IN THE ODISHA REAL ESTATE APPELLATE TRIBUNAL
AT BHUBANESWAR

OREAT Appeal No.124/2023
(Arising out of C.C. No.263/2022)

1)NBCC (I) Ltd., a Govt. of India Enterprise, SBG Office, Press Chhak, Bhubaneswar
2)NBCC (I) Ltd., a Govt. of India Enterprise, represented through Chairman-cum-Managing Director, Corporate Office, Lodhi Road, New Delhi.

...Appellants

-Versus-

1)NBCC (I) Ltd. Imperia Residents' Welfare Association (NIRWA), Bhubaneswar, represented through its authorised representative Sri Rajanikanta Mohanty.
2)Secretary, ORERA, Bhubaneswar.

...Respondents

For the appellants : Mr. M.K.Das, Advocate

For the respondent No.1 : Mr. S.N.Das, Advocate

For the respondent no.2 : Mr. B. Nayak, Advocate

CORAM :
Hon'ble Shri Justice P.Patnaik, Chairperson
Shri S.K.Rajguru, Judicial Member
Dr. B.K.Das, Tech./Admn. Member

O R D E R
20.3.2026

The appeal is taken up for final order.

2) Aggrieved over the order dtd. 8.6.2023 of the learned Odisha Real Estate Regulatory Authority passed in C.C. No.263 of 2022, the appellants who were the respondents therein have filed this appeal against the respondents praying to set aside the said order and to exempt the appellants from any

liability as well as to give them any other relief to which they are entitled. The respondent no.1 of this appeal was the complainant in the aforesaid complaint case and the respondent no.2 is the learned Regulatory Authority whose order has been challenged in this appeal.

3) Facts and circumstances leading to the filing of this appeal are as follows:-

On 19.8.2022 the present respondent no.1-association being the complainant filed the aforesaid complaint case against the present appellants before the learned Regulatory Authority submitting that, it being registered under the Societies Registration Act, 1860 consists of members who are owners of residential apartments in Blocks No.'A' & 'B' in the 'NBCC Imperia Residential Complex' developed by the respondents. Part occupancy certificate has been issued by the BDA in respect of the project comprising one block of 2B +S+13(3 BHK) multi-storied apartment, one block of 2B+S+17 (2BHK) multi-storied apartment out of one block of 2B+G+13 multi storied commercial building, one block of 2B+S+13 (3 BHK) multi storied apartment, one block of 2B+S+17 (2BHK) multi storied apartment, one G+4 (LIG) and S+3 storied residential apartment building executed on G.A. Department plot no. 4704 (P)in Khata No.1074 of Gadakana Mouza, subject to certain conditions. On 16.7.2022 possession of the apartments in residential blocks no.A & B were handed over to the respective owners. During joint visit of the residential owners of the complainant-association and the representative of the respondents, it was found that critical assets like HT/LT transformer, Panel WTP, STP, fire fighting systems were being

shared with the residents of the 48 flats of EWS towers. The complainant-association having objected to it, the respondent-developer assured to look into the matter. The complainant-association alleged that though an amount of Rs.2,45,66,000/- was there in the corpus fund, the respondent did not agree to refund the same on the plea that only after attending the maintenance issues the balance amount in the corpus fund would be refunded. Earlier, the respondent while taking the aforesaid amount from the members of the complainant-association had assured to refund the same at the time of handing over of the maintenance of the residential complex to the complainant-association. Though a joint site audit involving representatives of both the sides was conducted during 12.7.2016 to 16.7.2016 and interim observations and findings of the audit exercise were shared with the respondent on daily basis and a final audit report was prepared and made part of handover take over note, the respondent is now denying to sign the said handover takeover document on the plea that they had not participated in the audit. After completion of construction the respondent handed over the project to Techno Facility and Management Services, a facility management agency, w.e.f. 17.7.2020 for a period of two years. Members of the complainant-association lodged complaints with the respondent from time to time on issues relating to severe water seepages in basements, over head and underground tanks and bathrooms as well as kitchens of the flats. Complaints regarding construction defects and defects in critical assets like HT and LT electric panels, DG, STP, WTP, Fire system, solar system, lifts, plumbing, electric wiring in flats, CCTVs, intercom etc. were also made, but every time the officials of the respondent made verbal

