

**REAL ESTATE REGULATORY AUTHORITY  
HIMACHAL PRADESH**

**Complaint No.HPRERA2022033/C**

Ahlawat Developers and Promoters, (Partnership Firm) Khasra Nos.602-608,610-611, Malku Majra (Opposite Dr. Reddy Laboratories ) Tehsil Baddi, Solan , Himachal Pradesh 173205 through its partner(s)

..... Complainant

VERSUS

Nikhil Sharma Plot No. 22 in Himachal One Apartments, Malku Majra, Tehsil Baddi, Solan, Himachal Pradesh,173205

.....Respondent

**Present :- Smt. Neha Gupta,Ld. Counsel for respondent promoter alongwith Jagjit Singh Ahlawat Complainant through Webex**

**Sh. Shanti Swaroop, Ld. Advocate for respondents alongwith Sh. Yash Pal, Sh. Abdul Guffar Kasane and Sh. Nikhil Sharma**

**Final date of hearing:- 29.04.2023**

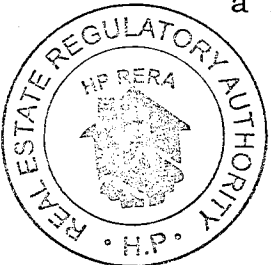
**Date of Pronouncement of order:-26.05.2023**

**Order**

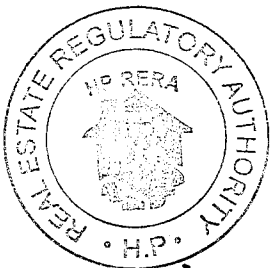
**Coram: - Chairperson and Member**

**FACTS OF THE COMPLAINT:**

1. That the relevant facts in brief giving rise to the present petition are that complainant is promoter of the Housing Project 'Himachal One' situated at Malku Majra, Tehsil Baddi, Solan , Himachal Pradesh. It was pleaded that respondents had purchased a residential plot no.22 in the aforesaid project. The sale deed of the said plot was executed in the office of the Sub Registrar Baddi in favour of the respondent on 05.09.2019. The copy of the sale deed is annexed herewith the complaint. It was further pleaded that the respondent has constructed a four storied house and the electricity for the construction was



supplied by the complainant. It was further pleaded that the respondent has paid only Rs. 19000/- to the complainant against electricity charges since date of execution of sale deed and has not paid any maintenance charges. The statement of total payments made by the 22 plot allottees is annexed as Annexure-1. It was further pleaded that as per the statement of accounts a sum of Rs 1,62,475/- was paid by the plot allottee(s) directly to HPSEBL on 27.08.2022 following disconnection of electricity supply by HPSEBL due to non-payment of electricity dues. It was further pleaded that the complainant paid a sum of another Rs 2,75,000/- to HPSEBL to ensure continuous supply of electricity by HPSEB to the residents. It was further pleaded that there is still outstanding amount of Rs 10,57,318/- which shall be paid to HPSEBL after the allottees have paid their share of maintenance charges/electricity bills. It was further pleaded that the details of electricity bills of Rs 46,59,624/- raised by HPSEBL from April 2019 till July 2022 are annexed as Annexure 2. It was further pleaded that the total maintenance charges for the plot no.22 works out to Rs. 6,075/- calculated @ 50 paise per sq. feet of the plot area (1215 sq. ft.) from the date of execution of sale deed till start of construction in February 2020 and Rs. 58,104/- from start of construction i.e. February 2020 onwards till date. It was further pleaded that the maintenance charges @ 75 paise per sq. ft. are calculated from the date of start of construction i.e. February 2020 on the total built up area i.e. 225 Sq. mts of the plot. It was further pleaded that the maintenance charges are Rs. 58,104/- from the start of construction i.e. February 2020 till September 2022 @ 75 paise per sq. ft. It was further pleaded that the electricity charges are to be paid as per the actual consumption of the electricity @ Rs. 5.00 per unit till the respondent takes electricity connection directly from HPSEBL in his name. With these averments it was prayed that respondent may be directed to pay the total maintenance charges of Rs 64,179/- and also to pay electricity charges as per actual consumption. It was further prayed that the respondent

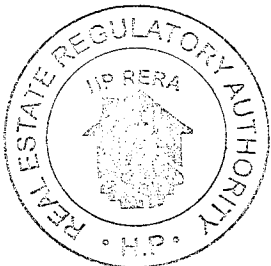


may be directed to plan and distribute its electrical load in conformity with the electrical system planned by the complainant.

