HARERA
GURUGRAM

Complaint No. 3175 of 2020

BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no.	**:**	**3175 of 2020**
First date of hearing:		**12.11.2020**
Date of decision	**:**	**08.05.2023**

Vedaanta Residents Welfare Association
(Through Sh. S. Ramanathan, Vice President)
Registration no. HR-018-2015-01673 dated 05.03.2015 under Haryana Registration and Regulation of Societies Act, 2012
Regd. Office: - Vedaanta Residents Welfare Association, Vedaanta Residential Complex, Sector-108, Gurugram Haryana - 122001 **Complainant**

Versus

M/s Raheja Developers Limited.
Regd. office: W4D, 204/5, Keshav Kunj, Western Avenue, Cariappa Marg, Sainik Farma, New Delhi-110062
Corporate office: 406, Rectangle One, D-4, District Center, Saket New Delhi- 110017.
Also, at: - Raheja Mall, 3rd Floor, Sector- 47, Sohna Road, Gurugram - 122001 **Respondent**

CORAM:

Shri Vijay Kumar Goyal	**Member**
Shri Ashok Sangwan	**Member**
Shri Sanjeev Kumar Arora	**Member**

APPEARANCE:

Shri Aaditya Vijay Kumar (Advocate)	Complainant/Association
Shri Garvit Gupta	Respondent/promoter

ORDER

1. The present complaint dated 06.10.2020 has been filed by the complainant in Form CRA under section 31 of the Real Estate

(Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of Sections 11(4)(a) and 11(4)(g) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions to the allottee as per the agreement for sale executed *inter se* them.

A. Unit and project related details

2. The particulars of the project, the details of the complainant, etc. have been detailed in the following tabular form:

S.No.	Heads	Information
1.	Project name and location	"Raheja Vedaanta", Sector 108, Gurugram.
2.	Licensed project area	10.668 acres
3.	Nature of the project	Residential group housing colony
4.	DTCP license no.	204 of 2007 dated 11.08.2007
	Validity status	10.08.2017
	Licensee details	Pinne Industrial Consultants Pvt. Ltd.
5.	**Total no. of towers in the project**	**9 towers**
6.	**Occupation certificate details**	**OC received dated 17.11.2014 for tower/block-** ➢ A (ground floor to 19th floor) ➢ B (ground floor to 19th floor) ➢ IF (Type A-7 no's) (ground floor to 3rd floor) ➢ EWS (ground floor to 4th floor) ➢ Basement under Block- A, B, and IF (Type-A) **OC received dated 03.06.2016 for tower/block-**

		➢ IF Type-B (ground + 1ST floor and 2nd floor) ➢ Commercial (Ground floor) ➢ Community Building (ground + 1ST floor)
7.	HRERA registered/ not registered	**Not registered**
8.	Vedaanta Residents Welfare Association **Complainant herein** (Through Sh. S. Ramanathan, Vice President)	**Registered vide no.** HR-018-2015-01673 dated 05.03.2015 under Haryana Registration and Regulation of Societies Act, 2012

B. Facts of the complaint

3. The complainant/association has made the following submissions in the complaint: -

   i. That the present complaint filed on behalf of the *"Vedaanta Residents Welfare Association"*. The complainant/association has been duly registered on 05.03.2015 under the Haryana Registration and Regulation of Societies Act, 2012 and has its registered office at Maintenance office, Vedaanta Apartments, Sector 108, Gurugram, Haryana.

   ii. That the respondent, i.e., "M/s Raheja Developers Limited", is a company incorporated and subsisting under the provisions of the Companies Act, 2013 and is engaged in the business of construction and development of residential and commercial projects.

iii. That the respondent, after ostensibly obtaining license for the project in the year 2007, began construction of high-rise buildings under the name and style of "Vedaanta Residential Complex" consisting of nine residential towers, two villas and ninety-four Economically Weaker section at Sector 108, Gurugram- 122001.

iv. That in the years 2014-2016, despite the project was not formally completed and despite the fact that completion certificates had not yet been issued by the competent authority, the respondent provided possession, on the strength of the occupation certificate, to the residents of the project. That the possession for a majority of allottee(s) was provided from the year 2016 onwards. It is pertinent to mention here, that within a year of granting possession of the residential apartments to a number of allottees, and particularly after the year 2016, several defects in the construction of the project as well as the functioning of the respondent began to surface.

v. That the defects continue to persist even as on date and include issues such as (i) structural defects in various parts of the project and serious seepage in the basement of towers G, H and I for which possession was provided in the year 2016; (ii) collection, misappropriation of the maintenance security paid by the allottees to the respondent and not handing the maintenance security to the complainant/association; (iii) failure in providing permanent electricity connection to the allottees; (iv) expenses borne by the complainant/association for the maintenance of the project including essential services; (v) electricity power supply deficit, besides other issues. The aforementioned defects have been brought to the respondent's notice time and again; however, the respondent has intentionally refrained from rectifying the abovementioned defects.

vi. That the present matter does not relate to the rectification of the structural defects relating to (i) the rectification work in the basement of the towers and (ii) the issues relating to the rectification of the façade as this has been adequately addressed by the authority in the matter titled as "***Haryana Real Estate Regulatory Authority (Suo Motu) v. Raheja Developers Ltd.***" in complaint bearing no. ***RERA-GRG-1909 of 2020***.

vii. Further, the present matter also does not deal with issues relating to regularization of the electricity connection and conversion of the electricity connection from commercial to domestic as this issue is being adjudicated by the Ld. Civil Judge, Gurugram in matter titled as "***Vedaanta Resident Welfare Association*** v. ***Raheja Developers Ltd.***", in complaint bearing no ***CS 3816/2021***.

viii. The present matter only deals with a handful of issues which are more particularly set out below: -

- **Issues relating to misappropriation of maintenance security**

ix. That the flat buyer's agreement obligates the allottee of the unit to pay "interest bearing maintenance security or interest free maintenance security" to the respondent/promoter. The purpose of the payment of IBMS or IFMS was essentially highlighted in clause 6.2 of the buyer's agreement which indicates that the amount paid to the respondent as IBMS or IFMS charge is to secure due performance by the allottees in prompt payment of maintenance bills and other charges raised by the maintenance agency or whosoever is in charge of the maintenance of the society. It is understood that the IBMS and IFMS would be to set off, if required, against the maintenance dues, which were liable to be particularly paid by the residents after possession had been granted.

x. That as per the buyer's agreement, the respondent or the maintenance agency appointed by the respondent was responsible to hold the abovementioned security charges only for a temporary period of time and it was obligatory on the part of the respondent to refund/offer to refund the security after adjusting therefrom any outstanding maintenance bills or any other outgoings of the allotees at any time including upon execution of the conveyance deed. The buyer's agreement does not state that the IBMS or IFMS deposits were a payment made *simplicitor* or an amount that the respondent could appropriate at its will. Further, the IBMS or IFMS charges were only to be temporarily held by the respondent until the maintenance responsibility was accepted by the complainant

/association. Thus, the IBMS or IFMS deposit being a security against failure to pay maintenance charges by the allottees, ought to be handed over to the complainant/association, who are presently in charge of the maintenance charges.

