he relied upon the case **DLF Universal Ltd. Vs. Director, Town and Country Planning Haryana and others (2010) 14 SCC 1**. He contended that reference of Section 11(4) (d) and (e) of the Act in the impugned order are misconceived and cannot be made selectively to only a part of the colony of the 'Vipul World'.

21. He further contended that the TRWA under the garb of the impugned order has forcibly and illegally taken over the possession of the project and the office of the promoter, which is even evident from the report of the Local Commissioner.

22. He further contended that by taking benefit of the order dated 02.05.2019, the TRWA cannot assail the same by filing the counter appeal. He further contended that various issues were involved in the present case, which have not been considered at all by the learned Authority. The project of the promoter is not 'on-going project' and was not required to be registered under the provisions of the Act. The Occupation Certificate was granted prior to the application of the rules and even the part completion certificate which was applied also stood granted later on. So, there was no requirement of

getting the project registered under the Act and the rules made thereunder and the project of the appellant was beyond the purview of the provisions of the Act. All these issues were not considered. With these pleas, learned counsel for the appellant pleaded that the impugned order is liable to be set-aside.

23. On the other hand, Sh. Farukh Khan, Advocate, learned counsel for the TRWA contended that the project in question was 'on-going project' as per the provisions of the Act, as the completion certificate was received only on 20.07.2018. He further contended that the project of M/s Vipul Ltd. in the name of 'Vipul World' admeasuring 150 acres, was developed in phases and subsequently completion certificate was granted for 'Tatvam Villas' admeasuring 57.9385 acres in 2018. He contended that even though the project of the promoter was not registered with the learned Authority, the provisions of the Act and the Rules made thereunder shall be applicable. The promoter cannot take benefit of Rule 2(1)(o) of the rules in view of the specific provisions of Section 3(1) of the Act. He further contended that the promoter was under a legal obligation to get its project registered with the learned Authority.

24. He further contended that 'Tatvam Villas' is gated community colony and it is an exclusive project. Even as per the buyer's agreement and maintenance agreement, the 'Vipul

World' is not a gated complex. All the services of 'Tatvam Villas' like water, sewage, drainage, electricity and power-backup are separate from 'Vipul World'.

25. He further contended that the terms and conditions of the buyer's agreement and maintenance agreement are one sided oppressive and unjustified, which are liable to be ignored. To support his contentions, he relied upon the case of **Pioneer Urban Land and Infrastructure Ltd. Vs. Govindan Raghvan (2019) 5 SCC 726.**

26. He further contended that as per Section 11(4) (d) of the Act, the maintenance has to be transferred to the association of the allottees. As per clause 18 of the buyer's agreement, the promoter was bound to handover the corpus funds to the Society as and when formed. Similarly, as per clause 29 in the maintenance agreement, the maintenance was also required to be handed over to the 'Residents Welfare Association'. But the promoter has not whispered a word with respect to the corpus funds/maintenance security.

27. Learned counsel for the TRWA further contended that the Civil Writ Petition No. 6921 of 2018 filed by the promoter only relates to the matter of Community Centre which is not the prayer in the present case. He further reiterated that 'Tatvam Villas' is a separate project and has its own separate part completion certificate (Annexure-D of

Appeal No. 238 of 2019) and separate Zoning Plan (Annexure R-1 page 10 of short reply filed by the senior town planner, Gurugram, in appeal no. 1317 of 2019). He contended that all the services are separate and there is nothing common between 'Tatvam Villas' and 'Vipul World'. Those are not even connected by land. 'Tatvam Villas' has its own separate Resident Welfare Association. The maintenance charges of the 'Vipul World' are different from what was being charged from the residents of 'Tatvam Villas'.

