

**REAL ESTATE REGULATORY AUTHORITY,
HIMACHAL PRADESH**

In the matters of :-

Complaint No. HPSOCTA11180008

1. Sanjay Batra son of Sh. B.K. Batra, Flat no. 103, A-1, Omaxe Parkwood
Near Homeland City Big Bazaar, Tehsil Baddi, District Solan, H.P. -
173205

.....Complainant

Versus

Omaxe Parkwood, Near Homeland City Big Bazaar, Chakkan Road,
Baddi, Himachal Pradesh 173205 having **registered office** at Shop no.
19B, First Floor, Omaxe Celebration Mall, Sohna road, Gurgaon,
Haryana -122001 and having **corporate Office** at Omaxe House, 7 Local
Shopping Centre, Kalka Ji, New Delhi, Delhi (110019)

.....Non-Complainant/ Respondent

COMPLAINT NO. RERAHPSOCTA01190010

2. Rajesh Kumar Bali son of Kulbhushan Bali, resident of House no. 364 A,
Gandhi Nagar, Opposite Peer Baba, Gandhi Nagar, Jammu 180004

.....Complainant

Versus

Omaxe Parkwood, Near Homeland City Big Bazaar, Chakkan Road,
Baddi, Himachal Pradesh 173205 having **registered office** at Shop no.
19B, First Floor, Omaxe Celebration Mall, Sohna road, Gurgaon,



Haryana -122001 and having **corporate Office** at Omaxe House, 7 Local Shopping Centre, Kalka Ji, New Delhi, Delhi (110019)

Complaint no. RERAHPSOCTA01190013

3. Preeti Pandey daughter of Vijay Bakshi, resident of Flat no. 501, Gulmohar C, Omaxe Parkwood, Near Homeland City Big Bazaar, Tehsil Baddi, District- Solan, H.P. - 173205

Versus

Omaxe Parkwood, Near Homeland City Big Bazaar, Chakkan Road, Baddi, Himachal Pradesh 173205 having **registered office** at Shop no. 19B, First Floor, Omaxe Celebration Mall, Sohna road, Gurgaon, Haryana -122001 and having **corporate Office** at Omaxe House, 7 Local Shopping Centre, Kalka Ji, New Delhi, Delhi (110019)

Complaint no. RERAHPSOCTA01190012

4. Sachin Gupta son of Ram Babu Gupta, House no. 148, Phase 1 ward, Housing Board Colony, Village- Billanwali, Tehsil Baddi, District- Solan, H.P. - 173205

Versus

Omaxe Parkwood, Near Homeland City Big Bazaar, Chakkan Road, Baddi, Himachal Pradesh 173205 having **registered office** at Shop no. 19B, First Floor, Omaxe Celebration Mall, Sohna road, Gurgaon, Haryana -122001 and having **corporate Office** at Omaxe House, 7 Local Shopping Centre, Kalka Ji, New Delhi, Delhi (110019)

Complaint no. RERAHPSOCTA11180009



5. Sahil Narula son of Man Mohan Narula, A 101, Kachnar, Omaxe Parkwood, Near Homeland City Big Bazaar, Tehsil Baddi, District-Solan, H.P. – 173205

Versus

Omaxe Parkwood, Near Homeland City Big Bazaar, Chakkan Road, Baddi, Himachal Pradesh 173205 having **registered office** at Shop no. 19B, First Floor, Omaxe Celebration Mall, Sohna road, Gurgaon, Haryana -122001 and having **corporate Office** at Omaxe House, 7 Local Shopping Centre, Kalka Ji, New Delhi, Delhi (110019)

Present: - Shri Sanjay Batra president of Omaxe Parkwood Residents Welfare Association along with Vipin Sharma, Rohit, Parminder Singh, Som Chhabra, Rajender Kumar, Mukesh Chauhan, Manmohan Singh, Anup Kumar, Sushil Kumar, Brajnish Kumar, Kamal Chandel, Col. K Guleria, Arvind Gautam

Shri Shivank Singh Panta Ld Counsel for respondent promoter

Final Date of Hearing (Through WebEx): 28.01.2022.

Date of pronouncement of Order: 02.03.2022.

ORDER

CORAM: - Chairperson and both Members.

1. Brief facts in the complaint

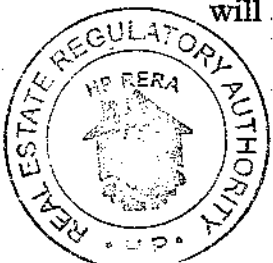
In this case initially five separate complaints were filed by the complainants mentioned above. Since these were identical and almost similar grievances of the aforesaid five complainants and they were all residents and members of Omaxe Resident Welfare Association, Baddi (in short ORWA) therefore the Authority directed them to pursue their



grievances by filing common complaint through the authorised representative. Thereafter a complaint dated 8th July, 2019 was filed which was re-sent on 25th August, 2019 and 9th September, 2019. The main reliefs of the ORWA were to handover the pending promised facilities such as club, swimming pool, play grounds etc. as mentioned in the sales brochure. Other reliefs were to complete the security issues especially the boundary wall, to resolve the matter of levy of holding charges and further it was stated in the complaint that there has been delay in handing over the parking slots to the flat owners for which heavy sum has been charged and it was alleged in the complaint that builder is constructing other towers, which are yet to be completed and not as per sanctioned plans. It was further prayed that the Authority may verify the facts as the ORWA has reasons to believe that the respondent is converting 2 BHK Flats to 3 /4 BHK flats by inter connecting the same. It was further prayed that the Authority may carry out inspection to see the adequacy of the common facilities i.e. fire fighting and sewerage system and car parking slots. It was further pleaded that the Authority may also verify the issue of legality of money being charged by the builder for providing open air parking from the residents.

2. Facts in Reply-

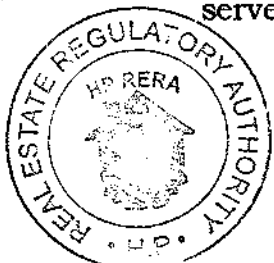
The notice was issued to the respondent. In response the respondent filed reply. The respondent pleaded that he has handed over/assigned the right to provide maintenance services to the maintenance agency M/s Facility Plus Estate Management Pvt. Ltd. It was pleaded that this agency manages and provides maintenance services to the residents/occupants of the township independently for which it raises monthly bills and collects charges in its name, directly from the residents. It was pleaded that this maintenance agency has executed agreements with each and every allottee. It was pleaded that because of this reason the respondent will not be able to address the grievances of the complainants and the



case is bad for non-joinder of necessary parties. A copy of the agreement between one of the allottee and respondent was annexed as Annexure R-2. It was further submitted that since the grievances and issues of the complainant ORWA are mainly with respect to maintenance services therefore the Authority has no jurisdiction to adjudicate on the same. It was further pleaded in the reply that the dispute shall be referred for arbitration in terms of clause 29 of the maintenance agreement entered into between the maintenance agency and allottees. On merits it was pleaded that the respondent has developed the residential project in the name and style of Parkwood Baddi-I on an area measuring 50462.41 Sq mts. It was pleaded that the said project has been developed after obtaining necessary permissions/ approvals/NOCs from the concerned competent authorities. It was pleaded that the respondent obtained part occupation certificate(s) dated 30.05.2014, 11.08.2016, 09.02.2017, 16.07.2017, 17.10.2017, 01.03.2018 and 24.09.2018 with respect to the said developed units and towers. It was pleaded that said towers were constructed in phases/ parts and part completion certificates dated 11.4.2014, 4.5.2016 and 9.8.2016 were obtained with respect to the said developed units and towers with adequate infrastructure for the purpose of habitation. The copy of part occupation certificates were annexed with complaint as annexure R-3 and part completion certificates were annexed with the complaint as annexure R-4. It was further pleaded that the respondent has handed over the possession of developed units to respective allottees which are complete in all respects and for which part occupancy/ part completion certificate has been obtained. It was further pleaded that company has provided adequate water supply, electric supply, lighting arrangements, fire fighting systems/ arrangements, sewerage system, internal roads, parking area and parks etc. It was further pleaded that the company has executed and registered sale deeds in favour of allottees/ buyers. It was pleaded that as per the terms and conditions of the allotment letter executed by and between the company



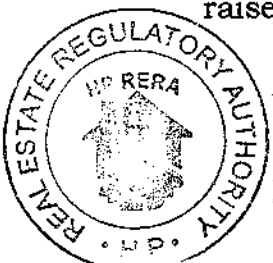
and buyer(s)/allottees with respect to the booking of the respective unit(s)/ flats, the respondent has given maintenance services of the common areas of the said project to M/s Facility Plus Estate Management Pvt. Ltd. It was further pleaded that the said maintenance agency is maintaining the services and the residents are paying Rs 1 per sq feet plus Rs 100/- as sinking fund per month to the maintenance agency since they have taken possession. It was further pleaded that for resolving the issue of construction of boundary wall the respondent came up with a proposal of putting iron sheets fences in the area where brick masonry wall cannot practically be constructed due to technical reasons and also tried to prepare a sample of the same but some of the residents disagreed to the same and did not let the construction take place. It was further pleaded that the ORWA filed a complaint dated 14.3.2017 before Additional Chief Secretary (TCP) to the Government of HP which was forwarded to the Town and Country Planning Department. It was pleaded that the said department by letter dated 29.4.2017 had directed the respondent to settle the issues raised by the complainant. In response thereto respondent had filed detailed reply by way of letter dated 14.6.2017 to the said letter of the complainant refuting all the allegations and pointing out that the residents /allottees are genuinely not interested in getting things streamlined and are interested in pestering the respondent on one or other frivolous grounds. Further it was pleaded that as per the information from the maintenance agency the monthly collection done by the agency is not sufficient to meet out the expenses incurred by them. Further with respect to specific issues raised by the ORWA in the complaint in the form of letters dated 8.7.2019, 25.8.2019 and 9.9.2019 pertaining to issues of allocation of parking slots in reply it was submitted that there are two types of parkings being developed i.e. Open Parking and covered parking. As far as open parking is concerned the same has been earmarked and have been allotted on first come first serve basis however it was submitted that residents do not park at the



allotted places. Second issue raised by the ORWA was with respect to security issues especially boundary walls. In reply it was submitted by the respondent that there are no security issues and the maintenance agency has deployed sufficient security personnel for round the clock security of the residents maintaining proper entry and exit system for visitors. Further it was pleaded that the maintenance agency has also installed two CCTV cameras on the main gate, entry and exit both and further installing more cameras for the other common areas. It was further pleaded that as far as the boundary wall is concerned brick masonry wall has already been provided. It was further pleaded that in some areas boundary wall has not been constructed because of the existence drain/ nallah. It was submitted that brick masonry wall cannot practically be constructed in the area and therefore for security purpose the company is developing iron sheet fencing in that area. The other issue raised by the ORWA was with respect to smooth operation of lifts. In reply respondent submitted that the lifts are functioning smoothly. Further it was pleaded that some residents refuse to the AMC, which makes it very difficult to maintain the lifts. On the issues raised by the ORWA pertaining to demand of holding charges it was submitted in the reply that the holding charges are being charged as per the allotment letter. It was submitted that holding charges are applicable to the allottees who have not taken possession and are not coming forward for registration of sale deed with respect to their booked units. The other issue raised by the ORWA was pertaining to not involving ORWA while handing over the flats to new allottees. In reply it was submitted that the respondent is under obligation as per allotment letter to handover the flats to residents and ORWA can have no concern what so ever with the same. Then issue raised by ORWA was pertaining to issue of club house with swimming pool. In reply it was submitted by the respondent that construction of club is under process, the structure has been completed and plaster work is in process. In totality it was submitted that 50%



work for construction of the club house is complete and the respondent is in the process of completing the remaining works. It was further submitted that club activity will be started after proper habitation and occupancy of developed units and towers. The next issue raised by ORWA was with respect to face lifting of Chinar block. In reply it was submitted that flats in Chinar block have been handed over to allottees in proper condition and the maintenance work is regularly being done by the agency hired in this behalf. Then issue raised by the ORWA was with respect to respondent wanting to make more towers in the same area. In reply it was submitted that respondent is constructing towers as per the lay out plans approved by the competent authorities and then issue raised by ORWA was with respect to alternate space for running of the association and in reply it was submitted that proper space has been provided to ORWA for running of the association. Then issue raised by ORWA was with respect to power supply and in reply it was submitted by the respondent that power is supplied by Himachal Pradesh State Electricity Board. Then issue raised by ORWA was with respect to water supply. In reply it was submitted that the maintenance agency has informed that there is adequate water supply and they have got the bore well installed in the year 2018 for which they have spent a huge amount. Then issue raised by ORWA was sewerage treatment system. It was replied that there is no problem with the sewerage treatment system. Then issue raised by the ORWA was with respect to seeking exorbitant maintenance charges and to this it was replied that the maintenance agency is charging @ Rs 1 per sq ft plus Rs 100 per month as sinking fund. It was submitted that the residents do not permit to increase the maintenance charges and respondent submitted that at present rates it is getting difficult to provide maintenance services. Further additional submissions were also made by respondent. In the additional submissions made by the respondent the important issues that were raised are that the promoter in order to construct the new blocks has



