



Chhattisgarh Real Estate Regulatory Authority, Raipur

Complaint No-M-PRO-2022-01803

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

- (1) Shri Ashish Jain
S/o Mr. Prasanna Kumar Jain
Address- D-1, NTPC TSTSP PTS Township,
P.O. Deepshikha, Talcher Kaniha
Talcher Dist – Angul Odisha
- (2) Mrs. Namrata Jain, W/o Mr. Asish Jain,
Address- D-1, NTPC TSTSP PTS Township,
P.O. Deepshikha, Talcher Kaniha,
Talcher Dist – Angul Odisha **Complainants**

V/s

- (1) Sunita Developers (Division of Sunita Finlease Ltd.)
Address-Opposite to Raj Kumar College,
Choubey Colony, G E Road, Raipur (C.G.)
- (2) Sunita Finlease Ltd.,
Address- Choubey Colony, G E Road, Raipur (C.G.)
- (3) Shri Rakesh Gupta, Director & Authorized Signatory,
Address-Opposite to Raj Kumar College,
Choubey Colony, G E Road, Raipur (C.G.) **Respondents**

Present :-

- (1) Shri Shrijan Shukla, Learned Counsel for Complainants.
(2) Shri Jatin Joshi, Learned Counsel for Respondents.

**(Project- “Sunita Park, Phase-I”, Village-Labhandi, Dist.-Raipur)
Order dated 03.04.2023**

1. The Complainants have filed instant complaint under section-31 of Real Estate (Regulation and Development) Act, 2016 in FORM-M for refund of excess amount of Rs. 6,42,651/- (Rs. six lakhs forty two thousand six hundred fifty one only), interest of 18% per annum on the entire amount paid by them to the respondents for the purchase of residential unit bearing no. 404, situated at 4th Floor block ‘C’ known as ‘Lily’ in respondent’s residential project “Sunita Park Phase I” situated Village Labhandi P.H.N no. 113 (New No. 44) R.N.M Raipur,

Tehsil & District- Raipur C.G. (which is hereinafter referred as “the property” for the sake of brevity) and for the payment of Rs. 3,00,000/- (Rs. Three lakhs only) for mental harassment and litigation expenses and to further direct the respondents to collect the maintenance charges only after obtaining the occupancy certificate from the competent Authority.

2. From the rival contentions of both the parties the undisputed facts emerges in the case are that agreement to sale dated 10-02-2015 and registered sale deed dated 16-06-2017 were executed between the parties in respect of a property.
3. Pleaded case of complainants is that the complainants had entered into an agreement to sell dated 10.02.2015 with the respondent no. 1 for the purchase of property in the project ‘**Sunita Park Phase-I**’ of the respondents for consideration of Rs. 63,42,131/-. The complainant had paid Rs. 9,00,000/- at the time of the execution of this agreement to sell, through a cheque and payment had been acknowledged by the respondent in the said agreement to sell. The remaining amount of the consideration i.e. Rs. 54,42,131/- was to be paid in 5 instalments. Under clause 7 of the said agreement to sell cost of construction for the apartment also includes the club membership fees, electricity connection charge, generator connection charge, gas connection charge, sinking fund, maintenance fee for 1 year, parking fee, preferential location charge. Under clause 27 of the agreement to sell the respondents have to complete the building blocks by December, 2014.
4. The complainants further pleaded that as per rule 13 and sec 2(f) of the Chhattisgarh Municipal Corporation and Municipalities (Registration of Colonizer, Terms and Condition) Rules, 2013, the maximum period of the internal development work of the project approved is five years from the date of the grant of development permission. Development permission (Vikash Anugya) for the project had been provided to the respondents on 30.06.2009 and the same was approved by the municipal corporation on 04-07-2011. Respondents after the expiry of 5 years failed to develop the project and the sale deed was executed on 26-06-2017. Therefore there is delay of 3 years as per the rules and the complainants is liable to get the compensation as per section 18 of the RERA, 2016. Agreement to sell mentions the total consideration including other charges

as Rs. 63,42,131/-, but the sale deed was executed for the total consideration of Rs. 56,99,480/-. The respondents has collected Rs. 6,42,651/- in excess from the complainants and also demanding for the maintenance charges from the complainants that too without obtaining the occupancy certificate for the said project which is illegal and arbitrary in nature. The respondent has collected a sum of Rs. 1,03,090/- towards club membership fees, but respondents has not provided a club house as promised and do not allow the resident to use club for any use except for commercial purpose.

