



**BEFORE THE TAMIL NADU REAL ESTATE  
REGULATORY AUTHORITY (TNRERA)  
(Tamil Nadu, Andaman & Nicobar Islands)  
at Egmore, Chennai – 600 008**

**[Under the Real Estate (Regulation and Development) Act, 2016]**

**C.Nos.451/2019, C.No.106 & C.No.117 of 2020,  
C.No.153/2021, C.No.226 & C.No.237/2021**

**26<sup>th</sup> day of October, 2022**

**Coram : Thiru K. Gnanadesikan, I.A.S. (Retired), Chairperson  
Er. S. Manohar, Member  
Adv. V. Jeyakumar, Member**

**Tvl.**

Col. R. Ganesan	451/2019	]	
Sub.Maj/H/Lt.K. Shanmugavelu	117/2020	]	
Capt. P.S. Dheenadayalan	106/2020	]	
Col. Sreeghanlal P. Raman (Retd.)	153/2021	]	Complainants
Raman Vihar Apartments Owners Association Rep. by its President Brig. Raymond Raj (Retd.)	226/2021	]	
		]	
1) Capt. P.S. Dheenadayalan (Retd.)		]	
2) Col. Sreeghanlal P. Raman (Retd.)	237/2021	]	
3) Sub Maj/Hony Lt.K. Shunmugavelu (Retd.)		]	
Versus			
Army Welfare Housing Organisation (AWHO)		]	
Represented by its Chairman		]	
Army Welfare Housing Organisation (AWHO)		]	Respondents
Represented by its Managing Director		]	

The remanded Complaints in C.No.451/2019, C.No.106/2020, C.No.117 of 2020 and C.No.153/2021 as well as the new Complaints in C.No.226 /2021 and C.No.237/2021 came up for final hearing before this Authority in the presence of the Complainants party in person in respect of C.Nos.451/2019, C.No.106/2020, C.Nos.117/2020, C.No.153/2021 & C.No.237/2021 and of M/s. R. Rama Subramaniam Raja - Counsel for Complainant Association in C.No.226/2021 and of M/s. AAV Partners – Counsel for the Respondents and upon hearing the arguments of all the parties, this Authority passes the following:

#### **COMMON FINAL ORDER**

The Complainant Col. R. Ganesan in C.No.451/2019 has submitted in the Complaint that the Army Welfare Housing Organisation (AWHO), Delhi, the Builder and Promoter constructs the dwelling units in any station for defence personnel both serving and retired only after being sure of sale of dwelling units. This is being done by way of market survey in which prospective buyers take part and express their interest. Thereafter, the AWHO buys land and starts the project. Since AWHO claims that every project in a station is a standalone project and also that it is a “No profit no loss” organization and that all the Allottees of defence fraternity believed this concept and accepted the modality of issue of technical brochure and allotment letter as against any Sale Agreement and Construction Agreement as is being done by any other builder and promoter. The Allotment letter by AWHO gives only the built-up area/super built up area

and the cost of the dwelling unit while the technical brochure gives the specifications of dwelling unit and the allied facilities. Once the construction is complete, AWHO hands over the dwelling units to the Allottees on registered sale deed. In Raman Vihar project at Coimbatore the AWHO committed to all the buyers vide letter No.EOF/LXA/159921/AR/Coimbatore/2012 dated 29.05.2018 (photocopy attached as Annexure-1 along with Complaint) that the dwelling units would be registered before physically handing over the same. By giving this promise in writing AWHO had demanded full payment from all buyers and in good faith the buyers have also paid up the cost of dwelling units in full. But after collecting full payment, the Builder/Promoter uploaded sale deed on his website reducing the project area drastically thereby conveying only reduced undivided share of land (UDSL) to allottees and retaining substantial portion of the land on which the building approval was accorded by the authorities for the construction of the project.

2. The Complainant has also submitted that the UDSL being conveyed to the buyers with the help of document at Annexure-2 (the downloaded copy from web portal attached as Annexure-2 to this Complaint), it is seen that more than 40% of land has been retained without specific authority and without informing the buyers.

3. The Complainant Allottee Sub.Maj/H/Lt.K. Shanmugavelu (Retd.) has also submitted in his Complaint in C.No.117/2020 that he has been allotted and given possession of dwelling unit No.C3-104 in AWHO, Raman Vihar, Coimbatore project.

4. The Complainant Allottee Sub.Maj/H/Lt.K. Shanmugavelu (Retd.) has further submitted that in 2019, the Promoter AWHO society, New Delhi wanted to grab/take away part of this 33.65 acres project land on the pretext that Promoter will construct 416 more dwelling units in addition to the sanctioned 496 dwelling units, in total 912 dwelling units to be constructed in various phases violating the original DTCP sanctioned approved single phase plan of 2012. The Complainant Allottee has further stated that the AWHO society wanted to register sale deed for 400 allottees/buyers including this Complainant Allottee with less UDSL by excluding the illegally separated and illegally reclassified land of 8.56 acres of land vide patta No.1996, so that the Promoter can grab the balance of UDSL land.

5. The Complainant Col. R. Ganesan in C.No.451/2019 has prayed that the Respondent, AWHO Delhi through its Project Director at Coimbatore be directed the following:

- a) Execution of Sale Deed with the buyers correctly conveying the UDSL as required to do so as per the survey numbers of the land on which Building approval has been accorded by LPA, Coimbatore for construction of this project.
- b) Since AWHO has collected 100% cost of project from all buyers as well as Corpus/maintenance charges for one year for each dwelling unit amounting to approximately Rs.3.00 crores from all buyers more than one year back to be directed to deposit, either 10% of the total cost of the project or the total sum of last payment and the corpus/maintenance charges collected

from all buyer along with bank interest earned for this collection, whichever is higher, with TNRERA till the sale deed is executed by him under the supervision of TNRERA.

- c) The Respondent be directed to recognize RVAOA as registered association as per the provisions of Act, 2016 and further be directed to handover the common areas, central amenities and the corpus/maintenance charges collected from all dwelling units to RVAOA.
- d) Action to be taken against the Respondent AWHO, Delhi as per Section 59 of the Act for having violated Section 3(1) of the Act and as per Sections 61 & 64 of the Act for having violated Section 11(4)(e) of the Act.

6. The Complainants in C.No.117/2020 and C.No.106/2020 have prayed for the following reliefs:

- a) Order AWHO Raman Vihar, Coimbatore, Project Promoter AWHO Society to register unbiased conveyance/sale deed with correct UDSL vide DTCP approved plan No.R.C.No.11444/2011/CP, dated 24.10.2011, as more than 20 months have passed after the Complainant fully paid as per promoter's demand and took over the dwelling unit/flat; and
- b) Order Promoter AWHO to stop manipulation of documents/alterations/transfer of DTCP approved AWHO Raman Vihar, Coimbatore Project land and reverse altered/manipulated/

reclassified project land documents, including patta of the project land.