2. The complainant has also filed an MA in the present case. In the MA, the complainant has mentioned that the promoter had a meeting with the plot allottees on 20<sup>th</sup> September, 2022 to resolve the maintenance charges. The minutes of the meeting are attached with the MA. According to that, the plot allottees were to pay Rs. 1,500/- per month during the period of construction and after that the allottees are to pay Rs. 700/- per month.

**3. Reply by the respondent**

In reply it was pleaded that complaint is not maintainable because the complainant has completely failed to discharge functions and duties of promoter, especially provided u/s 11(4) (d) (e) of The Real Estate (Regulation and Development) Act, 2016. It was further pleaded that the statement of maintenance charges are fake, false and without any supporting record, which cannot be relied upon and is liable to be rejected and ignored by this Hon'ble Authority. It was further pleaded that the factual conditions on the spot show that the complainant has spent nothing since his arrest in criminal case, to maintain the roads, parks, sewerage and other essential services for the convenience of the allottees. It was further pleaded that there is no arrangement for garbage collection, hence the society is in unhygienic conditions. It was further pleaded that the boundary/ protection wall of the project has been dismantled at many places due to which animals and thief(s) etc from outside are entering the project which has caused damages to allottees and cannot be compensated in terms of money. It was further pleaded that there are multiple theft issues which have already been reported and FIRs have been registered qua the same. It was further pleaded that the complainant has dug a well for sewerage, which is open and has endangered life of the persons including small children of the allottees. It was further pleaded that the sewerage treatment plant is lying idle without any motor and electricity supply. It was further pleaded that the complainant/ promoter has obtained temporary



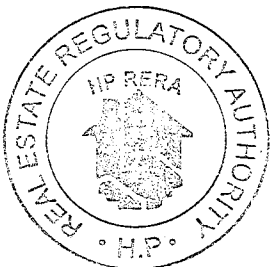
electricity connection for the construction of the flats for sale. It was further pleaded that the complainant has supplied electricity from the temporary electric connection for the construction of flat/ plots for sale and illegally charged higher rates @ Rs 5 per unit from the allottees. It was further pleaded that the complainant/ promoter has installed an electricity transformer in the month of October, 2022 from which allottees are consuming electricity and are paying the electricity charges as per consumptions shown in the meter/ sub-meter. It was further pleaded that after the transfer of the plots to the allottee, the promoter has no liability on or over such plot and cannot charge any maintenance charges for the simple reason that he spent nothing on the plot/plots. The contents of the complaint were admitted to the extent that a payment of Rs.19, 000/- was made by the respondent to the complainant qua electricity. It was further pleaded that respondent has paid the maintenance charges which have been acknowledged by the complainant as he has issued NOC on 05.10.2022, in which he has written that Sh. Nikhil Sharma has cleared all the dues including maintenance charges till October,2022 and the copy of the same is enclosed as annexure R-1 with the reply.

**4. Rejoinder by the complainant-**

It was pleaded in the rejoinder that all details/calculations of the maintenance/electricity charges so claimed by the complainant are given along with the present complaint and have also been communicated to the respondent by the complainant from time to time. It was further pleaded that the commercial property of the complainant was given as a security under a Memorandum of Understanding entered by M/s Ahlawat Developers and Promoters with one Mrs Asha Sahore in a complaint case pending before Hon'ble HP State Consumer Disputes Redressal Commission at Shimla. It was further pleaded that the Hon'ble National Consumer Disputes Redressal Commission, New Delhi (NCDRC) as per its decision dated 27.04.2022 had directed Mrs Asha Sahore to release the said property to M/s Ahlawat Developers and Promoters and same is yet to be