5. The complainants further pleaded that respondents are also liable to return back the amount paid by the complainants for not developing the project within the agreed time. Complainants advances further contention that said project is not registered with the Real Estate Authority and the respondents are duty bound to hand over the common area to the allottee or to the association of allottees by way of executing a registered conveyance deed under section 17 of Act. The respondents have till date not obtained the completion certificate and occupancy certificate for the said project but still collecting the maintenance charges and the respondents has also send legal notice dated 12-04-2022 to complainants in this regard. Therefore, complainants have filed instant complaint for the relief (s) as referred in clause (1) of this order.
6. The Respondents in their reply, beside denying the contentions of complainants vehemently, specifically submitted that agreement to sell was executed between the parties on 10-02-2015 for total consideration of Rs. 63,42,131/- only out of which complainant no. 1 had made the advance payment of Rs. 9,00,000/- only and the balance payment of Rs. 54,42,131/- only was to be paid in 5 installment as per construction link plan. By virtue of the agreement to sell Complainant No. 1 was obliged to pay the club member ship fee of Rs. 1,03,090/-, electricity connection charges of Rs. 1,23,708/-, generator connection charges of Rs. 27,108/-, gas connection charges of Rs. 20,618/-, sinking fund charges Rs. 26,295/-, one year advance maintenance charges of Rs. 41,363/-, parking charges of Rs. 1,64,944/- and the same were inclusive of the sale consideration amount of Rs. 63,42,131/-. The amounts mentioned above are inclusive of service tax and didn't include sales tax. However as per the terms of the referred agreement.

the Complainants were obliged to pay amended rates of service tax, sales tax etc as levied time to time by the State Government, Central Government or concerned statutory authorities.

7. The respondents further averted that installment schedule was not followed strictly by Complainant No. 1 and several reminders and requests through email and letters for release of payments was issued Respondents. It was only after the repeated requests Complainant No. 1 made all the requisite payments including the Sales Tax, Stamp Duty, Legal Fees and Typing Charges totaling to Rs. 67,13,644/- which were received by the Respondents. Consequently a Sale-Deed dated 16.06.2017 was executed at basic sale consideration i.e @ Rs. 3,160 per square feet * 1753 Rs. 55,39, 480/- (Rupees Fifty Five Lacs Thirty Nine Thousand Four Hundred and Eighty) + Parking Charges for Car Rs. 1,50,000/- (Rupees One Lac Fifty Thousand) Parking Charges for Two Wheeler Rs. 10,000/- (Rupees Ten Thousand) totaling to Rs. 56,99,480/- (Rupees Fifty Six Lacs Ninety Nine Thousand Four Hundred and Eighty) with the free and willful consent of the Complainants. As a gesture of good-will, Respondents even forego the underlying interest amount due and payable by the Complainants towards the delayed payments charges. The respondents contended that the sale consideration amount of Rs. 63,42,131/- as mentioned under the agreement to sell included the heads as listed therein. However, the said amount was subject to any changes in Service Tax, and didn't include additional Service Tax and Stamp Duty charges which makes the total amount payable by Complainants comes to be Rs. 67,13,644/-. In reality the registration of the sale document is executed on the amount of the sale consideration of the unit at basic price along with parking excluding additional Service Tax, Stamp Duty and the other amounts were paid towards other amenities and services as mentioned in the agreement to sell.
8. The respondents further averted that, along with the execution of the sale deed possession of property was immediately handed over to the Complainants vide a letter/certificate of possession dated 16.06.2017, which was duly received and acknowledged by the Complainant No. 1. The respondents further contended that the complainants had never resided in property, right from the beginning the property is put on rent by the Complainants to Mr. Sureet Sureen. Even the