xi. The respondent collected IBMS/IFMS in two different ways. From some allottee(s), a consolidated demand of the construction cost and the IBMS was made and the allottees were directed to deposit the consolidated demand and the IBMS in the account of the respondent/promoter while some allottees were made to pay the construction cost separately and the IBMS/IFMS separately in separate and distinct accounts in the name of the complainant /association.

xii. That the consolidated demand is illustrated by the payments of Mr. Aditya Prasad Tiwari (flat A-032), Mr. Bala Guru G (flat I-173) and Mr. Kaustubh Barooah and Ms. Anjali Barooah (flat D-041), just to name a few, who were directed by the respondent to deposit the IBMS/IFMS money into the respondent's accounts. This is also evident from the demand letter issued by the respondent /promoter and the statement of transaction of Mr. Aditya Prasad Tiwari wherein by way of cheque bearing no. 577606 an amount of Rs.2,45,062/- for IBMS/IFMS charges was transferred to the respondent's account. The obligation of the respondent to segregate the amount paid towards the demand for construction and the money received on account of IBMS/IFMS. This would have ensured a smooth transition and handover of money as and when the complainant/association would have been formed.

xiii. That similarly, as stated above, some allottees were depositing their IBMS/IFMS money in bank account bearing no. 1514002100038588 in Punjab National Bank, Saket, New Delhi in the name of the complainant/association. Illustratively, Mr. Gautam Sen, the then President of the complainant/association paid Rs. 2,63,230/- at the time of final settlement vide cheque bearing no. 035853 dated 11.05.2016, which was payable to the new bank account in Punjab National Bank.

xiv. That the complainant/association was set up subsequently, it was the respondent obligation to not only handover money deposited in Punjab National Bank but also hand over money towards IBMS/IFMS which were directly deposited by allottees in the account of the respondent. Respondent neither rendered accounts nor handed over the collections of the IBMS or IFMS to the complainant. That the respondent never issued a formal demand for set off of the amount collected with the IBMS/IFMS. Thus, from whichever angle one may look at it, the respondent did not have the right to hold the money or appropriate it. The respondent thus continued to illegitimately hold the IBMS or IFMS deposits of the allottees.

xv. That the germane to state that the erstwhile governing body of the complainant/association, prior to the administrator being appointed, contained representatives who were acting in connivance with the respondent and was completely dysfunctional. Hence, the erstwhile governing body of the complainant /association took no action to request for handover of money.

xvi. That the residents, between 2015-2019, were kept in the dark coupled with the fact that the erstwhile governing body was in connivance with the respondent, Mr. Gautam Sen, the erstwhile president of the complainant/association, vide an email dated 14.06.2017 requesting for information as to (i) who had the actual authority to credit amounts obtained in the new bank account; (ii) who was operating the bank account; (iii) who were the custodians of the amounts obtained from the allottees by the respondent; (iv) if proper approval was taken by the board of management of the then RWA from the eligible members of the welfare association; (v) whether annual audit of the account had been done with the cognizance of the allottees who were liable to be members of the welfare association; (vi) whether the transaction was in line with the bye-laws of the welfare association etc. The respondent was using the money so collected by it at its whims and fancies and had no real defense to a specific email issued by Mr. Gautam Sen, the communication was not replied to.

xvii. That the raised suspicions and the members of the association were compelled to file a criminal complaint dated 19.03.2018 to the Commissioner of Police, Economic Offences Wing, Gurgaon

Police against the respondent. The criminal complaint was filed under Sections 403, 405 and 415 of the Indian Penal Code, for misappropriation of funds, criminal breach of trust and cheating by it.

xviii. That one of the main priorities of the present governing body was that money collected from residents by it towards IBMS/IFMS ought to be handed over to the association. To this end, the association was compelled to issue communications dated 28.02.2019 to the respondent requesting it to hand over the IBMS/IFMS amount so collected by it. In response, the respondent admitted that it had to handover this amount though it stated that the handover would be made in a joint account and in multiple tranches. The operative portion of the email is set out hereunder: -

> *"It is not possible for the company to release anything until and unless the facts are reconciled; our accounts plus Realcare - the sister concern company of RDL which was maintaining the corpus then, team has to jointly reconcile the data before we come to any conclusion. Post which a meeting will be held with the Governing Body <u>and the payment will be released in tranches. The process will take a minimum of 45 working days please.</u> We may open a joint account immediately in case we are logging any new booking amount immediately transferred to the said account."*

xix. That prior to the complainant/association taking over, the maintenance responsibility was carried by Realcare Building Maintenance Service Private Limited. After elections however, RBMSPL was required to hand over maintenance to the complainant/association. For the purposes of the handover on 21.04.2019, the complainant filed a police complaint with the local police in respect of the handover. Pursuant to such a complaint, RBMSPL was divested of its responsibility of maintenance of the campus, but was allowed stay in a limited area to wind up their work, arrange their papers, etc.

xx. That in the interregnum, on 13.11.2019, the complainant applied to Punjab National Bank for a formal closure of the account. The account was closed on 03.12.2019 and the remaining amount of Rs.35,900/- which was existing in the account, was transferred to the complainant/association's designated account in HDFC Bank, Dharampur, Gurugram Branch.

xxi. The Punjab National Bank provided the association with the statement of account of the account wherein the IBMS/IFMS charges had been deposited. When the bank statement for the period 23.05.2016 to 03.12.2019 was provided by bank to the complainant, the statement reflected the amount of money being deposited and credited in the account, while it remained operative. The statement of account clearly shows that the respondents had been transferring money from the account in the name of the complainant/association to their own personal bank accounts. The statement of account reflects that an amount of Rs.1,10,00,000/- was transferred into the account maintained by the respondent on 16.10.2017 and a further amount of Rs.1,80,000/- was transferred on 22.06.2018. Those amounts were transferred to the bank account of the respondent held by it in HDFC bearing account no.

1514002100038223 and the account held by it in Axis Bank as well. There was absolutely no question of transfer of this amount to the respondent for its use since the respondent was only a trustee of the amount, which had to be handed over to the complainant/association.

xxii. That owing to this revelation, on 06.01.2020, the complainant /association filed a complaint with Punjab National Bank and stated that the entire funds (IBMS/IFMS) amounting to Rs.1.24 Crores were credited in the account from 2016-2019 (except for Rs.35,900/-), was withdrawn without the consent of elected governing body cum association. On receipt of the complaint by the complainant/association, Punjab National Bank, immediately requested the HDFC Bank and Axis Bank to put the respondent account on hold for an amount of Rs.1,10,00,000/- and Rs.1,80,000/- respectively.

xxiii. A bare perusal of the statement of accounts shows that money had been remitted to the respondent account. Following the repeated quest of the complainant/association to get the respondent to furnish details, proceeds, and transactions of the bank account through which IBMS or IFMS funds were channelized, the case finally culminated into a case of an economic offence against two officials of the respondent and a flat owner due to a criminal complaint dated 16.03.2020 filed on behalf of Punjab National Bank against the respondent. The diary number for the complaint before the Delhi Police, Economic Offences Wing to as "**EOW**" is DCP/EOW - D-1025 dated 17.03.2020.