7. The Complainant in C.No.153/2021 has prayed for the following reliefs:

- a) Order the Promoter AWHO society, AWHO Raman Vihar, Coimbatore to register unbiased conveyance/sale deed with correct UDSL vide DTCP approved Plan No.R.C.No.11444/2011CP, dated 24.10.2011, in his name (each allottee's name) as more than 30 months have passed after he/they fully paid as per promoters demand and took over the DU/flat.
- b) Order the Promoter AWHO society to hand over copies of following documents to him since no copies of the following had been given to him. He and aggrieved allottees of the said project earnestly request the Authority to order promoter AWHO of Raman Vihar project, Coimbatore to hand over certified copies of all project documents to him/allottees (who have paid full cost and taken over the DU but promoter has not delivered the legal rights through registered sale/conveyance deed till date).
- c) Also request for the order to promoter AWHO society to hand over all original documents of the said project to him/their registered allottees association (RVAOA) at the time of handing over the central facilities/assets.

d) Pray the Authority to include this complaint for unbiased sale deed along with the other three similar cases in Complaint No.106/2020, 117/2020 and 118/2020.

8. The Complainant in C.No.237/2021 has prayed for the following reliefs:

- a) Order the Promoter AWHO Society to correct and submit the carpet area statement to the 496 allottees of RV with correct unbiased UDSL to include the entire area (33.65 Acres less 5.5 acres donated to OSR, approach road and scheme road) covered under DTCP approved plan No.R.C.No.11444/2011/CP, dated 24.10.2011, as more than 24+ months have passed after full payment for the DUs having been made by the allottee as per Promoter AWHO Society's demand and the DUs/flat have been taken over;
- b) Order Promoter AWHO Society to submit the proper and correct details of (i) Chairman, (ii) Managing Director of the Promoter AWHO Society, (iii) Board of Governors (BOG) and (iv) Board of Management (BOM) as per the Registration Certificate filed with the Registrar of Societies, New Delhi and issued Registration No.S-9142 of 1978 dated 23.03.1978 with regard to registration with TNRERA;
- c) Order the Promoter AWHO Society to correct the numbers of car parks as 660, scooter parks as 400 and mark them on ground, as many of them are not yet constructed on ground as

per the DTCP approved Plan No.R.C.No.11444/2011/CP, dated 24.10.2011;

- d) Order the Promoter AWHO Society to register the correct UDSL of complete land of 33.65 acres, less land donated to Coimbatore Corporation for approach road, OSR and scheme road, proportionally distributed 496 allottees and register the sale deed for the 400 allottees of DUs and to retain the proportionate land of UDSL for constructing the remaining 96 DUs and their proportionate correct UDSL, for which construction is yet to be started;

9. The Complainant Association M/s.Raman Vihar Apartments Owners Association Rep. by its President Brig. Raymond Raj (Retd.) in C.No.226 has submitted in their Complaint that they are the Association of Apartment Allottees/Owners of the Real Estate Project promoted/developed by the Respondent under the name of 'Raman Vihar' at Chinnavedampatti Town Panchayat and Village, Coimbatore District, Tamil Nadu. The Complainant Association has also submitted that their Association is a duly registered society under the Tamil Nadu Societies Registration Act with Society Registration No.64/2018 with the Registrar of Societies, Coimbatore. The Complainant presently has 345 registered members. The President of the Association is duly authorized to file the present Complaint.

10. The Complainant Association has further submitted that the Respondent is also a society registered with the Societies Registration Act. The Respondent promoted the subject real estate project. The Respondent obtained the DTCP approval for its real estate project on 24.10.2011 vide Order R.C. No.11444/2011/CP. The Complainant Association has further stated that as per the said DTCP approval, the site comprised of S.Nos.177/1 part, 177/2 part, 178/1 part, 178/2 part, 178/3 part, 178/4 part, 178/5 part, 178/3, 178/4, 178/5, 180/1, 180/2, 181/1A1 part, 182/1A, 182/1B1, 182/1C1 part, 183/1, 183/2, 183/3, 186/1, 186/2, 187/1A, 187/1B and 187/2A, extent of 135711.623 sq.mtr. (33.53 acres approx.) at Chinnavedampatti Town Panchayat and Village, Coimbatore District, Tamil Nadu. In the said site, the approval was granted for construction of Type A, B, C, D & E Row Housing Dwelling Units in total 496, Club House and Convenience Shop as detailed in the said approval. The said approval was granted subject to the conditions mentioned in the said approval. The Respondent based on the said DTCP approval, obtained Building License dated 02.04.2012 subject to the conditions mentioned in the said approval.

11. The Complainant Association has also submitted that the DTCP approved layout clearly demarks the entire project site boundaries as A to P. The said DTCP approval provides for Open Space Reservation at 13584 sq.mtr. (3.35 acres approx.) which constitutes approx. 10% of the entire real estate project extent of 135711.623 sq.mtr. (33.53 acres approx.). The said DTCP approval clearly delineates the Type A, B, C, D & E Row Housing Dwelling Units, Garden Area, Convenience Shop, Area for

Transformer, Club House, Swimming Pool, Open Space, Sewage Treatment Plant, Pump House, etc. Also it has been clearly mentioned in the DTCP approval that under Condition No.3, the open space is also to be maintained as same.

12. The Complainant Association has further submitted that as per the DTCP approval, the Respondent gifted 5.15 acres to the Panchayat for road access and OSR, leaving out 28.5 acres of land for the Project. As per the booking letter, for promised date of completion "PDC" was December, 2013. However, the Respondent failed to complete the construction and handing over of the dwelling units to the allottees as per the PDC. The initial project PDC of December, 2013 for the Project has been revised multiple times i.e. the PDC was revised to December, 2014, June 2015, Jan. 2016, July 2016, February 2017, June, 2017, December, 2017 and March 2018 and is still incomplete as the Respondent have not commenced construction of the 96 dwelling units out of the 496 dwelling units and further, various common amenities are still incomplete.

13. It is further submitted by the Complainant Association that the Respondent has surreptitiously filed false details at the time of registration of the Project with TNRERA with respect to the undivided share of land for the 496 dwelling units. It is also submitted by the Complainant Association that though the Respondent has mentioned that the project extent is 33.53 acres, the UDS for 496 dwelling units is totaled at 18.43 acres only. The Allottees are entitled to the UDS for 496 dwelling units in the total extent of the project extent minus the extent gifted to the Panchayat for

development i.e. 28.5 acres. The Complainant Association has furnished the following details for reference.

Sl.No.	Particulars	Extent
1	Entire project extent as per DTCP approval	33.53 acres approx. (135711.623 sq.mtr.)
2	Extent gifted to Panchayat as per DTCP approval	5.15 acres approx. (20,855 sq.mtr.)
3	Undivided share of land available for 496 dwelling units	28.5 acres approx. (1,14,855.88 sq.mtr.)
4	Total extent mentioned by the Respondent in the carpet area statement for 496 dwelling units	18.43 acres approx. (74,565.68 sq.mtr.)
5	Remaining extent which needs to be included in the carpet area statement for 496 dwelling units.	9.96 acres approx. (40,292.1 sq.mtr.)