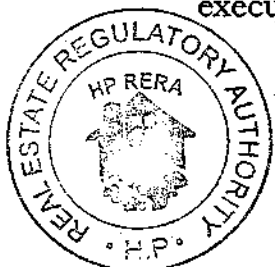
given the work order to M/s S S Project vide work order/ contract no. OML/OBD/11011149895 dated 3.7.2019. It was further pleaded that pursuant to the contract, material worth approx. Rs 41 lakhs was stacked at site for sustained development and construction of the new blocks. It was submitted that when the contractor tried to initiate the works it was resisted by the residents of ORWA and they virtually stopped the construction work. Further by way of additional submissions it was pointed out by the respondents that total 720 flats are there in the project and title deeds in favour of 300 flats have been executed/registered and the respondent is persuading the remaining residents of the flats to get the sale deed registered but the remaining residents are deliberately shying away from getting the sale deeds registered for reasons best known to them.

3. After receipt of the reply vide order dated 17.2.2020 both the parties were directed to conduct a reconciliatory meeting on 23rd February, 2020. As directed by the Authority, both the parties met on 23rd February, 2020 to discuss and settle the various issues of the ORWA.
4. This fact was brought to the notice of the Authority on the next date of hearing i.e. 2nd March, 2020. In the meeting it was agreed by the respondent that it will complete the work of club house by 31st March, 2020. It was further agreed by the respondent that the construction of boundary wall will be completed by 31st March, 2020 except stretch where additional towers are to be constructed/ completed. Further in the zimni order dated 2nd March, 2020 it was further pointed out that many allottees have not got the sale deeds registered for the apartments/properties allotted to them, though they have already taken the possession of the units. The Authority vide the same zimni order directed all the allottees that they must get their sale deed registered/executed by 31st May, 2020. It was also held in the order that no holding charges shall be taken from such allottees by promoters in case sale deeds are registered on or before 31st May, 2020. The matter



was next listed for 17th June, 2020. Owing to spread of COVID 19 matter could not be listed on 17th June, 2020 and then it was listed on 30th July, 2020.

5. On 30th July, 2020, the ORWA showed its inability to get the sale deeds executed owing to spread of COVID 19 and sought more time. On the other hand the respondent also submitted that the construction work of clubhouse building and boundary wall at the site could also not be completed on account of spread of COVID 19. The Authority after considering all the facts extended the date of execution of sale deeds of the allotted properties where possession was taken by the allottee by 15.12.2020, without holding charges. It was further held by the Authority in the order that any registration after the aforesaid date shall only be allowed with holding charges. The respondent was also directed to abide by its commitment regarding construction work of building club house and boundary wall. The matter was next listed for 15.12.2020.
6. On 15.12.2020, the ORWA intimated that 37 allottees have procured e-stamp papers and have deposited the same with respondent for the purpose of registration of conveyance deeds. The Authority directed the respondent to get conveyance deeds executed within one month in favour of allottees who have procured e-stamp paper and submitted the same to the respondent. It was also held that no holding charges will be levied on such allottees who have procured e-stamp paper up to 31.1.2021. The time for construction work of club house and boundary wall was further extended by the Authority up to 31.3.2021 and the matter was listed on 18.02.2021.
7. On 18.2.2021, the respondent apprised the Authority that around sixty number of sale deeds are in the process of registration. Two members of the ORWA Narinder Sharma and Pratap Mohan, on that date made a grievance that respondent is not getting the sale deed registered in their favour. The Authority vide the same order directed the respondent to get executed sale deed in favour of both the aforesaid members of ORWA on



the same terms, as with other members of the ORWA. Further the ORWA on that day raised the issue of poor and inferior boundary wall being constructed by the respondent. It was further pointed out by the ORWA that the design and specifications of the of boundary wall have also been changed as compared to previous boundary wall constructed by the respondent. On this issue the Authority vide the same order directed the respondent that the quality and height of boundary wall should be the same as was constructed as earlier. Further it was directed by the Authority that both the parties to convene a meeting regarding the issues pertaining to construction of boundary wall/club house on 28.02.2021 and a copy of proceedings was directed to be supplied to this Authority. The matter was listed for 09.04.2021.

8. On 09.04.2021, the ORWA apprised the Authority that now there are no issues pending qua registration of sale deed in favour of allottee. The respondent requested the Authority to allow respondent to impose holding charges to those allottee who despite sufficient time and notice have not come forward for registration of respective sale deeds. The Authority vide the same order held that since the respondent as developer has received the consideration and has nothing to loose by holding the possession of the allotted flats, therefore it was directed that holding charges will not be payable to the developer. Further since the construction of the club house and boundary wall was not completed within the time granted therefore the Authority vide the same order imposed a penalty of Rs One Lakh on the respondent and granted time to the respondent to complete the remaining work of club house and boundary wall within three months i.e. up to 30.06.2021 with a rider that if respondent fails to complete the work on or before 30.06.2021 the penalty will be enhanced to Rs Ten Lakhs. Further the ORWA raised the issue of maintenance services being provided by the respondent to which the Authority directed that if the ORWA is not satisfied with the maintenance services as provided by the respondent, they may by



decision in their general body meeting take over the maintenance services in their own hand. The matter was listed for further hearing on 01.07.2021.

9. On 01.07.2021, the respondent further sought extension of time to complete the construction of club house and boundary wall by three months and submitted that the construction work could not be completed due to the spread of COVID-19. On the request of the respondent for extension of time for completion of construction, the time was extended by one month and it was held that if the construction is not complete by 31.07.2021, a penalty of Rs. Ten Lakhs shall be imposed on the respondent under section 63 and 69 of the Act. The matter was next listed for hearing on 02.08.2021.
10. On 02.08.2021, on the rival submissions of the both the parties qua the completion of construction work, the Authority directed the Town & Country Planner of the Authority to visit the site and inspect the spot on 04.08.2021 and submit a detailed report to the Authority in this behalf. The matter was next listed on 10.08.2021.
11. On 10.08.2021, on the perusal of the report it transpired that there has been non-compliance of order of the Authority dated 01.07.21 and therefore penalty of Rs. Ten Lakhs under section 63 & 69 of the Act was imposed. The respondent was further granted time of three months to complete the construction work of club house and boundary wall. It was held that if the construction work is not completed within the time granted the respondent will be further liable to penalty of Rs. Twenty Lakhs. Also the parties were given opportunity to file their comments on the site inspection report. The matter was listed on 15.11.21.
12. On 15.11.2021, on the failure of the respondent to deposit of Rs. Ten Lakhs imposed vide order dated 10.08.21, he was held liable to a further penalty of Rs Ten Thousand per day for each day of default in depositing Rs. Ten Lakhs. Further it was directed that there shall be no withdrawal from the banks of the respondent till the amount of Rs. Ten lakhs as



directed earlier is deposited. Further the respondent for failing to complete the construction work was imposed a penalty of Rs. Twenty Lakhs. It was also ordered that on the next date, the matter will be heard finally and therefore both the parties were given liberty to file their affidavits/ written submissions along with supporting documents in support of their claims before the Authority. The matter was listed on 06.12.2021.

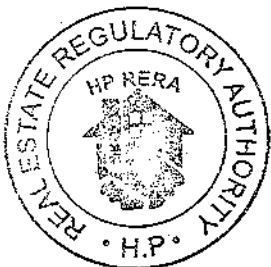
- 13.** On 06.12.21 the respondent had paid Rs. Thirty Lakhs and Eighty Thousand in lieu of penalty imposed by the Authority and it was held by this Authority that the entire penalty till date has been fully paid by the respondent. Thereafter the matter was listed on 06.01.2022 and further the matter was finally heard and judgment reserved on 28.1.2022.

14. Rejoinder by the ORWA-

In rejoinder it was submitted that respondent has handed over the function of providing facilities to M/s Facility Plus Estate Management Pvt Ltd. which they were supposed to independently manage and it was submitted that on papers they (Facility plus and respondent) may be two different agencies but from operations point of view Facility Plus is the subsidiary of Omaxe Ltd, the respondent herein. Further it was also submitted that by handing over maintenance services to Facility Plus Estate Management, the respondent cannot wash their hands off their liability.

15. SITE INSPECTION REPORT

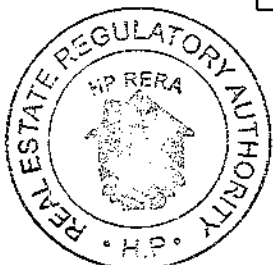
The site inspection was held by Town and Country Planner of the Authority on 04.08.2021 at 4:50 PM at Omaxe Parkwood in the presence of Sanjay Batra, President, Omaxe Parkwood Resident's Welfare Association and 17 other residents and for respondent Sh. Ankur Bakshi, Authorized Representative of respondent Promoter Company M/s Omaxe Ltd (Respondent) and 5 other employees of the Company



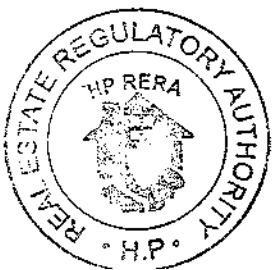
were present. The TCP after detailed deliberation has given the following report.

SITE INSPECTION REPORT

Sr No	Description of Complaint/e-mail dated 02.08.2021	Site Inspection Report
1.	Common Club	
	<p>We appreciate the efforts the Omaxe Ltd team has put into show that the club is ready and the assignment has been completed, however, we have serious concerns about the quality of the workmanship. The basic flaws have been:-</p> <ol style="list-style-type: none"> 1. That absolutely insufficient time has been given for the concrete to dry, especially in the rainy season where the fresh flooring and plasters got washed by rain many times. 2. The PCC below the tiles in the entry the zone has been laid on un-compacted mud, that too only one layer, which is expected to crack/cave in very soon 	<ol style="list-style-type: none"> 1. No comments. At the time of inspection, no work was going on at the site except brooming of cement mortar spread on the floor outside the Club House Building. See Photo No.1 enclosed herewith. 2. No comments. At the time of inspection, tiles were already laid in the entry zone See Photo No.2 enclosed herewith.



