PROCEEDINGS OF THE DAY	
Day and date	Friday and 04.03.2022 (from 02:00 PM to 08:30 PM)
Complaint No.	CR/2785/2021 Case titled as Nidhi Singh V/S IREO Victory Valley Private Limited
Complainant	Nidhi Singh
Represented through	Bhupinder Pratap Singh, Advocate
Respondent	IREO Victory Valley Private Limited
Respondent represented through	S/Shri M.K Dang along with Garvit Gupta Advocates for respondent no.1 to 7 Shri Ashish Thakral, Secretary of the association for respondent no. 11 None for respondent no. 8, 9, 10 and 12.
Last date of hearing	21.01.2022

PROCEEDINGS

1. Application dated 07.02.2022 for placing on record additional documents submitted by counsel of the complainant. In this application a list of 68 nos. of conveyance deeds were given. As informed by the counsel for the complainant copy of 11 conveyance deeds were filed in the registry on 18.10.2021 and taken on record by the authority on 27.10.2021 proceedings, to have been executed after the order dated 24.11.2020 in complaint no. 3687 of 2020 titled ***Rakesh Sachdeva and Others Vs. KSS Properties and Others*** for registration of criminal complaint against the promoters on account of non-registration of the project.
2. Application under section 63 and 69 of the Act for remedial action against the promoter for violation of order dated 20.07.2021 is taken on record. Application on behalf of the complainant for interim order under section 36 and for commencement of penal proceedings under section 63 read with section 69 of the Act for violation of order dated 20.07.2021 in the present complaint and order dated 24.11.2020 in complaint no. 3687 of 2020 is taken on record.
3. The matter was taken up for detailed arguments on each of the relief and keeping in view the complexity of the matter it was decided that proceedings may be continued till conclusion of the matter even if proceedings are continued late in the evening.
4. The present complaint was filed on 15.07.2021 and registered as complaint no. 2785 of 2021. As per the records available, the complainant sent the copy of complaint along with annexures through speed post and the receipts for the same are placed on record. The complainant also sent the copy of complaint along with annexures vide email on 23.07.2021 which is also available on the file.

5. The registry of the authority also sent a notice for hearing with a copy of the complaint along with annexures through speed post to all the respondents. The tracking reports of the speed post are available on the file which shows the successful delivery of items. Registry has also sent the notice along with a copy of the complaint through email to the respondent at ivvpl@IREO.in, lalitgoyal@IREO.in, anupam.nagalia@IREO.in, kss.properties1@gmail.com, highresponsible.realtors@gmail.com, punit.monga@IREO.in, nitin.gupta@IREO.in, amarjeet.khadulia@IREO.in, secretarialgrgh@M/s Indiabulls.com and notice of hearing to the complainant at bhupender.legal@gmail.com. The same is shown to have been delivered on the above email addresses on 23.07.2021 as per the report available on the file. As such, the service of the notice is presumed to be complete.

6. The authority vide order dated 20.07.2021 directed the respondents to file reply within two weeks i.e., by 04.08.2021. On failure to file reply, on 27.10.2021, the respondents were directed to file reply within two weeks and a cost of Rs. 10,000/- was imposed on the respondents to be paid to the complainant. The respondents were given opportunity time and again to file reply which they failed. However, today during the course of hearing, the reply was filed by Sh. M.K. Dang on behalf of respondent no. 1 to 7 during proceedings and copy has already been supplied to the complainant through the counsel.

7. It was brought to the notice of the authority by the learned counsel for the complainant that even after giving last opportunity for filing reply, reply was not filed and now this reply is being filed today after nearly seven months and plea for covid relaxation, as ordered by the Hon'ble Supreme Court of India and Hon'ble Punjab and Haryana High Court is being taken by the learned counsel for the respondent. In this regard the counsel for the respondent submitted that the limitation period that in case where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. In the event the actual balance period limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply (Hon'ble Supreme Court of India order in Civil Original Jurisdiction Miscellaneous Application No. 21 of 2022 in Miscellaneous Application No. 665 of 221 in Suo Motu Writ Petition (C) No. 3 of 2020; In Re: Cognizance for Extension of Limitation with Miscellaneous Application No. 29 of 2022 in Miscellaneous Application No. 665 of 2021 in Suo Motu Writ Petition (C) No. 3 of 2020). The authority is of the view that if reply is to be accepted today then the opposite party needs to be compensated by the cost already imposed. The counsel for the complainant categorically stated that he has no objection if reply is accepted even without imposing cost and the reply of the respondents may be taken on record. Also, it is submitted that the counsel for the complainant has already received copy of the reply. Accordingly, the reply is taken on record without any new imposition of cost.

8. The reply on behalf of respondent no. 11 (R-11) i.e., M/s Victory Valley Condominium Owners Welfare Association was also submitted today by Shri Ashish Thakral, the Secretary of the association which was taken on record.

9. There are 12 respondents in this matter. Respondents no. 1 to 7 are represented by Sh. M.K. Dang and Sh. Garvit Gupta Advocates. No one appeared on behalf of respondents no. 8, 9, 10 and 12 in spite of the fact that the service of the notice on the said respondents is complete. They are accordingly proceeded ex-parte. On behalf of respondent no. 11 i.e., M/s Victory Valley Condominium Owners Welfare Association, Shri Ashish Thakral, Secretary of the association has put in appearance.

10. The complainant submitted that the respondent no. 1 (R1) is a company registered under the Companies' Act 1956 and is promoter of the subject project within the meaning of the Act. Further, it was submitted by counsel for the complainant that Sh. Lalit Goyal has been made respondent no. 2. It is alleged by the counsel for the complainant that he is the person who is behind IREO related group of companies, although, very smartly and cunningly he has kept himself out in the papers and from the records of the Ministry of Corporate Affairs, Government of India as he finds no mention on the records of IREO group of companies on the website of the Ministry. Also, it was alleged that he is the man behind the show and there is need of investigation regarding his role in these companies. As he has been made a party and also represented through common counsel for R-1 to R-7.

11. It was submitted by counsel for the complainant that Sh. Anupam Nagalia, the respondent no. 3, is the Chief Operating Officer of the promoter company. Accordingly, he is responsible for running the affairs of the company. In support of his submission the copies of the hypothecation deeds of project 'IREO VICTORY VALLEY' in favour of M/s India Bulls Housing Finance Ltd. were produced where he has signed on behalf of R-1, R-6 and R-7

12. The counsel for the complainant submitted that Sh. Bhupesh Bansal, the respondent no. 4, is one of the present directors of the promoter company and accordingly responsible for conducting the affairs of the company. Sh. Rajender Kumar Yadav, the respondent no. 5, is also one of the directors of the promoter company as per website of the Ministry of Corporate Affairs as submitted by the counsel for the complainant.

13. The Counsel for the complainant argued that the counsel for the respondents filed reply only on behalf of 1, 6, and 7. No case for dropping of other respondents can be made without specific authorization from them. Secondly, the said respondents have not joined proceedings despite notice to join proceedings and cannot be given the advantage of their own wrongs. Thirdly, Annexure C13 at page 394 refers – R2 and R3 have not denied their role in running the affairs of the promoter company. Besides, R3 is the authorized signatory on the mortgage deeds on behalf of all three promoter companies R1, R6, and R7 (Page 228 refers). Someone who has the authority to mortgage the entire project can't claim himself

not to be a necessary party. Respondents 4 and 5 are admittedly directors as per the information available on the Ministry of Corporate Affairs website. All respondents are therefore, necessary parties, in line with the mandate of section 69 of the Act as pressed for by the counsel of the complainant.

14. M/s KSS Properties Pvt Ltd and M/s High Responsible Realtors Pvt. Ltd. are respondent nos. 6 & 7 respectively and are the license holders/ developers in respect of the subject project. Accordingly, they fall within the ambit of definition of promoter as per the provisions of the Act.

15. M/s Quick Real Estate Pvt. Ltd., the respondent no. 8, is alleged to be a shell company by the counsel for the complainant. It was also alleged that this company was used by the promoter for taking club membership fee varying from Rs. 3.5 lacs to 7 lacs per home buyer. Sh. Punit Monga and Sh. Nitin Gupta, the respondent no. 9 and 10 respectively, are the shareholders having share of 50% each in M/s Quick Real Estate Pvt. Ltd. Both are the employees of IREO group as alleged by the counsel for the complainant and he also submitted that their e-mail addresses are punit.monga@IREO.in and nitin.gupta@IREO.in which clearly reflects their association with the IREO group. Sh. Sh. Nitin Gupta, the respondent no.10, was serving as treasurer in the erstwhile resident welfare association.

16. M/s Victory Valley Condominium Owner Welfare Association is the respondent no.11 in the present matter.

17. M/s Indiabulls Housing Finance Limited is the respondent no. 12 in the present matter. It is alleged by the counsel for the complainant that the entire project has been mortgaged by the promoters in 2016 itself in complete violations of the provisions of the Act. However, during the course of arguments, the counsel for the complainant agreed that his unit has been conveyed and is free from all encumbrances and as per section 11(4) (h) of the Act, if any such mortgage or charge is made or created then notwithstanding anything contained in any other law for the time being in force, it shall not affect the right and interest of the allottee who has taken such apartment as in the present case.