tenant(s) of the Complainants were also not denied to enter the club house by Respondents. Agreement to sell dated 10.02.2015 was executed between Respondent No.1 and Complainant No. 1, and Complainant No. 2, Mrs. Namrata Jain was not a party to the said agreement. Moreover, Complainant No. 1 had also availed home loan on subject flat to the tune of Rs. 46,00,000/- from State Bank of India and an agreement dated 13.05.2015 termed as "Draft Tripartite Agreement For 'SBI Upfront' Home Loans" was executed between Complainant No. 1, Respondent No. 1 and State Bank of India on 13.05.2015 and there were no where abouts of complainant No. 2 in the said tripartite agreement. The respondents further pleaded that Complainants are not paying running maintenance charges regularly and are liable to make the total payment of Rs. 1,61,200/- to the Respondents. Therefore respondents requested to direct the complainants to make payment of Rs. 1,61,200/- along with interest @ 18% per annum and to make the timely payment of the running maintenance charges in future along with interest @ 18% per annum and to dismiss the instant Complaint with exemplary cost.

9. From the rival contentions of both the parties and on perusal of material on record following are points for determination to adjudicate the controversies between the parties: -
 - i. Whether the respondents have contravened the terms and the condition of agreement to sell dated 10-02-2015? If yes, than the consequences.
 - ii. Whether the respondents are entitled to collect the maintenance charges? If so than since when.
 - iii. Relief (s)
10. **Points For Determination No. (I)**– Prior to the appreciation of rival pleadings of the parties, their documents and the arguments, it is pertinent to mention here that the complainant has sought relief of refund of excess amount paid, damages/ compensation, interest and for the payment of maintenance charges to the respondents only after obtaining the occupancy certificate from the competent authority. In view of above relief prayed only significant and the relevant pleading to decide the real controversy between the parties are being considered.

Complainants in this regard pleaded that total consideration for the purchase of property as agreed under the agreement to sell was Rs 63,42,131/- (Rs. sixty three lakhs forty two thousand one hundred and thirty one only) but the sale deed was executed for the total consideration of Rs. 56,99,480/- (Rs. fifty six lakhs ninety nine thousand four hundred and eighty only) and the respondents collected Rs 6,42,651/- (Rs. six lakhs forty two thousand six hundred fifty one only) in excess from the complainants. At the outset, it would it will be apt to reproduce the relevant clauses of agreement to sale dated 10-02-2015 (Annexure-2) which reads as under –

Clause (1) The vendor shall sell and the purchaser shall purchase the agreed apartment better described in schedule ‘A’ hereunder written for an agreed sale consideration of Rs. 63,42,131/- (in words Rupees Sixty Three Fourty Two Thousand One Hundred Thirty One Rupees.).

Clause (2) The vendor has already received from the purchaser a sum of Rs. 9,00,000/- (in words Rupees nine lakhs Rupees) towards earnest money in the manner hereinbefore enumerated, the receipt of which amount the vendor does hereby admit and acknowledge.

Clause (3) The purchaser shall pay the balance sale consideration of Rs. 63,42,131/- less Rs.9,00,000/- equaling to Rs. 54,42,131/- (in words Rupees fifty four lakhs fourty two thousand one hundred thirty one Rupees) to the vendor in 5 installments as hereunder mentioned – construction link payment plan.

Payment Schedule

1. Due to the completed slab casting
(G+6) within 45 days ----- Rs. 41,73,705/-
2. On brick work ----- Rs 3,17,107/-
3. On plumbing & electrical ----- Rs. 3,17,107/-
4. On plastering & flooring ----- Rs. 3,17,107/-
5. On intimation of possession ----- Rs. 3,17,105/-

Clause (7) The cost of construction for the Apartment as mentioned in Schedule A also includes:-

- (i) The club membership fee of Rs. 1,03,090/-
- (ii) The electricity connection charges of Rs. 1,23,708/-
- (iii) The generator connection charges of Rs. 27,108/-
- (iv) The gas connection charges each units Rs. 20,618/-
- (v) The sinking fund charges of Rs. 26,295/-
- (vi) The one year advance maintenance charges of Rs. 41,363/-. However due to any subsequent legislation/government order or directions or guidelines or if deemed necessary by the vendor if additional fire safety measures are undertaken then purchaser agrees to pay the additional expenditure incurred thereon on a prorata basis as determined by the vendor in its absolute discretion.
- (vii) The total parking charges for a four wheeler (Stilt/open parking) & for a two wheeler of Rs. 1,64,944/-
- (viii) Preferential location charges of Rs. N.A.

