



**Chhattisgarh Real Estate Regulatory Authority, Raipur**

**Complaint No-M-PRO-2022-01750**

**BEFORE  
(FOR AND ON BEHALF OF C.G.R.E.R.A.)  
(Deepa Katare, Adjudicating Officer)**

Salasar Welfare residents Associations,  
Through-Secretary Shri Ranjit Kumar,  
S/o Shri Haridwar Prasad,  
Address - Salasar Society office, Salasar Greens,  
Sarona, Ward no. 70, Raipur (C.G.) ..... **Complainant**

V/s

1. **M/s Sachdev Buildcon,**  
Through-Mr. Vivek Sachdev,  
S/o Late Shri Shamandas Sachdev,  
Address- Narayan Mill Compound,  
Ramsagarpara, Raipur (C.G.)
2. **M/s Wallfort properties Pvt Ltd.,**  
Through-Partner/Director – Mr. Pankaj Lahoti,  
Address-204-205, Wallfort Oz1,  
Fafadih Chowk, Raipur (C.G.)
3. **Wallfort Garden Residential Society,**  
Address-Near Salasar Greens,  
Sarona, Raipur (C.G.) ..... **Respondents**

**Present :-**

- (1) Shri Shashwat Surana, Learned Counsel for Complainant.
- (2) Shri Jatin Joshi, Learned Counsel for Respondent no. 1.
- (3) Shri Abhinav kardekar, Learned Counsel for Respondent no. 2.
- (4) Shri Shrijan Shukla, Learned Counsel for Respondent no. 3.

**(Project- “Salasar Greens”, Sarona, Raipur)  
RERA Registered No. PCGRERA090818000674  
Order dated-13.04.2023**

1. The complaint has filed instant complaint under section 31 of the Real Estate (Regulation and Development) Act, 2016 in form-M to the effect
  - (A) That the complainant is entitled for
    - 1) Interest @ 24% on the amount paid by the members of complainant at the time of registration of conveyance deed
    - 2) Compensation of Rs. 50,00,000/- (Rupees Fifty Lakhs only) for mental agony and harassment

- 3) Maintenance Charges with adequate security amounting to Rs. 55,00,000/- (Rupees fifty five lakhs only) yearly till the use of any part of the project by any means is being done by the respondent no.2 or it's allottees.

(B) That the direction be issued to

- 1) Respondents to stop all the movement of heavy vehicles and commercial vehicles including all modes of transport of taking material through the project Salazar Greens to Wallfort Garden including movement / transit of employee, labour of respondents no.2 or it's allottees.
- 2) Respondents it's allottees, agent, employees and the staff to use any of the 2 other roads /entry available to the respondents no.2 for its project Wallfort Garden and completely stop using internal main road of the project Salazar Greens.
- 3) Responded no. 1 to execute registered deed for transfer of title (conveyance deed) of common areas including the internal road in favour of the complainant.
- 4) To competent authority to initiate the action against the respondent no.2 for misrepresenting facts vide obtaining the approval of its project.
- 5) To competent authority to cancel the approved layout and permission of the project Wallfort Garden of respondent no. 2 or inquiry to be held by the authority in this regard.

(C) To impose the maximum statutory penalty on respondent under the provisions of The Real estate (Regulation and development) act, 2016.

2. From the rival contentions of both the parties the undisputed facts emerges in the case are –

1. Consent agreement dated 28.12.2009 was executed between respondent no.1 and 2.
2. The internal main roads of project Salazar Greens is being used by the respondent no.2 and 3.
3. Pleaded case of complainant is that the complainant is an association of unit owners of the project Salazar Greens developed and constructed by the respondent no. 1 and the respondent no. 2 has developed a real estate project Wallfort Garden touching South side of the boundary of project Salazar Greens. At the time of purchase of unit in the project the respondent no.1 have lured the unit owners of its project by depicting the project would have various facilities, amenities and the project will be secured by the boundary wall. For the construction of several units in the project of respondent no. 2 Wallfort Garden internal main road of 40 ft. of project Salazar Greens is being used by the respondent no. 2 and its allottees illegally due to which heavy commercial vehicles, construction agent , employees labours of the respondent no. 2 and its allottees unauthorisedly enters into the project Salazar Greens there by causing severe security and accident threats to the resident of project Salazar Greens and

one of the resident Mr. Sanjeev Kumar Verma has been subjected to robbery in the daylight. There are 2 another approach roads from which respondent no. 2 and 3 can be easily and effectively access but the same has been deliberately not been used by the respondent no. 2 and 3 despite of several request of complainants and various meetings of respondents, causing trouble and inconvenience to the residents of project Salasar Greens.