14. The Complainant Association has further submitted that the Promoter AWHO has obtained the registration with TNRERA by providing false details and misrepresenting statements and information.

15. Regarding handing over common amenities and failure to complete the common amenities and facilities, the Complainant Association has submitted that they have filed W.P.No.8115 of 2019 before the Hon'ble High Court of Madras against the Respondents communication to form a parallel ad-hoc committee (AUC) and for handing over the common amenities. After prolonged litigation, the Hon'ble High court of Madras vide its order dated 18.03.2021, recorded the relevant portion of the affidavit

filed by the Respondent that they recognize the Complainant Association and further directed the Respondent to “surrender the common amenities in Raman Vihar complex to the petitioner association and also deposit the corpus fund available with them into the nominated bank account of the petitioner on or before 31.03.2021” and disposed the Writ Petition.

16. The Complainant Association has also submitted that the Respondent did not abide to the said direction of the Hon’ble High Court of Madras in letter and spirit. In respect to the deposit of corpus fund into the nominated bank account of the Complainant, the Respondent transferred only Rs.50,04,295/- on 31.03.2021, without providing the statement of accounts with respect to the corpus amount collected from the allottees and in addition the Respondent has stated that the registration fees of Rs.12,51,788/- was paid out of the corpus fund for registering the project with TNRERA . It is further informed by the Respondent that any charges in connection with TNRERA registration would be on account of the Allottees which is completely against the provisions of the Act.

17. With respect to the direction to surrender the common amenities, the Respondent has handed over incomplete common amenities i.e. not in a usable condition. The Complainant has listed out the major incomplete common amenities handed over as below:

- i. Defunct STP
- ii. No electric sub station
- iii. Incomplete compound wall
- iv. No solar panels in all building terraces
- v. Overhead tanks leaking

- vi. Sub standard roads
- vii. Structural cracks on roof and main beams in club house building.

18. The Complainant Association has prayed for the following reliefs in their Complaint in C.No.226/2021.

- a) Declare that the Respondent has filed incorrect details while submitting its Application for Registration in Application in TN/11/Building/0130/2021, dated 22.04.2021 and consequently direct the Respondent to resubmit its Application with the correct Carpet Area Statement for the 496 dwelling units totaling to 28.5 Acres as per the extent in the DTCP approved No.R.C.No.11444/2011/CP, dated 24.10.2011.
- b) Declare that all agreements, deeds, registrations and acts done pursuant to the incorrect registration in TN/11/Building/0130/2021, dated 22.04.2021 as null and void.
- c) Permanent injunction restraining the Respondent, its men, agents from attempting to either fence, obstruct, segregate and interfering with the Complainants peaceful possession of the Open Space in the Project.
- d) Permanent injunction restraining the Respondent from carrying out any activity other than the activities approved under the DTCP approval No.R.C.No.11444/2011/CP, dated 24.10.2011.
- e) To direct the Respondent to provide audited Statement of Accounts with respect to the corpus received from the allottees

and consequently direct the Respondent to deposit such amount remaining to deposit into the Complainant's account.

- f) Declare that the registration fee of Rs.12,51,788/- for registering the project with TNRERA deducted from the corpus is illegal and consequently direct the Respondent to deposit into the Complainant's account.
- g) Direct the Respondent to complete the incomplete common amenities and provide for the amenities listed out in Annexure A within a fixed timeline.

19. In the Counter Affidavit in respect of C.No.451/2019, the Respondents have submitted that the only valid agreement existing between the Respondent and the Complainant Association members as also other Allottees are the terms and conditions of the Respondent's Master Brochure, the technical Brochure, the Booking letter and all such written communication issued by the Respondent to each one of the Allottees and accepted by them. The Complainants have lawfully bound themselves to this agreement by accepting the term of the Master Brochure, Booking Letter including the Technical Brochure and other written communications which is an inalienable part of the Booking Letter, paid the agreed consideration and taken possession of their respective dwelling units. Only later as an afterthought since 2018 few of the Complainants are illegitimately attempting to usurp the benefits of the balance land admeasuring 8.56 acres earmarked for future development as Phase 2 by the Respondent Society from the likely prospective allottees

who are other Army Personnel and Veterans like themselves and would like to subscribe to the proposed housing scheme as to the truth and in the best interest of the larger community of service personnel and veterans.

20. In the Counter Affidavit filed by the Respondents in respect of the Complaint No.117/2020, it has been submitted that the Planning Permission approval was granted for the subject project by the DTCP, Government of Tamil Nadu vide R.C.No.114444/2011/CP dated 24.10.2011. However, the approval is internal to the DTCP and is addressed to the Member Secretary, Local Planning Authority i.e. the Town and Country Planning, Coimbatore. The Respondents have also stated that the actual Planning Permission of Coimbatore Town 32 A to O /2012 dated 08.02.2012 was issued to the Respondent by the Town and Country Planning, Coimbatore in the capacity of the Local Planning Authority vide letter No.7907/2010 LPA-3.

21. The Respondents have further submitted that as a part of the project, 496 dwelling units were to be constructed along with central facilities and accordingly, only a part of the land available with the Respondent was earmarked for construction of 496 dwelling units as is available in the planning permissions obtained. Also the Respondents have submitted that the planning permissions for the construction in the subject project does not in any manner specify that the entire land mentioned in the plan is to be utilized as undivided share of the present Allottees of the 496 dwelling units only.

22. The Respondents have also submitted that the planning for the development of the subject project as per Respondent's Standard

Operating Procedure began in 2005 by conducting a demand survey from the prospective eligible Allottees. A total of 862 demand survey registrants evinced interest upto May, 2009. It is also submitted by the Respondents that the land parcel of 33.645 acres was acquired by the Respondent Society so as to develop the subject housing project at Chinnavedampatty, Coimbatore based on the demand survey.

23. The Respondents have further stated that in 2009, specific request for offer was floated by the Respondent Society to empanelled Architects for submission of their plans. Interested Architects participated with plans for utilization of the permitted FSI of upto 1.5 at that time. The Respondents have also submitted that after consideration of the plans, Architect M/s. YessKay Promag was selected, and the project was planned with 912 dwelling units and 1.43 FSI. Despite the demand survey depicting 862 registrants, the number of actual confirmed registrations was much less and therefore, a spot scheme was announced for the project for a tentative number of 560 dwelling units.

24. The Respondents have also stated that in late 2010, based on the response, the project plans were reformulated to 496 dwelling units and application for planning permission was made to Local Planning Authority. However, the drawing of Planning Permission so obtained, inadvertently omitted to explicitly label and land earmarked for later development in the layout as future phase/s. Also the manner in which such land intended for future development is not interspersed with remaining buildings and facilities but removed/detached from them is ample proof of this statement. It is further submitted that in any case, what the Respondent

Society had offered to its Allottees is explicit from the booking letter and technical brochure, which explicitly portrays that the Respondent Society had planned to develop in first phase of development, leaving aside 8.56 acres of land termed as second phase to be developed in future. By the time planning permission was obtained for 496 dwelling units, while detailed planning was being carried out, demand was for only 400 dwelling units, and allotted based on then prevailing demand. After construction, 397 apartments have been handed over to the Allottees by the Respondent Society between May, 2018 and March, 2022. Pursuant to recognition of the RWA/Complainant, common amenities have also been handed over to them by the Respondent Society on 31.03.2021.