18. The counsel for the complainant submitted that the complainant had purchased a unit bearing no. A/2104 from the original allottee in the subject project and a conveyance deed bearing no. 6434 dated 05.02.2021 was executed in her favour. However, these changes were not made in the RWA's record as the RWA of allottees was working on the directions of the directors/office bearers of the promoter company.

19. On the other hand, the counsel for the respondent no. 1 to 7 has argued that this complaint filed by a single allottee is totally mala-fide, baseless and just to harass and pressurize respondent no. 1 to 7. The complaint is a misuse of the process of law in as much as the project has already been completed and more than 680 families are residing therein and more than 590 conveyance deeds have been executed. In fact, the conveyance deed of the unit of the complainant was registered way back and the possession was handed over to the original allottees vide letter dated 26.04.2019. As per the recital of the conveyance deed, no claims

of the original allottees remained towards the promoter. After the sale of the said unit to the original allottees by the promoter, the complainant with her eyes open and after seeing the project and the subject unit purchased the same from the original allottee. He further submitted that even the original allottee had never raised any objection or claims against the promoter and the complainant has no right to make the false claims made against the promoter in the present complaint. As per clause 3, 12, and 15 of the conveyance deed, all works were done to the satisfaction of the allottees.

20. In rebuttal the counsel for the complainant has argued that it may be appreciated that a complaint under section 31 of the Act for violation of the provisions of the Act may be filed by any aggrieved person. The authority may take cognizance of the violation of the provisions of the Act even if raised by a non-allottee. The complainant on the other hand, is admittedly an allottee. Secondly, the R11 association after being duly constituted as a body of allottees on 02.02.2022 has adopted the pleadings of the complainant in substance by filing its reply and endorsing the reliefs claimed. Thirdly, promoters can't be absolved of the statutory violations being committed by them either before or after registration of conveyance deeds, the self-serving conditions put in such deeds not-withstanding.

The reliefs sought by the complainant were argued at length as under:

I. To file a criminal complaint against the respondents (R1 to R7) with the competent magistrate for their failure to register the project as per the provisions of the Act despite repeated orders of this authority.

21. The counsel for the complainant pressed for penalizing the respondents (R1 to R7) for offences committed by them under section 59, 60, and 61 of the Act and earmark a percentage of the penalties as deemed fit by this authority for the benefit of the subject project.

22. The complainant counsel has alleged that the promoter has not got the project registered in spite of the fact that the directions were issued by this authority. In pursuance of the directions of this authority, the officers of the engineering branch of this authority visited the project site and it was transpired that there were two different occupation certificates granted by the Director, Town and Country Planning, Haryana, Chandigarh in respect of the towers mentioned therein vide memo no. ZP-358/SD(BS)/2016/14990 dated 25.07.2016 and memo no, ZP-358-Vol.-I/ SD(BS)/2017/24532 dated 28.09.2017 respectively. It is pertinent to note that the first occupation certificate was granted on 25.07.2016 i.e., before coming into force of the Act of 2016 and second occupation certificate was granted on 28.09.2017. It may be presumed that the application for grant of occupation certificate dated 28.09.2017 would have been submitted before the competent authority before 28.07.2017 i.e., coming into force of the Haryana Real Estate (Regulation and Development) Rules, 2017 and a window of three months was given for applying for registration in such form as prescribed by the Haryana Rules of 2017.

23. The counsel for the respondent no. 1 to 7 has argued that the project does not fall within the ambit of definition of on-going projects as defined under rule 2(o) of the rules of 2017.

24. The authority observes that the occupation certificate for the part project was granted on 28.09.2017 and going strictly by the definition of on-going project provided in rule 2(o) that part of the project is exempted from registration as that part of any project as per rule 2(o)(ii) is out of ambit of on-going project for which part completion/completion, occupation certificate or part thereof has been granted on or before publication of these rules. These rules were published on 28.07.2017 whereas part occupation certificate for part of the subject project was granted on 28.09.2017. Accordingly, the part of the project for which occupation certificate was granted on 25.07.2016 is not on-going project as per the above quoted provisions.

25. Naturally, keeping in view the abovementioned dates and provisions of the rule 2(o) of the Haryana Rules of 2017, it becomes clear that the part for which occupation certificate was granted on 28.09.2017 subsequent to the coming into force of the Haryana Rules of 2017 i.e., 28.07.2017 was not exempted from the registration.

26. However, it is a matter of fact that within two months of coming into force of the Haryana Rules of 2017, the part OC for the subject project was granted by the competent authority. But the project is still not complete and the development works and other amenities have not been completed before coming into force of the provisions of this Act. Considering the above facts, certainly, the registration would have given a clear picture of the subject project as to what development works are still pending and what community amenities and facilities and other infrastructure requirements were lacking in the said project as the occupation is in respect of buildings and completion is in respect of project. It needs to be considered that the portion of the buildings which have been granted occupation certificate by the competent authority only after six basic amenities i.e., road, water, sewerage, electricity, storm water and horticulture are certified to be complete. There may be various amenities, community facilities commercial facilities, parks, other infrastructural requirements, etc. to be provided as per layout plan are not considered while granting occupation certificate for towers but these are essentially required to be completed before completion certificate is granted.

27. It is pertinent to mention over here that the purpose of registration of on-going project is to take stalk of the situation as to what part of the project has been completed and what part of the project is still left to be completed. This helps allottees to know as by what time facilities as per the sanctioned lay out plan/building plan will be completed by the promoter.

28. The promoter was liable to register that part of the project atleast with the Haryana Real Estate Regulatory Authority and application was to be made to interim authority within three months of coming into force of the Act i.e.,

01.05.2017. No such application for registration of the project has been shown to have made or produced. Accordingly, the promoter is guilty for not registering the project but keeping in view the fact that within two months of the publication of the Haryana Rules, 2017 the occupation certificate was obtained in respect of the part of the subject project and the responsibility to give possession to the allottees within two months of grant of occupation certificate is obvious so that the allottees are not in suspense as to by what time the possession of their unit would be given. Keeping in view the fact that in the subject project, all roads have been laid, sewer lines and storm water drains have been provided, water supply system is in place, streetlights are also in place, the infrastructure of the project has been laid which was concurred by both the parties and also the secretary of the association, which is respondent no. 11. But still many things remains to be provided requiring substantial expenditure. (Page 138-141 of the complaint refers).

29. The authority is of the view that although, the matter regarding interpretation of rule 2(o) of Haryana Rules, 2017 is pending before the Hon'ble Punjab and Haryana High Court regarding validity of taking out of the projects in the on-going category by way of exemptions provided in rule 2(o) of Haryana Rules, 2017 and requirement of registration of projects coming within the exemption of rule 2(o) of Haryana Rules, 2017 have been stayed. But in the present case for the part of the project as has been explained above comes within the ambit of registration under the Act and even after allowing exemptions in the definition of on-going projects. Accordingly, that part of the project for which occupation certificate was received after publication of the said rules, should have been registered. Further, in this case the registration has also become essential as the detailed information is required by this authority for disposal of many complaints which are received in this authority w.r.t the subject project. In this case substantial amount is yet to be spent for the completion of the project in question so in case, the promoter fails to complete the infrastructural work then either the competent authority or association of allottees or in any other manner as provided under section 8 of the Act action has to be taken to carry out the remaining development works which require resources. These resources would have been available in case the project is registered and 70% amount is deposited in the separate RERA account which could only be used for the land cost and construction cost. Due to non-registration of registerable part of the project no such account was opened by the promoter. Accordingly, the amount for completing the remaining works will have to be arranged from the promoter either from the sale of unsold inventory or from his own resources.

30. The counsel for the complainant has argued that blatant violation of the orders of the authority for registering the project – orders dated 24.11.2020 in 3687 of 2020 and 20.07.2021 in the present complaint refer.

31. Therefore, penal proceedings are concluded regarding non-registration of the project by the promoter for violation of section 3 of the Act which is punishable

under section 59(1) of the Act and accordingly, a penalty of Rs. 25 lacs is imposed on the promoter company.

32. Regarding launching of criminal proceedings under section 59(2) the counsel for the respondent submitted that it was never the intention of the respondent promoter to violate directions of the authority issued in this regard but because of COVID-19 situation the promoter was not able to make an application as large number of documents and voluminous information is to be supplied to the authority for registration of the project. The counsel for the respondent further assured that within one month the application for registration of that part of the project which is registrable as per present Haryana Rules, 2017 shall be made. In case of further violation, the authority may take serious view. The emphasis of the authority in the initial years of implementation of the Act has been focused on compliance of registration requirements. Accordingly, the authority directed that one more opportunity be given to the promoter to make application for registration of that part of the project which is registrable as per present Haryana Rules, 2017 (which have not been declared ultra-virus so far by the Hon'ble Punjab and Haryana High Court and matter is pending therein) within one month otherwise the authorised officer of the authority is directed to file a complaint before the magistrate of competent jurisdiction for taking cognizance under section 59(2) of the Act as despite the repeated directions by the authority to register the subject project, the respondent promoters have failed to comply with the said directions which is a violation of section 3 of the Act and punishable under section 59(2) of the Act ibid. Shri Sumeet Nain, Engineer Executive of the authority, is authorized to file a criminal complaint on behalf of this authority and hire the services of an advocate/public prosecutor, if required, in case application for registration is not made within one month. The respondent promoter is also directed to submit record of all allottees in the performa of the DPI within one month.