<p>3. The Granite at Many Places especially in stairs has already developed cracks.</p> <p>4. The Railing made in Ms Pipe is not looking good at all and is shaking</p> <p>5. The Backside area where the Pump House is there is still pending to be completed.</p> <p>6. Over Head. Tank work is still in process.</p> <p>7. Badminton Court is still not ready and has doubts if it is as per dimensions required also alights for an evening playing not provided.</p> <p>8. Squash Court is still pending.</p>	<p>3. Yes In Club House Building. There were cracks in the granite titles laid on stair case. See Photo No 3 enclosed herewith.</p> <p>4. Yes, The MS Pipe Railing in stairs case of Club House Building was shaking even after applying minimal force. See Photo No.4 enclosed herewith.</p> <p>5. The wall of Pump House is adjoining with the Boundary Wall. At the time of inspection, though no work was going on at the site but tiles are yet to be laid on a small portion. See Photo No.5 enclosed herewith.</p> <p>6. None of the Parties discussed about it.</p> <p>7. The flooring of Badminton Court was already laid. No lights for evening playing were seen on the site. See Photo No 6-A & 6-B enclosed herewith.</p> <p>8. Yes, The work on Squash Court is still pending see Photo No6-B enclosed herewith.</p>
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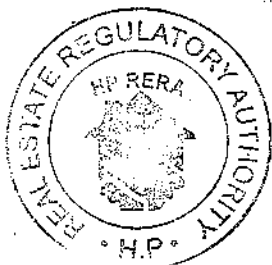
<p>9. Drains and Manholes are still pending.</p> <p>10. Water Drain pipes on the roof are still not completed.</p>	<p>9. None of the Parties discussed about it.</p> <p>10. The down pipes from roof of Club House Building to ground near Badminton Court were existing at site. See Photo No.7 enclosed herewith. There stagnated water on the roof of Club House building. See PhotoNo.8 enclosed herewith.</p>
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2 Design of the Club

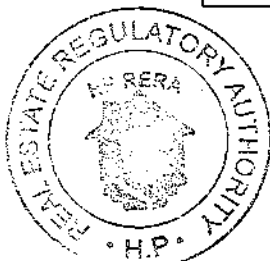
<p>The design of common club building does not match the Sakes brochure provided, according to Omaxe Ltd. (Photos attached) Club Building:-</p>	<p>Yes. The front elevation of Club House Building shown in Brochure (See Photo No.9 enclosed herewith) does not match with the Club House construction at site (See Photo No. 10 enclosed herewith). As per sanctioned plan uploaded on the web portal of HP RERA, land for Commercial Shops and Future Expansion/Community Hall has been proposed at two separate places and in between these. Green Area Park-3 has been shown, whereas at site, the Commercial Building and Club House Building have been constructed at one place with common wall and Swimming Pool has been constructed at the place earmarked for Future</p>
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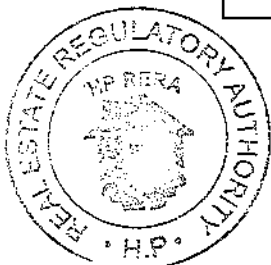
<ol style="list-style-type: none"> 1. Gym equipment not yet received. 2. No door locks are still fitted. 3. Water Seepage is seen on the 1st Floor form the Glass Frames. 4. No Fire Smoke Sensors installed/ No Fire Alarm system installed. 5. No lightning Arrestors Installed. 6. No Independent Electric Control Panel Provided. 7. Common Kitchen is not yet fully completed. No provision for storage. Chimney not installed. 8. No provision for drinking water, RO Water Purifier not installed. 9. Sona/Steam Bath demonstration of its working not 	<p>Expansion/ Community Hall, which is deviation See Sketch at Annexure-B as enclosed herewith.</p> <ol style="list-style-type: none"> 1. Yes. Gym equipment's were not seen in the Gym of Club House Building. The authorized Representative of the Promoter Company told that they have placed the order and these will be provided soon. See Photo No.11 enclosed herewith. 2. None of the Parties discussed about it. 3. None of the Parties discussed about it. 4. Yes. There were no Fire Smoke Sensors inside the rooms of Club House Building. 5. Yes. There were no Lightning Arrestors in the complex. 6. None of the Parties discussed about it. 7. None of the Parties discussed about it. 8. None of the Parties discussed about it.
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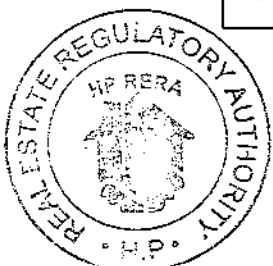
	<p>seen.</p> <p>10. Washrooms: Exhaust fans not installed.</p> <p>11. There should have been a club manager office with CCTV's installed.</p>	<p>9. The room/space has been provided for Sona/Steam Bath separately for Gents and Ladies.</p> <p>10. Yes. Neither any Exhaust fan nor any Ventilator have been provided in the Wash Rooms.</p> <p>11. None of the Parties discussed about it.</p> <p>Remarks:</p> <p>No partition has been provide near Gent's Urinal as shown by the Complainant at site and said that it should be provided to have privacy.</p>
3.	Swimming Pool	
	<p>1. Many of the Vertical Tiles in the Swimming Pool Area not properly fixed.</p> <p>2. No Separation / Partition between main pool and children pool area provided.</p>	<p>1. Tiles have already been fixed the Swimming Pool Area, None of the Parties discussed about it See Photo No.2 enclosed herewith.</p> <p>2. Yes. There was no separation/partition between main pool and children pool area. The Respondent informed that as per Rules/practice the Children below 6 years age should use the Swimming Pool with their Guardians.</p>



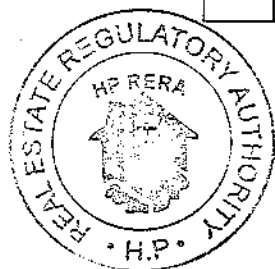
	<p>3. The Outside Pool Drainage Line is not yet covered.</p>	<p>See Photo No.3 enclosed herewith.</p> <p>3. None of the Parties discussed about it.</p>
<p>4.</p>	<p>TCP Norms</p>	
	<p>1. We Feel that the Club and Swimming Pool have not been constructed in accordance with the TCP norms, as no setback is thereform the Commercial Complex, they are touching back to back.</p> <p>2. There is no setback from the boundary wall of the Swimming Club and the Pump House.</p> <p>3. Requirement of Rain Harvesting Tank.</p>	<p>1. No comments. As per sanctioned plan uploaded on the web portal of HP RERA, land for Commercial Shops and Future Expansion/ Community Hall has been proposed at two separate places and in between these, Green Area Park-3 has been shown, whereas at site, the Commercial Building and Club House Building and Club House Building have been constructed at one place with common wall and Swimming Pool has been constructed at the place earmarked for Future Expansion / Community Hall, which is deviation. See Sketch at Annexure-B as enclosed herewith.</p> <p>2. None of the Parties discussed about it.</p> <p>3. None of the Parties discussed about it.</p>



	<p>4. Test Report from the 1st Class Electrical Contractor and An Inspection Report by the Electrical inspector should be provided.</p>	<p>4. None of the Parties discussed about it.</p>
<p>5.</p>	<p>Boundary Wall</p>	
	<p>In continuation to our statement in the hearing on 1.7.2021, Omaxe Ltd constructed a simple straight Boundary Wall but after our complaint dated 8 July 2021 and email of 26 July 2021 to the RERA Authority, Omaxe Ltd did some modification/patch work on the boundary wall, we feel it isn't the appropriate way to build a boundary wall.</p> <p>Strength of Wall:</p> <p>Because the wall was built on makeshift foundations with no curing, we are concerned that it may collapse quickly under the weight of a strong rainstorm, a light earthquake, or a</p>	<p>(i) The entire Boundary Wall was inspected along with both the Parties. It is approximately more than 1 Km in length. Three videos of the Boundary Wall have also been recorded.</p> <p>(ii) At some places, it appears that the Boundary Wall has been constructed long back which can be named as old Boundary Wall See Photo No. 12 enclosed herewith.</p> <p>(iii) However, at many places it appears that the Boundary Wall has been constructed recently in a hurried manner which can be named as new Boundary Wall. See Photo No. 13-A, 13-B, 13-C, 13-D and Sketch Plan At Annexure-c enclosed herewith.</p> <p>(iv) The new Boundary Wall has developed cracks.</p>



<p>medium impact.</p> <p>Wall design :</p> <p>They are making the design just for the sake of displaying it from the outside, disregarding the strength that the design is supposed to provide to the boundary wall.</p> <p>Incomplete Wall:</p> <p>a. Boundary wall only complete with patchwork around Kachnar-C and B blocks.</p> <p>b. Boundary wall without pillar plaster on Kachnar- B side and Block Jacaranda - C side, C4 to C6 only</p> <p>c. No wall around Jacaranda C4 to STP backside. Temporary partition fixed instead of a permanent boundary wall.</p> <p>d. No wall from Jacaranda C4 to C1</p> <p>e. No wall from Jacaranda C1 to STP</p> <p>f. No boundary</p>	<p>See Photo No. 14-A and 14-B enclosed herewith. There is lot of level difference and the residential pointed out about its strength and slenderness. See Photo No.14-C enclosed herewith.</p> <p>(v) The design of boxes seen in the old Boundary Wall has been tried to be carved out at many places in the new Boundary Wall just to match it with the design of old Boundary Wall.</p> <p>(vi) In place of Brick Boundary Wall, metal sheets fixed with angle irons have been provided See Photo No.15-A, 15-B and Sketch Plan at Annexure -C enclosed herewith.</p> <p>(vii) On right side of the complex there is nullah. Many Jhuggis/ slum dwellers resides there. As told by Complainant stray dogs used to enter the complex who has even bite one of the residents. The Complainant further told that in the absence of permanent Boundary Wall, there is always threat of thieves. See Photo No. 16 enclosed</p>
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	<p>wall for the rear end of EWS blocks</p> <p>We request Strict Action towards non-completion of the boundary wall and the wrong statement was given by the Counsel representing Omaxe Ltd in the last hearing.</p>	<p>herewith.</p> <p>(viii) The Complainant told that in place of putting temporary metal sheets fixed with angle irons, proper Boundary Wall made of Bricks and having same design as per old Boundary Wall should be constructed.</p> <p>(ix) There is neither any Brick Boundary Wall nor any partition made of metal sheets fixed with angle irons at some places. See Photo No.17-A and 17-B enclosed herewith.</p> <p>Remarks:</p> <p>As per Quarterly Progress Report For the Quarter ending 30.06.2021, the Promoter Company in Table B of the Architect's Certificate in the column of 'Percentage of Work Done' has written that Boundary Wall has been completed 100% which is wrong.</p>
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16. Written submissions on behalf of the ORWA-