28. He further contended that the learned Authority had failed to correctly adjudicate upon the complaint filed by the TRWA on many issues. Number of issues were raised in the complaint with respect to the defects in the workmanship, quality or provisions of the services, major structural defects, deteriorating state of affairs of maintenance/essential services, seizures of IMFS/Maintenance security deposit, faulted drainage system, lack of electricity load and absence of infrastructure. The maintenance security to the tune of Rupees 23 crores is being illegally retained by the promoter and the residents of the colony even did not know if the money is still lying in the same account and what has been done to the interest accrued thereupon and the principal or if it has been siphoned off. He further pleaded that the interest accrued over this amount after the years runs into crores,

which was meant for the upkeep and maintenance of 'Tatvam Villas' but the promoter had miserably failed to provide basic infrastructure facilities to the residents. The TRWA has filed the complaint to seek reliefs of all the issues but the learned Authority has failed to adjudicate upon various issues and only gave the partial relief.

29. He further contended that as per the provisions of Order 41 Rule 24, this Tribunal can finally determine all the issues and there is no reason to remand the case to the learned Authority as the residents of Tatvam Villas are suffering from almost over a decade. He relied upon case ***Ashwin Kumar K. Patel Vs. Upendra J.Patel & Others AIR 1999 SC 1125.***

30. He is further contended that the maintenance charges being charged by the promoter were highly exorbitant and extra ordinary. Even as per the report of the Senior Town Planner, the promoter was required to provide the maintenance services on reasonable charges till the taking over of the same by the association of the allottees as per Section 11(4)(d) of the Act. The promoter has raised all the hurdles to disrupt the maintenance services and even did not recognise the association of the allottees (TRWA), which is a duly registered body and was required to be recognised by virtue of section 11(4) (e) of the Act.

31. With these contentions, learned counsel for the TRWA contended that the impugned order passed by the learned Authority may be modified and all the reliefs claimed by TRWA may be granted.

32. Learned counsel for respondent no. 3 contended that this Tribunal may pass the appropriate order as warranted by law.

33. We have duly considered aforesaid contentions, it is settled preposition of law that an order passed by the quasi-judicial authority must be speaking one, the reasons in support of the order are required to be disclosed firstly, to grant an opportunity to the person aggrieved to demonstrate that the reasons for returning the findings are erroneous. Secondly, the obligation to record reasons operates as a deterrent against the possible arbitrary action by the Authority invested with judicial powers. Mere, grant of an opportunity of being heard will not be enough the necessity to record reasons is even greater where the order is subject to appeal. The recording of reasons in support of a decision on the disputed claim ensures that the decision is not a result of caprice, whim or fancies but was arrived at after considering the relevant law facts and circumstances. The very requirement of giving reasons is to prevent, unfairness or arbitrariness in reaching the conclusion. The supply of reasons in support of the finding

also satisfies the basic principle that justice should not only be done; it should also appear to be done as well. The principle of natural justice also requires the reasons to be written for the conclusion arrived at. In fact the reasons are soul of the order passed by the ld. authority exercising the judicial powers. Where the order passed by the quasi- judicial authority is bereft of reasons, it cannot be sustained in the eyes of law. Reference can be made to the case **Kranti Associates Private Limited and another vs. Masood Ahmed Khan and ors. (supra)**.

34. Though ld. authority has passed the impugned order running into sixty pages. First forty one pages have been devoted to reproduce the facts. Ten pages have been devoted to mention the written contentions/submissions raised by the complainant (TRWA) and the promoter. The finding of the ld. authority starts from the page fifty three of the impugned order. The relevant part of the findings of the Ld. Authority reads as under:-

66. A perusal of the comparative analysis of both the contentions raised by the parties, it comes on surface that 'Tatvam Villas' comprising of 50 acres is a part of 'Vipul World' of 150 acres of land was constructed in the year 2010 onwards and at the moment, RWA is a registered society with 206 members. Since the matter has been agitated

before DTCP in a very patent manner that the maintenance charges should be reasonable and it should not be exorbitant in any manner. However, at the moment, the matter is sub-judice before the Hon'ble High Court in CWP no. 6921 of 2018 which is fixed for hearing on 10.07.2019.