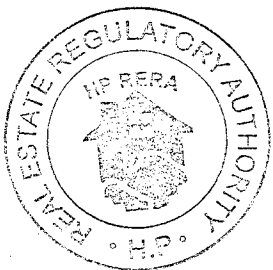
released. It was further pleaded that due to the reason mentioned above, the complainant has not been able to develop the commercial property which includes certain essential services. It was further pleaded that the respondent had purchased the Plot No 22 and executed sale deed bearing registration No 1738/2019 dated 05.09.2019 and had requested the complainant / promoter to provide electricity for construction purposes as the BBND A had not issued NOC for electricity connection to the respective plot allottees. It was further pleaded that the modus operandi of the respondent was to deliberately damage their electricity meters after an average consumption of around 2000- 4000 units and again put another temporary meter costing not more than Rs 900/-. It was further pleaded that the respondent has consumed 7040 units of electricity from the start of construction in February, 2020 till August, 2022 as 6-7 families are residing in the said building at Plot No 22. It was further pleaded that the brief summary of the electricity bills raised by HPSEBL are placed at Annexure A3. It was further pleaded that the new transformer of 500 KW was installed in June, 2022 but was not commissioned as the allottees had not cleared their electricity bill amounting to Rs 14.94 lacs. It was further pleaded that HPSEBL was constrained to disconnect the electricity to the project on 28.08.2022 for not clearing the electricity dues. It was further pleaded that the plot allottees deposited a cumulative sum of Rs 1,62,475/- on 28.08.2022 and the complainant as promoter deposited a sum of Rs 5,75,000/- to HPSEBL so that the electricity is restored to the housing project and the residents do not face any inconvenience. It was further pleaded that none of the plot allottees have made any payment of electricity charges to the complainant promoter or HPSEBL from August, 2022 onwards and the current electricity bill as on February, 2023 is showing the current outstanding amount of Rs 18.50 lacs. It was further pleaded that the electricity connections were released in favour of the allottees directly by HPSEBL in November, 2022 based on the MOU with the plot allottees. It was further pleaded that the complainant promoter has planned the electricity sub-station



with a load of 5 KW for every family. It was further pleaded that the plot allottees have built the houses for commercial purposes by renting out all the top floors and keeping the ground floor for themselves. It was further pleaded that to fulfil the electricity requirement for 25-30 people, each plot allottee has taken a load of 12-20 KW which is far in excess of the load planned by the promoter. It was further pleaded that the allottees shall have to pay for the excess load taken by them from the electrical infrastructure developed and commissioned by the promoter. It was further pleaded that the respondent has constructed a 4 storied building on the said plot in which a total of 6-7 families comprising of 25- 30 persons are residing since February 2022. It was further pleaded that total charges payable by the allottee/respondent are Rs 61,857 as maintenance charges, Rs 35,200 as electricity charges and Rs 24,000/- as payment for excess load over 5 KW. It was further pleaded that Rs 68,100/- has already been paid by the respondent and therefore a balance of Rs 52,957 is to be paid by the respondent. It was further pleaded that the claim for electricity in the present case is only up to August, 2022 and the bills raised by the promoter from August, 2022 till the time of installation of electricity connections by HPSEB are yet to be cleared by the respondent. It was further pleaded that at present there are total 36 plot allottees and 40 flat allottees who are residing in the housing project but sale deeds for all the 70 plots in the housing project have been executed by the complainant promoter. It was further pleaded that the said project is completely maintained by the complainant itself and hence all the allottees are duty bound to pay maintenance charges to the developer upon demand raised or on monthly basis

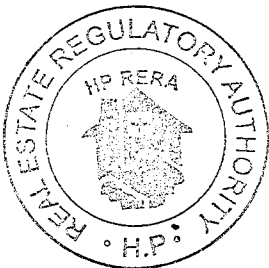
**5. Site inspection report-**

The Authority, vide its order dated 28.03.2023 had instructed Learned ADA of the Authority to visit the site in the presence of the parties and submit a factual report in the case. The ADA has submitted the site inspection report on 6<sup>th</sup> April, 2023. The relevant contents of the site inspection report in verbatim are re iterated as under-



*"The undersigned was directed to visit the spot on **6<sup>th</sup> April, 2023 at 12 PM** and hold a meeting with parties to mediate and facilitate the parties to the case to amicably settle the issue. In pursuance thereof the undersigned visited the site of the project on the date and time already fixed by this Authority. Before mediating with the parties the undersigned in the presence of all the parties to the four case inspected the site of the project and observed as under-*

1. **Electrical substation-** *In terms of the site plan approved by BBNDA uploaded on the promoter profile in HP RERA by the promoter, the undersigned inspected the area where electrical sub station was to be installed by the promoter as per the approved site plan.  
The promoter had installed a transformer of 500 KW and there was also a panel installed inside an outhouse just adjacent to the transformer which was operational as it appeared from the naked eye and this fact was also confirmed by the officials on the spot from HPSEBL. Another transformer of 125 KW was also installed nearby.*
2. **Shopping Center and community hall-** *The shopping center and community hall as proposed in the approved site plan has not yet been constructed and there is barren land at the place of shopping center on the site of the project.*
3. **Parks-** *Apart from one park all the other parks shown in the spot map have not been developed properly and there is barren land on the spot of the parks.*
4. **Parking-** *The parkings shown in the spot map have not been developed. .*
5. **Roads-** *Only one internal road that is abutting the flats is pakka cemented road and has been constructed properly. Rest of the internal roads that are abutting the plots are katcha roads.*
6. **Rain Water Harvesting Tank-** *The rain water harvesting tank is not properly constructed and is in semi constructed and also is not proper as per the specifications. It is also not operational. The tank installed at the site is open and there is risk of children or tender age from falling inside.*
7. **Sewerage Treatment Plan-** *The sewerage treatment plant is situated on the spot as shown in the site plan but as admitted by both the parties the same on the date of inspection is not functional. The respondents have tried to show that the sewerage dirty water is flowing out from the boundary wall installed next to the STP and there is a pool of dirty water close*