The ORWA filed written submissions where in it was submitted that the respondent has not built complete boundary wall and the photographs of incomplete work were attached as annexure-A. It was further submitted that the respondent has not built boundary wall as per the design and specifications of the previously built boundary wall. It was further



submitted that in a stretch of approx. 200m meters area form Kachnar-C Block to Kachnar-B Block towards North (Nallah Side), the boundary wall was originally constructed in one brick thick (9" thickness) which was later on amended on intervention by the Authority and modified to visually look like old wall but is not structurally sound. It was further submitted that the boundary wall wherever constructed has not been plastered & painted form outside of the project and the photographs of the same are attached as annexure-B. It was further submitted that the boundary wall is not built on the exterior edge of the land under possession of this project on the rear side near STP area there by leaving the uncovered land portion of the society of no use. It was submitted that the boundary wall along with the main entrance on the front road of this project is not strong enough/ stable and still is pending to be constructed and further prayed that the respondent may be directed that it needs to be built as per the approved design and specifications of the previously constructed wall. It was further submitted that the respondent has not completed the common club house area as per the facilities mentioned in its sales brochure. It was further submitted that the respondent has not completed the Common Club House area as per drawings and designs as received by ORWA. It was further submitted that the Banquet Hall has no separate entry & exit as shown in the drawings. Further it was submitted that the parapet shown in the drawing is not physically present on the spot. It was further submitted that the respondent has not completed the Common Club House area as there is no exhaust fan in the Kitchen pantry of the Club House. Further it was submitted that R.O. system for drinking water has also not been provided. It was further submitted that the Gymnasium Hall is still incomplete and without equipment's. It was submitted that the toilet block of Common Club does not have Windows/Ventilators as per drawings submitted with ORWA. It was further submitted that there is no provision for rain water harvesting tank as per government norms. It



was further submitted that no earthing of electrical equipment, & earthing of the building for protection from lightening has been done. It was further submitted that the swimming pool is still not tested for and put in operation and hence not commissioned. It was further submitted that the partition between the swimming area for Children & adults is missing. Further it was submitted that there has to be provision of lockers/ racks, changing rooms and sitting arrangement for the users of the swimming pool which is missing. It was further submitted that location and size of the Squash Court & Badminton Court are also not as per design & drawing shared with ORWA. It was further submitted that the MS railing is not proper being shaky and in a bad condition. It was further submitted that underground electrical cables are not laid in a trench/cable gully/cable tray, and may cause fatal accidents in the long run. It was further submitted that the pump house has an opening which can allow the miscreants to enter without obstruction and has been constructed against the TCP norms because it is built on boundary wall by two of its sides and therefore it was prayed that same needs to be rectified. It was prayed that the respondent has not provided covered storage racks for the pantry kitchen. It was further submitted that partition for urinals in male toilet is also required which has not been provided by the respondent. It was further submitted that the fire ducts need to be covered. It was further submitted that electrical ducts are also required to be covered. It was further submitted that no door is provided for closing the pump house. It was further submitted that power backup for the Common club is also not provided. It was further submitted that before handing over/taking over the common club the ORWA requests clearance certificates form Fire Department, Chief Electrical Inspector & T.C.P. Department for Occupancy Certificate. It was further submitted that the quality of concrete is very poor e.g. the flooring made for the playing area outside the main building has been laid with concrete without reinforcement, which will cause cracks very soon. It was further



submitted that the society will not take over the common club house unless they are completed according to the desired quality, commitments done by the respondent with the allottees and with the facilities as mentioned in its sales brochure and. It was therefore submitted that the respondent may be directed to fulfill all the terms and condition mentioned in its brochure and all the promised facilities shall be constructed using excellent quality construction material. The copy of the Sales Brochure was attached as annexure-C.

17. Written submissions on behalf of Respondent-

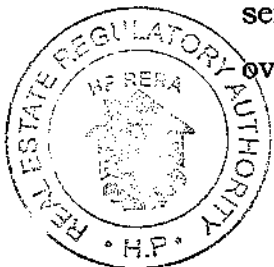
It was submitted that the Club House Building and Boundary Wall work have already been completed as per sanctioned drawings. It was further submitted that tiles in the entry zone have already been laid and the work has been completed strictly as per technical specifications. It was further submitted that in club house building, the granite tiles had been laid on the stair case as per specifications. However, due to loading of heavy tables like pool table, one of the tiles in stair case developed some cracks and the same has also been replaced with a new granite tile. It was further submitted that MS Pipe Railing in stairs case of the Club House Building has been affixed as per specifications. As regards shaking of Railing, the required work has been done to strengthen the same. It was further submitted that the tiles on the small portion of the wall of pump house adjoining with the boundary wall had been mounted and affixed and entire work has been completed. It was further submitted that the flood lights had been installed in badminton court to enable the residents to play in the evening. It was further submitted that the pending work of squash court has been completed. It was further submitted that the required work has been done to ensure that no water gets stagnated on the roof of the club house building. It was further submitted that the club house and



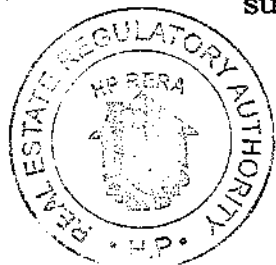
swimming pool are constructed as per the sanctioned plan duly approved by the concerned department of Town & Country Planning H.P. It was further submitted that the Gym equipments will be placed within a span of 30 days once the decision on Standard Operating Procedures including the appointment of a Gym instructor for the proper usage of the equipment is taken by ORWA. It was further submitted that the fire detection smoke sensors have been installed and provided inside the rooms of the club house building and are functional to work in case of any fire emergency situation. It was further submitted that the provision of lightning arrestors in the complex is not required and the work has been executed as per sanctioned drawings. It was further submitted that the RO water purifier with dispenser has been installed. It was further submitted that the pending work of providing separate space for Sauna/Steam bath for different genders of the society has been completed. It was further submitted that the CCTV cameras have been installed with a view to enhance the safety of the residents and to make the complex more secure. It was further submitted that SS railing has been affixed to bifurcate kid's pool and main pool. It was further submitted that the new boundary wall has been constructed as per the design and in accordance with the old boundary wall to match the design and specifications of old wall. Every technical aspect in the course of construction has been taken care of. It was further submitted that the wall is minimum 230 mm thick and its slenderness ratio is well within the stipulated guidelines for the same. It was further submitted that the photographs are being annexed in order to demonstrate that except the construction of remaining boundary wall in the ongoing project area, no other work is left to be completed. It was further submitted that the construction work is going on at full swing on the site, however it was submitted that the incomplete boundary wall falls within the ongoing construction area which is yet to be handed over and does not impact the residents of already occupied Parkwoods



area in any manner. It was further submitted that the incomplete portion of the boundary wall has been bifurcated by providing metal sheet fencing to protect the entire complex area from anti-social elements. It was further submitted that as there is construction going on at site, the incomplete boundary wall falls under ongoing construction area(which has still not been handed over) to ORWA but the same has been bifurcated by providing metal sheet fencing. It was further submitted that in a stretch of approx. 200m meters area from Kachnar-C Block to Kachnar-B Block towards North (Nalla Side) the boundary wall has been constructed as per the orders of the Authority. It was submitted that the boundary wall is a stable structure. It was further submitted that the work is going on at site and shall be completed as per requisite norms. It was submitted that the respondent is following all the protocols and guidelines in place to keep a check and curb on corona virus infection and due to COVID-19 protocols and due to adherence to COVID appropriate behaviour the work on the site got delayed. It was further submitted that in response to the claim of the ORWA that the boundary wall is not built on the exterior edge of the land under possession of this project and on the rear side near STP area, thereby leaving the uncovered land portion of the society of no use, it was submitted that as per TCP inspection report, no such issue had ever been raised and discussed ever before and is being taken in the written arguments for the first time which he cannot be permitted to do under law. It was reiterated by the respondent that the Boundary wall is constructed as per sanctioned plan. It was further submitted that the club house is being constructed as per the sanctioned plan duly approved by the concerned Authority. It was submitted that the club's operations chart has been discussed and designed in conformity with ORWA dignitaries. Proper lock and key operations of all the services had been discussed and will be provided at the time of handing over of these services. It was submitted that after freezing the standard



operating procedures, a soft launch and trial will take place to set up the functions of different areas of the common club. The club usage fee would be charged to the residents in their CAM bills on monthly basis. It was further submitted that the exhaust fan in the kitchen pantry of club house has been installed. It was further submitted that the RO water purifier/s with dispenser has also been installed. It was further submitted that the construction work of gym building has already been completed, however the required equipment(s) as per norms shall be provided at the time of handing over of Club House to ORWA. It was further submitted that as regards to issues of toilet blocks of Common Club not having Windows/Ventilators, no provision for main rain water harvesting pit as per government norms, no earthing of electrical equipment, & earthing of the building for protection from lightening, it was submitted by the respondent that as per TCP inspection report, no such issues were ever raised and discussed in the past, even though the complainant association had enough opportunities to rake up all these issues which are being taken for the first time during the final arguments, which they cannot be legally permitted to do. It was further submitted that the swimming pool is constructed as per the approved sanctioned plan and the swimming pool is commissioned for use by the Residents. It was submitted that Pavers offer a non-slip quality and there is no compromise on the standard of workmanship. It was submitted that from installation to paver finishing touches, the respondent has worked diligently with top of the line and range of construction materials resulting and guaranteeing a satisfying final swimming pool area. It was further submitted that Squash Court & Badminton court are constructed as per sanctioned plan. Moreover it was submitted that as per TCP inspection report, no such issue had been raised and discussed therefore it was submitted that the ORWA is precluded from raising such issue at argument stage. It was further submitted that the work of MS Railing was done as per the approved



specifications, however the strengthening of the same now stands improved to the satisfaction of ORWA. It was further submitted that the work of underground electrical cables has been completed and done as per the approved drawings. It was further submitted that the completion of the work has been done in accordance with approved drawings and it was submitted that the members of the ORWA are not technical experts to comment on the technical aspects of the construction and development of township. It was further submitted that on the issue of pump house, covered storage racks for the pantry kitchen and partition for urinals in male toilet, it is submitted by respondent that as per TCP inspection report, no such issues were ever raised and discussed in the past and therefore it was submitted that ORWA is precluded from raising the same at such a belated stage. It was further submitted that both the fire ducts and electrical ducts have been covered. It was further submitted that on the issue raised by ORWA that no door is provided for closing the pump house and power backup for the Common club, it is reiterated that as per TCP inspection report, no such issues were ever raised and discussed in the past and therefore the ORWA is precluded from raising such issues at this belated stage. It was further submitted that the respondent undertakes that before handing over the common club to the ORWA all the requisite clearance certificates/ permissions would be taken/obtained from the competent authorities. It was further submitted that work of laying down the concrete has been completed strictly as per technical specifications. It was further submitted that the completion of the development and construction work of the common club area has been done strictly adhering to the technical specifications as sanctioned and specified and the same would be offered to the ORWA for taking over as it is.

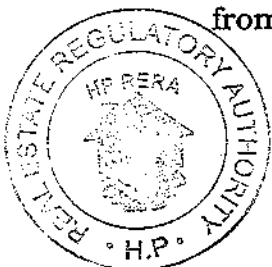
18. Arguments by ORWA-



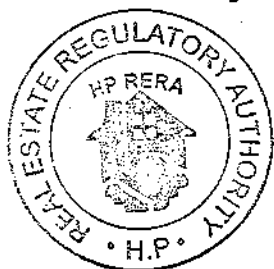
It was argued on behalf of ORWA that the work has still not been complete which can be verified from site inspection report. It was argued that in the club building indoor and outdoor play courts are not ready. It was argued that in the gym equipment has not been installed. It was argued that the swimming pool is also not ready and functional. It was argued that no trial run of the swimming pool has been done till date. It was argued that the boundary wall is also not complete and at some points it is left open in such manner that the stray dogs and other notorious elements can come inside. It was further submitted that the report of the Town and Country Planner who visited the Society is self-evident and self-speaking which goes to show that work is not complete.

19. Arguments on behalf of the respondent

In response it was argued on behalf of the respondent promoter that the complainant ORWA has taken up certain issues in its written arguments/ submissions which are new and raised for the very first time which they cannot be permitted to do for the reason that this Authority is exercising judicial functions and is bound by the procedural law and therefore it was submitted that the ORWA is bound by the pleadings they have made while filing complaint . It was further submitted that respondent cannot be permitted to raise new pleas by way of written arguments which are totally de-hoarse the pleadings. It was further argued on behalf of the respondent that along with his written arguments/ submissions he has shared photographs which show that when it comes to construction and completion of boundary wall, the leftover remaining work of boundary wall construction does not even impact or affect the ORWA. The construction work of remaining boundary wall has been properly bifurcated by metal sheets and no alien or notorious elements as argued by ORWA can come in from there and the same is reflected in the photographs appended with



the written submissions filed by the respondent. It was further argued on behalf of the respondent that he undertakes to complete the remaining work of boundary wall as soon as possible within a period of 30 days and by the end of February, 2022 the work will be finished. Further it was argued on behalf of the respondent that the works of swimming pool, squash court & railings have already been completed as per technical specifications which fact is evident from the photographs appended. It was further argued that the site inspection report conducted on the orders of the Authority reveals that there are certain points/issues of the ORWA that have been raised for the very first time. It was again fairly admitted on behalf of the respondent that the only incomplete work left is of the boundary wall which also is being completed taking due care of the privacy of the ORWA and its residents by installing metal sheets. It was further argued that the work of badminton court is also complete and floods lights have been installed therein. It was further argued that the construction work of the gym is complete and it has to be handed over to the ORWA. But for this it was submitted that the ORWA has to first appoint an instructor. It was further undertaken before the Authority that the day they appoint an instructor within a span of 30 days all the gym equipment will be installed in the gym. The only reason why gym equipment has not been installed is for the reason that ORWA is yet to appoint an instructor. Further it was submitted that the expenses of appointing an instructor has to borne by the ORWA. Further it was also argued that construction of club house is complete as per technical specifications and as per the latest maps approved and handed it over to the ORWA. It was argued by the respondent that earlier the ORWA had a grievance that fans have not been installed in the public toilets but it was submitted that now the same have also been installed. Further it was argued that water dispenser has also been installed in the club house. It was argued that



the delay that has been caused in completing the common facilities was only because of the outbreak of COVID 19.