33. Furthermore, an affidavit shall be submitted by the respondent no. 3 who is the COO of the promoter's company and responsible for running day to day affairs of the company or in case, respondent no. 3 is not the COO then any authorized representative /key managerial functionary duly authorized by the Board in its meeting to submit the requisite information required for registration.

34. As the promoter has failed to complete the project as no completion certificate has been issued and has also failed to get the project registered; in that eventuality the account of the promoter in which the sales consideration of already sold unit is being received is freezed till further orders of this authority and promoter is restrained to withdraw any amount from the said account. As this project is registrable and three accounts need to be opened, out of which RERA account where 70% amount is deposited can only be used for construction and land cost. Here in this case such account has not been opened. The authority has left with no other option but to freeze the above account till information is made available to this authority.

II. **To order prohibition of sale or creation of third party interest in any shape or form in any property of the subject project including apartments, shops, community buildings, school land or any other spaces, constructed or otherwise, by the respondents (R1 to R12) or anyone acting on their behalf until such time the obligations in terms of this complaint including payment of monies due are discharged by the respondents to the satisfaction of this authority, or until such other time as the authority may deem fit in the circumstances.**

35. The authority vide its orders dated 20.07.2021, while exercising its power under section 36 of the Act had restrained the promoter from selling of the unsold units in the subject project. In compliance of the orders of this authority, the Engineer Executive visited the subject project on 04.08.2021 and a notice w.r.t restraining of sale of unsold units in the subject project was pasted in the office of the builder/ promoter. A detailed report in this regard has also been submitted on 24.08.2021 which has been taken on record.

36. It was alleged by the counsel for the complainant that the respondent promoters have not registered the project but continue to engage in sale without being visited with penal consequences and further requested that Sub-Registrar, Badshahpur may be directed not to register conveyance deeds until the dues of the respondent promoters to R11 are cleared. The promoters should further be directed to deposit a sum of Rs. 100 crore with the authority to secure the sums due to the R11 association in light of the facts and circumstances of the case. The counsel for the complainant contended that the R11 association has a charge by virtue of section 19 of the Haryana Apartment Ownership Act, 1983 for unpaid dues against the apartments. He further submitted that the directions issued to the Sub Registrar for prohibiting registration of sale would therefore, be in line with the said section and will further the mandate of section 3 of the Act which essentially is "no registration no sale". The complainant alleged that the promoters continue to sell units in the project through big resellers like M/s Evinos Builders Limited and M/s Indiabulls Commercial Credit Line Limited (Pages 33 to 37 of the additional documents filed on 7.02.2022 refer), who are not allottees in the true sense of the term and are only holding the units to sell to other buyers. Conveyance is still being done by the promoters to the end buyer. The authority must take cognizance once this information is brought to its notice.

37. The respondent promoters are also liable for penalties under section 59, 61, 63, and 69 of the Act. It is imperative that the authority requisitions the record of all sales carried out since 24.11.2020 when the order for registration of criminal complaint against the promoters, for non-registration of the project, was first made by the authority. It is imperative that the respondent promoters are held accountable for the monies collected by them in terms of conveyance deeds referred in the application for additional documents dated 07.02.2022.

38. However, it was alleged by the counsel for the complainant during the course of hearing that even after the restraining order of this authority, still sales are being made by the promoter. The properties have been given/allocated to M/s

Indiabulls Housing Finance Ltd. who are their financer and M/s Indiabulls Housing Finance Ltd. is selling these properties and conveyance deed is being executed by the promoter. Additional documents filed by the complainant vide application dated 07.02.2022 on pages 33-37 reflect bulk inventories in the name of two entities M/s Evinos Builders Ltd and M/s Indiabulls Commercial Credit Limited. The counsel for the complainant alleges that these entities are now selling the inventories and conveyance deeds are being registered in violation of order dated 20.7.2021 in the present complaint and order dated 24.11.2020 in complaint no. 3687 of 2020. The authority restrained the promoter for further sales in the project with effect from 20.07.2021. The conveyance deeds submitted by the complainant provides date of execution of the conveyance deeds which are post 20.07.2021 but these have been found to be based on the builder buyer agreements much earlier to this date. Accordingly, the sales have taken place prior to 20.07.2021. The complainant was unable to submit any proof w.r.t the sales after words. Although, he submitted a fresh list of conveyance deeds without any copy where the guilt of the promoter is established beyond doubt.

39. Keeping in view the fact that serious allegations have been made but requisite proofs to substantiate the allegations are not on record. The authority keeping in view, the interest of the allottees and the fact that infrastructural work are pending in the subject project for completion apart from other dues, the authority thinks it appropriate that an inquiry under section 35(2) of the Act the instituted in the affairs of the promoter

(i) To ascertain whether any sales have been made after restraining the promoter on 20.07.2021 and whether the conveyance deeds submitted by the complainant and also the units mentioned in the list of conveyance deeds submitted on 07.02.2022 have been sold post the restraining orders.

(ii) To ascertain whether that no unsold inventory as existed on 20.07.2021, has been put to sale either directly or indirectly through any other entity.

(iii) The list of unsold inventories as on 20.07.2021.

(iv) The list of sold inventories as on 20.07.2021 along with details of buyers, builder buyer agreements, sale considerations, etc.

(v) The details of resources of the promoters from where the cost of pending works and dues to the resident welfare association could be recovered.

(vi) The dues payable by the promoter to the resident welfare association.

(vii) Details of loans and advances given with copy of accounts.

(viii) A report regarding resources generated by respondent no. R8 and expenditure incurred/ funds diverted to the promoter.

(ix) Role of Sh. Lalit Goyal in the IREO Group of Companies be ascertained.

III To order the respondents (R1 to R7), jointly and severally to deposit the cost of pending works with this authority, with withdrawal being subject to completion of works to the satisfaction of this authority.

40. The attention of the authority was drawn towards the fact that a sum of Rs. 32 crore is required to complete the pending works in the subject project. The complainant in this regard has placed on record a "Technical Due Diligence Report" for the Victory Valley Condominium Owners Welfare Association dated February 2021 prepared by the M/s Cushman & Wakefield. In the said report (Page no. 138 to 141), estimated cost for pending infrastructure works at the subject project is mentioned. Further, the counsel for the complainant drew attention of the authority towards the fact that this Victory Valley Condominium Owners Welfare Association was the association having erstwhile governing body members of the employees of the promoter and NOT ALLOTTEES. The counsel for the complainant has argued that this factum may be ascertained from the list of allottees filed with additional documents on 07.02.2022.

41. Regarding the background under which this report was prepared, it was submitted by the counsel for the complainant that this Victory Valley Condominium Owners Welfare Association was to take up only the maintenance work whereas major works which were pending for completion of the project were outside its ambit. Accordingly, to clearly delineate the scope of maintenance work and incomplete infrastructure work in the subject project, this report was prepared. The report was attached with the complaint and the copy of the complaint was sent to the respondents.

42. The promoters are also directed to deposit the cost of incomplete development works and payment of dues to the resident welfare association in a separate RERA account to be opened while registering the project.

IV To order the respondents (R1 to R7), to complete the pending woks in a time bound manner and obtain completion certificate from the competent authorities or in the alternative exercise powers under section 8 of the Act to take over the project and order completion of works by a competent body or authority.

43. The counsel for the respondent no.1 to 7 on this point submitted that the development works in the subject project are complete and the report by a third party carries no meaning when the authority has also appointed local commission in the other case bearing no. 3687 of 2020 titled as Rakesh Sachdeva vs M/s KSS Properties w.r.t the same project. The plea taken by the learned counsel for the respondent no. 1 to 7 was vehemently opposed by the counsel for the complainant as the report has been got prepared by the erstwhile resident welfare association which consisted of the employees of the promoter itself from a reputed third party which is normally involved in preparing such type of report and the local commission report is on some specific points and is not a comprehensive one. The local commission's report dated 14.12.2020 in Cr No. 3687 of 2020 has also been perused by the authority which is relevant to some

extent in this case and the conclusion of the local commission report is reproduced below which clearly shows that there are deficiencies in the subject project:

> *The site of the project is visited physically, and the observations are based upon the actual construction at site and described further :*
>
> 1. *Occupation certificate for all the towers has been granted by DTCP Haryana but some internal and eternal patches are unfinished in Tower-A, B, C, D18, D16 and D22 i.e. plaster and paint where unsold inventory is left. Further all the services are provided as per the sanctioned plan.*
> 2. *Secondary fire staircase in the tower was made mandatory in the year 2017 by Director, Fire Services, Haryana and the work for secondary fire case was started but till date it is not completed in all towers.*
> 3. *As on date an ultimate load of 10421 kw and partial load of 1008 kw is sanctioned vide memo no. CH-2/SE/C/Sol-221 dated 13.2.2017 by DHBVN. The work for 33 kv switching station is just started and laying of cables is in progress./The main entrance rom 60 meter road is fully operational whereas two entrances from 24 meter sector road are constructed but not operational from 24 meter sector road as the road is not constructed. These two entrances are operational from internal roads of the project.*
> 4. *The convenient shopping is under construction for which occupation certificate has not been granted. Further no occupation certificate has been granted for the nursery schools.*

44. Although, it is matter of fact that the aforesaid LC report was confined to fire safety, electrical infrastructure & lift and lobby etc., whereas the list of incomplete infrastructural work has already been produced before the authority as per technical due diligence report.