xxiv. Despite this the respondent has not deposited the money received by it towards IBMS/IFMS with the complainant /association. The entire amount of IBMS or IFMS is estimated at Rs.8.87 Crore (principal amount) plus interest accrued thereon, based on the calculation that there are 454 flats currently taken possession of by the flat buyer's, presently in the project, with a total super area of 887010.81 sq. ft. The rate as per the flat buyer's agreement of Rs.100/- per sq. ft. has been applied to this total super area, to compute the gross IBMS or IFMS, which is required to be returned to the complainant/association.

xxv. That the respondent has misappropriated money and further failed to even disclose the total amount accumulated on account of IBMS or IFMS. The respondents have also diverted money, by way of misappropriation, which is clear from the statement of accounts filed above. To this end, a criminal complaint for lodging an FIR is pending before the Ilaqa Magistrate, Gurugram.

xxvi. That the respondent has now claimed that it will appoint auditors to verify the amounts which are due and payable and had proposed the names of various auditors. The complainant has however rejected any such appointment as there is no question of any auditors and the money ought to be simply handed over to the complainant.

xxvii. That the complainant makes it clear that the complainant was only claiming money which has been paid in excess by it. By way of the present petition the complainant was not, nor does it seek to address the issue relating to conversion of the commercial electricity meter to domestic meter but by this petition, the complainant only seeks to recover the excess paid by it on account of the inactions of the respondent. The respondent in a statement which has been duly signed and stamped by it, has admitted that Rs.7,55,76,684/- has already been collected by the respondent from 366 allottees. However, the respondent has not remitted this amount to the DHBVN, despite it being a specific obligation under the buyer's agreement. Further, the respondent has also conveniently not proffered an explanation regarding the remittance of this sum to DHBVN for getting a permanent electricity connection for the project, in conformity with the above-referred provisions of the buyer's agreement.

xxviii. Even as on date, the respondent has been receiving the power supply from DHBVN for the project on an *adhoc* basis of 450 KVA, which is basically provided by the authorities for the purposes of construction. This amount to a blatant breach of the terms of the occupation certificate, more particularly condition 15 which mandates the respondent to apply for connection of the electricity services within a period of 15 days from the date of the issuance of completion certificate. The respondent has mis-used this provision by not getting the completion certificate of the project indefinitely and obtained only the occupation certificate to wriggle out of the obligations that must be fulfilled after the issuance of the completion certificate including applying for a permanent electricity connection for the project thereby causing harassment to the allottees.

xxix. The nonchalance of the respondent towards the flat buyer's basic demand of essential service of electricity, may be appreciated from the contents of the DHBVN letter dated 06.09.2019 addressed to the respondent. This letter clearly highlights how the respondent failed to deposit the requisite money to DHBVN and did not took any sincere action from August 2012 to September 2019, to obtain a permanent electricity connection for Vedaanta project. While a load requirement of 2000 KW was applied for by the respondent on 28.2.2012, the required amount of money was not deposited as per DHBVN's demand. The requisite payment has not been made till date, which manifestly amounts to lack of commitment of the respondent to obtain release of the appropriate load and authorization of permanent electricity connection.

xxx. That the magnitude of the loss has been suffered by the members of the complainant/association, due to the inaction of the respondent in applying and getting a permanent electricity connection. As even after almost 6 years, the project is still not formally completed, and the respondent is in no position to obtain the requisite completion certificate from the competent authority and is continuing to supply power through a temporary connection at commercial tariff which is Rs.10.125/- being presently paid by the members of the association, as against the charge of less than Rs.6 per unit for domestic consumption in the neighboring complexes.

xxxi. That the power load requirement for the project comprising of 537 flats, and an Economically Weaker Section of 94 flats, is still to be formally approved by the DHBVN. Additionally, the failure of the respondent to get the approval for the power load requirement violates the stipulation of obtaining the said approval in a time bound manner i.e., within 2 months from the issuance of the occupation certificate.

xxxii. That with regard to the safety clearance of the internal power network and power back-up, the respondent has misled the Chief Electrical Inspector, Government of Haryana, Chandigarh /Executive Engineer, Electrical Inspectorate, Haryana, and Director Town Planning, Gurugram for the purpose, by projecting a power load requirement of a higher magnitude than the company actually intended to provide. Thus, there is a huge deficiency between the approvals obtained and the DG sets actually set-up.

xxxiii. That at presently, only two DG sets of 250 KVA and 380 KVA have been provided by the respondent for the entire project. As per the single line diagrams submitted by the respondent to Chief Electrical Inspector, Electrical Inspectorate Haryana, Gurugram, the latter had approved 2x1250 KVA, 2x1000 KVA T/Fs & 1x500 KVA, 1X380 KVA and 1x250KVA DG Sets vide their Memo No. D/2228/CH-3 dated 15.07.2014. The DG sets are to be provided as an essential power supply back-up for the project comprising of 537 flats, the villas and the EWS complexes. However, the respondent has provided substantially less power back-up of 630 KVA capacity. This is a huge variation in actual power supply back-up provision against that promised supply, while obtaining safety certification and occupation certificate from the respective competent authorities i.e., Executive Engineer, Power Inspectorate, Gurugram and Director Town and Country Planning, Gurugram.

xxxiv. That the respondent is contractually obligated to provide power back-up of 24 hrs., as per clause 6.9(3) of the buyer's agreement. In view of this huge deficiency of the essential service of power back-up, has resulted in the violation of the assurance given by the respondent to the members of the complainant. This addition is an essential requirement with respect to the existing and increasing need of the residents and when viewed against the approvals obtained in 2015. Condition 16 of the occupation certificate stipulates that the respondent shall submit the approval of the power load requirement within 2 months of issuance of the certificate. Even though the application for safety clearance of the power back-up set-up of 1130 KVA was filed, but the respondent clearly has no intention to provide as per the capacity applied for and safety clearances sought. The non-responsiveness of the respondent has forced the complainant to look for quotations to install 500 KVA DG set.

xxxv. The respondent had represented that on account of there being multiple floors in the towers; lift facilities would be provided to each resident of each tower. This naturally presupposed that the lifts would be in proper working condition and order. Upon the use of the lifts in the towers, several defects were found relating to (i) there being a vibration in most of the lifts; (ii) it was not clear whether the cards were replaced as required; (iii) whether MCBs and lighting have been installed properly inside the lift shafts; (iv) detailed inspection report in respect of each of the lifts were not available; (v) water is coming inside the lift shafts and damaging the lifts.

xxxvi. The respondent was time and again informed about inoperative status of the lifts for a considerable amount of time, causing serious impediment to use of the flats by the residents. One such letter dated 06.11.2017; addressed to the respondent and the maintenance agency, RBMSPL, by Mr. Manish Sinha (Resident, Member Subcommittee), confirming that the respondent was well aware/informed about the issues with respect to the lifts. Besides this, Mr. Manish Sinha also urged the respondent to clarify issues raised in the letter with regard to payment liability, replacement of lifts etc.

xxxvii. The respondent and its designated agency i.e., RBMSPL, had totally failed to maintain these lifts. It is noteworthy that the State Government Executive Engineer, Power Inspectorate vide Memo bearing no.13708 dated 18.10.2018, informed the respondent that the lifts in the project were in a terrible state on numerous counts and this was a very serious issue. The mandatory inspection under Sections 7, 8 and 9 of the Haryana Lift and Escalators Act, 2008 has not been complied with. The respondent has also failed to carry out requisite inspection, even after a period of 2 months pursuant to the installation of the lifts. Vide the aforementioned Memo; the registration of these lifts was also cancelled on 18.10.2018.