4. Complainant further contended that when the complainant requested the respondents to stop such illegal usage of internal road of project Salasar Greens then unregistered consent letter had been provided by the respondent no. 2 to the complainant alleging that by virtue of said consent letter entered between the respondents, the respondent no. 2 has right to use the main road of the project Salasar Greens as the approach road of the project Wallfort Garden. The said consent letter was neither informed to the members of complainant at the time of sale by the respondent no.1 nor any information in respect of the alleged permission for the use of internal road of the project was given by the respondents. On enquiring in respect of alleged consent letter from the respondent no. 1 it has been stated that same was never enforced as respondent no. 2 never complied from its part of obligation and rather than using other alternate approach roads connecting to the project respondent no. 2 without any express consent or registered document has been using the internal roads of project Salasar Greens. Due to the same the complainant is subjected to bear the cost of Rs. 16,04,223/- as security expense. Thus the respondent no.1 and 2 together with the melafide intention concealed the fact of execution of unregistered consent letter therefore same is not binding up on the complainant.
5. Complainant further contended that the drains and sewerage system of the adjoining project has also been constructed in such a way that the slope is made towards the project of Salasar Greens. There is no maintenance in the project of the respondent no.2 and due to ongoing construction all sewerage waste and rainwater enters in the project of complainant for which the complainant is forced to incur expenses for cleaning the same every month. The respondent no.2 was under obligation to develop its own sewerage and drainage system but intentionally dumping all the waste inside the project of the respondent no.1 making the project "Salazar Greens" inhabitable and the complainant is subjected to grave danger and is forced to live in fear and unhygienic conditions. The respondent no. 2 and its allottees despite using and enjoying the cleaning services of the internal main road and the electricity connection like street light of the project "Salasar Greens" are not even paying a single rupees for the same and all such cost is forced upon the complainant. Also the allottees of the project Wallfort Garden are using all other amenities like Garden, play area of the project "Salasar Greens" as there can be no effective way to restrict them unless their entries is completely restricted from inside of the project Salasar Greens.

The complainant has even approached the concerned police station to at least stop the transit of heavy vehicle, staff and the labour of the respondent no.2 or it's allottees.

6. Complainant further contended that the layout approved by the respondent no. 2 is on the basis of false representation and alleged unregistered consent letter therefore liable to be cancelled. The common areas of the project Salasar Greens is exclusively of the allottees of the same projects which is to be handed over to the complainant and the respondent no.1 is under the obligation to transfer the title of common areas of the project including the roads there to the exclusive ownership and the possession of complainant but due to the interference of respondent no. 2 it's allottees, agents, employees and the staff it has not been handed so far. Therefore complainant has filed instant complaint for the relief (s) as referred in clause (1) of this order.
7. The Respondent no. 1 in his reply contended that respondent no. 1 has duly obtained all necessary approvals and permissions from the respective authorities right from initiating the project till its completion and also thereafter till date. Alleged consent letter was executed way back on 28-12-2009 i.e. even prior to the commencement of project. During 2009-2010, the respondent no. 1 was planning to develop a project on the piece and parcel of hand situated at back side of the project Wallfort Sapphire, while the development of the project Salasar Greens had already got started. During that the time respondent no. 1 was not having approach road for its project which was proposed to be developed behind the project Wallfort Sapphire vis-a-vis respondent no. 2 was not having approach road for its project Wallfort Garden. Hence, the alleged consent letter dated 26.12.2009 has come into the picture and it was mutually agreed between respondent no. 1 and 2 that "respondent no. 1 will use the internal road of Wallfort Sapphire as an approach road for its proposed project and respondent no. 2 will use the internal road of respondent no. 1 for its project Wallfort Garden. Said arrangement was not for indefinite period of time. The respondent no. 1 cancelled the plan to develop the project in the piece and parcel of land situated behind the project Wallfort Sapphire and till date the respondent no. 1 has never used the internal road of project Wallfort Sapphire to access its own land. Respondent no. 1 informed its decision to respondent no. 2 that it is not interested to use the internal road of project Wallfort Sapphire and therefore it was mutually agreed between respondent no. 1 and respondent no. 2 that" Respondent no. 2 will stop using the internal land of respondent no. 1 as an approach road for its project Wallfort Garden either on the completion of project of the respondent no. 1 i.e. Salasar Greens OR on availability of alternative road to approach the project of respondent no. 2 i.e. Wallfort Garden, whichever happens earlier. The respondent no. 2 is illegally using the main road of the project Salasar Greens as an approach road of the project Wallfort Garden

knowingly that project Salasar Greens has been completed and its physical possession has been handed over to the complainant society. The Respondent no. 1 further contended that in the Joint meeting held on 28-07-2019 between residents of Salasar Greens and residents of Wallfort Garden and Builders of both projects, it was mutually agreed that heavy commercial vehicles and labours of respondent no. 2 will not enter in the premises of Salasar Greens but was never adhered and complied by the respondent no. 2. Consent letter has lost its binding effect from the day when the project "Salasar Greens" got completed. Other alternative approach roads to the project Wallfort Garden are available to the respondent no. 2 but still the respondent no. 2 is illegally using the internal road of the project Salasar Greens.