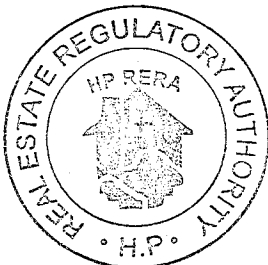
to the boundary wall. The undersigned saw the dirty water flowing out from boundary wall installed near the STP and there is pond of dirty water at a little distance from the wall.

8. **Over Head Tank-** There was an over head tank proposed in the approved site plan but on the spot there is no such over head tank constructed and installed.

9. **Load issue-** Sh. Trilok Chand Sharma SDO HPSEBL and Sh. Manjeet Singh JE from HPSEBL are present on the spot. It was submitted by officials from HPSEBL at the very outset that the more load the allottees will draw the more bill they are liable to pay.

Sh. Ahlawat submitted that as per clause no. 15.3 of the model agreement for sale which has been signed with all the allottees it is given that every allottee shall plan and distribute its electrical load in conformity with the electrical system installed by the promoter and the allottee shall be responsible for any loss or damage arising out of breach of aforesaid conditions. It was further submitted by Sh. Ahlawat that the sub station planned by him is of 500KW plus 125 KW. If all the allottees consume electricity more than the load allotted to them individually then he has to install a heavy transformer for which price has to be borne by the allottees collectively.

Sh. Trilok Chand Sharma SDO HPSEBL and Sh. Manjeet Singh JE HPSEBL stated that load of electricity to project is allocated or allotted on the basis of rough estimate that each unit(flat) will require a load of 3-4KW. It was further stated by the officials that if the load requirement increases in that case the promoter or the Resident Welfare Association will approach HPSEBL for additional allocation of load and the same will be allocated to them subject to payment of extra charges. They stated that for additional load infrastructure of sub-station has to be further enhanced/increased. It was further stated by them that as of now there is no problem with the transformer as it can cater to the additional load but in case all the allottees consume more load than the load allocated in that case a bigger transformer or sub station has to be installed. However they stated that even now the allottees who are drawing extra load shall pay to the promoter for the additional load. It was further stated that from the point of view of HPSEBL there is no restriction for the allocating extra load and the same can be given as and when demanded by the promoter. It was further stated that it is between the promoter and the allottee to settle





on terms and conditions for allocation of extra load and HPSEBL has no role to play between the parties.

On this issue Sh Abdul one of the respondents submitted that a pre estimated load of 4- 5 KW cannot meet the requirement of a four storied building, plans whereof have already been got approved from BBND A by Sh. Ahlawat.

Sh. Yash Pal respondent further submitted that it was the duty of the promoter to make a genuine assessment of the load requirement of plots where four storied building(s) have to be constructed. It was further submitted by him that for a four storied building a minimum requirement of 12 KW load is necessary.

After hearing this the officials of HPSEBL stated that for a four storied building somewhere around 20 KW is required.

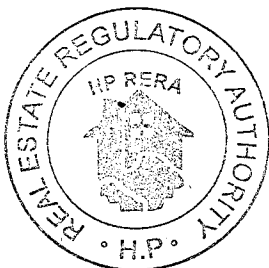
The total capacity of transformer(s) installed by the promoter as stated above is 500KW plus 125 KW i.e. 625 KW which has to cater to 80 flats and 70 plots. Per unit load of the flats assessed by HPSEBL is 4-5 KWS per flat. Where as for the plots where four storied building are constructed they say a load requirement per building of 20 KW is necessarily required.

Therefore the total load requirement of the project roughly is  $1800 \text{ KW} [80 \text{ Flats} \times 5 \text{ KWs} + 70 \text{ Plots} \times 20 \text{ KWs}]$  if all the flats and plots are in occupation and people are residing. Therefore prima facie the load got sanctioned from HPSEBL by the promoter appears to be less than the actual requirement.

In view of the aforementioned facts the matter on this issue is placed before the Hon'ble Authority for kind perusal and further necessary action in the matter.

