

**REAL ESTATE REGULATORY AUTHORITY  
HIMACHAL PRADESH**

**Complaint No. HPRERA2022032/C**

Ahlawat Developers and Promoters, (Partnership Firm) Khasra No.602-608,610-611, Malku Majra, Tehsil Baddi, Solan , Himachal Pradesh 173205 through its partner

..... Complainant

VERSUS

Abdul Guffar Kasane plot(s) No. 66, 67, 68, 69 & 70 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**

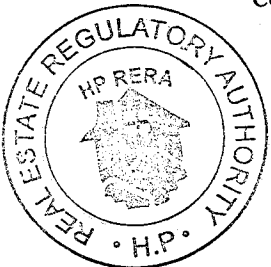
**Date of Pronouncement of order:-26.05.2023**

**Order**

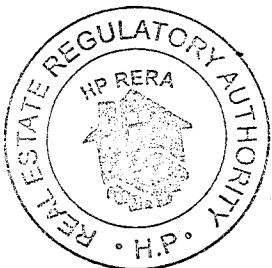
**Coram: - Chairperson and Member**

**Brief facts of the case**

1. That the complainant is the promoter of the Housing Project 'Himachal One' Baddi registered with HP, RERA vide registration number RERAHPSOP06180035 as mixed development project. It was further pleaded that the respondent had booked five number of residential plots nos. 66,67,68,69 and 70 in the housing project and the agreement for sale dated 24.04.2019 was executed between the parties. It was further pleaded that the sale deed of the above said plots was executed in the favour of the respondent on dated 26.04.2019. It was further pleaded that after the execution of the sale deed the respondent started the construction of the buildings on the residential plots bearing numbers 69



and 70 in the project during January, 2022 and four storied houses each on the both the plots have been constructed by the respondent. It was further pleaded that the respondent has not paid any maintenance charges and electricity charges in respect of the above four storied houses as the electricity has been supplied by the complainant promoter. It was further pleaded that the complainant has placed the statement of total payment made by the plot allottees to the complainant at Annexure-1 which includes sum of Rs. 1,84,000/- paid by the plot allottees directly to HPSEB on 27.08.2022 following disconnection of electricity supply by HPSEBL over non payment of dues. It was further pleaded that the complainant promoter paid a sum of another Rs 2,75,000/ to HPSEBL to insure supply of electricity. It was further pleaded that there is still balance outstanding amount Rs 10,57,318/- which shall be paid to HPSEBL after the allottees have paid their share of maintenance/ electricity charges. The detail of electricity bills worth Rs. 46,59,624/- raised by HPSEB from April 2019 till July 2022 are placed at Annexure-2. It was further pleaded that the complainant has always been burdened to make the payments to HPSEBL besides incurring other expenditure for the maintenance of the project that the total maintenance charges for the plots number 66,67 and 68 work ought to Rs 76,545/- calculated at the @50 Paisa per Sq. ft. of the plot area (1215 sq. ft) from the date of execution of the sale deed. It was further pleaded that the construction of the plot no. 66, 67 and 68 has not been started as yet. It was further pleaded that the maintenance charges for plot no. 69 and 70 are Rs. 40,095/- from the date of execution of the sale deed till the start of construction in January, 2022 @ of 50 Paisa per sq. feet. It was further pleaded that the maintenance charges @ of 75 paisa per sq. ft. are calculated from the date of start of construction i.e. January 2022 on the total built up area of the plot. It was further pleaded that depending upon the building plan the maintenance charges are Rs 32,683/- from the start of construction i.e. January, 2022 – till September, 2022 @ of 75 paisa per square feet and the total maintenance charges are Rs 1,49,323/- for all the five plots which are owned by the respondent. It was further pleaded that the electricity charges are to be paid as per the