However apart from the above cost for the apartment as mentioned in schedule a payable in the manner setout above, the purchaser shall also be liable to pay:-

The stamp duty, registration fees and legal charges in connection with execution and registration of the sale deed of conveyance in respect of Schedule A apartment, as may be prevailing at the time of registration.

Clause (9) The purchaser agrees and undertakes to pay all types government Tax viz tax on land, municipal tax, property tax, wealth tax and any kind by whatever name it may be called whether levied or livable now or in future by the government or any government authority on the said flat.

11. At this juncture it will be apt to consider various clauses of registered sale deed dated 16-06-2017 (Annexure-3) pertaining to the amount of consideration and the charges payable by complainants, which reads as under –

“AND WHEREAS the seller has agreed to sell and the purchaser has agreed to purchase the proprietary rights of the flat no. 404 (3 BHK) on the 4th floor of Block no. C, known as LILY as admeasuring super buildup area 1753sq.ft., more particularly described in the Schedule A for a price of Rs. 56,99,480/- including parking, out of which the purchaser has paid Rs. 9,00,000/- as earnest money and

remaining in part payment of the said purchase price during the construction as per Agreement of sale dated 10/02/2015.

AND WHEREAS all the terms and conditions pertaining to club Membership fees, Electricity connection charges, Generator connection charges, Gas connection charges, Sinking fund charges, Maintenances charges, and other expenses in connection with stamp duty, Registration fees, legal expenses etc were explained and made it clear to the purchaser by the seller and purchaser had agree to comply and act in accordance with it.

AND WHEREAS the purchaser has satisfied himself about the title the purchase of flat no. C-404, and is ready & willing to execute this deed of conveyance.

NOW THIS INDENTURE WITNESSETH THAT in pursuance of the said agreement and in consideration of Rs. 56,99,480/- (Rupees fifty six lakhs ninety nine thousand four hundred eighty only) paid by the purchaser to the seller before the execution of these presents (the receipt whereof the seller hereby admits and acknowledges) the seller hereby grants, transfers, conveys and assures unto the purchaser.”

12. Thus over all reading of above referred clauses of the agreement to sell date 10-02-2015 and registered sale deed dated 16-06-2017, and the pleading of the parties. The following factual position emerges that:-
 - (a) With free and willful consent of the parties registered sale deed of the property was executed between the parties for the consideration of Rs. 56,99,480/- instead of the agreed one, i.e. Rs. 63,42,131/- vide agreement to sale dated 10-02-2015. No bonafide and justified reason was advanced by the complainants that why the complainants has agreed to execute the sale deed at less sum of consideration.
 - (b) In agreement to sell dated 10-02-2015 the sale consideration amount of Rs. 63,42,131/- included the head as listed therein i.e. club membership charges, electric connection, the generator connection charges, the gas connection charges, the sinking fund charges, the one year advance maintenance charges, the total parking charges for a four wheeler & for a two wheeler. In addition to the said amount, complainants were also liable

to pay the stamp duty, registration fees, legal charges for the execution and the registration of sale deed and also all the taxes payable to the government or any government authority.

- (c) In registered sale deed dated 16-06-2017 the amount as mentioned is the amount of sale consideration of property at basic price along with the parking area excluding additional stamp duty, registration fees, legal charges, taxes and other amounts to be paid towards the other amenities and the services which were mentioned under the head as listed in the agreement to sell dated 10-02-2015. Said fact is duly admitted and acknowledged by both the parties in sale deed itself.
- (d) The fallout of above discussions makes it clear that the complainant has paid Rs. 56,99,480/- as a consideration of a property and parking area, the receipt of which is acknowledged by the respondents in sale deed itself, which also included the booking amount of 9,00,000/-. However, the said amount was not inclusive of any other charges on account of any amenities and the services which is to be provided by the respondents. Said fact is fortified and corroborated by the copy of chart showing the description of the payment made by the complainant (Annexure R-4). On perusal of the Annexure R-4, it is evident that net amount received by the respondents from the complainants is. 67,13,643/- the details of which are as under-