#### **Maintenance Issue-**

On the question as to what expenditure is being incurred monthly by Sh. Ahlawat on the maintenance of the project it was submitted by him orally that he has engaged three sweepers, two security guards, two gardeners and one foreman and one carpenter have been employed. It was further submitted by Sh. Ahlawat that monthly expenditure on maintenance works roughly is between Rs 70,000 to Rs 1,00,000. No cogent and tangible evidence to this effect has been appended by the promoter in the case file. However even



if this fictitious amount is taken as true then also there are total 80 flats and 70 plots making it total 150 units. If Rs 1,00,000 is divided by 150 units than also per unit cost of maintenance comes out to **Rs 667 per month**. But there is no cogent and substantial proof of expenditure incurred by the promoter appended in the court files therefore it is difficult to asses the actual expenditure of the spot.

### **Individual Complaints-**

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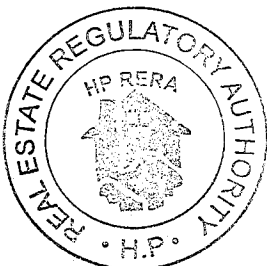
3 **Nikhil Sharma-** The plot no. 22 belongs to Sh. Nikhil Sharma. A four storied building is constructed on the spot. In the present matter 'No Objection Certificate' has been issued by promoter to the respondent, a copy of which has also been appended with the reply. The perusal of NOC goes to show that the promoter has mentioned in the document that maintenance charges have been paid by respondent up to October, 2022.

It was further stated by Sh. Nikhil Sharma that after October, 2022 the promoter has been paid maintenance charges up to January, 2023 for which he had shown online receipts but the copy of the same was not given. It was further stated that all the electricity charges have been paid by Sh. Nikhil Sharma except for an amount of Rs. 2800 that has to be paid but he submitted that there is some amount due from Ahlawat towards Nikhil Sharma and he further stated that he has paid Rs 16,000 to HPSEBL directly for electricity consumed by him from the promoter. It was further stated by him that separate electricity meter has been installed after the issuance of NOC i.e. October, 2022 therefore there is no issue of payment of electricity bill after October, 2022. It was further stated by Sh. Nikhil Sharma that he is ready to pay future maintenance only if the promoter does completion of pending basic amenities & performance of maintenance works.

Sh. Ahlawat has stated that maintenance charges have been paid up to January, 2023 but electricity charges to the tune of Rs 16,200 have been paid and rest of the amount has not been paid which is Rs 19000 upto August 2022 and thereafter electricity charges for two months i.e. September, 2022 and October, 2022 is also due.

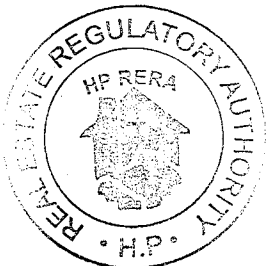
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The facts as presented by the parties and gathered on the spot by the undersigned are placed before the Hon'ble Authority for



*kind perusal and it was further submitted that mediation proceedings in all the four cases was not successful. Report along with photographs taken on the spot are appended and the same is submitted to the Hon'ble Authority for kind perusal please".*

6. The ADA in his site inspection report has stated that the shopping centre and community hall have not been constructed, the roads and parking areas have not been developed in the project. The internal roads abutting the plots are kutcha, the rain water harvesting tank is not properly constructed and the sewerage treatment plant is not functional.
7. He has also highlighted that the load requirement to cater to all the flats and plots would be around 1800 KW whereas transformer installed for the project is of 500+125 KVA capacity. Therefore, the load sanctioned from HPSEBL is less than the actual requirement for the project. Regarding maintenance issue, he has stated there is no cogent and substantial proof of expenditure by the promoter, however, the per unit cost of maintenance comes out to be Rs. 667/- per month.
8. The parties were asked to send their comments on the Site inspection report submitted, by the ADA. The complainant in his written submissions mentioned that the promoter has spent Rs. 18.89 lakh on the electric sub station and any additional load requirements have to be borne by the allottees, in proportion to the additional load taken by them. For this purpose, he cited clause 15 (3) of the Agreement for Sale. He also stated that the shopping centre will be constructed after the gift deed executed in favour of Smt. Asha Sahore is revoked. Regarding paths and parking, he has pointed out that they are not being maintained due to construction waste and debris thrown by plot owners. He has also stated that the rain water harvesting tank got damaged and the sewerage treatment plant is not working as the motor pump was either stolen or deliberately removed. Regarding the maintenance charges he has pointed out that the estimate of Rs. 667 per month, as indicated in the site inspection report is not sufficient and Rs. 1 per square feet is required to be charged for it.