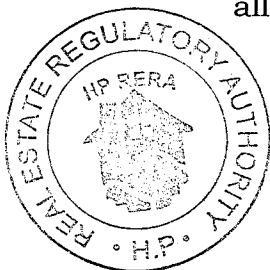


actual consumption of the electricity @ of Rs 5.00 per unit till the respondent takes electricity connection from HPSEBL in his name. It was further pleaded that the complainant has further stated that the respondent is required to make payment in common with other allottees as per Clause 26 of the agreement for sale. It was further pleaded that as per Section 11 (4) (d) of the RERD Act, 2016, the promoter is to maintain essential services on reasonable charges and as per Section 19 (6) of the RERD Act, 2016 , every allottee is required to pay electricity as well as the maintenance charges as per agreement for sale. He has also highlighted Clause 15 (3) of the agreement for sale which states, that the allottee shall plan and distribute its electrical load in conformity with the electrical system planned by the promoter.

2. Hence, the complainant has requested the Authority to direct the respondent to pay the maintenance charges from the execution of sale deed and electricity charges as per consumption and also direct the respondent to plan and distribute its electrical load in conformity with the electrical system planned by the promoter. The reliefs sought by the complainant are to direct the respondent to pay the total maintenance charges of Rs 1,49,323/- , to pay electricity charges as per actual consumption, to plan and distribute its electrical load in conformity with the electrical system planned by the promoter and to obtain NOC from the promoter before release of electricity connection from HPSEB.

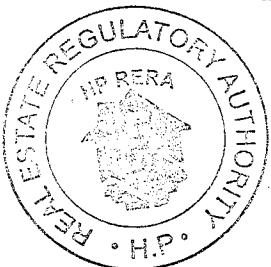
**3. Reply filed by Respondent**

It was further pleaded in the reply that the present complaint is not maintainable because the complainant has failed to discharge functions and the duties of the promoter especially provided u/s 11(4)(d)(e) of the RERD Act, 2016. The respondent in his reply has further submitted that the statement of maintenance charges is 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 these spot show that the complainant has spent nothing since his arrest in the criminal case to maintain the roads, parks, sewerage, and other essential services for the convenience of the allottees. It was further pleaded that the boundary wall of the Himachal



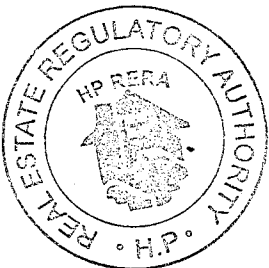
one project has been dismantled at many places due to which animals etc. from outside enter in the housing project which has caused damage to the allottees and the same cannot be compensated in terms of money. It was further pleaded that the complainant has dug a well for sewerage which is open and has endangered life of the persons including small children of the allottees. It was further pleaded that the machinery for sewerage treatment plant is lying idle without any electricity supply and is thus non functional. It was further pleaded that the photographs Annexure R-1 establish that there is nothing worth on the spot for the complainant to seek the maintenance charges from the respondent and other allottees.

4. It was further pleaded that the complainant has obtained temporary electricity connection and has supplied electricity for construction of flats/plots for sale and illegally charged high rate of Rs. 5 per unit from the allottees. It was further pleaded that the complainant promoter has installed a transformer in the month of October, 2022 from which allottees are paying the electricity charges as per consumption shown in the meter/sub meter. It was further pleaded that after the transfer of the plot to the allottees the promoter has no liability on or over such plot(s) and cannot charge any maintenance charges for the simple reason that he has spent nothing on the plots. It was further pleaded that the respondent has completed the construction in plot no. 69 and 70 and is requesting the complainant to provide occupancy/ completion certificate but it was further pleaded that the complainant is not providing the same. It was further pleaded that the respondent has installed a sub metre for consumption of electricity. It was further pleaded that an amount of Rs. 15,000/- was paid to son of the complainant when he was in the judicial custody. It was further pleaded that the respondent has been continuously requesting the complainant to receive the electricity charges as per sub meter reading after adjustment of amount of aforesaid Rs. 15,000/- but the complainant declined the offer. It was further pleaded that the respondent is ready to pay actual charges for electricity consumption as per sub meter reading. With these averments the respondent has prayed for dismissal of the complaint.