25. The Respondents have also submitted that unlike private developers, the Respondent Society does not execute builder/buyers or a sale agreement with the registrants/Allottees of the dwelling units. However, the terms and conditions of allotment of the dwelling units, car parking and other common amenities in the housing project are contained in the Master brochure, the booking letter, technical Brochure and such letters/circulars and the Handing/Taking over instructions of the dwelling units issued by the Respondent Society during the construction of the housing project based on the approvals by the competent authorities in the city where the project is developed.

26. Further the Respondents have submitted that in none of the documents mentioned hereto did the Respondent Society even promise the Allottees of the AWHO's subject project including the Complainants, that it shall transfer the entire land or even the land in the first phase of

the project to its Allottees either severally or jointly with the RWA/Complainant. On the contrary, the Booking letters issued to catch individual Allottees, who are members of the Complainant RWA, and the Technical Brochure therein, clearly specifies the construction and development in Phase1 of the Project, and the land now being claimed by the Complainant Allottees are being shown as "Land left for future Development. The Respondents have also submitted that for the sake of brevity, the Respondent Society is filing some vital documents of one of the Allottees of the project in hand. It is further submitted by the Respondents that these few vital letters/communications have been issued by the Respondent Society to all its Allottees of the project in hand.

27. The Respondents have also stated that the undivided shares of land (UDSL) proposed to be conveyed to the Allottees have been specified in draft Sale Deed. It is further submitted by the Respondents that the details of UDSL proposed to be conveyed to Allottees, as submitted to TNRERA vide application dated 24.02.2021 for RERA registration of the project and there upon uploaded by the Authority on its website is correct and forms valid communications or disclosures made to the Allottees about the intended transfer of UDSL to the Allottees, thus far. The Respondent has further stated that the undivided shares of land proposed to be conveyed to the Allottees have also been specified in draft of the Sale Deed uploaded on Respondent's website and also as shown in the Sale Deed dated 04.10.2021 referred to above.

28. The Respondents have further stated that the Floor Space Index (FSI) permissible at the time of approval was 1.5 for the subject project

and only 0.46 of the FSI has been utilized till now, and the AWHO is permitted to utilize an FSI of 2.0 as per prevalent Tamil Nadu Combined Development and Building Rules. Hence, the application submitted to this Authority is factual and legally correct, which has been considered in its totality and approved vide TNRERA Registration No.TN/11/Building/0130/2021 dated 22.04.2021. The Respondents have further submitted that in addition, a representation has been made by the AWHO to this Authority for recall or waiver of Condition 2 (vii) of the Registration considering the special circumstances of the cases stated in its representation.

29. The Respondents have also submitted that purchase of land at Coimbatore was done by AWHO for giving maximum benefit to the eligible Army personnel. The larger interest of the Army personnel, Veterans and their families who are in need of affordable housing in future ought to be protected but the Complainants' only interest is to mislead this Authority into usurping the lands admeasuring 8.56 acres earmarked for development of Phase-II of the housing project by the Respondents.

30. It is also submitted by the Respondents that the clarification on the land to Phase-I Allottees was uploaded on AWHO website on 31.01.2019 reiterating that 400 Allottees of Phase-I have been charged only 15.14 acres of land developed as Phase-I of the project and accordingly UDSL has been distributed for 15.14 acres of land amongst 400 Allottees of the Phase-I of the group housing project. The same was also communicated by a D.O. letter written by the Respondent Society to all Allottees and uploaded on the website on 05.03.2019. The Respondents

have further submitted that it was again reiterated that the land was procured much before the commencement of Phase-I project and that 8.56 acres of land shall be utilized for Phase-II development in future.

31. The Respondents have also submitted that the Phase-I Allottees have no right, title or lien on the land admeasuring 8.56 acres earmarked for future development as Phase-II by the Respondent Society and that the Allottees have not been charged for 33.65 acres land of project. Complete details of land cost was explained to the Allottees on 23.08.2020 through video conference which was also unloaded on Website of AWHO for information of all Allottees on 02.09.2020. The Respondents further stated that it was brought out clearly through Web update dated 02.09.2020 that the land cost paid by the Respondent Society to the sellers of 33.65 acres was Rs.31.56 crores, stamp duty paid was Rs.2.84 crores, land tax paid was Rs.0.27 crores and Rs.20.76 crores were spent as various development charges to include change of land use, various permission/approval from local authorities to plan housing society, plan approvals, etc. Thus the land cost of 33.65 acres was Rs.55.43 crores out of which Rs.24.95 crores and Rs.4.32 crores as financing cost has been charged from the 400 allottees of Phase-I for a total of 15.14 acres of land out of 33.65 acres of land.

32. The Respondents have also submitted that the project statement obtained from the Chartered Accountants M/s. Anjan and Associates, Delhi pertaining to Phase-I project statement as on 21.01.2022 clearly portrays that all amount so obtained from Phase-I allottees has been utilized towards the expenditure accruing from Phase-I itself and the amounts have

not been utilized for the Phase-II land. The Respondents have also furnished the costing and deficits of Project as below:

Project Statement (Provisional)

**Phase-I**

As on 21.01.2022

	Particulars	Amount
A	Expenditure	(Rs.)
	a. Land Cost	24,94,81,145
	Interest on Land Cost	3,96,22,373
	Land Overheads	35,49,938
	Total Land Cost (A)	29,26,53,456
	b. Construction Expenses (B)	1,38,19,13,738
	c. Payment to PD for S&S imprest (C)	24,77,135
	d. Construction overheads as on 31.03.2021	4,81,83,039
	e. Total Construction Expenses (E)=(A+B+C)	1,43,25,73,912
	Project Expenditure (F) =(A+E)	1,72,52,27,368
B	Construction Fund (Receipt) (G)	1,65,51,46,835
C	Deficit (G-F)	7,00,80,533

Project Statement (Provisional)

**Phase-II**

As on 21.01.2022

	Particulars	Amount (Rs.)
A	Expenditure	
	Land Cost	30,48,11,054
	Interest on Land Cost	--
	Land Overheads	--
	Total Land Cost	30,48,11,054

33. Therefore, the Respondents have submitted that there is a deficit amount of Rs.7,00,80,533/- specified in the Phase-I project statement is to be recovered from the Contractor M/s. Sree Devi Infra Construction Pvt. Ltd. out of the arbitration award. Also it is submitted by the Respondents that the Phase-I of the project was completely handed over when the central amenities were handed over to the Complainant Society/RWA on 31.03.2021 pursuant to the order dated 18.03.2021 in W.P. No.8115 of 2019 and W.M.P. No.8707 of 2019 passed by the Hon'ble Madras High Court.