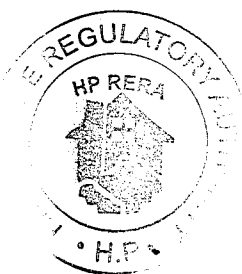
**9. Arguments by complainant-**

The arguments in this case were heard on 29.04.2023. The Learned Counsel for the complainant argued that as per the electric system installed by the promoter the electrical load per plot comes out to the 3 KW and rest of the load is required to be borne by the plot owners / allottee, as mandated in Clause 15.3 of the Agreement for Sale. He also stated that at present only 36 flats and 20 plots have been occupied. Hence, the load requirement in future, needs to be borne by the allottees. She also argued that the allottees are required to pay the maintenance charges @ Rs 1 per sq ft for the total carpet area to maintain the project facilities. She also told that the shopping Complex will be developed, once the gift deed is revoked. It was further argued that the paths and green areas will be maintained once the construction is completed. She has further argued that the roads would be re constructed after the development of the colony is complete. She also argued that in place of over head tank, underground water tank would be constructed. She also told that rain water harvesting structure has been damaged and will be made functional.

**10. Arguments by respondent-**

The learned Counsel for the respondent argued that from the site inspection report of the ADA, it is crystal clear that shopping centre and community hall have not been constructed. Paths, parking and roads are in pathetic conditions. It was further argued that rain water harvesting tank and sewerage treatment plant are not functional. It was further argued that as the complainant promoter has not provided these basic amenities, therefore he cannot claim maintenance charges. Further, he emphasized that the complainant has given him NOC, stating that all the maintenance charges have been paid till September, 2022. It was further argued that the respondent has paid maintenance charges up to January, 2023 and he has already paid the electricity charges for the electricity consumed by him and nothing is due in his behalf.

11. No other point urged or relief pressed.



## **12. Points for Consideration and Finding of the Authority:-**

We have gone through the pleadings of the parties and the site inspection report of the Learned ADA of the Authority. The following issues need to be decided in this case-

- a. Whether the respondent is to pay the maintenance charges to the complainant ?**
- b. Whether the respondent is to pay the electricity charges as per the consumption made by him, to the complainant?**
- c. Whether the respondent is to pay for the extra electrical load installed by him?**

Our findings on these issues are as follows:-

### **13. Whether the respondent is to pay the maintenance charges to the complainant ?**

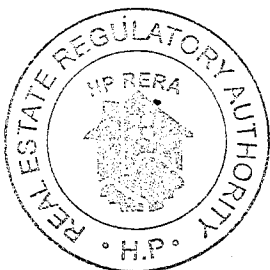
The complainant in his complaint has claimed that the respondent is to pay maintenance charges @ Rs 0.50 per square feet of the plot area from the date of the execution of the sale deed till the start of construction and to pay the maintenance charges @ Rs 0.75 per square feet of the build-up area from the date of start of construction. Later on during arguments, he has claimed maintenance @ Rs. One per square feet of the build-up area.

14. The respondent in his reply has stated that he has already cleared all the maintenance charged up to October, 2022, as per the NOC given by the complainant on 5<sup>th</sup> October, 2022. He has further highlighted that although he has paid the maintenance charges upto January, 2023 @ Rs 700 per month but the receipt of the same is not on record. It was further his stand that no maintenance charges are payable, as the complainant has not provided basic amenities in the project, and no maintenance is being done towards the plots of the project.
15. The issue of maintenance charges is linked with the amenities provided and maintenance being done by the promoter in the Project. The Learned ADA in his report dated 6<sup>th</sup> April, 2023 has clearly stated that the shopping centre and community hall have not been constructed. The parks, parking and roads have not been properly maintained. The



rain water harvesting tank and sewerage plant are non functional. Therefore, from the report of the ADA it is crystal clear that the basic amenities in the project, either have not been developed or are not being maintained. The ADA in his report has roughly calculated the maintenance cost of Rs. 667 per month, per allottee. From the pleadings of the parties, it is evident that in the meeting of allottees with the promoter on 20<sup>th</sup> Sep 2022, it was decided that the allottees will pay Rs. 1,500/- per month during the construction and Rs. 700/- per month from the date of completion of construction up-to Sep, 2022. The charges shall remain the same till the taking over of the maintenance by the Resident Welfare Association. The complainant has not provided any evidence or copy of agreement citing maintenance @ Rs. 1 per square feet or even 0.50 per square feet executed with the allottees. The Section 11 (4) (d) of the RERD Act 2016, provides that the promoter shall provide and maintain essential services on reasonable charges till the taking over of the maintenance of the project by the association of the allottees. Therefore, reasonable maintenance charges are necessary for the upkeep of the common amenities in a real estate project. At the same time, para 11 of the agreement for sale, signed between the parties provides that the promoter shall be responsible to provide and maintain essential services till the issuance of the completion certificate of the project. Therefore, completing the common amenities and keeping them functional is necessary for a promoter to charge the maintenance fees from the allottees. In this case, most of the basic amenities, have not been completed or are non-functional. The complainant promoter present during the course of the arguments has himself admitted that he will complete the essential services as well as project within next three months. Further, from the NOC given by the promoter himself, the respondent has already paid the maintenance charges till October, 2022.