*67. As such, it is advisable for the parties to wait till the final judgment of Hon'ble High Court over the issues involved and raised by the RWA. However, in the present case, the handing over the maintenance of the project to MCG by the builder/promoter is sine qua non as per section 11(4)(d) & (e) of the Act *ibid*. The respondent is to abide by the directions of the statutory enactment i.e. as per provisions of section 11(4) (d) & (e) of Real Estate (Regulation and Development) Act, 2016 which reads as under: -*

“Section 11(4) (d) & (e) The promoter shall-

(d) be responsible for providing and maintaining the essential services, on reasonable charges, till the taking over the maintenance of the project by the association of the allottees;

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

“68. Accordingly, both the parties have to wait till the final decision of the Hon'ble High

Court, till then the status-quo shall prevail and the provisions of law shall come into force immediately after the decision of the Hon'ble High Court. Both the parties are advised to pursue the matter before the Hon'ble High Court on the date fixed.

69. However, RWA is authorised to take care about their essential issues w.r.t. security, horticulture, power back up and garbage collection. However, the costs shall have to be borne by the RWA.

35. In fact, only in the aforesaid paras, the Id. Authority had returned the findings to dispose of the complaint. In para no. 66, the contentions of the parties have been summed up but the Id. Authority has not expressed any opinion or findings by itself. Only this fact is mentioned that the matter is sub-judice before the Hon'ble High Court in CWP No. 6921 of 2018. Sh. Farukh Khan, Advocate, Id. counsel for the TRWA has contended that the said writ petition was filed by the promoter against the order dated 24.01.2018 passed by the Principal Secretary Town and Country Planning, Department, Haryana only to the extent of the directions given in para nos. 10a, 10b, 10c, and 10d of the said order. He contended that these directions relate to the construction of unauthorised villa no. 52, construction of second gate, non-installation of solar water heater system and the construction of club instead of community centre. He further contended

that no other issue was sub-judice before the Hon'ble High Court.

36. The findings recorded by the ld. authority in para no. 67 of the impugned order render the impugned order self-contradictory. Ld. Authority has mentioned in this para that the handing over the maintenance of the project to Municipal Corporation, Gurugram, by the builder/promoter is *sine qua non* as per section 11 (4) (d) and (e) of the Act. Thus, as per these observations, the handing over the maintenance of the project to the Municipal Corporation, Gurugrma was a condition precedent but at the same time in para no. 69 the TRWA has been authorised to taking care about essential services with respect to the Security, Horticulture, Power Back Up and Garbage Collection, at their own costs. Mere, reproducing the statutory provisions of the section 11(4)(d) & (e) will also not substitute the requirements of supplying the reasons to arrive at any finding. Again, in para no. 68 of the impugned order the ld. Authority has mentioned that the parties have to await the final decision of the Hon'ble High Court till then the *status quo* shall prevail and provisions of law shall come into force immediately after decision of the Hon'ble High Court. The parties were advised to pursue the matter before the Hon'ble High Court. But in para no. 69, the TRWA has been authorised to take care of the security,

horticulture, power back up and garbage collection at their own costs without mentioning any reasons as to why these services are being handed over to TRWA. So, the impugned order passed by the Id. Authority is totally bereft of the reasoning and it cannot be ascertained as to what persuaded the Id. Authority to hand over the aforesaid essential services to TRWA particularly when they were ordered to maintain *status qua* and statutory provisions were to be made applicable after the decision by the Hon'ble High Court in CWP No. 6921 of 2018. This Tribunal has been deprived of to ascertain as to whether the directions given by the Id. Authority to hand over the aforesaid essential services to TRWA were justified or not. In view of the ratio of law laid down by the Hon'ble Supreme Court in **Kranti Associates Private Limited and another Vs. Masood Ahmed Khan & ors. (Supra)** such an unreasoned order cannot be sustained in the eyes of law.

37. Id. counsel for the TRWA has pleaded that instead of remanding the case to the Id. Authority, this Tribunal should itself decide all the issues between the parties. He has relied upon the case **Ashwani Kumar Patel Vs. Upendra J. Patel (Supra)**. We have duly considered this plea. In view of the fact that the impugned order is totally bereft of reasoning and is also self- contradictory. So, the case will require re-trial

which will not be possible at the appellate stage. In **Kranti Associates Private Limited and another vs. Masood Ahmed Khan and others (supra)**, the Hon'ble Apex Court after finding the impugned order to be without any reason held as under:-

“48. For the reasons aforesaid, we set aside the order of the National Consumer Disputes Redressal Commission and remand the matter to the said forum for deciding the matter by passing a reasoned order in the light of the observations made above. Since some time has elapsed, this court requests the forum to decide the matter as early as possible, preferably within a period of six weeks from the date of service of this order upon it.”