8. The Respondent no. 1 further contended that road adjoining the West boundary of the project Salasar Greens" which is 40 foot wide road and which has an easy access to the project Wallfort Garden has been constructed by the respondent no. 1 on the land of 1 of its sister concern called as M/s Shiva Infrastructures. It is significant to mention here that respondent no. 1 and M/s Shiva Infrastructures has no objection whatsoever if the said land shall be used as an access to the project Wallfort Garden. By allowing said arrangement the intention of Respondent no. 1 is to bring the amicable solution of the ruckus created by the Respondent no. 2. Respondent no. 1 further contended in sum and substance that Respondent no. 1 is always standing hand in hand with the Complainant society and as a gesture of cooperation to the complainant society the respondent no. 1 has constructed a 40 foot wide road in the land adjoining the western boundary of the project Salasar Greens so that it can be used as an easy access to the project Wallfort Garden. In addition to it the approach road available to respondent no. 2 to access its project Wallfort Garden through approach road of its another connected/adjoining project called Wallfort Alancia. The respondent no. 1 further averted that physical possession of the project of Salasar Greens has been handed over to the Complainant society in the year 2018. The respondent no.1 is ready and willing to comply with the provision of Section 17 of the RERA Act and in that regard the respondent no. 1 undertakes to comply with any direction(s) passed by the Hon'ble Authority. Therefore, respondent no. 1 prayed to direct the respondent no. 2 to access the approach road for project Wallfort Garden either through its own adjoining project Wallfort Alancia or to acces the approach for project Wallfort Garden through 40 foot wide road constructed by Respondent no. 1 (any one of them) and to restrain and stop the Respondent no. 2 and/ or its allottees and/or its labour and /or its employee and/ or its commercial vehicles to illegally access the internal road of project Salasar Greens and prayed accordingly to dismiss the complaint filed against the Respondent no. 1.
9. The Respondent no. 2 in his reply contended that agreement between the Respondents by which Respondent no. 1 had given specific consent for

unconditional usage of internal main road of Salasar Greens by the Respondent no. 2 is a duly notarised document on the basis of which approval was granted by the Town & Country Planning, Raipur for project Wallfort Garden, therefore there is no illegality on the part of the respondent no. 2. Respondent no. 2 had duly discharged its obligations and the consent agreement was executed by the parties and is enforceable as on date. Respondent no. 2 is not concerned with the representations and warranties made by the respondent no.1 to the Complainant or Allottees of Salasar Greens. There is no other approach to the project Wallfort Garden apart from one owned by the Respondent no. 1 and for which Respondent no. 1 had given specific consent for unconditional usage. Respondent no. 2 project Wallfort Garden was completed on 18-10-2019 and handed over to the resident association. Moreover, out of 216 units 208 units of the Respondent no. 2 is plotting project Wallfort Garden are already sold and there is no construction work left to be done in Wallfort Garden by Respondent no. 2. That Complainants are aggrieved by the construction work done by the allottees of the Respondent no. 2 in their own plots for which they are using the road owned by Respondent no. 1 and for which Respondent no. 1 had given specific written consent for use even before approval of the layout of Complainant's project. Hence respondent no.3 prayed to dismiss the complaint filed against him.

10. The Respondent no. 3 in his reply contended that consent letter was executed between the respondent no. 1 and the respondent no. 2 dated 29.12.2009. wherein the respondent no.1 and 2 has mutually decided that the road which is part of Khasra No. 201/21, 190/1-2, 191/1-4 admeasuring 13863 Sqft. belonging to respondent no. 2 i.e. Wallfort Properties Pvt. Ltd. and part of khasra no. 309/2-3, 312/1-2-3 admeasuring 36561 sqft., will be used by both the parties and the construction of the said road will be done by the respondent no. 2 and it was also mutually decided that the development permission from the T&CP department will be obtained by showing this road as a common road in the layout permissions to be obtained by respondent no. 1 & 2 and it was also specifically agreed that the said road will be used equally by respondent no. 1 & 2 and the successors of respondent no. 1 & 2 will not create any kind of claim with respect to the said road in future. The respondent no. 3 further contended that the T&C department has also granted the development permission to the respondent no. 2 considering this particular consent letter only. In both the projects the road has been shown as the common extended 40 feet wide roads and this particular road is used for the common usage. This particular information was given by the respondent no. 2 to the residents of the society i.e. respondent no. 3 through brochure at the time of the sale of the plots of the colony Wallfort Garden. At the time of development of Wallfort Garden said road was used by the respondent no. 2 for the transport of the raw materials required for the development of project Wallfort Garden and moreover it was the

entrance road only that attracted many buyers in the project Wallfort Garden. In the meeting convened on 28 July, 2019 it was decided in the presence of the respondent no. 2 that the transport of the heavy vehicle is permitted from 11.00 PM to 5.00 AM, respondent no. 3 is always ready to negotiate the matter at any moment, because the respondent no. 3 will always use the said 40 feet road for its access. The respondent no. 3 further states that the respondent no. 2 i.e. Wallfort Properties Pvt. Ltd. has always said that the approach road i.e. the said 40 feet road is common for the complainant and also for the respondent no. 3. Making compliance on this promise only many members of the respondent no. 3 has invested in the project Wallfort Garden. Hence the respondent no. 3 requested to dismissed the complaint against respondent no. 3 as the same is not maintainable against respondent no. 3.

11. From the rival contentions of the parties and on perusal of material on record following are points for determination to adjudicate the controversies between the parties: -

- i. Whether instant complaint is maintainable under the provision of The Real Estate (Regulation and Development) act 2016?
- ii. Whether the agreement dated 28.12.2009 executed between the respondent no.1 & 2 is enforceable against complainant?
- iii. Relief (s)

12. **Points For Determination No. (I)**– Objection regarding the tenability of instant application has been raised by the respondent no.2 in his written argument only. It is argued by the respondent no.2 that:-

- i. Instant dispute is not a dispute between a builder and allottee(s)
- ii. Authority lacks power to modify/cancel the approved layout plan
- iii. Right to land is a civil right which cannot be interfered with by Authority
- iv. Authority lacks power to interfere and adjudicate upon a private agreement between 2 parties concerning right to usage of a land
- v. Reliefs sought are beyond the jurisdiction of Authority and facts of case warrant rejection of reliefs sought

At the outset it would be appropriate to extract the various provisions of The Real Estate (Regulation and Development) Act, 2016 which governs the law pertaining to real estate sector. **Section 31 of the Act deals with filing of complaints with the Authority** which reads as under :-

“(1) Any aggrieved person may file a complaint with the Authority or the adjudicating officer, as the case may be, for any violation or contravention of the provisions of this Act or the rules and regulations made thereunder against any promoter allottee or real estate agent, as the can may be.