45. The authority observed that the reply submitted by the respondent is very casual and general in nature where no comments whether the works mentioned from page 138 to 141 of the report have actually been completed on the site or not, has not been given.

46. The authority after going through the technical due diligence report and hearing arguments of both the parties has arrived at the conclusion which have been recorded earlier also that the reply of the respondent is general in nature without any specific averment on the incomplete infrastructure work that have been pointed out in the "Technical Due Diligence Report".

47. The department of Town and Country Planning Government of Haryana grants license for development of a colony/ real estate project under the Haryana Development and Regulation of Urban Areas Act, 1975 and Rules framed thereunder. The license for development of the colony is issued for a fixed period and after expiry of the license period there is provision/ practice of renewal of licenses and there is no time limit prescribed/ fixed for completion of the project. In case of plotted colonies/ real estate projects part completion of part of the project is granted from time to time on completion of specified internal

development works. There are very few cases where the promoters have obtained completion certificate of a project. Leaving open the completion of project is causing hardship as well as resentment among allottees as they are not sure as by what time the infrastructural facilities, community facilities and commercial facilities as per the approved layout plan will come on ground. There are projects where licenses were issued decades ago have not obtained completion certificate and the community facilities and amenities have not been provided even now after lapse of years together and there is no certainty as by what time these would be provided for which conclusive proof is obtaining completion certificate. Similar is the position in case of group housing projects, rather position is little worse as in case of group housing projects the practice of occupation certificate is followed which is granted under the Haryana Building Code and is only in respect of towers/ buildings found habitable with no concern for community and commercial facilities. The license is granted under the Haryana Development and Regulation of Urban Areas Act, 1975 and there is no provision of granting OC but provision of granting part CC/CC for the project. The OC is granted for the building whereas part CC/CC granted for the project. There are large number of cases observed by the authority where individual towers have been granted OC and the buildings in the whole project have been granted OC and also registration obtained by the promoters from interim RERA in respect of such towers and most of the part of the common areas and community facilities have been left out. The authority observes that in case of group housing projects part CC be granted for that part of the project where common areas have been developed, infrastructure have been provided to serve the buildings for which OC has been granted. There have been projects where builder has obtained OC for all the towers but number of infrastructures works in the project including roads in some of the areas, regular water supply, electric supply and sewerage systems have not been laid. The allottees are living in miserable conditions. There are no connectivity with the main roads. Open spaces and green areas are not developed in the project, but OC is granted for the towers and there is no binding on the builder to complete the lacking infrastructural facility in a time bound manner. The authority observes that licenses should not be granted in those areas where during the initial licensing period, the agencies responsible for external development services are not in a position to provide the same. Similarly, without initially having 24 meter road connectivity licenses shall not be granted as there are many such projects where there is no likelihood in near future for such connectivity and even in some cases this connectivity will never be available although planned on the papers.

48. As in rare cases promoters obtain completion certificate the authority observes that after the OC for all the towers in a group housing project has been granted under Haryana Building Code a time limit be prescribed for obtaining completion certificate of the project so that allottees comes to know as by what time infrastructural and common areas will be developed and community and commercial facilities as per layout plan shall be provided.

49. The authority is of the considered view that it is an obligation of the respondent promoter to complete the subject project. Accordingly, the respondent promoter is directed to complete the subject project and obtain the completion certificate w.r.t the subject project. The respondent promoter has to declare the timeline for completion of project and obtaining the completion certificate.

V **To order the respondents (R1 to R7), jointly and severally, to deposit their share of common area maintenance charges and other dues with R11, with a direction to keep the said monies deposited with this authority in an interest-bearing deposit for and on behalf of R11, until such time R11 is handed over to a duly elected body of resident owners.**

50. The counsel for the complainant has argued that R1-R7 admittedly owe a sum of at least Rs.15,51,74,557/- (the sum as of 31.03.2020) in CAM and other dues to the association, R11 (Annexure C9, audited financial statement of R11 for the year ending 31.03.2020 at page 383 refers). The counsel for the complainant averred that respondents R1 to R7 may, therefore, be directed to pay their dues as of today to the association (R11). It is the obligation of the promoter to pay common maintenance charges to the association of allottees in respect of unsold inventory.

51. It is apparent from the audited financial statement of R-11 association that a sum of R. 15,51,74,557/- was due to the association as on 31.3.2020 from the promoter against CAM against unsold inventory and other dues (page 383 of the complaint refers). These dues were payable by the promoter to the Association as part of its obligation and it is accordingly ordered.

52. The counsel for the complainant further argued that the project is admittedly not complete as of today and the erstwhile governing body of R11 was not an "association of allottees" (Page 265-268 refer) within the meaning of the Act and did not even conform to its own bye laws (Page 273 clause 5.1 and 5.2 refer). It was a body admittedly comprising of employees of the respondent company who were neither allottees/owners nor residents (Page 265-268 refer). The counsel for the complainant further submitted that the authority has jurisdiction to decide as to whether or not the association R11 when first formed was an "association of allottees" within the meaning of the Act. The authority cannot deem the project to be handed over to such a body on the date of deed of declaration i.e., 09.02.2018 (Annexure C7 – page 246), especially when the project was and continues to be incomplete to this day. It is of import to note that as many as 200 units were admittedly unsold (page 332-358 details of unsold units) on the date of DoD i.e., 09.02.2018. The counsel of the complainant stressed that the association of allottees was formed in the true sense only on 02.02.2022 (Annexure R11-3 refers).

53. The counsel for the respondent no. 1 to 7 argued that the affairs of the subject project were taken by respondent no. 11 which was independent body duly registered under the applicable provisions of law. The matter raised in the present complaint were also raised before the District Registrar, Firm & Societies

who appointed administrator vide order dated 06.10.21 and fresh elections have already been held. Moreover, the promoter did not commit any illegality in mortgaging part of the project and clear title of the unit of the complainant and unit have been conferred upon the respective allottees.

54. At length the discussion were held and while normally the liabilities payable by the promoter before handing over to the association of allottees remain recoverable from promoter and it is his obligation under the Act if such outgoings/ liability are before such transfer but in the present case, it is evident from the bare perusal of page 265 to 268 of the complaint and the additional documents filed by the complainant which includes details of allottees filed under rule 26(2) of the Haryana Development and Regulation of Urban Ares Rules, 1976 by the promoter. It was argued by the counsel for the complainant that it is clear that the erstwhile RWA was not an association of allottees and, therefore, no project handover within the meaning of the Act could have happened to such an association. The outgoings/ liabilities are after transfer of possession to the association of allottees as per the deed of declaration filed and hence, are liable to be recovered as per the provisions of Haryana Apartment Ownership Act and Haryana Apartment Ownership Rules. Even on the day of filing of the deed of declaration a sum of Rs. 3.54 crores was admittedly due from the promoters to the association (pg. 371 of the complaint refers)

55. The authority observes that as per the deed of declaration, the buildings were transferred to the association of allottees/RWA and the repair & maintenance was taken over by the association but if there are defects either w.r.t the structure or workmanship, the same will have to be rectified by the promoter on its own cost up to five years of obtaining occupation certificate. Further, a dispute has also been raised that heavy amount has been spent by the erstwhile governing body of resident welfare association for which the current governing body may investigate and if there is any criminality on the part of the erstwhile governing body, the appropriate civil or criminal action may be taken by the current governing body of the association. The rights and contention of the parties with regard to the validity of erstwhile governing body of R-11 association are left open to be decided by the lawful authority may be such as the District Registrar of Firms and Societies, Gurgaon or the Director Town and Country Planning, Haryana in whose office these documents are filed by the promoter after a specified period of obtaining occupation certificate.

56. The deed of declaration is filed with the registrar and also with the competent authority i.e., Director, Town and Country Planning, Haryana. The present association has been recognised by the District Registrar Firms and Societies, Gurgaon against the same registration no. of the erstwhile association. Any determination regarding the erstwhile association being lawful or not may be raised before the District Registrar Firms and Societies, Gurgaon. It also transpired during proceedings that matter is also pending in the Civil Court as informed by the counsel for the complainant. Accordingly, the complainant did not press for any action by the authority in this regard. The matter regarding

handing over maintenance of common areas to the erstwhile association which is alleged to not to be the resident welfare association as per the Haryana Apartment Ownership Act, (as none of the governing body member of the erstwhile association was an allottee but employees of the promoter company) may be raised by the complainant before the Town and Country Planning to initiate action against the promoter/ license holder for acting against the provisions of Haryana Apartment Ownership Act, Rules and Bye-laws made thereunder.