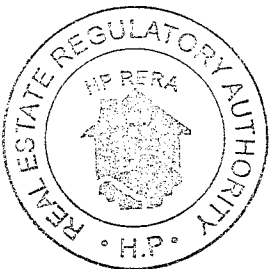
16. Therefore, it is held that the respondent is liable to pay the maintenance charges, once the basic amenities are developed or made functional in this project as highlighted in the report of the ADA. As the



respondent has already paid the maintenance charges till October, 2022 therefore, he will be liable to pay the maintenance charges @ Rs. 700 per month as agreed in the meeting between the promoter and the allottees dated 20.09.2022, on completion of the basic amenities in the project, which will be due from November, 2022.

17. **Whether the respondent is to pay the electricity charges as per the consumption made by him, to the complainant ?**

The complainant in his complaint has claimed that the respondent has not paid the electricity charges for the consumption made by him from the temporary connection given by him. In his complaint, he has mentioned an amount Rs. 34,375/- as electricity dues however, no details have been provided as to how this amount has been calculated. Later in the miscellaneous application filed by the complainant, he stated that the total electricity payment due from the respondent was Rs 35,200 for 7040 units, out of which Nikhil has paid the electricity charges of Rs 19000 and still Rs 16,200 is to be paid by him. Later on the complainant in his written submissions stated that consumption as per chart submitted to HPSEBL on 27.8.2022 was 7040 units where as consumption on release of individual electricity connection was 7573 units therefore there is a difference of 543 units for which he states that Rs 3530/- is payable and rest of the amount appears to have been paid. The respondent in his reply has stated that the complainant had supplied electricity from temporary electric connection for construction of flats/plot and illegally charged higher rate of Rs. 5 per unit from the allottees. As per the complainant the amount of Rs 3530/- is payable from respondent but his claim in the initial complaint is contradictory and without any proof and does not correlate with the final demand of Rs 3530/-. What happened to the initial demand of Rs 16,200/- and how this figure of Rs 3530/- has been arrived at has not been explained by the complainant to the satisfaction of this Authority. Therefore the complainant on this issue has failed to lead any cogent and convincing evidence to prove the actual meter readings and the amounts arrived at by him.

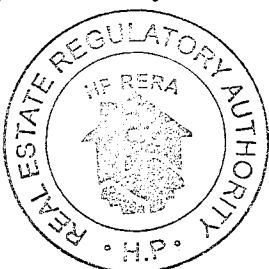


18. From the above facts, it is clear that a temporary electricity connection was provided to the respondent and the respondent has to pay the electricity charges as per the consumption made by him. However, in this case the complainant has not given details of individual electricity supplied to respondent and has annexed general electricity bills of the whole colony. Therefore, it is very difficult to assess how much electricity consumption has actually been made by the respondent. What emerges from the facts is that respondent has already paid Rs 19000/- qua electricity charges to the complainant whereas from his final version during the written submissions it is stated that only Rs 3530/- is due and payable. It is not explained by the complainant as to how and in what manner the arrears were paid or how much were paid out Rs 16,200/-. What emerges from the record is that he must have paid the amount of Rs 16,200/- directly to HPSEB then how a further consumption of 543 units was done has not been explained or substantiated and there is no cogent and convincing evidence to substantiate this averment. Therefore, for the lack of specific evidence from the complainant, the Authority is unable to decide whether any amount of electricity is due to the complainant for and therefore rejects the claim of the complainant on this count.

**19. Whether the respondent is to pay for the extra electrical load installed by him?**

The complainant in his complaint has stated that the respondent has constructed a 4-storied house on Plot Number-22. As per Clause 15.3 of the agreement for sale dated 03<sup>rd</sup> August, 2018 provides.