20. Arguments of ORWA in rebuttal

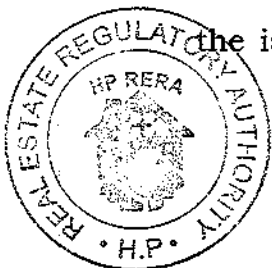
It was argued on behalf of the ORWA that the construction of boundary wall should have been complete well before the construction of the flats inside. It was further argued that the submission of the respondent that the leftover work of boundary wall does not impact the ORWA is incorrect and contrary to the facts. It was argued that the incomplete boundary wall is an invitation to the notorious elements and because of which lot of thefts have also taken place. It was further submitted that the partition in boundary wall by way of metal sheets as submitted is not adequate and this fact also finds mentioned in the report of the TCP. Further the submissions of the respondent that works are complete as per the technical specifications is wrong as no document showing technical specifications has been brought on record by the respondent. It was submitted that the ORWA has not received any document showing technical specifications of the club, boundary wall, gym and the swimming pool. Further it was argued that no flood lights have been provided by the respondent in the badminton court and his argument to this extent is factually incorrect. Further it was argued that the squash court is also not complete. It was further argued that the respondent has been changing the structures and drawings without taking the consent of the ORWA which is the mandate of the Act. It was further argued that the club house building is still incomplete and all the pipes coming down from the roof have not been properly installed. It was further submitted that the swimming pool has not been filled with water and tested for, meaning thereby no trial run of the swimming pool has yet been conducted. It was further argued that the design of actual construction is not as per the sanctioned drawings. Further it was argued that in the gymnasium there is only structure and nothing



beyond that and therefore it was submitted that it is of no use unless it has equipment installed in the same. It was further submitted that the issue of appointing instructor was never brought to the notice of the ORWA either orally or in written form. No such document has been placed on record. It was further argued that there is no written document executed by the respondent qua handing over of common facilities to the ORWA. Further it was also argued on behalf of ORWA that the respondent shall be directed to handover the occupancy certificate to the ORWA along with other documents.

21. Queries to both parties by the Authority and their replies.

A query was raised by the Authority from the president of the ORWA as to whether the ORWA was entitled under the builder buyer agreement to receive the structural stability certificate. In reply it was submitted on behalf of the ORWA that as consumer the ORWA is legally entitled to receive the Structural Stability certificate and it was submitted that stability certificate has been given but the authenticity of the stability certificate is in question which it was submitted by president of the ORWA that the issue will be raised with the competent authority i.e. Department of Town and Country Planning. It was further submitted that so far as boundary wall and club building design is concerned no drawing have been supplied to the ORWA. Further query was raised by the Authority during the course of the arguments from the respondent that there is no trial run from the side of respondent qua the club house and the swimming pool and the machinery has not been installed therefore how can the facility be said to be complete and is capable of being handed over when the same has not yet been tested. In reply respondent submitted that in the month of January, when there is extreme cold, trial run could not be done because it was an outdoor swimming pool and not an indoor swimming pool. It was replied that the issue that trial run has not been done, is coming up for the very



first time as it has never been raised before. It was replied that the issue earlier raised qua the swimming pool was that tiles had not been properly affixed. Therefore it was submitted that the respondent has taken care of the grievance of the ORWA and tiles have been properly affixed which fact is evident from the photographs appended. It was further submitted that if it is required by the Authority and if Authority directs also the respondent, it will get the trial run conducted within the time granted. Another query was raised by the Authority to the respondent as to whether the club house swimming pool and other facilities can be handed over to the ORWA without taking occupancy certificate and completion certificate from the competent Authority. In reply it was submitted by the Ld. Counsel for the respondent that he is unable to answer this query and this fact needs to be verified as the documents are not in his possession right now and time may be granted to the respondent to answer this query as it has been raised for the very first time. Further a query has been raised as to whether the construction of common facilities has been done as per the sanctioned drawings to which respondent replied that the construction has been done as per the sanctioned drawings of 2019.

22. CONCLUSION/ FINDINGS OF THE AUTHORITY:-

We have heard the arguments advanced by the complainant ORWA & respondent and also have perused the record pertaining to the case. This Authority is of the view that these are the following issues that require the consideration and adjudication, namely:-

- Whether this Authority has the jurisdiction to adjudicate upon the present complaint?
- Issue of club House and other related and miscellaneous issues with respect to common facilities
- Issue of Gymnasium



- Issue of Swimming Pool
- Issue of Play grounds
- Issue of completion of boundary wall
- Issue of levy of holding charges by respondent
- Issue pertaining to non- adherence of sanction plan in completion of new phases/ blocks
- Issue of registration of sale deeds
- Issue of maintenance of common services
- Issue of poor quality construction
- Issue related to delay in handing over the parking slots

23. Whether this Authority has the jurisdiction to adjudicate upon the present complaint?

It was submitted on behalf of the complainant ORWA that the Authority in terms of Section 11, 14, 17, 19 read with Section 31 of the Act has necessary jurisdiction to adjudicate the complaint filed by complainant for refund of the amount. Section 31 of the Act prescribes that any aggrieved person can file a complaint before the Authority or the Adjudicating Officer as the case may be for any violation of the provisions of the Act.

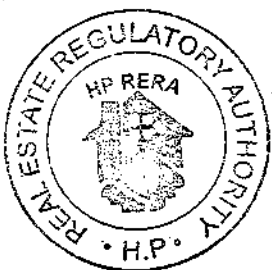
The **Section 34 (f)** of the Act prescribes that the function of Authority shall include

“to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the Rules and regulations made there under”.

The relevant extract of **Section 11** of the RERD Act is as under :

Section 11 (4) The promoter shall—

- (a) be **responsible for all obligations, responsibilities and functions** under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for



sale, or **to the association of allottees**, as the case may be, **till the conveyance of all the apartments, plots or buildings**, as the case may be, **to the allottees, or the common areas to the association of allottees or the competent authority**; as the case may be:

Provided that the responsibility of the promoter, with respect to the structural defect or any other defect for such period as is referred to in sub-section (3) of section 14, shall continue even after the conveyance deed of all the apartments, plots or buildings, as the case may be, to the allottees are executed.

(b) be **responsible to obtain the completion certificate or the occupancy certificate**, or both, as applicable, from the relevant competent authority as per local laws or other laws for the time being in force and to make it available to the allottees individually or to the association of allottees, as the case may be;

(c) be responsible to obtain the lease certificate, where the real estate project is developed on a leasehold land, specifying the period of lease, and certifying that all dues and charges in regard to the leasehold land has been paid, and to make the lease certificate available to the association of allottees;

(d) be **responsible for providing and maintaining the essential services, on reasonable charges, till the taking over of 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:

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



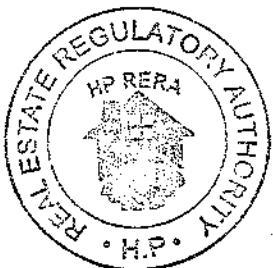
(f) **execute a registered conveyance deed of the apartment, plot or building, as the case may be, in favour of the allottee along with the undivided proportionate title in the common areas to the association of allottees or competent authority, as the case may be, as provided under section 17 of this Act;**

(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 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 or agreed to take such apartment, plot or building, as the case may be;

Section 19 of the RERD Act deals with **rights and duties** of allottees.-



(1) The allottee shall be **entitled to obtain the information relating to sanctioned plans, layout plans along with the specifications**, approved by the competent authority and such other information as provided in this Act or the rules and regulations made there under or the agreement for sale signed with the promoter.

(2) The allottee shall be entitled to know stage-wise time schedule of completion of the project, including the provisions for water, sanitation, electricity and other amenities and services as agreed to between the promoter and the allottee in accordance with the terms and conditions of the agreement for sale.

(3) The allottee shall be entitled to claim the possession of apartment, plot or building, as the case may be, and **the association of allottees shall be entitled to claim the possession of the common areas, as per the declaration given by the promoter under sub-clause (C) of clause (I) of sub-section (2) of section 4.**

(4) The allottee shall be entitled to claim the refund of amount paid along with interest at such rate as may be prescribed and compensation in the manner as provided under this Act, from the promoter, if the promoter fails to comply or is unable to give possession of the apartment, plot or building, as the case may be, in accordance with the terms of agreement for sale or due to discontinuance of his business as a developer on account of suspension or revocation of his registration under the provisions of this Act or the rules or regulations made there under.

(5) The allottee shall be entitled **to have the necessary documents and plans, including that of common areas, after**



handing over the physical possession of the apartment or plot or building as the case may be, by the promoter.

(6) **Every allottee**, who has entered into an agreement for sale to take an apartment, plot or building as the case may be, under section 13, **shall be responsible to make necessary payments** in the manner and within the time as specified in the said agreement for sale and shall pay at the proper time and place, the share of the **registration charges, municipal taxes, water and electricity charges, maintenance charges, ground rent, and other charges**, if any.

(7) The allottee shall be liable to pay interest, at such rate as may be prescribed, for any delay in payment towards any amount or charges to be paid under sub-section (6).

(8) The obligations of the allottee under sub-section (6) and the liability towards interest under sub-section (7) may be reduced when mutually agreed to between the promoter and such allottee.

(9) **Every allottee** of the apartment, plot or building as the case may be, shall participate towards the **formation of an association or society or cooperative society of the allottees**, or a federation of the same.

(10) Every allottee shall take physical possession of the apartment, plot or building as the case may be, within a period of two months of the occupancy certificate issued for the said apartment, plot or building, as the case may be.

(11) Every **allottee shall participate towards registration of the conveyance deed** of the apartment, plot or building, as the



case may be, as provided under sub-section (1) of section 17 of this Act.

Section 2 (n) of the RERD Act defines **common areas** as under

- (n) "common areas" mean—
- (i) the entire land for the real estate project or where the project is developed in phases and registration under this Act is sought for a phase, the entire land for that phase;
 - (ii) the stair cases, lifts, staircase and lift lobbies, fire escapes, and common entrances and exits of buildings;
 - (iii) the common basements, terraces, parks, play areas, open parking areas and common storage spaces;
 - (iv) the premises for the lodging of persons employed for the management of the property including accommodation for watch and ward staffs or for the lodging of community service personnel;
 - (v) installations of central services such as electricity, gas, water and sanitation, air-conditioning and incinerating, system for water conservation and renewable energy;
 - (vi) the water tanks, sumps, motors, fans, compressors, ducts and all apparatus connected with installations for common use;
 - (vii) all community and commercial facilities as provided in the real estate project;
 - (viii) all other portion of the project necessary or convenient for its maintenance, safety, etc., and in common use;

Section 31 of the RERD Act says

(1) Any **aggrieved person may file a complaint** with the Authority or the adjudicating officer, as the case may be, **for any violation or contravention of the provisions of this Act** or the



rules and regulations made there under against any promoter allottee or real estate agent, as the case may be.