34. The Respondents have further stated that the Respondent is the rightful and legal owner and absolute possessor of the land which was to be demarcated for the safety of the present residents and also to protect the land from encroachment and possible illegal activities by unauthorized persons/entities.

35. The Respondents have also submitted that Section 14 of the RERA Act provides for the promoter to adhere to sanctioned plans and project specifications by the Promoter. However, Rule 4 of the TNRERA Rules provides for the exemption to obtaining 2/3<sup>rd</sup> consent from the allottees if in the event of the subject project was conceived to be developed in phases and if the same was agreed upon by the allottees.

36. The Respondents have further submitted that the Planning Permission is not cast in stone and is not irreversible, so as to put larger good purpose of providing houses to as many Army personnel, unachievable. Also the Respondents have stated that the DTCP approval does not convey the intent of sale of the entire land parcel available at the

site to the 496 allottees, for the consideration mutually agreed upon. Further, when the Respondents have not charged the Complainants towards the land costing of Phase-II, in other words, when the Complainants have not paid any amounts towards the land cost of Phase-II, the Complainants are in no manner entitled to stake a claim in the Phase-II lands merely on the premise that the DTCP approvals states "Open Lands" on the Phase-II earmarked lands.

37. In the Counter Affidavit in respect of the Complaint in C.No.226 of 2021 filed by the Raman Vihar Apartments Owner Association, the Respondents have submitted that the Respondent is Army Welfare Housing Organization (AWHO), a non-profit and non-loss society which came into existence from 1<sup>st</sup> July 1978 under the Indian Societies Registration Act XX1 of 1860. It is further submitted by the Respondents that the aim and objective of the Organization is to construct group housing projects for the welfare of serving/retired Army personnel and their widows in selected stations throughout the country. The AWHO's mission is to provide structurally sound, economically viable and functionally efficient dwelling units to the desirous serving/retired personnel of the Indian Army and their Widows on a "No Profit No Loss" basis.

38. It is further submitted by the Respondents that the Carpet Area Statement provided has been filled correctly conveying the correct intent of the Respondent Society to its members who are allottees in the subject Project.

39. The Respondents have also reiterated that AWHO is a society on the basis of "No Profit No Loss" and that the subject project was completed

by the time RERA was enacted in Tamil Nadu, and therefore, the Respondent Society did not take into consideration the cost implications of obtaining RERA registration by adding the same into the calculations of consideration amounts obtained from the Allottees. It is further submitted by the Respondents that as few members filed complaint against the Respondent society with RERA and demanded Registration, it was carried out at an expense of Rs.13,09,978/- and this amount was not planned as part of the project expense therefore the said funds were not available and as RERA registration was done at the behest of the Allottees, this expense was adjusted against the Corpus Fund released on 31.03.2021 to the Complainant Association.

40. It is further stated by the Respondents that the Respondent is the title holder and legal owner of the entire land parcel of 33.645 acres, it purchased. The method of alienation of portion of the land through allocation UDSL to the allottees in their fair share, as per details submitted to the Authority is the only intended action thus far, which is legal and correct.

41. In the Rejoinder filed by the Authorised Signatory of the Complainant Association, it is has been submitted that the Respondents in its reply has unequivocally admitted that the planning permission for the subject project is the DTCP approval granted vide RC No.11444/2011/CP dated 24.10.2011. The Respondent however has conjured up a theory that the drawings of planning permission inadvertently omitted to explicitly label the land as future development phase. The theory propounded by the Respondents is completely unbelievable as the land is clearly earmarked as

'Open Space'. The DTCP approval clearly stipulates the condition that "Open Space shown in the Blocks shall be maintained accordingly".

42. The Complainant Association denied the allegation that it works "No profit no loss" basis as false and baseless. The Respondent is just another developer.

43. The Complainant Association has also submitted that de hors the issue of planning permission granted by DTCP and thereafter forwarded to the LPA, the fact of matter remains that the planning permission granted clearly makes a mention of the Open Space and the condition stipulates that Open Space ought to be maintained accordingly. It was only based on the DTCP approval that the members of the Complainant Association entered into booking allotment. All other contentions with respect to drawings prepared by Architect M/s.YESSKAY PROMAG and the documents supporting the same are immaterial as they are self-serving documents.

44. The Complainant Association has further submitted that with respect to the averments, that the drawings of Planning Permission inadvertently omitted to explicitly label the land as future development phase is false as it is specially mentioned as Open Space. Also the Complainant Association has submitted that the contention regarding the manner in which the portion is left out is immaterial. Further, the said justification is merely an afterthought to illegitimately grab the open space. The technical brochures are self-serving documents and disputed.

45. The Complainant Association has further submitted that the sale deed which is registered based on incorrect UDSL statement in favour of Suresh Kumar Nair on 4<sup>th</sup> October, 2021 is a sham as the Suresh Kumar is

stooge of the Respondent. The said registration has happened after the case was filed by the Complainant. In fact, the sale happened even after the first date of hearing. The Complainant Association has also submitted that all the documents mentioned in para 13 of the Counter Affidavit (in C.No.226 of 2021) and appended in Appendix "D" are disputed and have been issued with a sole motto to grab the open space from the allottees.

46. The Complainant Association has further stated that the purported sale deed dated 04.10.2021 was executed after the present complaint and the issues are sub-judice.

47. The Complainant Association has further submitted that the Respondent has stated that they have issued clarification on the land to the Allottees and have uploaded the same in their website. All the documents and communications which were mentioned in para-18 of the Counter Affidavit of the Respondent are only from the year 2019 which is long time after obtaining the DTCP approval. Additionally, the details are false and also the documents uploaded in their website are only self-serving documents.

48. The Complainant Association has also submitted that it is well settled position of law that any construction in contravention of the approval itself illegal. It is equally well settled that the once an area has been mentioned as open space in the layout, the same cannot be subsequently used for any other purpose other than the purpose mentioned in the approval.

49. The Complainant Association has further submitted that the Respondent is hiding behind the mask of Army personnel and is unjustly

enriching itself and is exploiting the army personnel by making false promises. Further, once an area has been marked as open space in an approved plan, layout the Respondent merely holds it as a trustee for the benefit of all the Allottees and the Respondent cannot change the nature of open space or make use of it for future development.

50. It is further submitted by the Complainant Association that it is an admitted case that the project was ongoing which required registration under RERA and the corpus ought to be transferred to the Owners Association. The Respondent cannot punish the allottees by deducting the corpus, for taking legal steps. Such deductions are unjust enrichment and ought to be paid back. The Complainant Association has further stated that the Respondent is legally obligated to complete the common amenities and rectify the snags and defects in the project.

51. In the written submission of arguments filed by the Complainant in C.No.451 of 2019, the Complainant has submitted that the Complainant had applied for allotment of a dwelling unit in Respondents' project on 26.03.2012 and accordingly he was issued a booking letter, dated 31.07.2012 promising to complete the project and handover the dwelling unit by December, 2014. But the Respondents committed inordinate delay in execution of the project and finally he was allotted a dwelling units bearing door No.A3/301 through letter dated 25.01.2018 without executing the sale deed in his favour till date. The said dwelling unit was handed over to the Complainant only on 13.05.2019. The Complainant has further submitted that the Respondents are also attempting to unilaterally reduce

the undivided share of land (UDS) to be conveyed to him and other Allottees of the project.