## 5. Rejoinder by the complainant

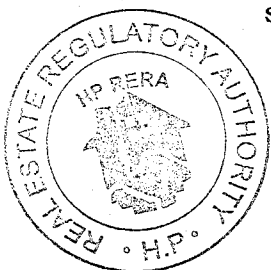
The complainant has filed rejoinder to the reply filed by the respondent and submitted that all details/ calculations of the maintenance and the electrical charges so claimed by the complainant are given along with the present complaint and have also been communicated to the respondent by the complainant from time to time. It was further pleaded that the letter(s) sent to the respondent and HPSEBL from time to time are annexed collectively as Annexure A -1. It was further pleaded that the commercial property of the complainant was given as a security under a Memorandum of Understanding with one Mrs. Asha Sahore in a complaint case pending before Hon'ble H.P State Consumer Disputes Redressal Commission at Shimla. It was further pleaded that the said matter was escalated to National Consumer Dispute Redressal Commission New Delhi. It was further pleaded that as per its decision dated 27.04.2022 it has been directed that the complainant Mrs. Asha Sahore shall release said property to M/s. Alhawat Developers and promoters but the same is yet to be released. It was further pleaded that due to this reason the complainant has not been able to develop commercial property of the project. It was further pleaded that it was on the request of respondent that the electricity was provided by the complainant so that the construction on the plots goes on smoothly. It was further pleaded that there was a dedicated bore well for plot allottees which used to run for 10 hours daily apart from the borewell for the flats to cater to the construction need for around 35 plots from the period 2019 -2021. It was further pleaded that the allottee has consumed 5000 units of electricity from the start of construction in January, 2022 till September, 2022 for construction of two 4 storied houses at plots no. 69 and 70. It was further pleaded that the brief summary of electricity bills raised by HPSEBL are placed at annexure A-3. It was further pleaded that the new transformer of 500 KW was installed in June 2022 but was not commissioned as allottees had not cleared their electricity bill amounting to Rs. 14.94 Lakhs. It was further pleaded that the 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 complainant deposited a sum of Rs. 5,75,000 to HPSEBL to restore the electricity to the housing project. It was further pleaded that the current electricity bill of Feb, 2022 is showing the outstanding dues as Rs.8.50 lakh. It was further pleaded that the electricity connections were released in favour of allottees directly by HPSEBL in November, 2022 based on the MOU with plot allottees to the NOC that electricity charges shall be cleared by the allottees and electrical connection shall be released as per norms of HPSEB. It was further pleaded that the total maintenance and electricity charges payable by the respondent for plot no. 69 & 70 are Rs. 1,03,476/- as per Annexure A-4 i.e. maintenance charges of Rs 78,476 and electricity charges of Rs 25,000. It was further pleaded that total maintenance charges payable by the respondent for the plots no. 66,67,68 are mentioned in Annexure-4 and summarised as Rs 83,895/-. It was further pleaded that the project is still ongoing and with respect to occupancy it was submitted that at present there are a total 36 plot allottees who are residing in the housing project and project is solely maintained by the developer itself. It was further pleaded that all allottees are to pay the maintenance charges to the developer on the demand raised or on monthly basis as per arrangement set out by the developer. It was further pleaded that as per section 19 of the RERD, Act 2016 every allottee after entering into agreement for sale to take an apartment, plot or building shall be responsible to make the necessary payment in the manner and within the time as specified in the said agreement for sale. It was further pleaded that the respondent is liable to pay the balance amount of Rs 1,87,371/- towards maintenance and electricity charges to the complainant promoter for plot(s) owned by respondent and his wife. It was further pleaded that the completion certificate in respect of the plots constructed in the project has to be applied jointly by both the allottees as well as the promoter.