38. Similarly in case **state of Orissa vs. Chandra Nandi (supra)**, the Hon'ble Apex Court laid down as under:-

“8. Having heard the learned counsel for the parties and on perusal of the record of the case, we are constrained to allow the appeal, set aside the impugned order and remand the case to the High Court for deciding the respondent's writ petition afresh on merits in accordance with law.

9. The need to remand the case to the High Court has occasioned because from the perusal of the impugned order, we find that it is an unreasoned order, nor delat with any of the submissions urged by the parties and nor assigned any reason as to why it has allowed the writ petition and granted the reliefs to the writ petitioner which were declined by the Tribunal.

10. This Court has consistently laid down that every judicial or/and quasi-judicial order passed by the court/tribunal/authority concerned, which decides the lis between the parties, must be supported with the reasons in support of its conclusion. The parties, must be supported with the reasons in support of its conclusion. The parties to the lis and so also the appellate/revisionary court while examining the correctness of the order are entitled to know as to on which basis, a particular conclusion is arrived at in the order. In the absence of any discussion, the reasons and the findings on the submissions urged, it is not possible to know as to what led the court/tribunal/authority for reaching to such conclusion. (See *State of Maharashtra V. Vithal Rao Pritirao Chawan, Jawahar Lal Singh v. Naresh Singh, State of U.P. V. Battan, Raj Kishore Jha v. State of Bihar and State of Orissa v. Dhaniram Luhar.*)

11. The order impugned in this appeal suffers from the aforesaid error, because the High Court while passing the impugned order had only issued the writ of mandamus by giving direction to the State to give some reliefs to the writ petition (respondent) without recording any reasons.

12. We, are, therefore, of the view that such order is not legally sustainable and hence deserves to be set aside.

13. In view of the foregoing discussion, the appeal succeeds and is accordingly allowed. The impugned order is set aside. The case is remanded to the High Court for deciding the writ petition afresh, out of

which this appeal arises, for its disposal in accordance with law keeping in view the observations made above.”

39. In case **J. Bala Singh V. Diwakar Cole, & ors. 2017 (3) RCR (Civil) 85**, the Hon'ble Apex Court by referring the provisions of Order 41 Rule 23A of the code of civil procedure 1908 held that the Appellate Court can remand the case to the Trial Court when it finds that though Trial Court has disposed of the suit on all the issues but on reversal of the decree in appeal a re-trial is considered necessary by the Appellate Court.

40. Case **Ashwani K. Patel V. Upendra J. Patel (supra)** relied upon by the ld. counsel for the TRWA is quite distinguishable on facts. In that case, on the basis of interlocutory application filed by the plaintiff, the trial court found the plaintiff to be in permissive possession and held that the defendant could not interfere with the possession of the plaintiff. While dealing with the appeal, the High Court found the findings of the ld. Trial Court to be erroneous on appreciation of the documents available on record. In these circumstances, the Hon'ble Apex Court held that the entire material was available before the High Court. The Hon'ble High Court could have decided the appeal on merits. But in the case in hand as already mentioned the impugned order is totally bereft of reasons. Various substantial issues raised by

the parties have not been touched at all by the ld. authority and the case need re-trial in order to decide all this issues between the parties.

41. In the instant case, the complainant (TRWA) has raised as many as 23 issues and sought as many as 22 reliefs mentioned in para no. 8 of this order but none of these issues except the reliefs for handing over the maintenance of essential services to the complainant (TRWA) has been touched at all in the impugned order. The ld. Authority has not even tried to ascertain as to what matters were actually covered and were sub-judice before the Hon'ble High Court in CWP no. 6921 of 2018 filed by the promoter. On the one hand, it is being mentioned that the parties should maintain the *status quo* till the decision of the Hon'ble High Court and on the other hand, abruptly the maintenance of essential services with respect to the Security, Horticulture, Power Back Up and Garbage Collection were handed over to TRWA. In these circumstances, the only option before this Tribunal is to remand the case to ld. Authority for fresh decision in accordance with law as the re-trial of the case is required. As we have formed the opinion for remand of the case to the ld. Authority for fresh decision so, we refrain from touching the other contentions raised by ld. counsel for the parties on merits of the case.