52. The Complainant has further stated that his core contention was that the UDSL sought to be conveyed by the Respondents is not in consonance with the sanctioned plans/approvals and the Respondents are attempting to convey the reduced UDSL to all its Allottees and thereby unlawfully making gain for themselves. The Complainant has further submitted that the Respondents instead of conveying the total extent of land remaining after execution of Gift Deed (i.e. 14,61,343.81 sq.ft. – 2,24,407.80 sq.ft. = 12,36,936.05 sq.ft. = 28.51 acres) had with malafide intention stated to TNRERA that only a land measuring 8,02,519.90 sq.ft. (18.43 acres) would alone be divided and conveyed to all Allottees.

53. The Complainant has also stated that the extent of UDSL to the complainant or to any Allottee was never communicated through any means by the Respondent till they collected 100% consideration in the project. It is only through the unilaterally decided sale deed that was uploaded in December, 2018 in its web portal after collecting the entire consideration (exhibit A2 typed set in C.No.451/2019), the Promoter arbitrarily allotted the reduced/deficient UDSL. The basis of allotment of UDSL too was not communicated to the Complainant or to any allottee. The Complainant has further submitted that from the proposed UDSL by the Respondents, it emerged that only an extent of around 18.43 acres of the project land was proposed to be conveyed to the allottees thereby retaining around 10.08 acres with them, without any legally supporting documents to establish their claim.

54. The Complainant has also submitted that there was not even any prior intimation by the Respondents, before collecting 100% cost of project from all Allottees, about any proposal to develop the entire land in various Phases, stages, etc. nor was any intimation about the proposal to construction additional dwelling units totaling to 912. It is only after collecting 100% consideration from all Allottees, such intimation was let out by the Respondents. The Respondents sent intimation through their web portal on 15.03.2019 that they had plans to construct totally 912 dwelling units in the Complex.

55. In the written arguments filed by the Complainant Association, it has been submitted by the Complainant Association that the Respondent had filed incorrect carpet area statement excluding the 9.96 acres which is the Open Space of the Project. The Respondent contends that the open space is for future development and the developer has right over the said area of 9.96 acres. The case of the Complainant is that the said Open Space is for the common use of all the Allottees and it has to be used for the purpose specified in the DTCP approval and the Respondent cannot claim any right over the same and it belongs to the common interest of 496 Allottees alone.

56. The Complainant Association has further submitted that the Promoter has no right over Common area, Common Area cannot be altered and common area cannot be sold. It is settled law that the developer cannot claim any right over the common area by retaining UDS. The common amenities as per the DTCP approval have to be maintained accordingly.

57. The Complainant Association has also referred various case laws as under:

A. The Hon'ble Madras High Court in State Bank of Travancore Vs. State of Tamil Nadu and other reported in 2004-1- L.W.312, where the issue was with respect to the developer claiming car park space by retaining certain portion of the UDS, the Court held in para 24 that "A person cannot retain any undivided share in the land unless he is an apartment owner and in possession of the constructed are in the building". Once a promoter hands over the common area to the flat owners, the common area is in the possession of the Apartment Owner. In the present case, the Respondent has admittedly handed over the common facilities pursuant to the order of the Hon'ble High Court in W.P.No.8115 of 2019 and cannot illegally retain UDS and claim the open space.

B. The Hon'ble Madras High court in Krishna Nagar Residents Welfare Association Vs. Director of Town and Country Planning and others reported in 2001 3 LW 828 held that once a property is earmarked as open spaces in the DTCP approval, it is not open to the original owner i.e., the promoter to claim the property as her own, nor is it open to the authorities to concede to such a demand. The Complainant Association has extracted the relevant paragraph hereunder:

"8. It is not disputed that in the layout plan, the disputed property has been shown as a park. Therefore, there can be absolutely no justification on the part of the fourth Respondent to claim the

property as her own nor is it open to the authorities to concede such a demand..... The purpose should continue to remain only as public and for the benefit of the entire colony. But in the present case, the attempt is to convert the property as belonging to the fourth Respondent herself which is definitely not permissible. The very layout is sanctioned and granted only on the understanding that all the places marked as common would continue to remain as common and no individual like the fourth respondent can claim ownership of the property, which is sought to be done in the present case and which has also found acceptance by the public authorities namely Respondents-1 to 3. I am unable to sustain the said claim on the part of the fourth Respondent that she is entitled to have property to be converted to her own use. Otherwise, there is no purpose in submitting a layout plan and the Government sanctioning the layout plan subject to the requirements being satisfied. The learned counsel for the Petitioner has rightly relied on the judgment of Supreme Court in Pt. Chet Ram Vashist (Dead) by Lrs. Vs. Municipal Corporation of Delhi (1995) I S.C.C. 47). The Supreme Court has held that:

"reserving any site for any street, open space, park, school, etc., in a layout plan is normally a public purpose as it is inherent in such reservation that it shall be used by the public in general. The effect of such reservation is that the owner ceases to be a legal owner of the land in dispute and he holds the land for the benefit

of the society or the public in general. It would create an obligation in nature of the trust and may preclude the owner from transferring or selling his interest in it”.

“Therefore, the attempt on the part of the fourth Respondent to assert the title over the property and rights over the property to utilize the property in any manner she likes in order to get income from the property cannot at all be accepted. Therefore, permission granted by the Respondents 1 to 3 in this context is totally illegal and cannot be sustained”.

58. It is also submitted by the Complainant Association that admittedly, in the present project, the Developer has not entered into any agreement spelling out the total extent of UDS, individual UDS of Allottees or total extent of built up area and other details, which are otherwise mentioned in an Agreement of Sale or Construction Agreement. Also in this project there is only a one sided Booking letter, which does not contain such vital details. However, the DTCP approval for the project is the implied underlying agreement and undertaking which binds the parties with respect to UDS. If the DTCP approval is given a go by, then there will not be any sanctity for DTCP approval, which is a statutory approval. The open area and other common amenities is for the common enjoyment of 496 Allottees and the developer cannot claim any right over the same.

59. The Complainant Association has further stated that the contention of the Respondent that the purported technical brochures contains reference to phases and the open space was meant for future

development is a mere afterthought in order to grab a large extent of open space for making illegal profits.

60. Regarding Corpus fund collected from the Allottees, the Complainant Association has submitted that the Corpus fund must be used strictly for the purpose it is meant for and not for any other purpose. The Respondent has admittedly used the Corpus for meeting expenses that the Respondent has to meet from its own pocket such as registration of Project and penalty to the tune of Rs.10,00,000/- imposed by Hon'ble TNRERA. It is the obligation of the Respondent/Promoter to register the Project. The Respondent cannot use the Corpus amount for registering the project or paying the penalty.