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

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

**Section 79 of the Act deals with Bar of Jurisdiction** which reads as under :-

“No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Authority or the adjudicating officer or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.”

13. As averted by the parties in their pleading that complainant is an association of allottees of Salasar Greens and respondent no.3 is association of allottees of ‘Wallfort Garden’. Real estate project Salasar Greens is developed and constructed by the respondent no.1 and real estate project Wallfort Garden is developed by the respondent no.2. So the respondent no. 1 and 2 are promoters within the definition under the Section 2 (ZK) of act and respondent no.1 & 3 are the allottees within the definition under section 2(D) of the Act. The subject matter of the complaint pertains to the dispute related to violation and contravention of obligation casted upon the promoter, specifically under section 11 of the Act and infringement or violation of rights of allottees, as prescribed under section 19 of the Act and their respective analogous provision in act and rules. Therefore the subject matter of the instant complaint is within the sphere of exclusive jurisdiction of the Real Estate Regulatory Authority and further section 79 of the act creates specific embargo on taking cognizance of subject matter by civil court which the Authority is empowered by or under Act.
14. Respondent no.3 further argued that matter in issue is related to private agreement between the respondent no.1 and 2 creating the right to the usage of land which being right to land is a civil right and cannot be interfered and adjudicated by the Authority. In this context it is noteworthy to mention here that all subject matter vested under the jurisdiction of the Authority are of civil nature only and the dispute between the promoters and allottees relating to the land of real estate project in the contravention of provision of the act, rules and regulation is within the jurisdiction of Authority only. The fallout of above discussion is that Authority has a jurisdiction over the subject matter therefore instant complaint filed by the complainant is maintainable under the provision of The Real Estate (Regulation and Development) act 2016 and objection raised by respondent no.2 in this regard being misconceived is not tenable. Accordingly point no.1 is being decided in affirmation.



15. **Points For Determination No. (II)**– Prior to the appreciation of rival pleadings of parties, their documents and argument, it is pertinent to mention here that only significant and relevant pleadings to decide the real matter in controversy between the parties, in view of the relief claimed by the complainant, are being considered. On perusal of brochure (Annexure-10) and sale deed of house and plot (Annexure-12) of Project Salasar Greens, it is evident that it has not been mentioned anywhere that internal main road of the project of Salasar Greens shall be used by the allottees of Wallfort Garden as their main approach road, i.e. it will be used as common roads for the allottees of both the project. In view of above, it could be reasonably inferred that respondent no.1 had willfully concealed and suppress the above fact from the allottees of Salasar Greens while offer for selling or selling apartments and houses in the Salasar Greens. Responding no.2 and 3 has not submitted the brochure of Wallfort Garden or the sale deed of plots in the said project from which it could be ascertained that at the time of sale of plots, respondent no.2 had shown in brochure and sale deed of plot that the internal road of Salasar Greens shall be used as the common entrance or the approach road for both project. Thus respondent no.2 and 3 failed to establish that the members of respondent no.3 i.e. allottees of Wallfort Garden had purchased the plot in said project on placing the reliance on the brochure provided by the respondent no.2.
16. It is relevant to mention here the provision of section 11 (3) of the Act which makes provision that at the time of booking it is the duty of promoter to make available to allottees information regarding the sanction plan, layout plans along with the specification approved by the competent Authority. Section 12 of the Act further imposes obligation upon the promoter in case incorrect false statement information made by the promoter in the notice, advertisement of prospectus regarding the apartment plot or building at the time of making advance or deposit by the person, thereby causing any loss and damage to that person. Thus in view of above referred provision of act respondent no.1 and 2 was under the obligation to disclose the true and the correct information of their project in the brochure which the respondents had failed to do so. The respondent no.2 and 3 contended that there is a consent agreement dated 28-12-2009 between respondent no.1 and 2 vide which the respondent no.1 had given specific consent for unconditional usage of internal main road of Project Salasar Greens by respondent no.2 as approach road. On the basis of said agreement, respondent no.2 has obtained the permission and approved layout from the Department of Town and Country planning and since than respondent no.2 and 3 has been using said internal main road of project Salasar Greens as their main excess road in compliance of permission and approval granted by the department of Town and Country Planning. Per Contra, complainant denied the enforceability of alleged consent agreement against the allottees of salasar

Greens. It will be apt to reproduce the relevant part of consent agreement dated 28-12-2009 which reads as under :-

“पक्ष क्रमांक-एक की निम्न (खसरा क्रमांक-201/21, 190/1-2-4, 191/1-4 कुल रकबा 1.227 हेक्टेयर) भूमि में से 13863 वर्गफीट भूमि सड़क में है तथा पक्ष क्रमांक-2 की निम्न (खसरा क्रमांक-309/2-3, 312/1-2-3 कुल रकबा 2.406 हेक्टेयर) भूमि में से 36561 वर्गफीट भूमि सड़क में है।