**6. 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



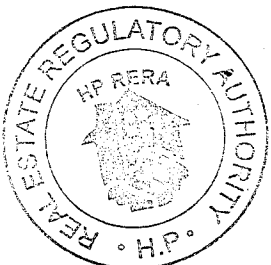
inspection report on 6<sup>th</sup> April, 2023. The relevant contents of the site inspection report in verbatim are re iterated as under-

*"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

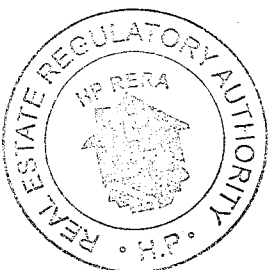


sewerage dirty water is flowing out from the boundary wall installed next to the STP and there is a pool of dirty water close to the boundary wall. The undersigned saw the dirty water flowing out from boundary wall installed near the STP and there is pond of dirty water at a little distance from the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

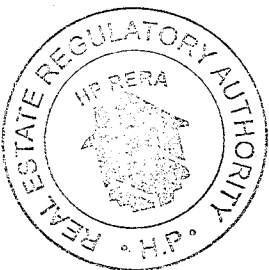
The total capacity of transformer(s) installed by the promoter as stated above is 500KW plus 125 KW i.e. 625 KW which has to cater to 80 flats and 70 plots. Per unit load of the flats assessed by HPSEBL is 4-5 KWS per flat. Where as for the plots where four storied building are constructed they say a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

Therefore the total load requirement of the project roughly is 1800 KW[80 Flats x 5KWs + 70 Plots x 20 KWs= 1800KW] 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 assess the actual expenditure of the spot.

**Individual Complaints-**

1.....

2...

3....

4 **Abdul Guffar-** The plot no. 66, 67, 68, 69 and 70 are owned by Sh. Abdul Guffar. Out of the five plots construction has been done in two plots i.e. 69 and 70. There are two four storied buildings on the spot on the plots no. 69 and 70 of Abdul Guffar. The individual electricity connections have been installed in his name. It was stated by Sh. Abdul Guffar that the electricity meters have been installed four to five days prior to spot inspection. Further on the spot Sh. Abdul Guffar stated that the promoter has not got installed a boundary wall at the back of his plot no. 69 and 70 due to which he alleged that incidents of theft in his plot and houses has increased and he has suffered losses because of the thefts. On the spot the undersigned observed that there is no boundary wall at the back of houses constructed by Sh. Abdul on plot no. 69 and 70. Further Sh. Ahlawat stated that he had assured Sh. Abdul that after the construction work is finished on the plots he will get the boundary wall erected at the spot. On the issue of payment of maintenance charges it was submitted on behalf of Sh. Abdul that there is virtually no maintenance on the spot and the project is not complete. It was further stated by him that he is suffering a lot due no boundary wall. Further it was submitted by him that the promoter never demanded any maintenance from him since the time the plots were allotted to him therefore he is not liable to pay any maintenance on the basis of belated demands being made now. Further it was also submitted by him that there is no maintenance agreement executed between the parties therefore he is not liable to pay any maintenance charges. It was further stated that the promoter may be directed to erect the wall at the back of plot no.69 and 70. It was stated by him that the construction on the plots started in February, 2022 and he has taken electricity from the promoter till May, 2022 and thereafter in May, 2022 it was disconnected. It was further stated by him that it became necessary in the present facts for the allottee to take possession before issuance of completion certificate as he could not be made to wait indefinitely for the completion of the project

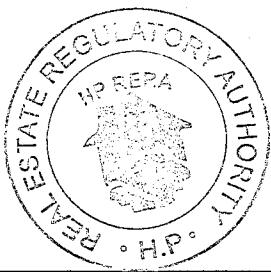


and then take possession. It was further stated by him that from the month of June 2022 the electricity supply was taken from Sh. Yash Pal who is being paid the electricity bills. Sh. Abdul further stated that he had only consumed 300 units from Sh. Ahlawat for which he is ready to pay for 300 units at the rate of Rs. 5 per unit. It was further stated by Sh. Abdul that he is ready to pay future maintenance only if the promoter does completion of pending basic amenities & performance of maintenance works.