61. In the Common written submission of arguments, the Respondents have submitted that the Planning Permissions itself does not act as a vessel for Complainants to demand the conveyance of the Phase-2 demarcated property whereas not a single rupee has been paid by the Complainants towards consideration for the Phase-2 demarcated lands.

62. It is also submitted by the Respondents that in any case, the project of 496 dwelling units offered by Respondent Society to its Allottees is clearly evident in the Booking letter and Technical Brochure, which explicitly indicates what the Respondent/Respondent Society had planned to develop in First Phase of development, leaving aside 8.56 acres of land termed as Second Phase to be developed in future. The Respondents have further submitted that the Technical brochure clearly states that the land being fraudulently claimed by the Complainants has been earmarked as "land left for future development". The Respondents have also stated that

right from the time of application itself, all the Allottees of the project have acknowledged the rules and procedures given in master brochure and have undertaken to abide by the rules and regulations therein. The Master Brochure clearly stated that the Technical Brochure shall be issued along with the booking letter which shall indicate all details pertaining to the construction. All these facts cannot be conveniently negated by the Complainants when each and every single one of the Allottees including the Complainants herein have given an undertaking.

63. This Authority has examined the remanded Complaints in C.No.451/2019, C.No.117/2020, C.No.106/2020 and C.No.153/2021 as well as the Complaints in C.No.226/2021 and C.No.237/2021, the Counter Affidavits filed by the Respondent Promoter, the Rejoinder filed by the Complainant Association and the arguments and the written submission of arguments of all the parties, carefully.

64. The main contention of the Complainants is that the Allottees in this real estate project are entitled for the undivided share of land, to be determined based on the entire extent of 33.65 acres of the project land for which DTCP has issued Planning Permission.

65. Normally in a real estate project, the booking letter/allotment letter issued by the Promoter will indicate the extent of undivided share of land allotted to the Allottee for which sale deed will be executed subsequently. Also in other real estate projects, the exact extent of undivided share of land to be conveyed / sold to the allottees will be clearly indicated in the Agreement for sale itself as a Schedule to the Agreement for sale as well as a Schedule in the Construction Agreement.

66. As far as this real estate project is concerned, there is no such indication / mention in the allotment letter /booking letter. In addition, no Agreement for sale as well as Construction Agreement have been executed between the Promoter and the Allottees.

67. In the absence of these vital legal documents, the case for the prayer of the Complainants for undivided share of land based on the entire extent of the land owned by the Promoter and covered by the DTCP Planning Permission is very weak.

68. The Complainants have contended that the entire extent of Layout planning permission has to be apportioned as undivided share of land to the 496 dwelling units in this real estate project.

69. As the Complainant Allottees and the Association of Allottees have relied upon the DTCP planning permission for their claim, there is a need to examine whether planning permission issued by the Planning Authorities confers interest/title to the undivided share of land in a real estate project to the Allottees.

70. The Tamil Nadu Town and Country Planning Act, 1971 deals with permission for development. Section 2(13) of the Act defines "development" as under:

(13) "development" means the carrying out of all or any of the works contemplated in a regional plan, master plan, detailed development plan or a new town development plan prepared under this Act, and shall include the carrying out of building, engineering, mining or other operations in, or over or under

land, or the making of any material change in the use of any building or land:

Section 49 of T&CP Act, 1971 deals with application for permission and grant thereof.

71. Therefore, it is clear that what is granted is only permission for development and nothing more.

72. Therefore, this Authority holds that the legal documents executed between the Allottees and the Promoter such as Allotment letter, Agreement for Sale and Construction Agreement can only determine the undivided share of land to be conveyed to the Allottees by the Promoter.

73. The Complainants have also contended that the space indicated as open space which is 8.56 acres has to be treated as common area and conveyed to them as undivided share of land.

74. This Authority has examined this issue of Open Space very carefully and critically. This Authority has also examined the Planning Permission issued by DTCP in the year 2011 carefully.

75. The Planning Permission issued by the Director of Town and Country Planning is dated 24.10.2011 (page No.1 to 5 of the typed set of papers filed by Col. R. Ganesan in C.No.451 of 2019 on 31.03.2022). The entire Planning Permission proceedings of the DTCP dated 24.10.2011 is in Tamil. Therefore, this Authority would go by this Tamil version only as this is the original and authentic document signed by the Director of T&CP. In this proceeding special conditions No.2 on page No.3 refers to Open Space Reservation with boundaries marked as QRST. It is normally 10% of the Layout extent which has to be earmarked as Open Space Reservation and

gifted to the concerned Local Body. This extent is 13584 sq.mtr. which has been gifted to the concerned Local Body by the Promoter.

76. This works out to the 10% of the overall extent of the layout which is 135711.623 sq.mtr. This is a legal obligation to be complied with by the Promoter. This is the position which is set out even in the Tamil Nadu Combined Development and Building Rules, 2019 – Clause 41 of the Rules under the heading “Reservation of land for community recreational purposes in developments”.

77. “The site so reserved shall be exclusive of setback spaces and spacing between the Blocks prescribed in the Rules”. Therefore, the question of treating any other large chunk of vacant lands to the tune of 10 acres other than what is earmarked and set apart as Open Space Reservation with clearly indicated boundary marked ‘QRST’ in the Layout plan cannot be claimed by the Allottees as open space and their entitlement under undivided share of lands.

78. Normally the undivided share of land will consist of the share of the Allottees’ in terms of the footprint of the building/buildings and associated common areas which include inner roads, common amenities such as water treatment plant, sewage treatment plant, club house, etc.

79. These common area extents have correctly been furnished by the Promoter while filing application for registration of this real estate project and accordingly the carpet area statement has also been furnished by the Promoter to this Authority.

80. Therefore, this Authority does not find any mistake or error or suppression of facts committed by the Promoter while furnishing the carpet area statement.

81. The Authority has also carefully examined the particulars furnished by the Promoter and the entire layout and planning permission with specific reference to the location of the dwelling units and the location of the common amenities and common areas.

82. The Authority has also obtained necessary clarification from the Promoter and upon satisfaction in an objective manner has granted registration to this real estate project under the Act.

83. Another major contention of the Complaint is that this project does not involve development of the entire extent of the project land in a phased manner.

84. However, it is seen that the Promoter Army Welfare Housing Organisation has issued a Technical Brochure indicating Phase-I of the Project in May, 2012 (page No.11 of the typed set of documents filed by Col. R.Ganesan on 31.03.2022).

85. On page No.13 of the above typed set of documents which is part of the Technical Brochure, it is indicated under the heading 'Development concept' – the development is planned in 2 Phases.

86. Therefore, even accepting for argument sake, that the plan prepared by the Architects engaged by the Promoter Organisation planning to construct 912 dwelling units ultimately is a self serving document as contended by the Complainants, this Authority considers the Technical Brochure issued in May, 2012 filed by the Complainant Col. R.Ganesan

which is prior to the Real Estate (Regulation and Development) Act, 2016 as a clear documentary evidence for the phased development of this real estate project.

87. In a phased development of a real estate project, the Allottees of the 1<sup>st</sup> Phase cannot claim the entire extent of the real estate project as their undivided share of land to be conveyed to them.