यह कि आज दिनांक 28.12.2009 को निम्नांकित शर्तों के आधार पर पक्ष क्रमांक-1 व 2 के बीच आपसी सहमति निष्पादित किया गया :-

1. यह कि दोनों तरफ की सड़क का उपयोग दोनों पक्ष आने जाने के लिये करेंगे।
2. यह कि बड़ी रोड़ (मुख्य मार्ग) का निर्माण पक्ष क्रमांक-1 वालफोर्ट प्रापर्टीज के द्वारा किया जावेगा।
3. यह कि छोटी रोड़ का निर्माण पक्ष क्रमांक-2 सचदेव बिल्डकॉन के द्वारा किया जावेगा।
4. रोड़ निर्माण में वेष्टित (लगने वाली) भूमि के अंतर की भूमि की आधी भूमि पक्ष क्रमांक-1, पक्ष क्रमांक-2 को ले-आउट (मानचित्र) स्वीकृति के पश्चात् भूमि का रजिस्ट्री करावेगा।
5. दोनों साईड वाली रोड़ को 1. वालफोर्ट प्रापर्टीज एवं 2. सचदेव बिल्डकॉन के द्वारा ले-आउट (मानचित्र) में दर्शाकर ले-आउट नगर तथा ग्राम निवेश रायपुर से स्वीकृत कराया जावेगा एवं संबंधित सभी शासकीय कार्यालयों में भी उपयोग किया जावेगा।
6. यह कि दोनों पक्ष अपने-अपने भूमि का ले-आउट (मानचित्र) में रोड़ दर्शाते हुये अपने-अपने व्यय पर स्वीकृत करवायेंगे।

उपरोक्त दोनों पक्षों को इस आपसी सहमति में कोई आपत्ति नहीं है और न ही भविष्य में आपत्ति होगी। अगर भविष्य में उक्त भूमि पर निर्मित रोड़ के संबंध में कोई उजर आपत्ति या दावा करते हैं तो इस सहमति पत्र के समक्ष नाजायज झूठा तथा शून्य माना जावेगा।

यह उक्त भूमि पर निर्मित रोड़ पर दोनों पक्षों का बराबर-बराबर हक एवं स्वामित्व रहेगा। वह अपनी सुविधा अनुसार उपयोग, उपभोग करेंगे।

अतः उपरोक्त सहमति पत्र को अच्छी तरह पढ़कर या पढ़ाकर, समझकर, सही होना पाकर बिना किसी दबाव के अपनी स्वेच्छा से निम्नांकित दो गवाहों के समक्ष अपना हस्ताक्षर कर निष्पादित कर दिया कि सनद रहे वक्त जरूरत पर काम आवे।”

17. On bare perusal of above referred consent agreement dated 28-12-2009 (Annexure R-1/7) and its original, it is abundantly Clear that above referred document was executed to create an equal title and ownership of one party over the land of another party and vice-versa i.e. it has been agreed that the party no.1 of the agreement (Respondent no. 2 of the instant complaint) will have a title and ownership over. 36561 square feet road constructed over the piece of land of party no.2 (Respondent no 1 of the instant complaint) and party no.2

(Respondent no 1 of the instant complaint) will have a title and ownership over 13863 square feet road constructed over the piece of land of party no.1 (Respondent no. 2 of the instant complaint) and both the parties will have equal use of usufructuary right over the both the roads. Thus through said agreement both the parties had mutually purported and operated to create right, interest title and ownership of immovable property of each other. It is relevant to mention here the provision regarding the document which are mandatory required to be registered under the registration act are as under :-

**Section 17: Documents of which registration is compulsory.—**

“(1) The following documents shall be registered, if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which, Act No. XVI of 1864, or the Indian Registration Act, 1866, or the Indian Registration Act, 1871, or the Indian Registration Act, 1877, or this Act came or comes into force, namely:-

- a) instruments of gift of immovable property;
- b) other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of 1 hundred rupees and upwards, to or in immovable property;**
- c) non-testamentary instruments which acknowledge the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest; and
- d) leases of immovable property from year to year, or for any term exceeding 1 year, or reserving a yearly rent;
- e) non-testamentary instruments transferring or assigning any decree or order of a Court or any award when such decree or order or award purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of 1 hundred rupees and upwards, to or in immovable property:

Provided that the State Government may, by order published in the Official Gazette exempt from the operation of this sub-section any lease executed in any district, or part of a district, the terms granted by which do not exceed five years and the annual rents reserved by which do not exceed fifty rupees.

**1[(1A) The documents containing contracts to transfer for consideration, any immovable property for the purpose of section 53A of the Transfer of Property Act, 1882 (4 of 1882) shall be registered if they have been executed on or after the commencement of the Registration and Other Related laws (Amendment) Act, 2001 (48 of 2001) and if such documents are not**