Sh. Ahlawat stated that the construction on the two plots started in January, 2022 and the electricity was consumed by Sh. Abdul till August, 2022 and thereafter the meter got disconnected/ destroyed. Thereafter he stated that electricity was taken by Sh. Abdul from Sh. Yash Pal owner of plot no. 11. It was further stated by Sh. Ahlawat that as and when the construction starts in a plot owned by any of the allottee a temporary meter is installed and electricity is supplied till he obtains an individual electricity connection in his name. It was further stated by Sh. Ahlawat that roughly about 2500 to 3000 units have been consumed by Sh. Abdul from January, 2022 to August 2022. It was also stated by Sh. Ahlawat that HPSEBL without NOC from promoter released electricity meter in the name of Sh. Abdul Guffar.

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".

7. The ADA in his site inspection report has stated that the shopping centre and community hall have not been constructed, the path and parking areas have not been developed in the project. The internal roads abutting the plots are kutchra, the rain water harvesting tank is not properly constructed and the sewerage treatment plant is not functional.
8. 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

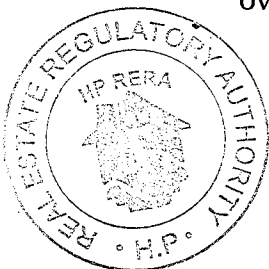


cogent and substantial proof of expenditure by the promoter however, the per unit cost of maintenance comes out to be Rs. 667/- per month.

9. 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.

#### **10. Arguments by the complainant**

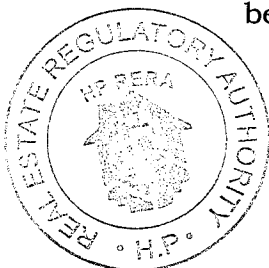
The arguments in this case were heard on 29.04.2023. The Learned Counsel for the complainant argued that as per the electric system installed by the promoter the electrical load per plot comes out to the 3 KW and rest of the load is required to be borne by the plot owners / allottee, as mandated in Clause 15.3 of the agreement for sale. She 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. It was also argued that the allottees are required to pay the maintenance charges @ Rs. 1 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. She further submitted that the total maintenance charges due to the respondent are Rs.1,49,323/- and electricity charges payable by the respondent are Rs 25,000/ for each plot. While being asked by the Authority regarding documentary proof for electricity charges payable by the respondent, the ld. counsel stated that the actual bills received from the HPSEBL have been placed on record in the court file. It was further argued that the respondent has consumed 1400 units from the temporary electricity connection of the complainant promoter with effect from January, 2022 to 31.07.2022 and the meter reading was 3500 units for the construction of two plots no. 69 and 70 when the electricity meter was deliberately destroyed by the respondent. On being specifically asked by the Authority the complainant submitted that the maintenance charges @ Rs 700/- per month are being taken from other allottees from the date of completion of construction up to September, 2022 as per minutes of the meeting between plot allottees and promoter on 20.09.2022. On being further specifically asked by the Authority, the complainant submitted that he will complete the common, essential and basic amenities/facilities as per the sanctioned plan as also pointed out in the site inspection report within next 3 months.

#### **11. Arguments by the 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. It was further argued that the respondent has done construction in two plots out of five plots purchased in the project from the promoter i.e. plot nos. 69 and 70. It was further argued that the individual electrical connection has been installed. It was further argued that the promoter has not constructed the boundary wall in the back of plots nos.69 and 70 of the respondent because of which the respondent and other allottees are suffering