xxxviii. The complainant/association necessarily had to get the lifts repaired at the risk and expense of the respondent. The respondent was duly informed of this fact. Till date, the complainant has incurred a sum of Rs. 11,00,000/- to ensure the serviceability and the safe use of the 18 lifts installed in various towers of the project. This amount ought to be reimbursed by the respondent. This move was done by the statutory authority under the Haryana Lift and Escalators Act, 2008 which is the Executive Engineer Mrs. Geetha Rathi who had issues after inspection of Lifts at Vedaanta premises and had issued the above-mentioned notice threatening action including seizing of lifts at the 20 storey residential flats at Vedaanta premises.

xxxix. The respondent had provided two Sewage Treatment Plants (STP) in the project. One STP was for nine towers (A to F) and another for three towers (G, H, and I) and two sets of Villas and the EWS flats.

xl. There are also several works which are yet to be undertaken which would, in essence, amount to completely overhauling the STP. Thus, comprehensive snagging (detection of problem areas and technical weak points) has to be completed, including automation of the STPs. In one of the STPs, only the blower and the garden pumps are in working conditions and nothing else. That apart, the following repairs are also estimated:

- A filter feed new pump is required;
- Change of filter pipelines required and the installing of butterfly valve 65 mm with fittings;
- Procurement of filter media of 4500 kg.;
- Activated carbon content of 300 kg.
- Repair two sludge re-circulation pumps (SP1HM) and three flushing pumps;
- Ultraviolet change with panel: 1 no.;
- Procure screw pump (CH33): I no.;
- Procure electrical control panel: I no.;
- Walkways required to be fabricated for safety and material procured of 1560 kg.;
- Blower motor to be repaired: 1 no.;
- Sewage pumps to be procured: 2 nos.;
- Flowmeter outlet fittings required: I no.;
- Diffuser;
- Pressure vessel: 1 no.

xli. That the complainant has work orders for a sum of Rs.3,40,000/- from the first week of May 2019, which has been informed to the respondent vide notice dated 09.06.2019. However, after carrying out the required repairs, a sum of Rs.3,15,000/- has been incurred by the association. The statement of accounts of the Complainant Association for payment towards the NWV and the cheque's bearing no. 000582, 000323, 000009 and 000146, as well as ledger along with details of payment. In addition, a further amount of Rs.13,03,410/- of Clean Tech Services, Gurugram would be incurred.

C. **Relief sought by the complainant/association**

4. The complainant has sought following relief(s).

   i. Direct the respondent to refund and consequently pay the complainant/association a sum of Rs.8.87 Cr. in respect of IBMS/IFMS money (with interest at the rate of 18 % p.a. thereon from the date that the amount fell due till the date of realization);

   ii. Direct the respondent to refund and consequently pay the complainant/association a sum of Rs.11,00,000/- towards the repairs of the lifts of the project (with interest at the rate of 18 % p.a. thereon from the date that the amount fell due till the date of realization);

   iii. Direct the respondent to refund and consequently pay the complainant/association a sum of Rs.16,18,410/- towards the repairs of the two sewage treatment plants of the project.

   iv. Direct the respondent to refund and consequently pay the complainant/association a sum of Rs.5,00,00,000/- which is the amount incurred by the complainant from April 2019 being the difference between the domestic tariff and the commercial tariff (with interest at the rate of 18 % p.a. thereon from the date that the amount fell due till the date of realization);

v. Direct the respondent to refund and consequently pay the complainant/association a sum of Rs.54,00,000/- for procurement of two DG Sets of 500 KVA capacity (with interest at the rate of 18 % p.a. thereon from the date that the amount fell due till the date of realization);

vi. Direct the respondent to pay compensation to the complainant/ association in the sum of Rs.10,00,00,000/- on account of the hardship faced by the residents towards structural defects, defects in lifts, misappropriation, defect in the STP and on account of the lack of DG sets.

5. The respondent/promoter put in appearance through company's A.R & Advocate and marked attendance on 13.09.2022, 14.12.2022, 13.04.2023 and 08.05.2023. Despite specific directions it failed to comply with the orders of the authority. It shows that the respondent is intentionally delaying the procedure of the court by avoiding filing written reply. Therefore, in view of order dated 08.05.2023, the defence of the respondent was struck off.

6. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submissions made by the complainant.

D. Written submission filed by the respondent.

7. The respondent has filed an application dated 01.06.2023 for challenging the maintainability of the present complaint cum short

reply/written submission and contested the complaint on the following grounds:

i. That the present complaint is not maintainable on the ground that several alleged issues highlighted by the complainant in the present complaint are already pending adjudication before several Civil and Criminal Forums and it is clear that the complainant is nothing but a forum hunter who has a habit of harassing the respondent by spinning a web of litigation prolonging to several years.

ii. The respondent is a well-established, well known and reputed real estate developer and is in the business of developing numerous prestigious residential group housing, commercial and other real estate projects in and around Gurugram. The respondent has always believed in satisfaction of its customer. The respondent has developed and delivered several prestigious projects such as 'Raheja Atlantis', 'Raheja Atharva', 'Raheja Shilas' and in most of these projects large number of families have already been shifted after having taken possession and resident welfare associations have been formed which are taking care of the day to day needs of the allottees of the respective projects.

iii. The present complaint pertains to the "Raheja Vedaanta" project. It is submitted that the present project is a project which was formulated before the commencement of the Act, 2016. The Department of Town and Country Planning has already issued occupancy certificates dated 17.11.2014 and 11.11.2016 after completing due diligence.

iv. That the project in question does not fall under the definition of "On going Project" as defined under the Rules of 2017 as the occupation certificates were received on 17.11.2014 and 11.11.2016 i.e., prior to the notification of the Rules, 2017, notified on 28.07.2017, therefore, does not require any registration under the Rules of 2017. The correct interpretation of 'ongoing project' defined under Rule 2(o) of the Rules, 2017 cannot be arrived at, inter-alia without reading it in conjunction with Sub- Rule (5) of Rule 4 of the Rules, 2017. The State Government, Haryana in exercise of its power under Section 84 of the Act, 2016 framed rules for implementation of the provisions of RERA in Haryana. In order to supplement the provisions of the Act, 2016 where it is silent with regard to the definition of 'ongoing projects. The said definition was incorporated by the Appropriate Government in rule 2(o) of the Rules, 2017 and the same cannot be ignored.

v. That the rules framed by the appropriate Government, Haryana, nowhere offends or supplants the provisions of the Act, 2016, rather, it supplements the Act, 2016 and a harmonious reading of both would reveal that both complement and supplement each other. The Rules, 2017 were notified on 28.07.2017. It is a well settled law that the provisions of the Act of 2016 are prospective in nature and cannot be applied retrospectively to projects which did not require registration under the rules of 2017. Since the authority had no jurisdiction to entertain the complaint, therefore, the complaint is liable to be dismissed.

vi. That the complainant association has highlighted issues which allegedly persists in the "Raheja Vedaanta" project. At the outset it is submitted that the present complaint filed by the complainant association is nothing but an arm-twisting tactic to extort money from the respondent. The complainant is acting in nexus with some of the allottees whose sole aim is to somehow cause wrongful loss to the respondent and wrongful gain to themselves. The said issues can be categorized into six categories: -

- **Structural Deficiencies**

vii. That there are no structural deficiencies as alleged by the complainant association in the project in question. All the allegations as stated in the complaint are denied in toto. The complainant association has already filed a complaint bearing no. 1909 of 2020 with the authority and the authority taking cognizance of the same has directed the respondent association to submit a report on the allegations of the complainant. The respondent in the said case has submitted a detailed report of the allegations of the structural deficiencies along with the photographs and all the necessary documents. Since the complainant has already addressed the allegation of structural deficiency in the said already pending complaint, the complainant cannot claim any relief in the present complaint on that very cause of action. Without prejudice to the rights of the respondent, the report being submitted by the respondent along with the documents be read as part and parcel of the present complaint.

viii. That apart from filing a similar complaint before the authority, the complainant has already filed several complaints against the respondent on the issue of structural deficiencies with the Directorate of Town and Country Planning, Haryana and the same has been mentioned by the complainant in the present complaint. As already stated above, the complainant cannot proceed parallelly and seek same reliefs on the same cause of action against the same party in two or more forums simultaneously.