VI **To order the respondents (R1 to R10), jointly and severally to refund the entire corpus of club membership fees collected by them to R11, with a direction to keep the monies deposited with this authority in an interest-bearing deposit for and on behalf of R11, until such time R11 is handed over to a duly elected body of resident owners.**

57. The complainant has alleged that R-8 (Quick Real Estate Pvt. Ltd.) is a shell company found by the promoters of the IREO group and two of its employees are shareholders of 50% each in the said shell company. It is alleged by the counsel for the complainant that R8 had demanded and recovered a sum of approximately of Rs. 45 crores in the name of club membership fees. Further, it has been submitted that under the garb of membership nearly four times the cost of construction and land has been recovered which is against the condition of the license. However, in its audited financial statements the cost of land and cost of the construction of the community buildings is shown as Rs. 10,50,00,000/-. Further, the complainant has annexed the audited financial statement of R8 as annexure C-15 to support his claim.

58. On this, the counsel for the respondent no. 1 to 7 submitted that the respondent no. 8 is a separate legal entity, and the promoter has no direct concern with the same. The respondent no. 2 to 5 have been wrongly and illegally impleaded as such and they have no personal role at all in the matter. Their names are liable to be deleted. Furthermore, the club membership charges have been paid to respondent no. 8 as per rules and regulation of the club. It was optional for the complainant to become a member or not. Moreover, the club forms part of the FAR of the promoter and the promoter had every right to transfer the same as per law laid down by the apex court in ***DLF Vs. State of Haryana and others***. All developers have right to transfer the schools, dispensaries and community sites to third party and the complainant have no locus standi to object.

59. The counsel for the complainant on the other hand has argued that as much as Rs. 7,08,000/- (Annexure R11-4 (Colly) pages 15-18) was collected from every resident owner towards club membership by the shell company R8, which is nothing but an alter ego of the promoters companies run by their own employees, Nitin Gupta (nitin.gupta@IREO.in) and Punit Monga (punit.monga@IREO.in) who are also shareholders of 50% each in the said company. This is a mass fraud orchestrated on the resident owners by the promoters. The said company recovered a sum of approximately Rs. 45,00,00,000/- in the name of club membership fees. In its audited financial statements, the cost of land and the cost

of the construction of community buildings is Rs. 10,50,00,000/- (Page 433 para 30 and page 456 para 29). The said company has failed to give an account of the monies collected till date (Annexure C13 at Page 394 of complaint and Annexure R11-5 at page 19 of reply of R11 refers). Further, information furnished under Rule 26(2) of rules framed under the Haryana Development & Regulation of Urban Areas Rules, 1976 shows that until 31.03.2020, R8, had paid R1 a sum of only Rs. 49,28,230/- (page 37 of additional documents filed by the complainant on 07.02.2022 refer).

60. Counsel for the complainant further submitted that the obligation cast upon the promoter under section 11(4)(f), 17(2) read with section 2(n)(vii) and the law laid down by the Supreme Court in ***DLF v Manmohan Lowe and Bikram Chatterjee & Ors Vs. Union of India & Others*** is to handover the community buildings to the association of allottees. It is more so, when it has admittedly recovered more than 4 times the cost of land and construction for these buildings from the resident owners.

He drew attention of the authority towards para 123 in Bikram Chatterjee & Others v Union of India & Others (2019) 19 SCC 161 is extracted below:

> *"123. It is clear that common areas as provided under section 17 have to be ultimately handed over to the Association of Allottees or the competent authority as the case may be. Thus, any sub-lease, alienation or transfer effected by the promoter of the common areas as defined in RERA and otherwise reserved under the plan shall be void and inoperative."*

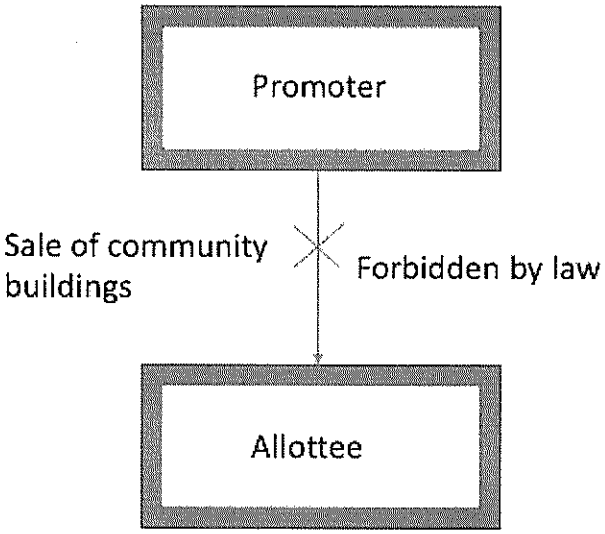
And further invited attention of the authority towards DLF Limited v Manmohan Lowe & Ors (2014) 12 SCC 231 - para 58 of judgment reads thus:

> *"Cost not on apartment owners*
>
> *58. We have found that the colonizer is legally obliged under section 3(3)(iv)(a) of the Act to construct at his own cost the community and commercial facilities stipulated therein and an agreement has to be entered into by the colonizer with the DTCP under the Development Act by which the colonizer is prohibited by law from recovering the cost of providing those facilities from the apartment owners".*

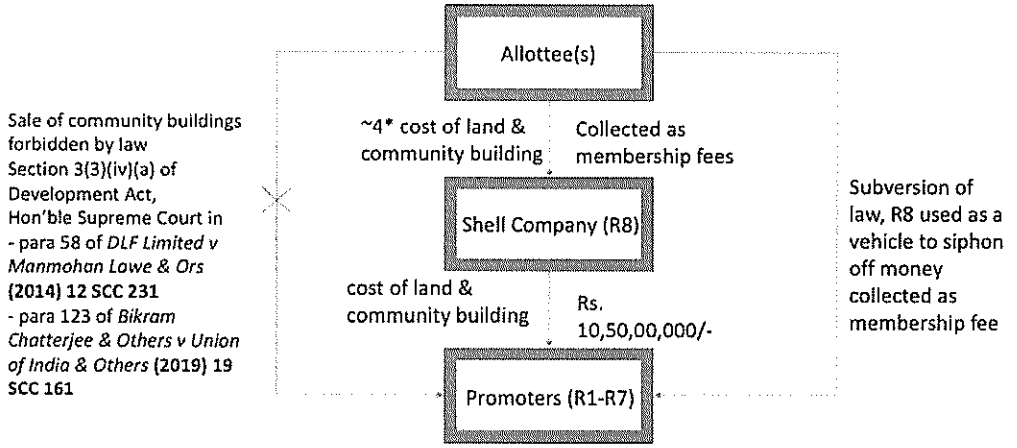
Attention of the authority was also drawn towards other relevant sections of the Haryana Development and Regulation of Urban Areas Act, 1975:

> *"Section 3(3)(a)(iv) – to construct at its own cost, or get constructed by any other institution or individual at its cost, schools, hospitals, community centres & other community buildings on the lands set apart for this purpose....."*
>
> *"LCIV-A clause 1c) – The owner shall at his own cost construct the primary-cum-nursery school, community buildings/dispensary and first aid center on the land set apart for this purpose....."*
>
> *"LCIV-A clause 1e) – The owner shall not be allowed to recover any amount whatsoever on account of internal community buildings from the flat holders/plot holders....."*

61. The counsel for the complainant submitted that the unfair trade practice perpetrated by the respondents in respect of the community buildings is depicted below:



62. The complainant further submitted that what could not be done directly has been accomplished by the promoters indirectly as shown below. This unfair trade practice has to be nipped in the bud.



63. He further contended that it is of import to note that neither R8 nor its officers R9, and R10 have entered appearance despite notice to contest the claim of the complainant or R11 association. The relief claimed qua the community buildings therefore, needs to be allowed on this ground alone. While R1, R6, and R7 claim that the community buildings have been lawfully sold for consideration but they have not annexed any document whatsoever to prove their claim.