- Sale deed consideration ----- Rs. 56,99,480/-
 - The club membership fee ----- Rs. 1,00,000/-
 - The electricity connection charges ----- Rs. 1,20,000/-
 - The gas connection charges ----- Rs. 20,000/-
 - The generator connection charges ----- Rs. 26,295/-
 - The sinking fund charges ----- Rs. 26,295/-
 - The one year advance maintenance charges ---- Rs. 36,813/-.
 - Service tax Rs. 2,18,407/-
 - Sales tax Rs. 1,24,356/-
 - Stamp duty Rs. 3,41,997/-
- Net received ----- Rs. 67,13,643/-**

13. The complainants specifically pleaded that respondents have collected Rs 6,42,651/- in excess from the complainants but the complainants only affirmed the payment of Rs. 9,00,000/- as an earnest money to the respondents and the complainant nowhere explained and stated that total how much amount they have actually paid to the respondents and also have not submitted any relevant document pertaining to the payment or the transaction in issue. Thus for the want of evidence complainants failed to establish that they have paid excess amount of Rs. 6,42,651/- to the respondents. In this context it is worthwhile to mention here that where the parties to sale deed duly admit and acknowledge the content of sale deed and executed the sale deed willfully and without any objection, then subsequently they cannot resail/deny the truthfulness and the correctness of the content of the sale deed, as the same has a binding efficacy upon the parties.
14. Complainants further contended that the respondents had to complete the building block by the December 2014 as per clause 27 of the agreement to sale but respondents executed the sale deed in 16-06-2017. Therefore, there is a delay of 3 years, hence complainants are entitled to the compensation from the respondents for the delay in providing the possession of the property. Having regard to this controversy, it will be appropriate to reproduce the relevant clauses of the agreement to sale, dated 10-02-2015 which reads as under –

Clause (4) The vendor shall execute and register in favor of the purchaser a sale deed in respect of the agreed apartment at the cost and expense of the purchaser immediately after receiving the entire agreed sale consideration from the purchaser and shall handover vacant and peaceful possession of the agreed apartment to the purchaser.

Clause (5) The purchaser agrees not to delay or withhold or postpone the payments dues as mentioned in clause 3 hereinabove on whatsoever ground for reasons set out above and in case the purchaser commits delay, withhold or default in the payment of installments of sale price on due dates as mentioned aforesaid, the purchaser shall be liable to pay interest on the defaulted amount @ 2% per month. However, a grace period of 10 days is considered on the above schedule.

Clause (6) In case the purchaser shall commit default in paying 3 consecutive installments of sale consideration as stipulated in clause 3 hereinabove, this 'Agreement to sell' shall stand automatically cancelled and revoked without reference to any kind to the purchaser and in that event the earnest money deposited by the purchaser shall stand forfeited.

Clause (8) Under no circumstances the possession of the flat shall be given by the vendor to the purchaser unless the payments required to be made under this agreement have been made by the purchaser to the vendor.

Clause (27) The vendor shall make endeavour to complete the building blocks of the residential complex by the end of March 2016 or within the reasonable period.

15. On the perusal of Clause (27) of agreement to sell dated 10-02-2015 itself, the stipulated time for the completion of building block was by the end of March 2016 or within the reasonable period and not the December 2014. An over all reading of above referred clauses of agreement to sell makes it crystal clear that time stipulation and timely payment was the essence of the agreement to sell i.e. timely payment of the installment, as per construction link plan, was condition precedent for delivery of possession. Complainants in their pleading willfully and intentionally suppressed as to when they have made the payment of different installment to the respondents. Since the complainants have not submitted any document related to the payment made by them by which it could be ascertained that the complainants have made timely payment on due dates. Per contra the respondents specifically alleged that installment schedule was not followed strictly by the complainant no. 1 and the several reminders and request for the release of payment was issued by the respondents.
16. On perusal of letters (Annexure R-1) issued by the respondents on 10-06-2016, 02-08-2016, 22-10-2016, 30-11-2016, 15-05-2017 it is evident that the respondents has completed the entire construction of the property by 02-08-2016 but till then the complainants have not made the payment of outstanding dues. On 16-06-2017 registered sale deed of the property was executed and on the same date possession of the property was handed over to the complainants

together with the certificate of possession. The copies of the letter sent by the respondents to the complainants, Annexure R-1, Corroborate and fortifies the fact of late payment by the complainants themselves. On the contrary, it appears on perusal of Annexure-4, that the respondents had even waived the interest accrued on the count of delayed payment charges by the complainants.