- **Misappropriation of Maintenance Security/IBMS**

ix. There has been no misappropriation of maintenance security /IBMS by the respondent as wrongly alleged by the complainant /association. There has been no failure of the respondent to comply with the terms and conditions of the allotment, rules, regulations, law, and the directions issued by the concerned departments. No illegality whatsoever has been committed by the respondent in holding the amount deposited by the allottees.

x. That the complainant/association has filed several complaints which is also evident from their own admissions in (para 33) of the present complaint wherein it has been mentioned that a criminal complaint dated 19.03.2018 was addressed to EOW against the respondent for alleged misappropriation of funds, criminal breach of trust and cheating. It is again re-asserted that the complainant/association is indulging in forum hunting against the respondent and is trying to harass the respondent before several Forums in order to cause wrongful loss to the respondent and wrongful gain to itself. The respondent has already filed its replies vide letters dated 02.04.2022, 07.05.2022 and 17.06.2022 with the EOW, Gurugram.

xi. Not only that, but the complainant/association has also filed a police complaint against the respondent company and had also filed a complaint with the Punjab National Bank. The respondent has throughout acted within the boundaries set by law and there has been no misappropriation of funds as alleged by the complainant. It is submitted that account No. 1514002100038588, held that Punjab National Bank alleged to be the bank account of the Vedaanta Residents Welfare Association is actually a joint account opened by the allottees of Vedaanta Residents Welfare Association of the project with the developer for the deposit of interest free maintenance security deposit (IFMS) collected from the allottees of the said project. The bank account held at PNB account was being operated by the said association and Mr. Naunihal Singh who was authorized by the RWA itself on its behalf to be the authorized signatory of the said bank account along with the authorized signatory of the builder. The amount was withdrawn from the bank account on authorization of all the authorized signatories and with the concurrence of the members of the RWA including the allottees. This very fact can be checked from the records of the PNB account which would clearly show that the payment was withdrawn with the concurrence and authorization of Mr. Naunihal Singh who was the authorized signatory on behalf of the operational association.

xii. That the matter of mutual performance of contractual obligations are governed by the duly agreed terms of the apartment buyer agreement which duly provide for the payment of IFMS. The respondent company had issued a letter dated 19.01.2022 to Mr. Gautam Sen, the then President of the association regarding claim of non-handing over of IFMS. To settle the issue pertaining to non-handing over of IFMS and several maintenance dues pending from the allottees, it was recommended by the respondent to get the account books audited by one of the best audit firms. It was further stated in that letter that upon successful completion of the audit, if any deficient payment is made out, the same shall be paid by either of the parties as directed by the reconciliation agencies/auditor. But the complainant/association failed to come forward to arrive at an amicable solution in order to reconcile the account.

The IFMS amount collected from the allottees/residents was as per the agreement to sell and maintenance agreement for the maintenance purposes. As per Clause 6.2 of the builder buyer agreement and the maintenance agreement, it has been agreed that the respondent would have the sole right to transfer the IBMS of the allottees to the maintenance agency/association as it may deem fit after adjusting any outstanding maintenance bills and/or other outgoings of the allottees at any time. Similar case was filed by a group led by Mr. Amit Sagar before the National Consumer Disputes Redressal Commission bearing case No. 73 of 2015 which was settled and was transformed in the settlement agreement that the money deposited would be used for the acquiring land and construction of 24-meter road to the project and payment of VAT charges. That the allottees were liable to pay VAT on the total payments made by them and accordingly the amount was aggrieved towards the total VAT payable to the said departments. The Builder has been reminding the allottees from time-to-time to pay the VAT amount, but all the efforts made by the builder have been futile. All the amounts have been taken by the respondent strictly as per the terms of the contract and the agreement in question which provides for the provisions of payment of IFMS and VAT.

xiii. That the complainant was just trying to create unnecessary cause of action without any locus standi or ground against the respondent despite being aware of all the factual facts and circumstances from the very inception. Furthermore, it is very important to mention herein that the complainant has also concealed the material fact that the complainant has already filed a civil suit against the respondent on the said issues mentioned in the present complaint and the same is pending before the Court of Sh. Vikrant, Civil Judge, Gurgaon. The said matter is sub-judice before not only the said Civil Court but as already mentioned above, it is pending before several other Forums so the complainant cannot get proceed with the present complaint under the garb of the provisions of the Act, 2016.

- **Issues relating to electricity supply**

xiv. That there has been no breach of the conditions of the occupation certificate as wrongly alleged by the complainant/association. All the money has been paid by the respondent to the concerned Authorities including DHBVN and there is no default whatsoever on respondent part in obtaining any electricity connection as wrongly stated by the complainant in the present complaint. Rather, the respondent has gone beyond its purview in order to make sure that there is no inconvenience caused to the allottees of the project in question. The complainant/association has addressed the very same issue relating to the electricity connection in the Civil Suit titled ***Vedanta Residents Welfare Association versus Raheja Developers***

Limited and another pending before the Court of Sh. Vikrant, Civil Judge, Junior Division, Gurgaon.

xv. That the respondent had installed 11 KVA electrical set up in the said project and only thereafter the occupation certificate was granted on 17.11.2014. However, in April 2015, the DHBVNL changed its policy and 33 KVA electrical set up was made necessary. Domestic connection was denied on that basis and a demand of Rs.4.75 crores as bank guarantee was raised. Thus, it meant that all the expenditure incurred by the respondent in 11 KVA was nullified due to the sudden change in policy. It is pertinent to mention herein that in the nearby projects, domestic connections were given on 11 KVA only. Till the time the respondent was managing the maintenance, DHBVN was observing different rates. Later, DHBVN Limited realized its fault and started raising bills on domestic rate from 01.03.2021 and continued for one year. Accordingly, the respondent stop paying the differential amount. It is submitted that estimated amount of Rs. 7.55 crores had been collected from the customers but approximately 9 crores had been incurred so far on the electrical infrastructure. Therefore, an estimated amount of Rs. 2.75 crores are yet to be recovered from the customers. The respondent then started the work towards 33 KVA and required 500 sq. yards rendered from grid was identified and accordingly DTCP Haryana accorded its NOC vide NOC memo No. ZP-295/ST (DK)/2021/9067 dated 06.04.2021. Furthermore, the DHBVN approved the electrification complaint of the respondent vide memo No. CH-99/SE/R-APDRP/OLNC-HT/GGN-1 /SOL/820 dated 12.01.2021.