64. As the respondent R8, R9 and R10 have failed to file reply and also to put in their appearance before the authority their defence is struck off. The authority after considering the documents placed on record and after hearing both the parties observers that there are three community sites in the subject project namely

community building – I; community building – II and community building – III which have been mentioned in the deed of declaration as recreation facility/club-I, recreation facility/club-II and recreation facility/club-III having an area of 910.719 sq.mtrs.; 370.253sq.mtrs. and 385.655 sq.mtrs. respectively. The FAR for these community buildings have been consumed out of the available /sanctioned FAR of the promoter. As gathered from the Directorate of Town and Country Planning, Haryana, there is a requirement of providing one community building on achieving population of 10 thousand. Below this population there is no requirement as per norms to provide community building. If a builder is desires to provide community building, then he has to provide the same from which sanctioned FAR. Here in this project also the promoter has used FAR in these buildings out of his sanctioned FAR and there is no requirement to hand over the same to the resident welfare association. The common areas are defined in the section 3(f) of the Haryana Apartment Ownership Act, 1983 which provides as under:

> *3(f) "common areas and facilities"* ***unless otherwise provided in the declaration or lawful amendments thereto,*** *means.-*
>
> *(1) the land on which the building is located;*
>
> *(2) the foundations, columns, girders, beams, supports, main walls, roofs, halls, corridors lobbies, stairs, stair ways, fire escapes and entrances and exits of the building;*
>
> *(3) the basements, cellars, yards, gardens, parking area and storage spaces;*
>
> *(4) The premises for the lodging of janitors or persons employed for management of the property;*
>
> *(5) installation of central services such as power, light, gas, hot and cold water, heating, refrigeration, air conditioning and incinerating;*
>
> *(6) the elevators, tanks, pumps, motors, fans, compressors, ducts and in general all apparatus and installations existing for common use;*
>
> ***(7) such community and commercial facilities as may be provided for in the declaration; and***
>
> *(8) all other parts of the property necessary or convenient to its existing maintenance and safety or normally in common use;*
>
> ***(emphasis supplied)***

65. From the above it is quite clear that it is left to the promoter to declare the community and commercial facilities in the declaration filed at the time of filing deed of declaration. Keeping in view the above facts if the builder has not declared community facilities/ club in the declaration to be the common area then he has no responsibility to transfer the same to the association of allottees. This matter was already settled in the judgement of Hon'ble Supreme Court of India in Civil Appeal No. 10930 of 2013 (Arising out of Special Leave Petition (Civil) No. 34275 of 2009, decided on 10.12.2013; MANU/SC/1255/2013) wherein it was held that

> *43. We are also of the view that the High Court has committed an error in directing the DTCP to decide the objections of the apartment owners with regard to the declaration made by the colonizer. The Competent Authority is defined under section 3(i) of the Apartment Act. Section 11(2) provides for filing of declaration in the office of the Competent Authority. Section 24A of the Act prescribes penalties and prosecution for failure to file a declaration and Section 24 B permits the prosecution only with the sanction of the Competent Authority. In a given case if the developer does not provide common areas of facilities like corridors, lobbies, staircases, lifts and fire escape etc. the Competent Authority can look into the objections of the apartment owners but when statute has given a discretion to the colonizer to provide or not to provide as per Section 3(f)(7) of the Apartment Act the facilities referred to in Section 3(3)(a)(iv) of Development Act, in our view* ***no objection could be raised by the apartment owners and they cannot claim any undivided interest over those facilities except the right of user****. In the instant case the apartment owners have raised no grievance that they are being prevented from using the community and commercial facilities referred to in Section 3(3)(a)(iv) of Regulation Act, but they cannot claim an undivided interest or right of management over them*
>
> ***(emphasis supplied)***

66. Although after coming into force of the Real Estate (Regulation and Development) Act, 2016 in its entirety on 01.05.2017, the position has changed regarding common areas but keeping in view the fact that the license for this project was granted much before coming into force of the Real Estate (Regulation and Development) Act, 2016 hence the common areas in this project seems to be governed by the provisions of the Haryana Development and Regulation of Urban Areas Act, 1975 and Rules made there under and provisions of the Haryana Apartment Ownership Act, 1983. Even the state government of Haryana vide memo no. Misc-2295/2021/1775 dated 25.01.2021 issued policy directions under section 83(1) read with its proviso of the Act of 2016, regarding treatment of community and commercial facilities falling in license colonies as under:

> ***B. Treatment of community and commercial facilities falling in licensed colonies:*** *In order to resolve the situation arising out of conflicting definition of common areas in the RERA Act, 2016, vis-à-vis the Haryana Apartment Ownership Act, 1983, for all intents and purposes, the common areas shall be governed by the definition as provided under the special Act of 1983 ibid in force in the State since 28.09.1983 and Rules of 1987 framed thereunder. Any contradictory provision/ definition an existing in the RERA Act, 2016 shall be considered to be redundant for all facts and purposes.*

67. **Regarding the allegation of the counsel of the complainant that cost of community building (club) has been recovered from the allottees in indirect manner for something what cannot be done directly.** He has alleged unfair trade practice by the promoter as mentioned in paragraph 57, 58 and 59 above. The specific attention of the authority was drawn towards the judgement of Hon'ble Supreme Court of India mentioned therein.

68. The relevant portion of the judgement is reproduced herein for ready reference:

Cost not on Apartment owners:

39. We have found that the Colonizer is legally obliged under Section 3(3)(a)(iv) of the Act to construct at his own cost the community and commercial facilities stipulated therein and an agreement has to be entered into by the Colonizer with the DTCP under the Development Act by which the Colonizer is prohibited by law from recovering the cost of providing those facilities from the apartment owners. The operative portion of the agreement executed by the colonizer reads as follows:

j) That only convenient shopping sufficient for requirement of the Group Housing will be allowed which shall be approximate one shop per one thousand persons, covering a maximum area of 200 sq. ft. per shop.

k) That adequate educational, health, recreational and cultural amenities to the norms and standards provided in the respective Development plan of the area shall be provided.

The owner shall at his own cost construct the primary-cum-nursery school, community building/dispensary and first aid centre on the land set apart for this purpose, or if so desired by the Govt. shall transfer to the Govt. at any time free of cost land thus set apart for primary cum nursery school, community building/dispensary and first aid centre, in which case the Govt. shall be at liberty to transfer such land to any person or instruction including a local authority on such terms and conditions as it may lay down.

o) That the owner shall abide by the provisions of the Haryana Apartment and Ownership Act, 1983.

p) That the responsibility of the ownership of the common areas and facilities as well as their management and maintenance shall continue to vest with the colonizer till such time the responsibility is transferred to the owners of the dwelling units under the Haryana Apartment and Ownership Act, 1983.

40. Section 3(3)(a)(iv) of the Development Act read with the above-mentioned clauses in the agreement would indicate that ownership of the portion of the land set apart for the common areas and facilities referred to therein vest with the Colonizer so also the obligation at his own cost to provide those facilities in the land set apart for the said purpose. The Colonizer cannot recover cost of land or the amounts spent by him for providing those facilities from the apartment owners. It is for the said reason that clause 7 of Section 3(f) of the Apartment Act has not made it obligatory, on the part of the Colonizer to include the community and commercial facilities in the declaration. If the colonizer includes the same within the declaration, then Section 6 of the Apartment Act will kick in, consequently, the apartment owners would be entitled to the undivided interest in respect of the community and commercial facilities provided therein without bearing the cost incurred by the colonizer in

purchasing the land and the cost of construction. In our view, the colonizer could not have included the community and commercial facilities referred to in Section 3(3)(a)(iv) of the Development Act, because the same is meant for the benefit of the entire colony, not merely the flat/apartment owners in one part of the colony since they form part of the lay out plans duly approved, which takes in plotted area and the group housing societies area as well.

69. From the contents of the complaint regarding charging cost of the community facilities indirectly as mentioned in the para no. 57, 58, and 59 above, the condition of license and further agreement in pursuance to license granted under the Haryana Development and Regulation of Urban Areas Act, 1975 and the Rules made thereunder and the Haryana Apartment Ownership Act, 1983 alleged to have been violated by the promoter, the complainant is advised to approach the Director, Town and Country Planning Department, Haryana, Chandigarh for necessary action in this regard.

VII To order the respondents (R1 to R7) to keep deposited with this authority, the entire RFMS deposit along with interest accrued thereon in an interest-bearing deposit for and on behalf of R11, until such time R11 is handed over to a duly elected body of resident owners.

70. The counsel for the complaint also drew the attention of the authority to the fact that a principal amount of Rs. 18,32,45,758/- as of 31.03.2020 was admittedly collected by R11 (erstwhile body comprising of employees of the promoter) from all resident owners towards RFMS (Annexure C9 at page 380 refers). The total saleable area in the project is approximately 24,00,000 square feet so this deposit should ideally have been Rs. 24,00,00,000/- calculated at the rate of Rs. 100/- per sqft. This entire corpus has been utilized/misappropriated by the promoters and their employees who happened to be presiding over the affairs of the R11 association until 02.02.2022. It was submitted by the counsel for the complainant that while criminal prosecution has already been initiated for the offences under the IPC it is incumbent upon the promoters to restore this corpus to the R11 association and may accordingly be ordered by the authority. The obligation of the promoter to handover the completed project to an association of allottees under the Act also includes the obligation to restore the security deposit collected to run the association. Handover with empty coffers is no handover. The counsel for the complainant has emphasized that authority has powers under section 34(f) to enforce compliance of the provisions of the Act and those powers must be exercised to further the ends of justice.

71. The authority directs the inquiry officer/ auditing firms/ fact finding team to find out as how much RFMS has been collected from the allottees and whether the same has been used for the purpose for which it was collected and what amount of RFMS is transferrable now to the residential welfare association.

VIII To order the respondents (R1 to R10) to settle all their pending dues towards their vendors and pay all dues for and on behalf of R11, until such time R11 is handed over to a duly elected body of resident owners.

72. The respondents are obligated to settle all there pending dues towards their vendors. Although no specific details of pending dues have been given by the complainant except the dues payable to R11 which will be settled by the inquiry officer/ auditing firm. The promoter is directed to clear the dues within one month of receipt of inquiry report after acceptance by the authority. The attention of the promoter is invited towards provision of section 11(4)(g) and (h) which is reproduced below and accordingly directed to comply with the provision.