17. However, along with the written argument, complainants have annexed the payment release details made to the respondents which is neither pleading nor evidence and also unauthenticated, therefore cannot be relied upon. Even if it is considered then too, it reveals the last payment was made by the complainant on 07-01-2017, which shows total amount of Rs. 55,00,000/- was paid by the complainants till said date i.e. 07-01-2017 which is not in consonance with the amount as agreed vide the agreement to sell dated 10-02-2015. It also reflects the excess payment made by the complainants which is again contradictory and conflicting to the pleading of complainants as excess amount mentioned is Rs. 2,10,886/- instead of Rs. 6,42,651/-.
18. Thus in view of conspectus facts adumbrated above and considering the contractual obligation of the parties it is quite vivid that complainants themselves have not adhere to timely payment of installment as per clauses of agreement to sell dated 10-02-2015 to which respondents can not be held accountable. As the timely, full and final payment was sine qua non to the execution of registered sale deed and delivery of possession, which has not been complied by complainants themselves therefore question of compensation, interest and damages for mental harassment and litigation expenses whatsoever does not arises, under the provision of Real Estate (Regulation and Development) Act, as no one can take advantage of its own lapse.
19. As complainants failed to prove that they have paid the excess amount of Rs. 6,42,651/- to the respondents hence they are not entitled for the refund of said amount under the section 19 of the Act. The fallout of the above discussion is that the complainants have failed to establish that the respondents have violated the terms and conditions of agreement to the sell dated 10-02-2015. Accordingly the point for the determination decided in negative.

20. **Points For Determination No. (II)**– Complainants in this regard specifically averred that the respondents have not obtained the completion certificate and the occupancy certificate so far for the said project but they are demanding for the maintenance charges illegally and in arbitrary manner. Respondents are not entitled to take the maintenance charges and they are also liable to return the amount collected from the complainants towards the maintenance charges with interest. Complainants have relied on the landmark judgement of National Consumer Dispute, Redressal Commission, New Delhi in **Kamal Kishore & Another's Vs - M/s Supertech Limited** it has been held that Offering Possession without obtaining occupancy certificate is meaningless. Therefore, the maintenance charges would be payable only from the date on which the requisite occupancy certificate is provided to the flat buyers and in **Madhusudan Reddy R. & Others Vs VDB Whitefield Development Pvt Limited & Others** dated 25.01.2022 it has been held that Builder can't levy maintenance charges on Flat Purchasers without obtaining occupancy certificate. Complainants have not mentioned specific details of above cited cases i.e. their case number, name of the journal in which they have been published. For the want of same, fact and circumstances of the quoted judgment are applicable to the facts and circumstances of instant complaint could not be ascertained.
21. On perusal of clause (7) of agreement to sell dated 10-02-2015, it is evident that it has been agreed between the parties that sale consideration include one year advanced maintenance charges of Rs 41,363/-. As established earlier that the consideration mentioned in the sale deed dated 16-06-2017 does not included the maintenance charges and the same was explained and made it clear to the purchaser by the seller i.e. by the respondents to the complainants and purchaser/complainants had agreed to comply and act in accordance with that. On perusal of certificate of possession (Annexure R-2) it is clearly mentioned that complainant's monthly maintenance charges will be payable from 01-01-2018. In Annexure R-4 and R-6 maintenance charges paid was only for the one year. It is pertinent to mention here the provision of The Real Estate (Regulation and Development) Act 2016 relating to the duties of the promoter in this regard which reads as under –

Section 11 (4) “The promoter shall—

(d) be responsible for providing and maintaining the essential services, on reasonable charges, till the taking over of the maintenance of the project by the association of the allottees;

(e) enable the formation of an association or society or co-operative society, as the case may be, of the allottees, or a federation of the same, under the laws applicable:

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

22. Under the rule 11 clause (7) of Chhattisgarh Municipal Corporation and Municipalities (Regulation of Colonizer, Terms and Conditions) Rules, 2013, there is a analogous provision which reads as under-

“The colonizer must ensure the compliance of the following: (a) A Resident's welfare Association must be formed within three months of receipt of the completion certificate or when fifty percent of the dwelling units have been sold, whichever is earlier; (b) Till such time as a Resident's welfare Association has been formed, the colonizer shall be responsible for maintenance of the colony. (c) The colonizer shall ensure that all relevant rules and byelaws relating to all types of waste including but not limited to solid with, construction and demolition waste, hazardous waste etc, are complied with, and shall be liable for payment of user charges as may be fixed by the municipality from time to time.”