xvi. Accordingly, the respondent entered into a gift deed on 02.08.2022 in favour of the Executive Engineer, DHBVN, Gurgaon to gift a portion of the land in the revenue estate of village Dharampur, Sector 108, Sub-Tehsil Kadipur, Gurgaon, Haryana for the use of proposed site of 33 KVA switching station in accordance with the circulars ruled out by the DHBVN Department as well as the NOC of the District Town Planner, Haryana. Vide the said gift deed, the DHBVN was made as the exclusive absolute owner and in possession of a land measuring approximately 571 square yards. Thus, it is clear that the respondent company had fulfilled all the requirements laid down by the statutory departments of the State of Haryana.

xvii. As already stated above, the amount collected from the allottees of the project under the contractual terms of the agreement have been utilized by the builder for the convenience of the allottees of the project. The respondent in lieu of one of the orders passed against them by the Court of Sh. Vikrant, Civil Judge, Junior Division, Gurugram had filed a revision petition before the Hon'ble Punjab and Haryana High Court vide its order dated 05.05.2022 in CR-902-2022 has directed that no coercive action shall be adopted against the respondent.

- **Issues relating to DG Sets: -**

xviii. That there is no power back-up for 24 hours or that the association is looking for quotations to install the 500 KVA DG sets. There is no need for power back-up as DHBVN has assured 24x7 power supply on 33 KVA. Complete load has been sanctioned by

DHBVN for the entire project in question comprising 537 flats and economically weaker section of 94 flats.

- **Issues Relating to Lifts: -**

xix. There are no defects in the lifts which can be attributed to the respondent company and it is clear that the complainant was just trying to shift its burden of responsibility upon the respondent under the garb of the present baseless and false complaint. Yet again, it is evident from a bare perusal of the complaint that the complainant/association has already approached several forums with respect to the working of the lifts. The maintenance of the project has already been handed over to association who presently is demanding and collecting the amount for the purpose of maintenance of the project as a whole from the allottees residing therein.

xx. That at the time of handing over of the maintenance of the maintenance agency, there were no defects on the part of the respondent/promoter. The regular wear and tear and servicing of the lift is the responsibility of the maintenance agency and later on the association who took the responsibility of the same from 2019 onwards. That all the lifts were inspected by M/s. Otis Elevators Company from time to time and accordingly were handed over. Some of the relevant documents pertaining to the same have been attached by the respondent along with the present reply. It is submitted that these are all maintenance related issues and the RWA have to take responsibility to maintain the same against the charges levied by them from the allottees under the purview and garb of maintenance charges.

- **STP: -**

xxi. That the STPs in the project are wholly deficient or that several repair works are required. It is submitted that for the sake of repetition that after taking over of the maintenance it is the responsibility of the RWA to maintain the project in question. The STPs were in working condition at the time of handing over to the maintenance agencies and CTO certificate dated 23.05.2018 issued by the Haryana State Pollution Control Board to the respondent validates the same. The respondent/promoter cannot be burdened with unnecessary additional cost of maintaining the project when the respondent is not responsible for the same and nor when it is collecting the money from the allottees of the project for the purpose of maintenance.

xxii. The present complaint is the gross misuse of the process of law and it is clear that despite availing several benefits before different forums, the complainant with complete mala fide motives has approached the authority in order to create pressure and to harass the respondent company. The said complaints pending before several forums are being vehemently contested by the respondent /promoter and there is no ground at all to adjudicate the present baseless and false complaint before the authority. The present complaint is liable to be dismissed on this short ground of maintainability alone. If this authority is of the opinion that the present complaint is maintainable, then the respondent reserves its right to file a detailed reply addressing each and every averment raised by the complainant/association.

8. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents.

E. Jurisdiction of the authority

9. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E. I Territorial jurisdiction

10. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. In the present case, the project in question is situated within the planning area of Gurugram district. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

E. II Subject-matter jurisdiction

11. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

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;

Section 34-Functions of the Authority:

34(f) of the Act provides 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 thereunder.

12. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

13. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. 2021-2022 (1) RCR (Civil), 357*** *and reiterated in case of* ***M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022*** wherein it has been laid down as under:

> *"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. if the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."*

14. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the case mentioned above, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

F. Findings on the objections raised by the respondent:

F.I Objections regarding that the respondent has obtained the occupation certificate before coming into force of RERA:

15. The respondent/promoter has raised the contention that the said project of the respondent is a pre-RERA project as the same has already obtaining occupation certificate from the competent authority on 17.11.2014 and 03.06.2016 i.e., before the coming into force of the Haryana Real Estate (Regulation and Development) Rules, 2017 on 28.07.2017. As per proviso to section 3 of Act of 2016, ongoing projects on the date of this Act i.e., 28.07.2017 and for which completion certificate has not been issued, the promoter shall make an application to the authority for registration of the said project within a period of three months from the date of commencement of this Act and the relevant part of the Act is reproduced hereunder: -

> *Provided that projects that are ongoing on the date of commencement of this Act and for which the completion certificate has not been issued, the promoter shall make an application to the Authority for registration of the said project within a period of three months from the date of commencement of this Act:*

16. The legislation is very clear in this aspect that a project shall be regarded as an "ongoing project" until receipt of completion certificate. Since no completion certificate has yet been obtained by the promoter-builder with regards to the concerned project, the plea advanced by it is hereby rejected.

G. Findings on the relief sought by the complainant.

G. I Direct the respondent to refund and consequently pay the complainant/association a sum of Rs.8.87 Cr. in respect of IBMS/IFMS money (with interest at the rate of 18 % p.a. thereon from the date that the amount fell due till the date of realization).

17. The Act mandates under section 11(4)(d), that developer would be responsible for providing and maintaining the essential services, on reasonable charges, till the time, the same is taken over by the association of the allottees. On the other hand, section 19(6) of the Act, states that 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/the builder buyer's agreement and shall pay within stipulated time and appointed place, the share of the registration charges, municipal taxes, water and electricity charges, maintenance charges, ground rent and other charges, if any.

18. The maintenance charges essentially encompass all the basic infrastructure and amenities like parks, elevators, emergency exits, fire and safety, parking facilities, common areas, and centrally controlled services like electricity and water, among others. Initially, the upkeep of these facilities is the responsibility of the builder who collects the maintenance fee from the residents. Once a residents association takes shape, this duty falls upon them, and they are allowed to change or introduce new rules for consistently improving maintenance. In the absence of an association or a society, the builder continues to be in charge of maintenance. Usually, maintenance fees are charged per flat or per square foot basis. The maintenance charges on the other hand accounts for the maintenance charges

thereafter builder incurs while maintaining the project before the liability gets shifted to the association of owners. Builders generally demand advance maintenance charges for 6 months to 2 years in one go on the pretext that regular follow up with owners is not feasible and practical in case of ongoing projects wherein OC has been granted but CC is still pending.

19. Further, section 11(4)(g), provides that the developer will be responsible to 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. It is further provides 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.