Explanation.—For the purpose of this sub-section "**person**" shall **include the association of allottees** or any voluntary consumer association registered under any law for the time being in force.

(2) The form, manner and fees for filing complaint under sub-section (1) shall be such as may be specified by regulations.

Further **Section 38 (1)** of the RERD Act says

“The Authority shall have powers to impose penalty or interest, in regard to any contravention of obligations cast upon the promoters, the allottees and the real estate agents, under this Act or the Rules and the regulations made there under.”

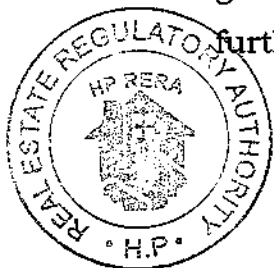
24. Section 34(f) of the Act empowers the Authority to ensure compliance of the obligations cast upon the promoters and Section 11, 14, 17 and Section 19 of the Act is the part of the obligation cast upon the promoter. Further, Section 37 of the Act empowers the Authority to issue directions in discharge of its function provided under the Act.
25. Therefore the Authority hereby holds that the complaint by the ORWA is maintainable and the Authority would have all the jurisdiction to try the same as any other interpretation would render the grievances of the ORWA remedy less for which Act was created defeating the purpose of the Act and would relegate them to other forums.
26. Although the ORWA had made an attempt to raise many issues during their filing of a complaint though not in prescribed form and by subsequent emails thereafter, the Authority while directing spot inspection from TCP gave a clear mandate to it to report on all the issues raised till then. In the site inspection report the TCP has tried to confine the issues and deal with them one by one. The detailed report has been mentioned above.



27. The issues raised by the ORWA primarily and the discussion and findings on these issues are as under one by one-

28. Issue of club House and other related and miscellaneous issues with respect to common facilities -

It was the grievance of the ORWA that construction of club house is not complete. The Authority during the course of hearings had regularly monitored the progress of construction work of the same. When the site was inspected on 4.8.2021 by the TCP of the Authority ORWA submitted that the structure of the club house is ready and complete but they have concerns about the quality of workmanship. It was further the grievance of the ORWA that insufficient time has been given for the concrete to dry and the plasters got washed by rain many a times. However during the inspection no work was going on at the site except mortar spread on the floor outside club house. It was further the grievance of the ORWA qua the club house that PCC below the tiles in the entry zone have been laid on un- compacted earth, which may crack very soon. To this it has been mentioned in the report that at the time of inspection tiles were already laid in the entry zone and no finding could be given on the issue. Further a grievance of the ORWA qua club house was that granite at many places has already developed cracks to which the finding in the report was that there are cracks in the granite stone laid on stair case of the club house. Further the grievance of the ORWA qua club house was that railing made in MS pipe is not looking good and is shaking to which the findings in the report were in affirmative that MS pipe railing in stair case of club house building was shaking even on applying minimum force. It was further the grievance of the ORWA that backside area where the pump house is there is still pending to be completed to which the findings in the site inspection report were that the wall of pump house is adjoining the boundary wall and at the time of inspection no work was going at the site but tiles were yet to be laid on this small portion. It was further the grievance of the ORWA qua the club house that overhead



tank was still in process of construction but as mentioned in the site inspection report none of the parties discussed this issue therefore this issue is deemed to have not been pressed. It was further the grievance of the ORWA qua the club house that badminton court is still not ready and has doubts if it is as per standard dimensions, also lights for playing in the evening have not been provided but in the site inspection report it has been mentioned that flooring of badminton court was already laid but no lights for evening playing were seen on the site. It was further the grievance of the ORWA qua the club house that the construction of squash court is still pending and in the site inspection report also it has been mentioned that the work of squash court is still pending. It was further the grievance of the ORWA qua the club house that drains and manholes are still pending to which it was mentioned in the site inspection report that none of the parties discussed this issue on the site therefore this issue is deemed to have not been pressed. It was further the grievance of the ORWA qua the club house that water drain down pipes from the roof are still not complete to which it was mentioned in the site inspection report that the down pipes from roof of club house building to ground near badminton court were existing at the site however it was mentioned that there was stagnate water on the roof of club house building. On the issue raised by the ORWA qua door locks, water seepage from 1st floor from glass frames were raised but in the site inspection report it was mentioned that none of the parties discussed this issue and therefore these issues were deemed to have not been pressed. Further an issue was raised that no fire smoke sensors/ fire alarms and lighting were installed to which it was mentioned in the spot inspection report that there are no fire smoke sensors or lighting arrestors inside the building. Further an issue was raised by the ORWA that there is no independent electric control panel in the common kitchen provided to which it was mentioned in the site inspection report that none of the parties raised the issue on the spot and therefore this



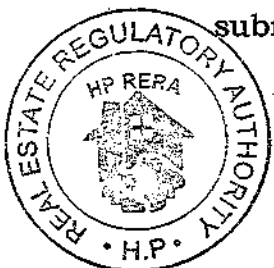
issue is also deemed to have not been pressed. Further an issue was raised by the ORWA that there is no provision for drinking water and RO Water purifier has not been installed however this issue was also not raised by the parties while spot inspection was being conducted and none of the parties argued on this issue therefore this issue also deems to have not been pressed by the ORWA. Further an issue was raised by the ORWA that sauna/ steam bath demonstration of its working was not done but in the spot inspection report it was mentioned that room/ space has been provided for sauna/ steam/ bath separately for gents and ladies. Further an issue was raised by the ORWA that exhaust fans are not installed in the washrooms to which in the spot inspection report it was mentioned that neither any exhaust fan nor any ventilators have been provided in wash rooms.

- 29.** Thereafter when the written submissions were filed by the ORWA an issue was raised that the banquet hall has no separate entry & exit as shown in the drawing but no drawing was placed on record to substantiate their case. Also it was submitted by the ORWA that the parapet shown in the drawing is not physically on the spot. In reply to the written submissions it was submitted by respondent that the club house is constructed as per the sanctioned plan duly approved by the concerned Authority. It was further submitted by the respondent that club operations chart has also been discussed with ORWA. It was further submitted in response that proper lock and key operations of all the services has been discussed and will be handed over to ORWA at the time of transferring possession of the services. It was further submitted that soft launch and trial will take place of the different areas of the common club before handing them over. It was further submitted that club usage fee would be charged to the residents in their CAM bills on monthly basis. Further the issue of no exhaust fan in the kitchen pantry and no RO system for drinking water installed has been re-iterated in the written submissions as well by the ORWA. In reply to the written



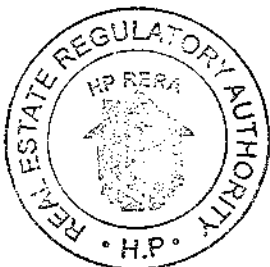
submissions it was submitted that exhaust fan in the kitchen of the club house has been installed and RO water purifier with dispenser has also been installed.

- 30.** A further issue was raised by the ORWA in the written submissions that toilet block of common club house do not have windows/ ventilators and there is no provision for rain water harvesting pit as per government norms and there is no earthing of electrical equipment and earthing of the building for protection from lightening. In reply it was submitted that no such issues were ever raised before and therefore the ORWA cannot be permitted to raise such issues at such a belated stage of arguments. Further the issue of ORWA that squash Court & badminton court are not as per the design & drawing. In reply it was submitted that such issues were never raised before and respondent also submitted that the construction has been done strictly as per the sanction plan. Further in reply to the issue of ORWA that MS railing is looking very bad, it was submitted that the work of MS railing was done as per the approved specifications, however the strengthening of the same has been done. Another issue was raised by the ORWA in the written submissions that the underground electrical cables are not laid in a trench/ cable gulley/ cable tray and may cause fatal accidents in the long run. In reply to the written submissions, it was submitted that the work has been done as per the approved drawings. Further issues were raised by the ORWA in the written submissions that pump house has an opening which may allow the miscreants to enter without obstruction and has been constructed against the TCP norms and then issue of covered storage racks in the pantry kitchen was also raised and then issue of partition for urinals in male toilet was also raised. In reply again it was submitted that no such issues were raised by the ORWA at any time before therefore the ORWA is precluded from raising these issues at such a belated stage. Further an issue was raised by the ORWA in the written submissions that fire and electrical ducts are also required to be covered



to which in reply it was submitted that both these ducts have been covered. Thereafter the issue of ORWA that no door is being provided for closing pump house and no power back up for common club was provided. To this also it was replied in the written submissions by respondent that such issues were never raised before and therefore the ORWA is precluded from raising these issues at this belated stage. Further an issue was raised by the ORWA that before handing over the common club, the ORWA wants the respondent to give clearance certificate from Fire Department, Chief Electric Inspector and occupancy certificate from TCP Department. In reply the respondent submitted that all the documents as demanded which are in the possession of the respondent shall be supplied. Further an issue was raised by the ORWA that the quality of concrete is very poor which will cause cracks very soon and to this in the reply to the written submissions it was submitted by the respondent that the work of laying down the concrete has been completed strictly as per technical specifications.

- 31.** The Authority has been monitoring the construction of club house and boundary since the time this complaint was filed. Despite being granted more than sufficient time to construct the club house and boundary wall, the respondent caused a lot of delay to complete the same and therefore vide order dated 9.4.2021 the Authority exercising powers under Section 63, 69 read with Section 38 of the Act imposed cost of Rs one lakhs on the respondent for failure to complete the club house and boundary wall with in time, which penalty was later enhanced to Rs Ten Lakhs vide order dated 10.8.2021. Thereafter another penalty of Rs Twenty Lakhs was also imposed on the respondent vide its order dated 15.11.2021 and in addition a per day penalty of Rs 10,000/- was also imposed for failure to deposit the penalty of Rs Ten Lakhs earlier imposed. Entire penalty imposed for delay to complete the club house and boundary wall amounting to Rs 30,80,000/- has been deposited in



the Authority as recorded in zimni order of the Authority dated 6.12.2021.

32. The Authority has heard both the parties and gone through the record. The work of construction of structure of club house is complete as is evident from the photographs. Further from the documents and photographs appended the Authority hereby holds that the tiles in the entry zone have been laid, granite stone on the stair case of the club house have also been laid and cracked granite stone(s) have been replaced. The Authority further holds that the tiles in the pump house area have been laid and MS railing pipe has been affixed and strengthened. The flood lights in the badminton court have been installed. Squash court has been completed. The repair work has been done in the roof of the club house to avoid water stagnation. The fire smoke sensors have been installed in the club house. RO water purifier and dispenser has been installed. Exhaust fan in the kitchen has been installed. Separate space for males and females have provided in the sauna/ steam bath area. CCTV cameras have been installed. SS railing in the pool area to bifurcate kids pool from adult pool has been done.

33. Further issues that toilet blocks of common club do not have windows/ ventilators, issue of no provision for rain water harvesting tank as per government norms, issue of no earthing of electrical equipment's and no earthing of the building for protection from lightening, issue that squash Court & badminton court are not as per the design & drawing, issue of no covered storage racks for the pantry kitchen, issue of no partition for urinals in male toilet, issue of no door being provided for closing pump house and issue of no power back up for common club have been raised for the very first time during arguments and were neither pleaded nor raised ever before. Even during the spot inspection by the TCP these issues were never raked up. The Supreme Court in the case of **Bachhaj Nahar vs. Nilima Mandal & Anr., (Civil Appeal Nos. 5798-5799 of**



2008) decided on 23.09.2008 and reported as (2008) 17 SCC 491 held as under

“8. The High Court, in this case, in its obvious zeal to cut delay and hardship that may ensue by relegating the plaintiffs to one more round of litigation, has rendered a judgment which violates several fundamental rules of civil procedure. The rules breached are:

(i) **No amount of evidence can be looked into, upon a plea which was never put forward in the pleadings.** A question which did arise from the pleadings and which was not the subject matter of an issue, cannot be decided by the court.