23. It is pertinent to mention here that under rule 98 of Chhattisgarh Bhumi Vikash Niyam the competent Authority issue completion certificate and occupancy certificate. At this juncture it will also be relevant to mention the duties of allottees under section 19 of The Real Estate (Regulation and Development) Act 2016 which 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.

Section 19 (7): The allottee shall be liable to pay interest, at such rate as may be prescribed, for any delay in payment towards any amount or charges to be paid under sub-section (6).”

24. It is relevant to mention here that the both the parties have not pleaded the formation of society/ association so far. It is also admitted by the parties that the complainants have taken the possession of property and the respondents are maintaining the project. Thus principal laid down in forgoing provision of section 11 of The Real Estate (Regulation and Development) Act 2016 read with the analogous provision of rule 11 clause (7) of Chhattisgarh Municipal Corporation and Municipalities (Regulation of Colonizer, Terms and Conditions) Rules, 2013, makes it clear, that till the formation of association, promoter shall be duty bound for maintaining the essential services on reasonable charges as the maintenance of civil common amenities of any project could not be differed or kept in abeyance till the liability of its payment is fixed for or decided. Hence the complainants failed to establish that respondents are not entitled for maintenance recurring charges as the completion certificate and occupancy certificate is not the condition precedent for the payment of maintenance charges in the light of above mentioned law.
25. One thing which cannot be marginalized and blinked away is that mandate ingrained itself in the statutes have not been complied by the complainants themselves. Provision of the section 31(2) of Act reads with the rule 35 and the content of the FORM-M mandates for the verification of the content of complaint. Instant complaint has been filed by the complainants without any due verification which is clear violation of above mentioned provision of the Real Estate (Regulation and Development) Act and rules. On this count alone i.e. for the non compliance of said mandatory provision of law, the instant complaint is liable to be dismissed.
26. Respondents pleaded that the complainants are not paying the recurring maintenance charges regularly and they are liable to make the total payment of Rs. 1,61,200/- to the respondents. Therefore, the respondents prayed to direct the complainants to make the payment of the said amount along with the interest @ 18% per annum and for the recurring maintenance charges in future also. It is

worthwhile to mention here that the provision of section 31 read with the Rule 35 of the The Real Estate (Regulation and Development) Act 2016, prescribed the procedure, form, manner and the fees for filing the complaint before the Authority, which has not been complied with by the respondents. Therefore for the want of appropriate complaint relief claimed by the respondents could not be granted.

27. Apart from the above, it is averted by the complainants that the said project of the respondents, in which the property lies, is not duly registered under The Real Estate (Regulation and Development) Act 2016 and the same has not been rebutted by the respondents in their reply. On the perusal of the agreement to sell deed dated 10-02-2015 and registered sale deed 16-06-2017 it is apparent that area of the said project, Sunita Park Phase-I is admeasuring 0.828 hectares, equivalent to 84,500 square feet. The respondents have neither averted nor submitted any evidence regarding the completion and occupancy certificate. Thus it reveals that the said project is an ongoing project which has not been registered in the C.G. RERA, which is violation of the provision of Section 3 of The Real Estate (Regulation and Development) Act 2016 and the direction issued by the Authority in this regard. In view of above, it is appropriate to issue the direction to the registrar CG RERA, to take the appropriate and necessary action against the respondents in this regard.
28. **Points For Determination No. (III)**– (A) As complainants have failed to prove their claim, they are not entitled to any relief they prayed for.
(B) Registrar C.G. RERA is directed to take necessary action against the respondents under the provisions of The Real Estate (Regulation and Development) Act 2016 and the rules 2017.
29. With the above this instant complaint stand dismissed.

Raipur
Dated : 03-04-2023

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