> *11 Functions and duties of promoter: -*
> *(4) The promoter shall—*
> *(g) pay all outgoings until he transfers the physical possession of the real estate project to the allottee or the associations of allottees, as the case may be, which he has collected from the allottees, for the payment of outgoings (including land cost, ground rent, municipal or other local taxes, charges for water or electricity, maintenance charges, including mortgage loan and interest on mortgages or other encumbrances and such other liabilities payable to competent authorities, banks and financial institutions, which are related to the project):*
> *Provided that where any promoter fails to pay all or any of the outgoings collected by him from the allottees or any liability, mortgage loan and interest thereon before transferring the real estate project to such allottees, or the association of the allottees, as the case may be, the promoter shall continue to be liable, even after the transfer of the property, to pay such outgoings and penal charges, if any, to the authority or person to whom they are payable and be liable for the cost of any legal proceedings which may be taken therefor by such authority or person;*
> *(h) after he executes an agreement for sale for any apartment, plot or building, as the case may be, not mortgage or create a charge on such apartment, plot or building, as the case may be, and if any such mortgage or charge is made or created then*

73. Accordingly, promoter is directed to settle all dues in view of provisions contained in section 11(4)(g) and (h) and an affidavit to have settled the dues be submitted in the registry of the authority within 3 months.

74. M/s Victory Valley Condominium Owner Welfare Association is the registered residential welfare association of the IREO Victory Valley Condominium Owners. It was alleged by the counsel for the complainant that the earlier governing body of the RWA was truly not representing the apartment owners in the project as

the same was constituting employees of the promoters and NOT ALLOTTEES within the meaning of the Act.

75. It was further submitted that vide order dated 06.10.2021, the District Registrar, Firms & Societies, Gurugram appointed an administrator to conduct the membership drive and hold elections for the governing body of the association. The counsel for the complainant further submitted that in the said order of District Registrar, Firm & Societies, it was mentioned that the tenure of the erstwhile governing body expired in July, 2018 and the body, therefore, had no jurisdiction to run the affairs of the society. The operative part of the order of District Registrar, Firms and Societies issued vide endorsement no. DR/DIC/GGM/1665 dated 06.10.2021 is reproduced as under:

> *"After detailed discussion/deliberation on the issues and as per records of this office it is clear that Victory Valley Condominium Owners Welfare Association, IREO Victory Valley, Sector 67 Gurugram was registered under the HRRS Act, 2012 in July, 2016 and the tenure of the governing body of association as per bye-laws is two years which has been expired in year 2018 and now the governing body has no power to take any decision. The counsel of management also agreed during the hearing for appointment of Administrator to conduct the election of the governing body of association.*
>
> *In view of the above, in exercise the powers conferred under sub section 10 of section 39 of HRRS Act, 2012 Sh. G.R. Khetarpal, Director, Ministry of Health & Family Welfare, Govt. of India (Retd) R/o H.No. 846, Ground Floor, Sector 9, Urban Estate, Near Kataria Market, Gurugram – 122001, is being appointed as Administrator to manage the day to day affair of association and to conduct the fresh elections of Governing Body of Victory Valley Condominium Owners Welfare Association, IREO Victory Valley, Sector 67, Gurugram strictly as per the provisions contained in the Bye-laws/HRRS Act/rules, 2012 and SOP guidelines issued by the Govt/District Administration w.r.t. Covid-19, within a period of 3 months.*
>
> *The Administrator is further directed that the election process must be completed following the process of videography and the election be conducted strictly as per the provisions contained by the Bye Laws/HRRS Act/Rules 2012 and guidelines issued w.r.t. Covid-19 by the Govt. and District Administration".*

76. Furthermore, the elections of the governing body have now been held on 02.02.2022 under the supervision of administrator appointed by the District Registrar of Firms and Societies, Gurgaon and approval of the duly elected governing body has been issued under section 33 and rule 19 of Societies Act, 2012 made thereunder vide memo no. 2022-02-0000191 dated 04.02.2022.

77. The newly elected governing body has taken over the charge and is expected to discharge its functions as per its bye-laws and will recover the dues as per the powers vest in it as per the bye-laws provided in the Haryana Apartment Ownership Act, 1983 and the Haryana Apartment Ownership Rules, 1987.

78. The authority is of the considered view that it is a matter of fact that the promoter got the residential welfare association constituted and the same was declared in the deed of declaration and the dues of the association of allottees/RWA can be

recovered under the Haryana Apartment Ownership Act and Haryana Apartment Ownership Rules and byelaws provided therein or the association of allottees of which the present complainant is also a member may pursue any other remedy, if available. If any bungling of funds has taken place that civil and criminal remedy may be resorted to against the erstwhile members of the governing body of the association.

IX. To order the respondents (R1 to R7), jointly and severally, to refund to R11 the entire monies paid by R11 to DHBVN in the form of penalties for its failure to install a permanent electricity connection for the subject project and also excess monies paid by R11 on account of higher billing rate for a temporary connection, with a direction to keep the monies deposited with this authority in an interest bearing deposit for and on behalf of R11, until such time R11 is handed over to a duly elected body oof resident owners.

79. The complainant has alleged that R11 is paying a penalty of approximately Rs. 1 lac per month for supplying electricity using a temporary connection. The total over a 3-year period would amount to Rs. 36 lacs.

80. In this regard, the complainant has annexed a "Technical Due Diligence Report" for the subject project prepared by the M/s Cushman & Wakefield as annexure C-4 (Page no. 83). Further, it is alleged that R11 is paying an additional sum of approximately Rs. 5 lac per month in electricity bill as a result of higher cost of per unit of consumption on temporary electricity connection, totalling to Rs. 1,80,00,000/-for the last 3 years. (Page no. 83).

81. In response to this, the counsel for the respondent no. 1 to 7 submitted that they have applied for electricity connection and for which they are pursuing. The authority is of the view it is the responsibility of the respondent to provide electricity connection and it is to be followed till permanent electricity connection is made available. The responsibility shall have to be discharged by the promoter to make arrangement of electricity supply on the same rate as are charged by the DHBVN and penalty/surcharge, cost of diesel for providing electricity through generators on account of the temporary electricity connection (which is not sufficient to bear the load of the society) etc , if any, shall be borne by the promoter.

82. The complainant has not given any details as what refund are to be made to M/s Victory Condominium Owners Welfare Association i.e., R11, the monies paid by R11 to DHBVN in the form of penalties for its failure to install a permanent electricity connection for the subject project and also excess monies paid by R11 on account of higher billing rate for a temporary connection.

83. The inquiry officer/ auditing firm/ fact finding team may workout this amount. The respondent promoter version be also taken into consideration. Regarding directions to keep the monies deposited with this authority in an interest bearing deposit for and on behalf of R11, until such time R11 is handed over to a duly elected body of resident owners, it is observed by the authority that newly elected body has taken over and the amount due on this account against the

promoter payable to R11 shall be paid by the promoter after the receipt of report and accepted by the authority within 3 months.

X **To order the respondents (R1 to R7), jointly and severally, to refund to R11 the entire monies spent on repairs and maintenance by R11 till date, with a direction to keep the monies deposited with this authority in an interest-bearing deposit for and on behalf of R11, until such time R11 is handed over to a duly elected body of resident owners.**

84. The complainant has not given any details in this regard accordingly the inquiry officer/ auditing firm/ fact finding team may workout the quantum of any money on account of repairs and maintenance by R11 till date if payable by the promoter. If any such amount is payable by the promoter same shall be paid by the promoter within 3 months after receipt of the report and accepted by the authority.

XI **To order the respondents (R1 to R7), jointly and severally, to refund to R11 the entire monies spent on purchasing water from an external source, with a direction to keep the monies deposited with this authority in an interest-bearing deposit for and on behalf of R11, until such time R11 is handed over to a duly elected body of resident owners.**

85. The complainant has not given any details as on what basis the refund to R11 is admissible in respect of monies spent on purchasing water from external source. No details have been given regarding the monies spent by R11 in this regard. The promoter is responsible to provide permanent water supply arrangement and same is chargeable as per HUDA/ MCG rates.

86. The inquiry officer/ auditing firm/ fact finding team may workout this amount. The respondent promoter version be also taken into consideration. Regarding directions to keep the monies deposited with this authority in an interest bearing deposit for and on behalf of R11, until such time R11 is handed over to a duly elected body of resident owners, it is observed by the authority that newly elected body has taken over and the amount due on this account if any against the promoter payable to R11 shall be paid by the promoter after the receipt of report and accepted by the authority within 3 months.

XII **To order the respondents (R1 to R7) to refund to R11 at least 50% of the CAM charges collected by R11 till date from the resident owners, with a direction to keep the monies deposited with the Authority in an interest-bearing deposit for and on behalf of R11, until such time R11 is handed over to a duly elected body of resident owners.**

87. The complainant has not given any cogent reason for this relief as why to refund to R11 atleast fifty percent of the CAM charges collected by R11 till date from the resident owners. Newly elected governing body has already taken over the functioning of the M/s Victory Valley Condominium Owners Welfare Association and there is no reason as to why to keep this monies deposited with the authority.

XIII To order the respondents (R1 to R10) to convey/formally handover all the common areas including the three community buildings to R11.