(ii) **A Court cannot make out a case not pleaded. The court should confine its decision to the question raised in pleadings. Nor can it grant a relief which is not claimed and which does not flow from the facts and the cause of action alleged in the plaint.**

(iii) A factual issue cannot be raised or considered for the first time in a second appeal.

Civil Procedure Code is an elaborate codification of the principles of natural justice to be applied to civil litigation. The provisions are so elaborate that many a time, fulfilment of the procedural requirements of the Code may itself contribute to delay. But any anxiety to cut the delay or further litigation, should not be a ground to float the settled fundamental rules of civil procedure. Be that as it may. We will briefly set out the reasons for the aforesaid conclusions.

9. **The object and purpose of pleadings and issues is to ensure that the litigants come to trial with all issues clearly defined and to prevent cases being expanded or grounds being shifted during trial. Its object is also to ensure that each side is fully alive to the questions that are likely to be raised or considered so that they may have an opportunity of placing the relevant evidence appropriate to the issues before the court for its consideration.**

This Court has repeatedly held that the pleadings are meant to give to each side intimation of the case of the other so that it may be met, to enable courts to determine what is really at



issue between the parties, and to prevent any deviation from the course which litigation on particular causes must take.

10. The object of issues is to identify from the pleadings the questions or points required to be decided by the courts so as to enable parties to let in evidence thereon. When the facts necessary to make out a particular claim, or to seek a particular relief, are not found in the plaint, the court cannot focus the attention of the parties, or its own attention on that claim or relief, by framing an appropriate issue.

As a result the defendant does not get an opportunity to place the facts and contentions necessary to repudiate or challenge such a claim or relief. Therefore, the court cannot, on finding that the plaintiff has not made out the case put forth by him, grant some other relief. The question before a court is not whether there is some material on the basis of which some relief can be granted. **The question is whether any relief can be granted, when the defendant had no opportunity to show that the relief proposed by the court could not be granted. When there is no prayer for a particular relief and no pleadings to support such a relief, and when defendant has no opportunity to resist or oppose such a relief, if the court considers and grants such a relief, it will lead to miscarriage of justice.**

Thus it is said that no amount of evidence, on a plea that is not put forward in the pleadings, can be looked into to grant any relief.

11. The High Court has ignored the aforesaid principles relating to the object and necessity of pleadings. Even though right of easement was not pleaded or claimed by the plaintiffs, and even though parties were at issue only in regard to title and possession, it made out for the first time in second appeal, a case of easement and granted relief based on an easementary right. For this purpose, it relied upon the following observations of this Court in *Nedunuri Kameswamma v. Sampati Subba Rao* MANU/SC/0319/1962 : [1963]2SCR208 :

No doubt, no issue was framed, and the one, which was framed, could have been more elaborate, but since the parties went to trial fully knowing the rival case and led all the evidence not only in support of their contentions but in refutation of those of the other side, it cannot be said that the absence of an issue was fatal to the



case, or that there was that mistrial which vitiates proceedings. We are, therefore, of opinion that the suit could not be dismissed on this narrow ground, and also that there is no need for a remit, as the evidence which has been led in the case is sufficient to reach the right conclusion.

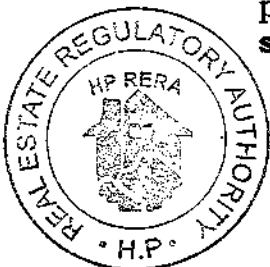
But the said observations were made in the context of absence of an issue, and not absence of pleadings.

The relevant principle relating to circumstances in which the deficiency in, or absence of, pleadings could be ignored, was stated by a Constitution Bench of this Court in *Bhagwati Prasad v. Shri Chandramaul* MANU/SC/0335/1965 : [1966]2SCR286 :

If a plea is not specifically made and yet it is covered by an issue by implication, and the parties knew that the said plea was involved in the trial, then the mere fact that the plea was not expressly taken in the pleadings would not necessarily disentitle a party from relying upon it if it is satisfactorily proved by evidence. **The general rule no doubt is that the relief should be founded on pleadings made by the parties.** But where the substantial matter relating to the title of both parties to the suit was touched, though indirectly or even obscurely in the issues, and evidence has been led about them then the argument that a particular matter was not expressly taken in the pleadings would be purely formal and technical and cannot succeed in every case. **What the Court has to consider in dealing with such an objection is: did the parties know that the matter in question was involved in the trial, and did they lead evidence about it? If it appears that the parties did not know that the matter was in issue at the trial and one of them has had no opportunity to lead evidence in respect of it, that undoubtedly would be a different matter. To allow one party to rely upon a matter in respect of which the other party did not lead evidence and has had no opportunity to lead evidence, would introduce considerations of prejudice, and in doing justice to one party, the Court cannot do injustice to another.**

The principle was reiterated by this Court in *Ram Sarup Gupta (dead) by LRs. v. Bishun Narain Inter College* MANU/SC/0043/1987 : [1987]2SCR805 :

It is well settled that in the absence of pleading, evidence, if any, produced by the parties cannot be considered. **It is also equally settled that no party should be permitted to travel beyond its**



pleading and that all necessary and material facts should be pleaded by the party in support of the case set up by it. The object and purpose of pleading is to enable the adversary party to know the case it has to meet. In order to have a fair trial it is imperative that the party should state the essential material facts so that other party may not be taken by surprise. The pleadings however should receive a liberal construction, no pedantic approach should be adopted to defeat justice on hair splitting technicalities. Sometimes, pleadings are expressed in words which may not expressly make out a case in accordance with strict interpretation of law, in such a case it is the duty of the court to ascertain the substance if the pleadings to determine the question. It is not desirable to place undue emphasis on form, instead the substance of the pleadings should be considered. Whenever the question about lack of pleading is raised the enquiry should not be so much about the form of pleadings, instead the court must find out whether in substance the parties knew the case and the issues upon which they went to trial. Once it is found that in spite of deficiency in the pleadings, parties knew the case and they proceeded to trial on those issue by producing evidence, in that event it would not be open to a party to raise the question of absence of pleadings in appeal.

12. It is thus clear that a case not specifically pleaded can be considered by the court only where the pleadings in substance, though not in specific terms, contains the necessary averments to make out a particular case and the issues framed also generally cover the question involved and the parties proceed on the basis that such case was at issue and had led evidence thereon. As the very requirements indicate, this should be only in exceptional cases where the court is fully satisfied that the pleadings and issues generally cover the case subsequently put forward and that the parties being conscious of the issue, had led evidence on such issue. But where the court is not satisfied that such case was at issue, the question of resorting to the exception to the general rule does not arise. The principles laid down in Bhagwati Prasad and Ram Sarup Gupta (supra) referred to above and several other decisions of this Court following the same cannot be construed as diluting the well **settled principle that without pleadings and issues, evidence cannot be considered to make out a new case which is not pleaded.** Another aspect to be noticed, is that the court can consider such a case not specifically pleaded, only when one of the parties raises the same at the stage of arguments by contending that the pleadings and issues are sufficient to make out a particular case and that the parties proceeded on that basis and had led evidence on that case. Where neither party puts forth such



a contention, the court cannot obviously make out such a case not pleaded, suo moto.”

Therefore to sum up any plea not taken in the pleadings and not at any time thereafter when sufficient time was granted, cannot be permitted to be raised later on when the trial of the case has matured and only arguments are to take place. Such approach will deny the respondent from efficiently defending his case which will cause prejudice to the respondent and will also lead to travesty of justice. In the present case also many pleas not originally taken up as mentioned above in this para, were raised at such a belated stage during arguments and now the respondent has no opportunity to rebut the same. The ORWA was raising new pleas at every stage of the trial and trying to make out a new case every time which procedure if permitted to continue will make these proceedings a never ending process. Therefore the Authority holds that the pleas taken up by the ORWA for the first time as mentioned herein above in this para cannot be permitted and therefore are hereby rejected.

34. Further no evidence has been placed on record by the ORWA on the (i) issue of squash Court & badminton court not being as per the design & drawing (ii) issue of underground electrical cables not laid properly (iii) issue of pump house having an opening which may allow the miscreants to enter without obstruction and having been constructed against the TCP norms (iv) issue of no covered storage racks for the pantry kitchen (v) issue of no partition for urinals in male toilet (vi) issue of fire and electrical ducts not covered (vii) issue of quality, structural stability/specifications with respect to various facets of club house and its common services (viii) issue of adherence to sanction plans while developing/ construction the common areas/services and doing internal and external development (ix) issue of design of club house not matching with the brochure. On all the aforesaid issues no evidence was led by the parties particularly the ORWA. As per **Section 101 of the Indian**



Evidence Act 1872 which defines **Burden of proof** says that — Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist. When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.

Section 102 of the Indian Evidence Act 1872 which talks about on whom burden of proof lies. — The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.

Section 103 of the Indian Evidence Act 1872. Burden of proof as to particular fact. —The burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.

Section 104 of the Indian Evidence Act 1872. Burden of proving fact to be proved to make evidence admissible. — The burden of proving any fact necessary to be proved in order to enable any person to give evidence of any other fact is on the person who wishes to give such evidence.

Therefore to conclude the burden of proof in terms of Section 101 to 104 of the Indian Evidence Act, 1972 is on the ORWA to prove the issues mentioned in this para. The ORWA did not bring on record any evidence in support of its case in this behalf as it is the ORWA who being complainant had to stand on its own legs and prove its case. Therefore the issues as mentioned herein above in this para, in the absence of any evidence are decided in negative and against the ORWA complainant.

35. It appears that the respondent has complied with sale brochure in substance and nothing adverse has been pointed out by ORWA to show that facilities mentioned in sales brochure have not been provided. The Authority after going through the record is certain that the construction



work of club house is complete and the common facilities of the club as asked by the ORWA in the site inspection report have been provided. However the possession of club and various common services attached thereto may be handed over to the ORWA after proper verification qua its operatibility.

36. Issue of Gymnasium-

Although gymnasium is a part of the club house however for the sake of convenience it is being taken up separately. The ORWA raised the issue of Gym equipment not yet installed and it was observed in the site inspection report that there are no gym equipment installed in the club house. In the written submissions also this issue was re-iterated. In reply to the written submission it was reiterated that the building work has already been completed however equipment shall be provided at the time of handing over of gym to the ORWA. In the arguments it was submitted by the respondent that the equipment will be placed within 30 days once the gym instructor is appointed. Further it was also submitted that the expenses of the instructor have to borne by the ORWA. In rebuttal the ORWA argued that the issue of appointing instructor was never brought to the notice of the ORWA either orally or in written form. No such document has been placed on record. The Authority after hearing both the parties and going through the record hereby holds that the ORWA has not denied its role/liability of appointing an instructor and has only submitted that this fact was never brought to their knowledge therefore in totality of facts the Authority directs that the ORWA to appoint gym instructor at the earliest and intimate the respondent in writing qua the same with a copy to the Authority. Thereafter within 30 days the respondent will install/ place the gym equipment and hand over the gym along with equipment(s) to the ORWA by issuing letter of possession.