damages due to increase in theft cases in the housing premises. Regarding the payment of the maintenance charges to the promoter he argued that the project is still not complete and no maintenance is being done by the respondent on the spot. It was further argued that the promoter has never demanded any maintenance charges from the respondent till date. It was further argued that no maintenance agreement has been executed between the parties and as such the respondent has no liability to pay the maintenance charges. It was further argued that the respondent has started construction on the plots in February, 2022 and electricity by the complainant promoter was provided up to May, 2022 and after that the same was disconnected. It was further argued that the respondent has taken electricity supplies with effect from June, 2022 from his neighbour Sh. Yash Pal and electricity bills are being paid to him regularly. It was further argued that the respondent has consumed only 300 units from the electricity connection of the complainant and is ready to pay the electricity charges as per unit Rs.5/-. It was further argued that the respondent is ready to pay the maintenance charges in the future provided that promoter completes the pending basic amenities and maintains the works accordingly. It was further argued that the essential services and amenities which are not completed and pending have been reported by the ADA of this Authority as per spot inspection report.

12. No other point urged or relief pressed.

**13. 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?**

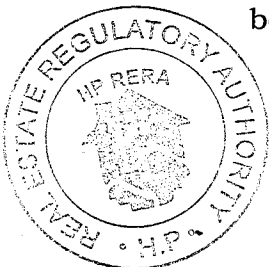


Our findings on these issues are as follows:-

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

The complainant promoter has claimed total maintenance charges Rs. 1,49,323/- for all five plots nos. 66, 67,68, 69 & 70 allotted to the respondent. He has claimed the maintenance charges of Rs 76,545/- for the plot(s) no. 66,67,68 @ of 50 paisa per square feet of the plot area 1215 sq ft from the date of execution of sale deed and for plot(s) no. 69,70 of Rs. 40,095/- from the execution of the sale deed till the date of start of construction work i.e. January, 2022 @ of 50 Paisa per sq. feet. The maintenance charges w.e.f. from start of construction i.e. January, 2022 to September, 2022 of Rs 32,663 @ of 75 Paisa per sq. ft were also claimed. The complainant promoter in his rejoinder has submitted the details of total maintenance charges payable by the respondent in respect of plot nos. 69 and 70 of Rs 78,476/- and in respect of plots no 66,67,68 of Rs 83,895/-.

- 15.** As per the minutes of the meeting between the plot allottees and promoter on 20.09.2022 to resolve the issue of maintenance charges by the plot allottees in clause 5 it has been resolved that the allottees shall clear the payment of monthly maintenance charges @ Rs. 700 per month from the date of completion of the construction up to Sept. 2022 and Rs. 1500 per month from the date of start of construction till completion of construction. Admittedly the respondent was not a signatory to the aforesaid minutes of meetings but in total eighteen other plot allottees were present in the meeting and signed the minutes of the aforesaid meeting. After going through the minutes of meeting the rates of maintenance as agreed between allottees and promoters are reasonable and appear to be genuine. It is not the fault of the complainant promoter if the respondent has chosen not to be part of the meeting to decide maintenance held on 20.09.2022. But the rates agreed therein are binding on all the plot allottees who were present and are also deemed to be binding on those allottees who were not present in the meeting despite being in possession of the plots as it is the corresponding duty of both the parties i.e. for the promoter to maintain the project and for the



allottee to pay for the maintenance. When the other similar allottees have paid the maintenance charges then no maintenance holiday can be given to the respondent when he admittedly as per the specific clause of the sale deed is coming in possession from the date of execution of sale deed as mentioned therein. The date of execution of sale deed is 24<sup>th</sup> April, 2019 and is therefore also the date of possession of five plots by the respondent.

16. Under section 11(4)(d) of the RERA Act, 2016 it is the duty of the promoter to maintain the project by itself or by appointing an agency for this purpose till the RWA takes over possession. The payment of maintenance charges by the allottees is one of the obligations to be performed by the allottees under the RERA Act, 2016. Therefore, reasonable maintenance charges are necessary for the upkeep of the common amenities in a real estate project. Section 19 (6) of the RERA Act reads as under-

Section 19 (6) Every allottee, who has entered into an agreement for sale to take an apartment, plot or building as the case may be, under section 13, shall be responsible to make necessary payments in the manner and within the time as specified in the said agreement for sale and shall pay at the proper time and place, the share of the registration charges, municipal taxes, water and electricity charges, maintenance charges, ground rent, and other charges, if any.