**registered on or after such commencement, then, they shall have no effect for the purposes of the said section 53A].**

(2) Nothing in clauses (b) and (c) of sub-section (1) applies to--

- (i) any composition deed; or
- (ii) any instrument relating to shares in a joint stock Company, notwithstanding that the assets of such Company consist in whole or in part of immovable property; or
- (iii) any debenture issued by any such Company and not creating, declaring, assigning, limiting or extinguishing any right, title or interest, to or in immovable property except in so far as it entitles the holder to the security afforded by a registered instrument whereby the Company has mortgaged, conveyed or otherwise transferred the whole or part of its immovable property or any interest therein to trustees upon trust for the benefit of the holders of such debentures; or
- (iv) any endorsement upon or transfer of any debenture issued by any such Company; or
- (v) any document other than the documents specified in sub-section (1A) not itself creating, declaring, assigning, limiting or extinguishing any right, title or interest of the value of 1 hundred rupees and upwards to or in immovable property, but merely creating a right to obtain another document which will, when executed, create, declare, assign, limit or extinguish any such right, title or interest; or
- (vi) any decree or order of a Court except a decree or order expressed to be made on a compromise and comprising immovable property other than that which is the subject-matter of the suit or proceeding; or
- (vii) any grant of immovable property by Government; or
- (viii) any instrument of partition made by a Revenue Officer; or
- (ix) any order granting a loan or instrument of collateral security granted under the Land Improvement Act, 1871, or the Land Improvement Loans Act, 1883; or
- (x) any order granting a loan under the Agriculturists, Loans Act, 1884, or instrument for securing the repayment of a loan made under that Act; or
- (xa) any order made under the Charitable Endowments Act, 1890 (6 of 1890), vesting any property in a Treasurer of Charitable Endowments or divesting any such Treasurer of any property; or
- (xi) any endorsement on a mortgage-deed acknowledging the payment of the whole or any part of the mortgage-money, and any other receipt for payment of money due under a mortgage when the receipt does not purport to extinguish the mortgage; or

- (xii) any certificate of sale granted to the purchaser of any property sold by public auction by a Civil or Revenue-Officer.

Explanation.-A document purporting or operating to effect a contract for the sale of immovable property shall not be deemed to require or ever to have required registration by reason only of the fact that such document contains a recital of the payment of any earnest mly or of the whole or any part of the purchase mly.

(3) Authorities to adopt a son, executed after the 1st day of January, 1872, and not conferred by a will, shall also be registered.”

**Section 49: Effect of non-registration of documents required to be registered:—**

“No document required by section 17 or by any provision of the Transfer of Property Act, 1882 to be registered shall —

- a) affect any immovable property comprised therein, or
- b) confer any power to adopt, or
- c) be received as evidence of any transaction affecting such property or conferring such power,

**unless it has been registered:**

Provided that an unregistered document affecting immovable property and required by this Act or the Transfer of Property Act, 1882 to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877, 2 [\* \* \*] or as evidence of any collateral transaction not required to be effected by registered instrument.”

18. By virtue of a afore said provision if the rights, interest, title and ownership intended to be effected by the said agreement dated 28-12-2009, then document is necessarily required to be registered. Said document is not duly registered but merely a notarized document. Thus the mandate ingrained in above referred foregoing provision of The Registration Act has not been complied with by the parties to said consent agreement. At this juncture, it would be pertinent to extract the provision of Indian contract 1872. **Section 2(H) of the Indian contract act** reads as under :-

**“An agreement enforceable by the law is contract.”**

**Section 10 of the Indian Contract Act** reads as under:-

“All agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void.

**Nothing herein contained shall affect any law in force in India and not hereby expressly repealed, by which any contract is required to be made in writing or in the presence of witnesses, or any law relating to the registration of documents.”**

19. An overall reading of above provision of Indian contract act read with relevant provision of The Registration Act makes it clear that for want of registration, said consent agreement dated 28-12-2009 is neither a legally enforceable document nor it has any evidentiary value i.e. no rights, interest, title, ownership is created or transferred in favour of any party to the said agreement. Moreover said consent agreement dated 28-12-2009 does not categorically specify that for what period and to what extent, said consent agreement will be operative or enforceable. It has also not been mentioned that whether it will be binding and operative against the successor in interest or subsequent transferee. At this juncture it would be appropriate to mention the doctrine of '**privity of contract**' under the contract law which provides that contractual rights and liabilities affect only parties to the contract. A contract cannot confer right or impose obligation upon anyone who is not party to that contract i.e. the contract are only binding on the parties to the contract and no third party can enforce the contract or sued under it. On perusal of said consent agreement dated 28-12-2009 it is clear that there is no 'privity of contract' between the complainant and respondent no. 3. Since respondent no. 3 and complainant were not parties to the said agreement therefore the respondents cannot enforce said consent agreement against the complainant and also the respondents cannot claim any right against the complainant.
20. However there is an exception to rule of the 'privity of contract' regarding covenant running with the land. Where a person who purchase a land with a notice that the owner of the land is bound by certain duties which are created by the agreement or covenant affecting the land which shall be bound by them although he was not a party to the contract. As established earlier that when the allottees of Salasar Greens i.e. complainant purchased the apartments and the plot in the project Salasar Greens at that time they were not intimidated or informed by the respondent no.1 that their internal main road will be used by the allottees of the respondent no.2 i.e. the complaint had no prior notice and knowledge of this restrictive covenant running with the land. Therefore, said restrictive covenant is not binding upon the complainant on this count also. Thus in view of Conspectus facts and law adumbrated above it is established that the consent agreement dated 28-12-2009 is not enforceable against the complainant. Accordingly, the point for determination no.2 is being decided in negative.
21. **Points For Determination No. (III)**– complainant further contended that vide information dated 17-5-2022 (Annexure-5) provided under The Right To Information Act by the department of Town and Country Planning, it comes into the knowledge of complainant that the consent agreement dated. 28-12-2009 was not a part of the record and was not submitted before the department of Town and Country Planning for obtaining the permission and approval of the project of Wallfort Greens. So the layout plan, approved by the Department of Town and