42. Before parting with this order, it is pertinent to mention that the TRWA have taken over the aforesaid essential services without any execution of the impugned order. This Tribunal has directed the TRWA to file the affidavit of its president vide order dated 10.07.2019. As per the affidavit dated 30.08.2019 filed by Sh. Somesh Jawarani, the president of the TRWA, it is alleged that the essential services were taken over in terms of the impugned order dated 02.05.2019, in consultation with the grounds officials of the promoter. In the affidavit, the particulars of those ground officials are not disclosed. There is also no material on record to show that the said ground officials were competent and authorised by the promoter to hand over the services to TRWA. It is an admitted case that the TRWA has not filed any execution petition before the ld. Authority to execute the impugned order dated 02.05.2019 and to take over the aforesaid services. Thus, taking over of the services by the office bearers of TRWA is not in accordance with law. Rather, they have taken the law in their hand. For this act of the then office bearers/members of executive of TRWA whose names and particulars have been disclosed in the affidavit dated 23.11.2020 filed by Sh. Mukesh Mittal, the Vice-President of the TRWA, the promoter shall be at liberty to initiate the appropriate civil or criminal proceedings before the appropriate forum in accordance with law, if so advised.

43. It is further the admitted fact that now the TRWA is taking care of the essential maintenance services mentioned above for the last more than one and half years, it will not be desirable to put the clock back, rather it will cause the disruption of the maintenance services which will result in utter inconvenience and hardship to the residents of Tatvam Villas. So, the TRWA is allowed to carry on with these maintenance services as interim arrangement at its own costs as directed by Id. Authority in the impugned order dated 02.05.2019, however, it will be subject to the decision of the complaint by the Id. authority.

44. Thus, keeping in view of our aforesaid discussion, appeal no. 238 of 2019 filed by the promoter is hereby allowed and the impugned order dated 02.05.2019 passed by the Id. Authority is hereby set aside. The case is remanded to the Id. Authority for re-trial and fresh decision as per our aforesaid observations and in accordance with law. Consequently, the cross-appeal no. 1317 of 2019 filed by the TRWA stands dismissed.

45. However, the TRWA is allowed to take care of the essential services mentioned in the impugned order as interim arrangement at its own costs till the decision of the complaint by the Id. Authority.

46. The original judgment be attached with appeal no.238 of 2019 and the certified copy thereof be attached with appeal no.1317 of 2019.

47. The copy of this judgment be communicated to learned counsel for the parties/parties and the learned Authority.

48. File be consigned to the records.

Announced:
December 23rd, 2020

Justice Darshan Singh (Retd.)
Chairman,
Haryana Real Estate Appellate Tribunal,
Chandigarh

Inderjeet Mehta
Member (Judicial)

Anil Kumar Gupta
Member (Technical)

Rajni

M/s Vipul Limited
Vs.
Tatvam Residents Welfare Association
Appeal No.238 of 2019

Present: None.

Vide our separate detailed judgment of the even date, the appeal is allowed and the impugned order dated 02.05.2019 passed by the Id. Authority is hereby set aside. The case is remanded to the Id. Authority for re-trial and fresh decision.

However, the TRWA is allowed to take care of the essential services mentioned in the impugned order as interim arrangement at its own costs till the decision of the complaint by the Id. Authority.

Copy of the detailed judgment be communicated to learned counsel for the parties/parties and the learned Authority.

File be consigned to the records.

Justice Darshan Singh (Retd.)
Chairman,
Haryana Real Estate Appellate Tribunal,
Chandigarh

Inderjeet Mehta
Member (Judicial)

Anil Kumar Gupta
Member (Technical)

December 23rd, 2020
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