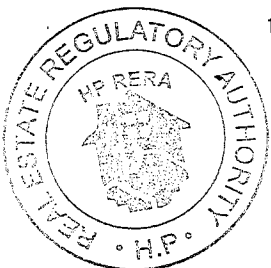
17. The allottees are therefore obligated under section 19(6) of the Act *ibid* to pay maintenance charges and various other charges at the appropriate rate more so when the respondent is in possession of the five plots since 24.04.2019 without any protest. Under Section 37 read with Section 19(6) of the Act *ibid*, this Authority has full powers to issue any binding directions to the allottees for payment of maintenance charges and interest thereon and also to issue any other directions which it considers necessary to dispense justice. There is an agreement *qua* payment of maintenance charges between the promoter and the allottees in the shape of minutes of meetings dated 20.09.2022 which have been signed by majority of allottees. Till such time the association of allottees takes over the project and its common services and decide





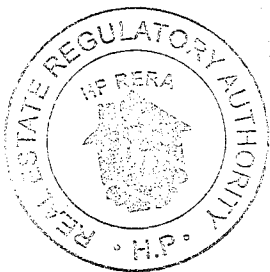
the common expenses and monthly contribution, payment of maintenance charges as stipulated in the minutes of meeting dated 20.09.2022 and enforceable under the RERD Act, 2016 shall continue to be made by the respondent as it is again reiterated that there cannot be any maintenance holiday once possession is taken and sale deed has been executed.

- 18.** 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 same till taking over of the maintenance by the Resident Welfare Association.
- 19.** 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.
- 20.** In this case the respondent has not paid even a single penny since the time he has taken possession at the time of execution of sale deed. There



are two different criteria(s) set out in the minutes qua payment of maintenance charges dated 20.09.2022 of Rs 1500/- during the construction period on the plots and Rs 700/- thereafter which appears to be fair. But the complainant has failed to lead any cogent and convincing evidence as to from what date the construction started and on what date it finished. Therefore this Authority without going into the details of period of construction is taking the amount of Rs 700 per month as maintenance charges in the peculiar facts and circumstances. Therefore in the joint interest of both sides and to further balance the equities the respondent is held liable to pay maintenance charges @ of Rs 700 per month for each plot from the date of taking possession i.e. date of the execution sale deed i.e. 24.04.2019. Since the meeting for payment of maintenance charges took place on 20.09.2022 therefore the respondent is held liable to pay arrears of maintenance charges w.e.f. 24.04.2019 (date of taking possession) up to September, 2022 within 60 days from the date of passing of this order @ of Rs 3500/- per month for five plots. The total amount payable is Rs 1,44,200/-. No interest is being charged if this amount is paid by the respondent within 60 days from the date of passing of this order. If the aforementioned amount is not paid within 60 days then an interest shall be charged on this amount. However, the interest rate as per Section-2 (za) of the RERD Act, 2016 will be same for the allottee and promoter. The interest rate payable by the promoter and allottee as per Rule-15 of the Himachal Pradesh Real Estate Regulation and Development Rule, 2017, is the highest marginal cost of landing rate being charged by the State Bank of India + 2%. Presently, the SBI HMCL rate is 8.7% therefore, the rate of interest which can be charged is  $8.7\%+2=10.7\%$ . Therefore an interest of 10.7% p.a. from the dates when the payments were due shall be charged from the respondent if the aforesaid amount of Rs 1,44,200/- is not paid within 60 days from the date of passing of this order.