Country Planning is on the basis of misrepresentation made by respondent no.2 therefore liable to be cancelled and should be subject to the inquiry by the appropriate authority and heavy penalties to be imposed upon the respondent no.1 and 2 for illegally inducting the road of complainant as its approach road in layout. Per Contra respondent no.2 and 3 contended that approval and the permission of layout was done by relevant authority on the basis of consent agreement dated 28-12-2009 between the respondent no.1 and 2. Respondent no.2 in his argument stated that the Real Estate Regulatory Authority does not have a jurisdiction to modify and cancel the layout plan sanctioned by the Department of Town and Country Planning and further stated there is no misrepresentation of the fact by respondent no.2 at the time of obtaining layout approval.

22. In this regard, it is relevant to mention here that the complainant has not made the Department of Town and Country Planning as a party to the instant complaint case. Therefore, without giving Department of Town and Country Planning proper opportunity of being heard, it could not be ascertained as to whether the respondent no.2 through misrepresentation and on the basis of consent agreement dated 28-12-2009 had obtained permission and approval of layout for his project Wallfort Greens from the Department of Town and Country Planning. On perusal of approval letter (Annexure-3) of Wallfort Garden, issued by Town and Country Planning filed by the complainant, it reveals that the Department of Town and Country Planning had issued development permission on 30-04-2010 on the basis of application dated 26-11-2009 of respondent no.2. Consent agreement was executed between the respondent no.1 and 2 on 28-12-2009 which reveals that said consent agreement was executed after the respondent no.2 applied for the development permission. Also on the perusal of Annexure-5(Page10) information given by the Department of Town and Country Planning under The Right to Information Act it is evident that the said consent agreement are not available on the record of the cases of both the projects.
23. Using the internal main road of the Salasar Greens project by respondent no.2 and 3 along with their family staff, labour employee construction agent is illegal, causing a serious threat to the security, to the members of complainant, which is further fortified and corroborated by the FIR (Annexure- 13) lodged by Smt. Dharmsheela Verma, resident of Salasar Greens for crime of robbery in daylight. Respondent no.2 contended in this regard that as per approved layout project Wallfort Garden was completed on 18-10-2017 and handed over to the resident association respondent no.3. Respondent no.2 has annexed the copy of completion certificate. The fact of approval of the layout of the project Wallfort Garden accorded by the Department of Town and Country Planning ipso facto

does not give authority to the respondent no.2 and 3 to the use land and premises of others i.e. the property of allottees of Salasar Greens. It is worthwhile to quote the letter Annexure C-1/2, of the Directorate of Town and Country Planning Chhattisgarh Raipur, of March 2010 in which it has been categorically mentioned that.

“अतः निर्देशित किया जाता है कि प्रस्तावित कॉलोनी के लिए सार्वजनिक मार्ग उपलब्ध नहीं होने की दशा में कॉलोनाईजर द्वारा यदि अन्य मार्ग प्रस्तावित किया जाता है तो वह आवेदनकर्ता कॉलोनाईजर या डेव्लपर्स के स्वामित्व की भूमि पर ही होना चाहिए। प्रस्तावित पहुंच मार्ग को किसी अनुबंध के आधार पर अन्य की भूमि पर मान्य नहीं किया जावे।

अतः भविष्य में अभिन्यास का अनुमोदन करते समय पहुंच मार्ग की भूमि के स्वामित्व का परीक्षण ठीक तरह से करने के उपरांत मार्ग की उपयुक्तता बाबत संतुष्टि कर लेने पर ही विकास अनुज्ञा जारी की जावे /अभिन्यास स्वीकृत किया जावे।”

24. Said mandatory direction of the Directorate shall be binding upon all colonizer, including the respondent no.2. In view of the said direction, it has been clarified by the Directorate of Town and Country Planning that the right of way on the land of other could not be exercised. Thus the respondent no.2 and 3 does not have a right to use the internal roads of the project Salasar Greens as thoroughfare and respondent no.2 and 3 are invading the right of complainant. Any entrance or use of internal main roads of Salasar Greens by the respondents no.2 and 3 without express or implied consent/permission of complainant association may amount to unauthorized uses. Even the approved layout of Wallfort Greens (Annexure- 4) i.e. doesn't reflect the internal main road of the Salasar Greens as connecting approach road for the Wallfort Garden. Buyers of the project Salasar Greens invested their hard earned money to purchase the property for their dream home under genuine and bonafied expectation that they will use and enjoy the same with the peace and the safety in congenial atmosphere. Using the main road of Salasar Greens as a public road for common thoroughfare, by respondent no.2 and 3 and their staff, employees and agent etc. intrudes the peaceful enjoyment, safety and security of people and property of the project Salasar Greens. Thus, considering the totality of facts adumbrated above and the legal position referred above, it led to the conclusion that the internal main road of the Salasar Greens is the exclusive property of the complainant after the handover of Project Salasar Greens by the respondent no.1 to the complainant association.
25. Complainant has sought the relief to initiate action against to respondent no.2 and to issue the direction to competent authority to cancel the approved layout and permission of project Wallfort Gardens of respondent no.2 and to hold enquiry in this regard. It is relevant to mention here that under Section 37 of the act, authority has a power to issue direction to promoters, allottees or the real estate agents, as the case may be and also only the competent authority has



jurisdiction to modify and cancel the layout plan, or to make inquiry in this regard. Therefore the relief sought as mentioned above could not be granted by this Authority. If so advised complainant may resort to the remedy before the competent authority for the relief sought in this regard.