37. Issue of Swimming Pool-



It was complained by the ORWA that many of the vertical tiles in the swimming pool were not properly fixed. Further it was also the grievance of the ORWA that no separation/ partition is there between main pool and children pool. The issue of non-coverage of outside drainage line was also raised. On these grievances, in the site inspection report it was mentioned that the tiles have been properly fixed and none of the parties raised this issue of proper fixing of tiles when the spot was inspected. It was further in the site inspection report that there was no separation/ partition between main pool and children area. It was further mentioned in the report that as per rules the children below 6 years age are permitted to use the swimming pool with their guardians. Further it was mentioned in the site inspection report that the issue of coverage of outside pool drainage line was not discussed or pressed by the ORWA at the time of inspection. Thereafter when the parties were permitted to file written submissions it was submitted by the ORWA that the swimming pool is not tested for and put in operation hence it has not been commissioned. It was further submitted that provision of lockers/ racks is needed near the swimming pool for the changing of clothes and keeping essentials etc. To this respondent replied in its reply to written submissions that swimming pool is constructed as per the approved sanctioned plan and the swimming pool is ready for use by the residents. It was further submitted that pavers of the swimming pool area offer an anti skid quality. On the query raised by the Authority during the course of the arguments as to whether there was any trial run from the side of respondent qua the swimming pool and how then can the facility be said to be complete and capable of being handed over it was replied by the respondent that in the month of January when temperature is very cold, trial run could not be done because it was an outdoor swimming pool and not an indoor swimming pool. It was further said on behalf of the respondent that the issue that trial run has not been done is coming up for the very first time as it has never been raised



before when the initial complaint was made or site inspection conducted. It was further submitted on behalf of the respondent that the issue earlier raised qua the swimming pool was that tiles have not been properly affixed which issue has now been fixed. Therefore the respondent orally argued that they have taken care of the grievance of tiles and tiles have been properly affixed which fact is also evident from the photographs appended. It was further submitted on behalf of respondent that if it is required by the Authority and if Authority directs the respondent will get the trial run conducted within the time granted. After going through the pleadings, photographs and hearing both the sides the Authority hereby holds that the construction work of swimming pool is complete in all respects and the only thing that is required to be done is conducting a test run or trial and thereafter it can be handed over to the ORWA for use. Therefore the Authority directs that the trial run of the swimming pool be done at the earliest and thereafter offer the possession of the same to the ORWA on or before 31st March, 2022 by way of issuance of written offer of possession and then ORWA shall take over the possession of the same.

38. Further an issue was also raised that the swimming pool has not been constructed as per the sanction plan but no evidence has been brought on record by the ORWA in support of its case in this behalf. Therefore in the absence of evidence, the issue of non-adherence of sanction plan while constructing swimming pool is decided in negative.

39. Issue of Play grounds-

No such point was raised at the time when the TCP visited the site nor was such point raised in the written submissions or while orally arguing the case on behalf of ORWA therefore no findings are being returned on this issue and therefore this issue has been held to be "not pressed" on behalf ORWA.

40. Issue of completion of boundary wall-



It was the grievance of the ORWA before the TCP when he visited the site on 4.8.2021 that the boundary wall that is being constructed is not in accordance with the earlier wall and the respondent did some modifications/ patchwork on the boundary wall. It was further their grievance before the TCP that the wall was built on makeshift foundations with no curing and therefore it was submitted that the wall may collapse on slightest impact. It was further their grievance before the TCP that the boundary wall is completed with patch work around blocks kachnar-C and B. It was also their grievance that the boundary wall is without pillar plaster on kachnar B side and Block Jacaranda -C side, C4 to C6. It was further the grievance of the ORWA that no wall around Jacaranda C4 to STP backside is constructed. It was further their grievance that temporary partition was fixed at some places instead of a permanent boundary wall. It was further their grievance that no boundary wall from Jacaranda C4 to C1, C1 to STP is there. It was further the grievance of ORWA that there is no boundary wall for the rear end of EWS blocks. The TCP in its report observed that the boundary wall is 1 km in length. It was further observed that a part of the boundary wall has been constructed long back. However at some places it was observed in the report of the TCP that boundary wall has been constructed recently in a hurried manner. It was further observed that at few places new boundary wall has developed cracks. As per the site inspection report it was observed that there is a lot of difference between the new boundary wall and old boundary wall. It was observed in the report of the TCP that the design and boxes have been carved out in the new boundary wall to match it with the old boundary wall. It was further pointed out in the site inspection report that at some places in place of brick boundary wall, metal sheets were fixed with angle irons. It was further observed in the report of the TCP that on the right side of the complex there is a nallah. It was further held that at some places



when the site was inspected there was neither any brick boundary wall nor any partition made of angle sheets and it was open.

41. Further when written submissions were filed by ORWA, it re-iterated their grievances made by it before the TCP when he had visited the site. In reply to the written submissions it was submitted that the construction work of boundary wall is complete as per the sanctioned plan and the construction work of boundary wall is still on-going in the area where construction of project is going on and that part of the project is still not handed over to the allottees or its association. It was further submitted that the construction in that part of the project is going on therefore the boundary wall in that area is incomplete but it was submitted that it does not impact the ORWA as the area has been properly bifurcated by providing metal sheet fencing to protect the entire complex area from any miscreants. It was submitted that incomplete boundary wall falls within the ongoing construction area and therefore it could not be completed. It was further submitted that the remaining portion will be completed as per the design, specifications and structure of the old boundary wall. It was further submitted that the delay caused in completing the construction is because of the spread of COVID 19. It was further also submitted that the issue raised by the ORWA that boundary wall has not been constructed on the exterior edge of the land under possession of this project has been taken up for the first time and therefore the ORWA is precluded from raising such objections at such belated stage. It was further submitted by the respondent that the boundary wall is being constructed as per the TCP norms. In the arguments it was submitted on behalf of respondent that the respondent has shared certain photographs which show that when it comes to construction and completion of boundary wall the remaining work left of boundary wall construction does not even impact or affect the ORWA. It was further submitted that the construction work of leftover boundary wall has been properly bifurcated by metal sheets and no alien or



notorious elements can come in from there and the same can be seen from the photographs. It was further argued on behalf of the respondent that he undertakes to complete the remaining work of boundary wall as soon as possible within a period of 30 days and finish the same by the end of February, 2022. It was also submitted that while completing the incomplete work of the boundary wall, the respondent is taking care of the privacy and safety of the ORWA and its residents by installing metal sheets.

42. This Authority monitored the construction of boundary wall from time to time since this complaint was filed. The respondent kept on seeking extension of time and the Authority had granted the same. Further vide order dated 18.2.2021 the Authority directed the respondent that the quality and height of new phase of boundary wall being constructed shall be the same as of the old wall. For the delay caused in the construction of boundary wall as discussed earlier the penalty was imposed and in response to the penalty so imposed the respondent deposited an amount to Rs 30,80,000/- with this Authority.

43. However, the Authority after hearing both parties and going through the record of the case, hereby holds that the incomplete boundary wall falls within the ongoing construction area which is yet to be completed and the area has been bifurcated by providing metal sheet fencing to protect the entire complex area from any miscreants. It is the undertaking of the respondent that the remaining work shall be completed as soon as possible within a period of 30 days and same shall be finished by the end of the month of February, 2022. Therefore the Authority after considering all the facts grants time to respondent to complete the boundary wall by 31st March, 2022.

44. Issue of levy of holding charges by respondent -

The issue of levy of holding charges was raised by the ORWA and on this issue vide order dated 9.4.2021 it was held by the Authority as under-



“ In the meantime following decision of the National Consumer Disputes Redressal Commission dated 3.1.2020 in a batch of consumer complaints including case no. 351/2015 titled as Capital Greens Flat Buyers Association and others versus DLF Universities ltd and another etc. has come to the notice of the Authority which was upheld by the Apex Court in the matter of DLF Home Developers Ltd. and another versus Captial Greens Flat Buyers Association decided on 14 December, 2020. The relevant para of the decision of the commission is reproduced hereunder:

“It transpired during the course of arguments that the OP has demanded holding charges and maintenance charges from the allottees. As far as maintenance charges are concerned, the same should be paid by the allottee from the date the possession is offered to him unless he was prevented from taking possession solely on account of the OP insisting upon execution of the indemnity cum undertaking in the format prescribed by it for that purpose. If maintenance charges for a particular period have been waived by the developer, the allottee shall also be entitled to such a waiver. As far as holding charges are concerned, the developer having received the sale consideration has nothing to lose by holding possession of the allotted flat except that it would be required to maintain the apartment. Therefore, the holding charges will not be payable to the developer. Even in case where the possession has been delayed on account of the allottee having not paid the entire sale consideration, the developer shall not be entitled to any holding charges though it would be entitled to interest for the period the payment is delayed”

Therefore vide the aforesaid order this Authority held that the allottees are not liable to pay any holding charges once they have paid full consideration.



45. Issue pertaining to non- adherence of sanction plan in completion of new phases/ blocks-

Although this point was raised in the pleadings but neither any evidence was led to prove the same nor was the same argued. The burden of proof to prove this issue by way of placing on record evidence was on the ORWA. ORWA has failed to bring on record any evidence in this behalf therefore this issue is decided in negative and against the ORWA.

46. Issue of registration of sale deeds-

The Authority vide its order dated 2.3.2020 observed that many allottees have not got their sale deeds registered for the apartments/ properties allotted to them, though they have already taken possession of the same and were directed to get their properties registered by 31st May, 2020. Thereafter vide order dated 9.4.2021 the president of the ORWA informed the Authority that the issue of registration of sale deeds which were pending to be executed has been resolved therefore nothing survives and this issue is decided accordingly.

47. Issue of maintenance of common services-

On this issue, vide the zimni order of this Authority dated 9.4.2021 the issue of maintenance was raised by the ORWA and after relying on Section 11 (4) (d) of the Real Estate (Regulation and Development) Act 2016 it was held that if the ORWA is not satisfied by the maintenance services being provided by the promoter or his associated organisations, the ORWA after taking a decision in their general body meeting may take over the services if they so want. Therefore in this manner discretion was given to the ORWA to take over the maintenance services but the ORWA has not apprised the Authority about any development on this issue.

48. Issue of poor quality construction-

On this issue also no evidence was led by the parties particularly the ORWA. As per Section 101 to 104 of the Indian Evidence Act the burden to prove this issue onus was on the ORWA. As the ORWA did not bring on record any evidence in support of its case in this behalf therefore this



issue in the absence of any evidence is decided in negative and against the ORWA complainant.

49. Issue related to delay in handing over the parking slots-

On this issue again no evidence was led and nothing was argued by the ORWA therefore as per Section 101 to Section 104 of the Indian Evidence act 1872 this issue is also decided in negative and against the ORWA complainant.

50. RELIEF:-

Keeping in view the above mentioned facts, this Authority in exercise of power vested in it under various provisions of the Act, rules and regulations made thereunder, issues the following orders/directions:

- 1) The complaint is partly allowed.
- 2) The respondent is directed to hand over the possession of club house along with other common facilities by issuing letter of possession to the ORWA on or before 31st March, 2022.
- 3) The ORWA is directed to appoint gym instructor at the earliest as per their choice and intimate the respondent in writing qua the same with a copy of the same to this Authority. Thereafter within 30 days the respondent will install/ place the gym equipment and hand over the gym along with equipment to the ORWA by issuing letter of possession.
- 4) The respondent is directed to conduct the trial run of the swimming pool to be done at the earliest and thereafter offer the possession of the same in writing to the ORWA on or before 31st March, 2022.
- 5) The respondent is directed to complete the remaining work of the construction of boundary wall by 31st March, 2022.
- 6) The respondent is directed to hand over latest approved sanction plans and other documents, including that of common areas which are in the possession of the respondent, to the ORWA by 31st March, 2022.
- 7) If the respondent fails to complete the remaining work of the construction of boundary wall by 31st March, 2022 in terms of direction



no. 5 of this order, he will be further held liable under Section 63 of the Act to a penalty of Rs Ten lakhs.

- 8) Non-compliance or any delay in compliance of the above directions shall further attract penalty under Section 63, 69 and Section 38 of the Act *ibid*, apart from any other action the Authority may take under Section 40 or other relevant provisions of the Act.


B.C. Badalia
MEMBER

Sicant
Dr. Shrikant Baldi
CHAIRPERSON


Rajeey Verma
MEMBER