- 21.** With regards to payment of maintenance charges with effect from October, 2022 it is held that that the respondent is liable to pay the maintenance charges @ 700 per month for each plot i.e. Rs.3500/- for five plots w.e.f. October, 2022, once the basic amenities are developed or

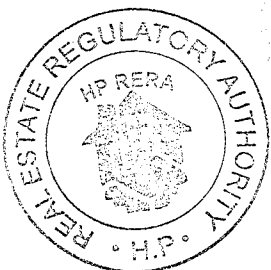


made functional in this project as highlighted in the report of the ADA. Further the complainant promoter is also directed to install the boundary wall at the back of respondent's plot no. 69 and 70 which was found missing in the report of the ADA. The respondent shall be liable to pay the future maintenance charges on completion of the basic amenities in the project, which will be due w.e.f. October, 2022.

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

The complainant promoter has also sought relief to pay the electricity charges as per actual consumption by the respondent. The total electricity charges qua plot no. 69 & 70 over which construction was claimed as Rs 7,000/- each. In the MA dated 3<sup>rd</sup> January, 2023 the relief for electricity charges of Rs 25,000/- for two plots i.e. total of Rs 50,000/- was sought. In the rejoinder the complainant has sought relief for an amount of Rs 25,000/- as electricity charges for two plots. As per Annexure to the rejoinder where in a chart has been framed by the complainant, electricity charges for plot no. 69 and 70 is Rs 64238 for alleged consumption of 5000 units. It is further alleged that for considerable amount of time the respondent consumed electricity charges despite having destroyed the meter but there is no cogent evidence to substantiate the averment therefore the same cannot be believed. In the written submissions it has been stated by the complainant that from January, 2022 till 31.07.2022 the meter reading was 1400 units and thereafter the respondent destroyed the electricity meter but simultaneously kept consuming electricity from the complainant's common connection up to September, 2022 after which he started taking electricity from plot no.11 of Sh Yash Pal. Therefore the only conclusion that can be drawn is that 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.

23. 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. 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 qua electricity charges and therefore rejects the claim of the complainant on this count.

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

The complainant in his complaint has made a prayer that the respondent may be directed to plan and distribute its electrical load in conformity with the electrical system planned by the promoter. But in subsequent pleadings there is no mention about the respondent taking extra load qua his plots.

25. 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. in the colony. 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 i.e. 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.

26. At present there is no proof that the respondent has taken any extra load however if in future the respondent consumes any extra load over and above 5 KWs for each of his five plots individually then he shall pay the development charges of extra load required 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

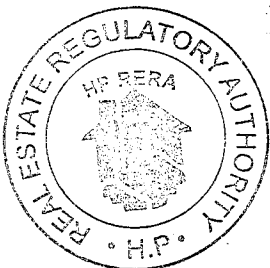


money received from the various allottees, for future developmental requirement of the electrical load.

27. **Relief**

Keeping in view the abovementioned 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 of Rs 1,44,200/- @ Rs. 700 per month for five plot(s) 66, 67, 68, 69, 70 i.e. Rs 3,500/- per month for five plots w.e.f. date of taking possession which is also the date of execution of sale deed i.e. 26.04.2019 up to September, 2022 (i.e. the month when meeting qua payment of maintenance took places between complainant and plot allottees). The aforementioned arrears shall be payable by the respondent within 60 days of the passing of this order failing which he shall be liable to pay interest of 10.7% p.a. from the dates when the payments were due.
- D. The respondent is further held liable to pay the future maintenance charges @ Rs 3,500/- per month for five plots w.e.f. October, 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 October, 2022 and will be paid regularly thereafter @ Rs. 3500 per month collectively for five plots by the respondent.



- E. The complainant promoter is also directed to install/erect the boundary wall at the back of respondent's plot no. 69 and 70 which was found missing in the report of the ADA within 3 months from the date of passing of this order.
- F. 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.
- G. The claim of the complainant qua arrears of electricity charges is declined for want of substantive and conclusive evidence.
- H. 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 the 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.
- I. All the pending applications are disposed of in aforesaid terms.

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

*SKant*  
**Dr. Shrikant Baldi**  
**CHAIRPERSON**