20. A quick glance at the provisions of the Act may be taken in this respect to the responsibility of the promoter or project developer for providing and maintaining essential and common services at a

reasonable charge payable by the flat purchasers till the time the co-operative housing society or RWA is formed. Section 17(2) of the Act says that after obtaining OC and handing over physical possession to the allottees in terms of sub section (1), it shall be the responsibility of the promoter to handover the necessary documents, plans, including common areas, to the association of the allottee or the competent authority, as the case may be, as per the local laws. The clause is reproduced below for reference.

> ***17. Transfer of title.***—*(1) The promoter shall execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of the allottees or the competent authority, as the case may be, and hand over the physical possession of the plot, apartment of building, as the case may be, to the allottees and the common areas to the association of the allottees or the competent authority, as the case may be, in a real estate project, and the other title documents pertaining thereto within specified period as per sanctioned plans as provided under the local laws:*
>
> *Provided that, in the absence of any local law, conveyance deed in favour of the allottee or the association of the allottees or the competent authority, as the case may be, under this section shall be carried out by the promoter within three months from date of issue of occupancy certificate.*
>
> *(2) After obtaining the occupancy certificate and handing over physical possession to the allottees in terms of sub-section (1), it shall be the responsibility of the promoter to handover the necessary documents and plans, including common areas, to the association of the allottees or the competent authority, as the case may be, as per the local laws:*
>
> *Provided that, in the absence of any local law, the promoter shall handover the necessary documents and plans, including common areas, to the association of the allottees or the competent authority, as the case may be, within thirty days after obtaining the [completion] certificate.*

21. Also, **clause 11 of the Annexure A** (Agreement for Sale) to the rules provide for maintenance of the project. It states that ***"the promoter shall be responsible to provide and maintain essential services in the project till the taking over of the maintenance of the project by the association of the allottees***". Furthermore, it provides that the

cost of such maintenance has been included in the total price of the plot/unit/apartment for residential/commercial/industrial/IT colony /any other usage. From aforesaid clause, it is clear that the maintenance charges are included in the total cost of the unit and in case, the allottee/association of allottees fails to take possession, then only the promoter has right to recover such amount as spent on maintaining such essential services after coming into force of the Act.

22. The complainant/association in its complaint stated that the flat buyer's agreement obligates the allottees of the unit to pay "interest bearing maintenance security or interest free maintenance security" to the respondent/promoter. The purpose of the payment of IBMS or IFMS was essentially highlighted in clause 6.2 of the buyer's agreement which is reproduced as under for ready reference:

6.2 Maintenance Agreement

"The Purchaser undertakes to join, society association of the Apartment owners and to pay fees, charges thereof and complete such documentation and formalities as may be deemed necessary by the Seller in its sole discretion for this purpose. The Purchaser upon completion of the said Complex and before taking the possession of the Premises shall enter into Tripartite Maintenance Agreement on the Seller's standard format with the Seller or any association /body/condominium of Apartment or any other nominee agency /association(s) or other body (hereinafter referred to as "Maintenance Agency") as may be appointed/ nominated by the Seller from time to time for the maintenance and upkeep of the said Apartment in the said complex, and in case ***the Purchaser takes the possession without signing the Maintenance Agreement mentioned above, the Purchaser must sign the said Agreement within 15 days otherwise the Purchaser shall be treated as illegal occupant and the allotment will be cancelled****. The Purchaser undertakes to pay the maintenance bills as raised by the Maintenance Agency from the date of the certificate for occupation and use granted by the competent authority on pro-rata basis irrespective of whether the Purchaser is in occupation of the Apartment or not and construction work is still in progress in adjacent tower! Complex and infrastructure facilities are not yet fully completed. Further, the Purchaser shall not make any claim(s) pertaining to division of maintenance charges on pro-rata*

basis in relation to other sections of the property/project not having received the Occupation Certificate. In order to secure due performance by the Purchaser in prompt payment of the maintenance bills and other charges raised by the Maintenance Agency, the Purchaser agrees to deposit, ***as per the schedule of payment and to always keep deposited with the Seller or the Maintenance Agency, nominated by the Seller, an Interest-Bearing Maintenance Security (IBMS) at the rate of Rs. 100/- per sq. ft. of the super area of the Apartment.***

In case of failure of the Purchaser to pay the maintenance bill or other charges on or before the due date, the Purchaser in addition to permitting the Seller/Maintenance Agency to deny him/her to use such services being maintained and also authorizes the Seller / Maintenance Agency to adjust in the first instance the interest accrued upon the IBMS against such defaults in the payments maintenance bills and in case such accrued interest falls short of the amount the purchaser further authorises the Company/Maintenance Agency to adjust the principal amount of IBMS against such defaults If due to such adjustments in the principal amount the IBMS falls below the agreed sum of Rs. 100/- per sq. ft. of the super area of the said Apartment, then the Purchaser hereby undertakes to make good the resultan: shortfall within fifteen (15) days of demand by the Seller/Maintenance Agency. Further, the Seller reserves its right to increase IBMS from time to time in keeping with the increase in the cost of maintenance services and the Purchaser agrees to pay such increases within fifteen (15) days of demand by the Seller. If the Purchaser fails to pay such increases in the IBMS or to make good the shortfall as aforesaid on or before its due date, then the Purchaser authorizes the Seller to recover the amount with an interest @ 24% p.a. or at its sole discretion to treat the allotment as cancelled without any notice to the Purchaser and to recover the shortfall from the sale proceeds of the said Apartment and to refund to the Purchaser only the balance of the amount realized from such sale after deducting there from the entire earnest money, brokerage/ commission paid. interest on delayed payments, any interest paid, due or payable and all other dues as set out in the payment plan. It is made specifically clear, and it is so agreed by and between the parties hereto that this condition relating to IBMS as stipulated in this clause shall survive irrespective of the conveyance of title in favour of the Purchaser and the Seller shall have first charge / lien on the said Apartment in respect of any such non- payment of shortfall/ increase, as the case may be.

Also, the Seller/Maintenance Agency shall at its sole discretion have the right to refund/offer to refund at their sole option the IBMS (Interest Bearing Maintenance Security) after adjusting there from any outstanding maintenance hills and/or other outgoings of the Purchaser at any time including upon execution of the Conveyance Deed and thereupon the Seller shall stand completely absolved/discharged of all its obligations and responsibilities.

concerning the IBMS including but not limited to issues of payment, refund and/or claims, if any of the Purchaser(s) on account of the same. In the alternative the Seller shall have the sole right to transfer the IBMS of the Purchaser(s) to the Maintenance Agency Association of Apartment owners as the Seller may deem fit after adjusting there from any outstanding maintenance bills and/or other outgoings of the Purchaser(s) at any time even after execution of the Conveyance Deed and there upon the Seller shall stand completely absolved/ discharged of all its obligation and responsibilities concerning the IBMS including but not limited to issues of repayment, refund and/or claims of any of the Purchaser(s) on account of the same. It is hereby specifically agreed by the Purchaser that such transfer of IBMS shall not be linked in any manner whatsoever to the implementation of the Haryana Apartment Ownership Act, 1983 by the Seller for the said Complex. Further the Purchaser agrees that the Maintenance Agency, upon transfer of the IBMS or in case of fresh IBMS is sought from the Purchaser as stipulated hereinabove, shall have the sole right to modify / revise all or any of the terms of the MS, Tripartite Maintenance Agreement, including but not limited to the amount / rate of IBMS, etc. That as and when any Plant & Machinery within the said Building/said Premises as the case may be, including but not limited to air-conditioning plants, lifts, escalators, DG sets, electric sub-stations, pumps, firefighting equipment, any other plaint/equipment of capital nature etc require replacement, up gradation, additions etc the cost thereof shall be contributed by all the Purchaser(s) in the said Building on pro-rata basis (i.e., in proportion to the super area of the said Premises to the total super area of all the Premises in the said Building, as the case may be). The Seller or the Operation/Maintenance Agency shall have the sole authority to decide the necessity of such replacement, up gradation, additions etc including its timings or cost thereof.