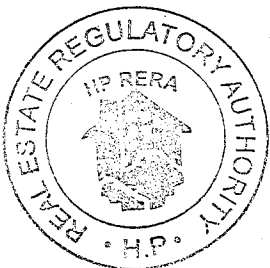
*“The Allottee shall plan and distribute its electrical load in conformity with the electrical system installed by the Promoter and thereafter the association of allottees and or maintenance agency appointed by association of allottees. The Allottee shall be responsible for any lose or damages arising out of breach of any of the aforesaid conditions.”*





The complainant in his miscellaneous application has further stated that he had planned the electricity system providing a load of 5 KW to each allottee. Whereas, the respondent has taken a load of 9.8 KW on his building, which is in excess by 4.8 KW. He has further stated that the excess load charges are to be paid @ Rs. 5000 per KW, therefore the respondent is liable to pay Rs. 24,000 for the excess load charges. The respondent in his reply has neither denied nor accepted anything about the extra load and its payment. From the perusal of the site inspection report, it is clear that the total capacity of the transformer installed by the promoter is 500 KW+ 125KW i.e. 625 KW. The sanctioned plots in this colony are 70 nos. and flats are 80 nos. The present electrical load will not be able to cater, once all the plot owners have constructed their buildings and flat holders have occupied their flats. The counsel for the complainant during arguments stated that at present, only 36 flats and 20 plots ie total 56 units have been occupied by the allottees. Therefore, at present the load availability is not an issue. However, as and when all the plot owners will construct their houses, there will be requirement of upgrading the electrical system of the colony to cater to the extra load requirement. Therefore, in the future, the electrical system will be required to be upgraded to cater to the requirement to all the allottees.

20. Now, the key question arises is as and when the allottees construct their houses, who will pay for the up gradation of the electrical system. The complainant has pointed out that he had installed the electric system providing 5 KW to each allottee. The Clause 15.3 of the agreement for sale executed with the respondent, clearly provides that allottee shall plan and distribute its electric load in conformity with the electrical system installed by the promoter. In the present case, it is clear that the respondent has consumed a load of 9.8 KW in place of 5 KW planned by the promoter. Therefore, the respondent is required to pay for the excess load of 4.8 KW to cater to the future needs of the colony. Therefore, it is held that the respondent will pay the

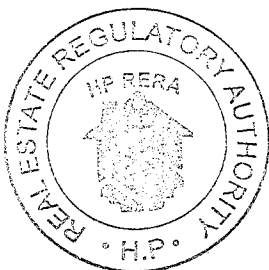


development charges of 4.8 KW extra load to the Resident Welfare Association/ Association of Allottees, as and when the same is registered, so that, the Resident Welfare Association/AoA could use the money received from the various allottees, for future developmental requirement of the electrical load. It is also held that if the promoter has already received the amount of extra load from any allottee, then he should transfer the same to the Resident Welfare Association/AoA, as and when the same is registered.

**21. Relief-**

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

- A. The complaint is party allowed.
- B. The complainant is directed to complete the pending common facilities/ basic amenities as per the sanctioned plan, as also pointed out in the site inspection report dated 06.04.2023 within four months from the date of passing of this order failing which he shall be liable to pay penalty under section 61 and 63 of the Act.
- C. The respondent is held liable to pay the maintenance charges @ Rs. 700 per month as agreed in the meeting between the promoter and the allottees dated 20.09.2022, on completion of the basic common amenities/facilities in the project. It is clarified that once the basic common amenities/ facilities are made functional, the maintenance charges will be due from November, 2022 and will be paid regularly thereafter @ Rs. 700 per month.
- D. The complainant promoter is directed to enable the formation and registration of association of allottee(s), within next 3 months. Once the association of allottees is registered, the registered association may be asked whether they would like to take over the maintenance of



the project or would like to continue the maintenance through the promoter.

- E. The claim of the complainant qua arrears of electricity charges is declined for want of substantive and conclusive evidence.
- F. Since the promoter has installed the electrical system/ sub-station with approximate load of 5 KW(s) per unit (flat or plot) therefore, the additional charges for the load required by each individual allottee over and above 5KW will be borne by the allottee(s) himself and shall be deposited with the association of allottee(s)/RWA at the rate prescribed by HPSEBL as soon as it is registered for the purpose of utilizing the same by RWA for future electrical load requirement from HPSEBL. The complainant promoter shall also deposit the charges collected/ amount received for extra electrical load from the allottee(s), with the association of allottee(s) after its registration with immediate effect.
- G. All the pending applications are disposed of in aforesaid terms.

*B. C. Badalia*  
**B. C. Badalia**  
**MEMBER**

*skant*  
**Dr. Shrikant Baldi**  
**CHAIRPERSON**