88. The common areas are defined in the section 3(f) of the Haryana Apartment Ownership Act, 1983 which provides as under:

> *3(f) "common areas and facilities" **unless otherwise provided in the declaration or lawful amendments thereto**, means.-*
> *(1) the land on which the building is located;*
> *(2) the foundations, columns, girders, beams, supports, main walls, roofs, halls, corridors lobbies, stairs, stair ways, fire escapes and entrances and exits of the building;*
> *(3) the basements, cellars, yards, gardens, parking area and storage spaces;*
> *(4) The premises for the lodging of janitors or persons employed for management of the property;*
> *(5) installation of central services such as power, light, gas, hot and cold water, heating, refrigeration, air conditioning and incinerating;*
> *(6) the elevators, tanks, pumps, motors, fans, compressors, ducts and in general all apparatus and installations existing for common use;*
> ***(7) such community and commercial facilities as may be provided for in the declaration; and***
> *(8) all other parts of the property necessary or convenient to its existing maintenance and safety or normally in common use;*
>
> ***(emphasis supplied)***

89. The definition of common areas and facilities is dependent on the declaration or lawful amendment thereto as per above definition given in the Apartment Ownership Act, 1983 which commences with the words "common areas and facilities" unless otherwise provided in the declaration or lawful amendments thereto. Accordingly, the common areas are declared in the deed of declaration filed by the promoter within specified period after obtaining occupation certificate. The complainant has not specifically mentioned as which common area as declared in the deed of declaration has not been handed over to respondent R11 i.e., M/s Victory Valley Condominium Owners Welfare Association.

90. Further as per 3(f)(7) it is provided that **such community and commercial facilities as may be provided for in the declaration** are part of the common areas and facilities and it is quite clear that it is left to the promoter to declare the community and commercial facilities in the declaration filed at the time of filing deed of declaration.

91. Although after coming into force of the Real Estate (Regulation and Development) Act, 2016 in its entirety on 01.05.2017, the position has changed regarding common areas but keeping in view the fact that the license for this project was granted much before coming into force of the Real Estate (Regulation and Development) Act, 2016 hence the common areas in this project seems to be

governed by the provisions of the Haryana Development and Regulation of Urban Areas Act, 1975 and Rules made there under and provisions of the Haryana Apartment Ownership Act, 1983. Even the state government of Haryana vide memo no. Misc-2295/2021/1775 dated 25.01.2021 issued policy directions under section 83(1) read with its proviso of the Act of 2016, regarding treatment of community and commercial facilities falling in license colonies as under:

> ***B. Treatment of community and commercial facilities falling in licensed colonies:*** *In order to resolve the situation arising out of conflicting definition of common areas in the RERA Act, 2016, vis-à-vis the Haryana Apartment Ownership Act, 1983, for all intents and purposes, the common areas shall be governed by the definition as provided under the special Act of 1983 ibid in force in the State since 28.09.1983 and Rules of 1987 framed thereunder. Any contradictory provision/ definition an existing in the RERA Act, 2016 shall be considered to be redundant for all facts and purposes.*

92. It was submitted by the complainant that there are three community sites in the subject project namely community building – I; community building – II and community building – III which have been mentioned in the deed of declaration as recreation facility/club-I, recreation facility/club-II and recreation facility/club-III having an area of 910.719 sq.mtrs.; 370.253sq.mtrs. and 385.655 sq.mtrs. respectively. The FAR for these community buildings have been consumed out of the available /sanctioned FAR of the promoter. The authority hereby make a reference of the matter to the Director, Town and Country Planning Department, Haryana, Chandigarh for giving clarification in this regard whether community building can be or shall be handed over to the association of allottees w.r.t the subject project, particularly in light of fact where such community buildings have been constructed out of sanctioned FAR.

93. The complainant has not given any details as to what common facilities transferrable to resident welfare association have not been developed by the promoter and mentioned in the deed of declaration.

94. The authority hereby directs the promoter to transfer the common areas and facilities as per the deed of declaration filed under the provisions of the Haryana Apartment Ownership Act, 1983 and Rules and Bye-laws made thereunder. Within one month if some or all of these have not been transferred earlier to the M/s Victory Valley Condominium Owners Welfare Association.

XIV To order the respondents (R1 to R7) to allocate at least 35 sqm of usable parking space for two independent car parking as per the sanctioned plan.

95. As per the statement of account as on 15.11.2017 in respect of the unit of complainant, parking charges of Rs. 7 Lac have been shown to have paid to the promoter. The complainant in his complaint submitted that the complainant discovered to her shock and surprise that two parking spaces allocated for the Apartment of the Complainant is also violative of the sanctioned plan, which provides for 35 sqm of parking space in the basement. Under the Haryana Building Code this space should be 1.5 equivalent car space (ECS), i.e., 48 sqm,

one ECS being 32 sqm for basement. Be that as it may, the respondents have not even provided sanctioned 35 sqm of space in that the two parking spaces are one behind the other in a constricted space between foundation pillars such one car cannot be removed unless the other is removed first. Parking the car in the constricted space getting in and out of the car is a cumbersome experience every time.

96. The authority after consulting department of town and country planning observes that to meet the parking requirements, a general principal of making provision @ 1.5 times of main dwelling units is required to be provided. Further for the purpose of calculations area norms for each ECS/ PCU have been prescribed depending upon the location of purposed parking as the same is provided at basement level, stilt level or even at open surface level with a further proviso that at least 50 percent parking spaces shall be covered parking spaces. The norm for basement parking for 1 ECS is 35 sqm (at the time of approval of this project), 30 sqm for 1 ECS for stilt parking and 25 sqm for 1 ECS parking at surface ground level. In the BBA there is no mention of area of car parking. Only two car parking spaces have been alleged to have been allotted to the complainant. The complainant failed to produced copy of the allotment letter/BBA issued to the original allottee where the size of car parking space has been specified. From a similar builder buyer agreement in the same project, it is gathered that number of parking spaces are mentioned not the size.

97. The equivalent car space i.e., 35 sqm for basement is for the purpose of calculation of total parking requirements in the basement which include individual parking spaces as well as general circulation space, margin for structural elements, and for manoeuvrability, turning radius, etc. Individual parking space is never calculated on the basis of equivalent car space which is a concept use for gross parking requirements taken collectively. Accordingly, the authority observes that there is no ambiguity in allotment of parking space. The parking space allotted is an integral attachment with the unit and it cannot be treated in isolation or sold separately. There is no violation of the sanctioned plan in allotment of parking space to the complainant. Although the problem faced by the complainant is genuine and if some solution could be worked out to the satisfaction of complainant it would be a welcome step. Keeping in view the individual problem of the allottee the resident welfare association may accommodate him, and alternate parking space may be allotted to him.

98. The complainant has not given any details regarding any variation in the parking provided in the sanctioned plans and parkings actually provided in the basement and on surface. Regarding saleability of parkings in the basement in the projects where licenses were issued before coming into force of Act, 2016, the authority has already decided that the sale of such parkings shall be governed as per provisions of builder buyer agreement.

XV To penalize the respondents (R1 to R7) for offences committed by them under section 59, 60, and 61 of the Act and earmark a percentage of the

penalties as deemed fit by this authority for the benefit of the subject project.

99. This issue has been dealt in detail in relief no. 1 above.

100. The authority also observes that license no. 244 of 2007 dated 26.10.2007 issued in favour of M/s High Responsible Realtors Pvt. Ltd. and license no. 103 of 2011 dated 07.12.2011 issued in favour of M/s KSS Properties Private Limited and M/s High Responsible Realtors Pvt. Ltd. whereas the sales have been made/ builder buyers agreement executed by M/s IREO Victory Valley Pvt. Ltd., Registered Office at 305, 3rd floor, Kanchan House, Karampura Commercial Complex, New Delhi – 110015 and Corporate Office at IREO Campus, Sector – 59, Gurgaon – 122011, Haryana (India) without any authorisation from Director Town and Country Planning or without any legal capacity or without obtaining BIP permission. The matter be referred to Director Town and Country Planning for information and further necessary action.

101. The M/s MKPS & Associates, Chartered Accountants, 804, 8th floor, Arunachal Building, 19 Barakhamba Road, New Delhi -110001 an empanelled firm to carryout inquiry/ audit/ fact finding in the affairs of the promoter is appointed to make an inquiry in relation to affairs of the promoter on the issues specified in these proceedings in various paras under section 35(1) of the Act, 2016. The firm entrusted this task shall also audit the accounts of the project whether some diversions of funds have taken place. The authority hereby directs the inquiry officer/auditing firm/ fact finding team to submit its fact-finding report to the authority within two months. The remuneration of Rs. 5 Lacs is fixed for conducting this inquiry payable to the firm assigned the work.

102. The report be examined by the planning branch and if violations are noticed the matter be placed before the authority for initiating further action as per provisions of law. Copy of the report may also be sent to the complainant and respondent no. 11 with a liberty to them to join as party in the penal proceedings against the promoters.

103. Matter disposed of accordingly. Detailed order will follow.

Vijay Kumar Goyal
Member
04.03.2022

Dr. K.K. Khandelwal
Chairman
04.03.2022