The Seller reserves its rights to terminate this agreement to sell and forfeit the Earnest Money on account of non-execution of the Maintenance Agreement along with outstanding interest, if any. That the Purchaser(s) shall join the Association of owners as shall be formed and registered with the concerned authority on behalf of the Owners of Apartments in the said building/complex and to pay any fees, subscription charges thereof and to complete such documentation and formalities as may be deemed necessary by the Seller for the purpose. Application form(s) attached herewith as annexure C, D, E & F for enrolling the Purchaser(s) shall be signed by the Purchaser(s) at the time of executing this Agreement to Sell."

23. On bare reading of the above-mentioned clause, it can be ascertained that the amount paid to the respondent as IBMS or IFMS charge is to secure due performance by the allottees in prompt payment of

maintenance bills and other charges raised by the maintenance agency or whoever for maintenance of the society. It is understood that the IBMS and IFMS would be set off, if required, against the maintenance dues, which were liable to be particularly paid by the residents after possession had been granted. Further, the IBMS or IFMS charges were only to be temporarily held by the respondent until the maintenance responsibility was accepted by the complainant/association. Further, it is observed that the complainant/association has been registered under Haryana Registration and Regulation of Societies Act, 2012 vide registration no. HR-018-2015-01673 dated 05.03.2015 having 454 homebuyers as member of the association. Thus, the IBMS or IFMS deposit being a security against failure to pay maintenance charges by the allottees, ought to be handed over to the complainant/association, who are presently in charge of the maintenance of the project.

G. II Direct the respondent to refund and consequently pay the complainant/association a sum of Rs.11,00,000/- towards the repairs of the lifts; a sum of Rs.16,18,410/- towards the repairs of the two sewage treatment plants; a sum of Rs.54,00,000/- for procurement of two DG Sets of 500 KVA capacity (along with interest at the rate of 18 % p.a. thereon from the date that the amount fell due till the date of realization);

24. The above-mentioned relief with regard to payment of amount towards repair of lift, two sewerage plants and procurements of two DG sets etc has been raised by the complainant/association. However, after perusal of documents available on record as well as submissions made by the parties it is ascertained that the maintenance of the project has already been handed over to association who is presently demanding and collecting the amount from the allottees residing therein for the purpose of maintenance of the project as a whole. The Authority is of considered view that IFMS is charged to bear with

capital expenditures only and the same has been discussed earlier also in relief no. G.I, that the same is to be handed over to the association of allottees. Hence, the said issues cannot be raised at this point of time and it is the complainant-association which is under obligation to carry out the maintenance, repairs, installation etc, if any, towards proper and smooth functioning of the project.

G.III Direct the respondent to pay compensation to the complainant/association in the sum of Rs.10,00,00,000/- on account of the hardship faced by the residents towards structural defects, defects in lifts, misappropriation, defect in the STP and on account of the lack of DG sets.

25. The complainant/association is seeking relief w.r.t. compensation in the above-mentioned reliefs. Hon'ble Supreme Court of India in case ***M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors. (2021-2022(1) RCR (C)357),*** held that an allottee is entitled to claim compensation & litigation charges under sections 12,14,18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses. Therefore, for claiming compensation under sections 12, 14, 18 and section 19 of the Act, the complainants may file a separate complaint before Adjudicating Officer under section 31 read with section 71 of the Act and rule 29 of the rules.

F.VI Direct the respondent to refund and consequently pay the complainant/association a sum of Rs.5,00,00,000/- which is the amount incurred by the complainant from April 2019 being the difference between the domestic tariff and the commercial tariff (with interest at the rate of 18 % p.a. thereon from the date that the amount fell due till the date of realization).

26. The complainant submitted that the fact has been admitted by the respondent that an amount equivalent to Rs. 7,55,76,684/- has been collected by it from 366 allottees but it is pertinent to mention that the same has not been remitted to concerned authority as per clause 6.9 & 3.11(6) of buyer's agreement and further, has failed to obtain permanent electricity connection for the concerned project from August 2012 to September 2019. As a result of same, the competent authority continues to provide electricity through temporary connection resulting in higher tariff i.e., Rs. 10.125/- per unit (at commercial rates) to that of Rs. 6 per unit (domestic rate), as charges by neighbouring complexes.

27. The respondent on the other hand submitted that it installed 11 KVA electrical set up in the said project and thereafter, the occupation certificate was granted to the respondent on 17.11.2014. However, in April 2015, the DHBVNL changed its policy and 33 KVA electrical set up was made necessary. Domestic connection was denied on that basis and a demand of Rs.4.75 crores as bank guarantee was raised. Thus, it meant that all the expenditure incurred by the respondent in installation of 11 KVA was nullified due to the sudden change in policy. Till the time the respondent was managing the maintenance, it was absorbing the differential in rates. Later, DHBVN Limited realized its fault and started raising bills on domestic rate from 01.03.2021 and continued for one year. Accordingly, the respondent stop paying the differential amount. However, an estimated amount of Rs.7.55 crores has been collected from the homebuyers but approximately an amount of Rs.9 crores has been incurred so far on the electrical infrastructure. Therefore, an estimated amount of Rs.2.75 crores are yet to be

recovered from the homebuyers. Thereafter, the respondent started the work towards electrical set up of 33 KVA and a land measuring approx. 571 sq. yards was transferred in favour of the Executive Engineer, DHBVN through gift deed dated 02.08.2022, for switching station in accordance with the circulars ruled out by the DHBVN department as well as the NOC of the DTCP Haryana vide NOC memo No. ZP-295/ST (DK)/2021/9067 dated 06.04.2021. Furthermore, the DHBVN approved the electrification complaint of the respondent vide memo No. CH-99/SE/R-APDRP/OLNC-HT/GGN-1/SOL/820 dated 12.01.2021.

28. The Authority observes that it has been bought to its knowledge that the above-mentioned relief sought is already pending before the court of Sh. Vikrant, Civil Judge, Junior Division, Gurgaon in civil suit titled ***Vedanta Residents Welfare Association versus Raheja Developers Limited and another***. Hence, the authority has not deliberated the above-mentioned relief and the same is barred under section 10 of the Code of Civil Procedure 1908.

H. Directions of the authority

29. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

   i. The respondent/promoter is directed to transfer all the IFMS/IBMS amount received by it from the allottees in the account of RWA. Further, if it has received any interest on the IFMS/IBMS deposit, then the same shall be transferred in the account of RWA.

ii. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.

30. Complaint stands disposed of.
31. File be consigned to registry.

V.l —

(Sanjeev Kumar Arora)	(Ashok Sangwan)	(Vijay Kumar Goyal)
Member	Member	Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 08.05.2023