88. It is also seen from the layout that the vacant land of 8.56 acres has been kept separately and not interspersed in the midst of 400 dwelling units which have been constructed for the present Allottees including the Complainant Allottees. It is seen that a demand survey itself was advertised in April, 2005 (The Times of India advertisement dated 06.04.2005 – page No.1 of the typed set of documents filed by the Respondent Promoter on 20.10.2021).

89. It is also seen that the entire extent of land has been purchased by the Promoter Organisation by way of several sale deeds in the year 2008, whereas booking letter has been issued in 2010 only (Booking letter issued to Brig. Raymond Raj on 24.12.2010 cited in the booking letter issued on 03.07.2012 vide page No.3 of the typed set of papers filed by the Respondent on 21.04.2022).

90. Therefore, the Allottees cannot contend that the entire extent of land has been purchased with payments made by the Allottees. In fact, the Promoter has submitted that the basic cost of 33.65 acres of land including the stamp duty and registration charges paid, Development charges paid to the vendor and vacant land tax works out to Rs.55.43 crores as determined by the Chartered Accountants engaged by the Promoter. Of this sum,

Rs.24.95 crores only has been charged as land cost to these 496 dwelling units of Phase-I (page No.101 of the typed set of papers filed by the Respondent on 20.10.2021). Therefore, the claim of the Allottees for the entire extent of land without having paid for the same in full is devoid of merits.

91. The Authority also notes that the Promoter has given clarification by its communication dated 05.03.2019 that 400 Allottees of Phase-I have been charged only for 15.14 acres of land and accordingly undivided share of land has also been distributed for 15.14 acres of land (Page No.15 of the typed set of papers filed by the Respondent on 03.02.2020).

92. Condition No.4 of the DTCP approval has also clearly indicated that the prior permission of DTCP should be obtained for any change in the approved layout.

93. Therefore, the Promoter is very much entitled to apply for planning permission for Phase-II of this real estate project as well as renewal of planning permission for 96 dwelling units out of the 496 dwelling units for which planning permission has been accorded on 24.10.2011.

94. Therefore, this Authority accepts the submissions made by the Promoter that the planning permission is not cast in stone and the Promoter can apply for planning permission for the additional construction/renewal of the existing planning permission as the case may be.

95. It is also seen that the Floor Space Index (FSI) availed and achieved by the Promoter in this real estate project is 0.46 only whereas

the permissible FSI as per the Combined Development and Building Rules, 2019 is 2 subject to satisfaction of other rules. Therefore, the Promoter is very much entitled to go for construction of additional dwelling units for catering to the needs of eligible Defence Personnel who are in need of dwelling units by fully utilizing the FSI permitted by the Government/DTCP.

96. This Authority has carefully gone through the citation of case law cited by the Counsel for the Complainant Association in Krishna Nagar Residents Welfare Association Vs. DTCP, etc. (2001 – 3 – L.W.828). In that case, the Promoter attempted to convert the land meant for park which is a public purpose into a community hall for private purpose.

97. The Hon'ble High Court of Madras had held that the purpose should continue to remain only as public purpose. This citation does not apply to this batch of Complaints as there is no such attempt to convert park (or) land meant for public purpose into land for private purpose by the Promoter.

98. Summing up, this Authority holds that the Promoter has furnished the correct information regarding the undivided share of land to be conveyed to the Allottees while filing the application with this Authority and therefore, the Promoter shall execute the Sale Deed conveying the undivided share of land to the Allottees strictly as per the carpet area statement, indicating the undivided share to be conveyed to each allottee, filed by the Promoter with this Authority and hosted in the website of this Authority at the time of granting registration for this real estate project by this Authority.

99. As the Promoter has handed over the common amenities and the common areas to the Association of Allottees on 31.03.2021, it is presumed that the Association of Allottees is maintaining the common amenities and the common areas with effect from 31.03.2021.

100. It is also seen that the Promoter has handed over the corpus fund to the Association of Allottees. This Authority directs the Respondent Promoter to furnish audited statement of account of the Corpus fund till the date of handing over the Corpus fund to the Association of Allottees before 31.03.2023. The Respondent Promoter shall also furnish audited statement of accounts for the maintenance charges collected from the Allottees and the maintenance expenditure incurred to the Association of Allottees before 31.03.2023.

101 Therefore, the question of directing the Promoter to deposit the corpus fund and the maintenance charges collected from the Allottees with this Authority till the Sale Deed is executed to Allottees does not arise.

102. Also the question of directing the Respondent Promoter to recognize the Complainant Association does not arise as this Association is the Association of Allottees as per the provisions of the Act and there is no provision in the Act which mandates recognition of the Association of Allottees by the Promoter.

103. Regarding action to be taken against the Respondent Promoter for not complying with the Section-3(1) of the Act, this Authority has already levied a penalty which has been paid by the Promoter and subsequently the Promoter has registered this real estate project with this Authority.

104. The Registration fee paid by the Promoter for registering this real estate project with this Authority is very much an expenditure relating to execution of this real estate project and hence the registration fees paid by the Promoter to this Authority very much forms an item of expenditure out of the total expenditure incurred by the Promoter on this real estate project. However, the penalty paid by the Promoter has to be borne by itself and cannot be passed on to the Allottees.

105. Therefore, the Promoter can very well charge the registration fee on the Allottees as part of cost of the dwelling units and accordingly this registration fees paid cannot be deducted from the corpus fund by the Promoter since the corpus fund can be used only for the purpose for which it has been created.

106. This Authority also directs the Respondent Promoter to complete all the pending common amenities, if any, before 31.03.2023.

107. Regarding the prayer to provide car park as per the DTCP approved plan, the Promoter has already filed the revised carpet area statement as per the DTCP approved plan on 31.08.2021 which has been hosted in the website of this Authority.

108. Regarding handing over of all original documents relating to this real estate project to the Association of Allottees, this Authority notes that the Respondent Promoter has submitted that it has handed over the relevant documents to the Association of Allottees on 27.03.2021 and 31.03.2021.

109. Regarding the prayer in I.A.No.6/2022 to declare the car park slot OCPF-07 as illegal as it is a driveway, this Authority directs the

Respondent Promoter to ensure that the car park is marked as per approved plan and as per the provisions of Tamil Nadu Combined Development and Building Rules, 2019 and that it is not part of a driveway.

110. Regarding the prayer in I.A.No.7/2022 relating to certain clauses in the draft sale deed, this Authority directs the Respondent Promoter to ensure conformity of the draft Sale Deed with the provisions of Real Estate (Regulation and Development) Act, 2016 and other applicable laws.

111. With the above findings and directions, these Complaints and the related IAs are disposed of.

Sd/-...26.10.2022  
MEMBER (M), TNRERA

Sd/-...26.10.2022  
MEMBER (J), TNRERA

Sd/-...26.10.2022  
CHAIRPERSON, TNRERA

/TRUE COPY/FORWARDED/BY ORDER

  
ADMINISTRATIVE OFFICER

HP  
26.10.22