26. Complainant further contended that the respondent no.2 and 3 using and enjoying internal main road of their project and not paying cost of maintenance. Consequently complainant is forced to bear all the heavy maintenance charges of Rupees 55,00,000/- (Rs. Fifty five lakhs only) yearly. Therefore, the respondent no.2 and 3 jointly or individually liable to pay same for past three years and along with Rupees 55,00,000/- (Rs. Fifty five lakhs only) per annum for the period till the respondent no.2 and 3 stop using Salasar Greens for their personal benefit and transit. Here it is relevant to mention that the complaint has not filed any document pertaining to incurring maintenance expenses i.e. no authenticated bills, invoices, cash memo, vouchers, book of account, ledger on count of maintenance charges, therefore for want of evidence relief sought could not be granted to the complainant.
27. Complainant further contended that respondent no.2 has developed sewerage and drainage of his project in such a way that its outlet has been made inside the project of Salasar Greens and also connected the sewerage line of Wallfort Garden with the project Salasar Greens with the slope towards the project of Salasar Greens causing blockage of garbage, excess flow of drain, sewerage waste making the project of Salasar Greens inhabitable and unhygienic. In this regard to this issue, Ld. Commissioner had given report that at the time of site visit Ld. commissioner has not found congestion at joining drainage nor any foul smell observed. In support of its version complainant has neither adduced any evidence nor specifically sought any relief under the prayer clause. So any direction to the respondent no.2 and 3 in this regard could not be granted.
28. As regards relief for imposition of penalty under 59 and 60 of The Real Estate (Regulation and Development) Act 2016, prayed by the complainant is concerned the complaint has not made any pleading in this regard as to how the respondents has contravened the provision of Section 3 and 4 of the act. Therefore for the want of pleading relief regarding the imposition of penalty under act, could not be granted.
29. Complainant has also sought the relief of compensation of Rupees 50,00,000/- (Rs. Fifty lakhs only) for the mental agony and harassment. It is worthwhile to mention here that the provision of section 31 read with the Rule 36 of the The Real Estate (Regulation and Development) Act 2016, prescribed the procedure, form, manner and the fees for filing the complaint for relief of compensation

which has not been complied with by the complainant. Therefore for the want of appropriate complaint relief claimed by the complainant could not be granted.

30. Complainant further contended that three other approach roads are available to respondent 2 and 3 from which the respondent no. 2 and 3, their staff, employees, etc, can easily pass, but the same has deliberately not been used by the respondent no. 2 and 3 thereby causing trouble and inconvenience to the complainant i.e. residents of the Salasar Greens. Hence the direction be issued to the respondent no. 2 and 3 to make the use of alternate roads as their approach and entrance roads. It would be appropriate that this authority should refrain from passing any order in this regard because respondent no. 2 and 3 cannot be compelled or be directed to use any particular specific road or a way for their thoroughfare as respondent no. 2 and 3 are at liberty to use any road/path as a thoroughfare legally available to them.
31. Complainant further contended that the common areas including the internal roads are exclusively the property of allottees of Salasar Greens which is to be handed over to the complainant and respondent no. 1 is under the legal obligation to transfer the title of the common areas of the project Salasar greens to the exclusive ownership of ownership and possession of complainant. It is note worthy to reproduce the **section 17 of the act which deals with transfer of title** and reads as under:-

“ 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.”

32. On perusal of record it is evident that the respondent no.1 has obtained the completion certificate from the competent authority on 11-08-2017 vide Annexure R-1/4 but till date has not complied the mandatory provision of Section 17 of the act regarding legal transfer of title of ownership and possession of common areas to the complainant by executing the conveyance deed. However in his reply respondent no.1 pleaded that physical possession of the project Salasar Greens has been handed over to the complainant association in year 2018 and he is ready and willing to comply the provision of section 17 of the act and undertakes to comply with any direction (s) passed by the authority. Thus it is established that after the issuance of completion certificate, the complainant is in exclusive possession of common areas of project premises though conveyance deed has not been executed with so far.
33. In view of above, allowing the claim under complaint following relief (s) are granted to the complainant –
- (1) Respondent no.2 and 3 their allottees, agent, employees, labour, staff are restrained from using or permitting to be used the internal main road of Salasar Greens Project, which has been marked with the blue color in map of project Salasar Greens and adjoining areas (Annexure 9) of the complaint, for their thoroughfare.
  - (2) Respondent no.1 shall execute registered conveyance deed under the Section 17 of The Real Estate (Regulation and Development) Act, 2016 in favour of complainant within 2 months.
  - (3) Interlocutory order, if any passed by the authority during the pendency of instant complaint case, shall be ceased to operate forthwith.
  - (4) The Annexure-9 of the complaint shall be the part of this order.
34. With the above this instant complaint stand disposed off.

Raipur

Dated: 13-04-2023

Sd/-  
(Deepa Katare)  
Adjudicating Officer  
Real Estate Regulatory Authority  
Chhattisgarh Raipur