assurance to carry out the rectifications before handing over of the entire complex with critical assets on or before 16.7.2022. The complainant-association alleged that due to extremely poor and unprofessional operation and maintenance management by Techno Facility and Management Service, the condition of all the critical assets deteriorated day by day. The main electrical power supply and lifts failed for weeks together, fire system was never activated, overhead and underground tanks were never cleaned and STPs were never run properly. It is further alleged by the complainant-association that, the respondent is delaying the refund of IFMS deposit on the plea that after de-snagging exercise the balance amount will be refunded, but the defects in the project having been arisen completely due to poor construction and maintenance to it, the complainant-association is no way responsible for the same and therefore the amount should have been refunded to its account without any deduction within 30 days from the date of handover of the maintenance to it i.e. on or before 15.8.2022. The complainant-association strongly objected to the sharing of the critical assets with the residents of the 48 flats of EWS tower as the critical assets were exclusively developed for the residential towers 'A' & 'B'. Though the respondent had agreed regarding this with the complainant-association on 20.7.2022, but then taking a U-turn communicated to the complainant that they could take a decision only after consultation with their consultants. It is further alleged that the conditions in the part occupancy certificate have not been complied with by the respondent. The complainant-association has claimed that their members are liable to pay maintenance charges only after 30 days from the date of taking over of the management and maintenance of the

common areas and facilities and accordingly the final occupancy certificate having been issued on 8.3.2021, they are liable to pay maintenance charges only from 8.4.2021. Till then it is the liability of the respondent-developer to maintain the project. Even documentary evidence available on record show that the complainant-association was formed on 30.6.2022 and therefore the respondent is supposed to refund the IFMS (Corpus fund) maximum by 30.7.2022. The avoidance of the respondent to refund the said amount to the complainant-association in spite of repeated requests and reminders is not only a gross violation of the contract but also amounts to unfair trade practice.

With the aforesaid claims and allegations, the complainant-association *inter alia* prayed before the learned Regulatory Authority for a direction to the respondent to rectify the structural defects and defects in critical assets, transfer the Interest Free Maintenance Security (IFMS) deposit of Rs.2,45,66,000/- with interest @24% per annum from 31.7.2022 together with pendetlite and future interest at the same rate, to disconnect all the critical assets of towers 'A' & 'B' from the EWS tower, relocate the 32 KVA pole structure with allocation of space and bearing relocation cost, handover copies of all the title documents, agreements, approved building plan, purchase order, service level agreements of all the critical assets and other statutory clearances, install electric transformer and sewerage treatment plant, provide separate parking space for the visitors and allot respective parking slots to the allottees, construct park garden as per the approved plan, handover the community hall and society office, install video door phone and intercom, make the CCTV surveillance functional and impose

penalty upon the respondent for contravention of sections 3,13,14 and 17 of the R E(R&D) Act, 2016.

Pursuant to the notice issued by the learned Regulatory Authority, the respondent-promoter appeared through his counsel and filed his written objection to the complaint submitting that, after the BDA allotted 5.05 acres of land on lease to it for a period of 83 years to develop commercial as well as residential complex in Public Private Partnership mode, the respondnet developed the residential project in the name 'NBCC Imperia' at Gajapati Nagar near Press Chhak, Bhubaneswar. Pursuant to the advertisement made by the respondent intending buyers applied for residential flats by making applications in the prescribed forms. As per the said application form period of maintenance was to start from the date of handover of 10% of the total apartments of the complex. The application form also contained the term that on handing over the maintenance to the Residents' Welfare Association (RWA) within two years of maintenance, the actual unspent amount, if any, in the account of IFMS was to be handed over by the NBCC to the RWA without interest. After completion of the residential project, NBCC obtained part occupancy certificate from the BDA on 4.1.2020. Thereafter, possession of the flats were handed over to the allottees who had cleared their dues in total. For maintenance of the residential complex, NBCC collected maintenance charges in advance from the allottees for two years. The handing over of possession of 10% of the total flats of the residential complex being completed by 16.7.2020, its maintenance for two years started from 17.7.2020. Accordingly, intimation notices were issued to the allottees by the NBCC. The maintenance

agreement had been signed by the allottees who had cleared their dues and taken possession of their respective flats. As per clause 2 (b) of the maintenance agreement, the maintenance agency was to maintain two separate accounts i.e. corpus deposit and the deposit of monthly maintenance charges. As per the maintenance agreement the monthly maintenance expenses were to be met from the account of monthly maintenance charges and other major costs or immediate expenses like installation, repair or replacement required for boundary walls, gates, guard rooms, maintenance office, pump rooms, electricity lines, water pipes, drainage, lifts, diesel generators, transformers, water pumps, sewerage treatment plants, white washing of the buildings and boundary wall etc. were to be met out of the corpus deposit account. In the event of the buyers defaulting in payment of the maintenance charges or other demands, the said amount may be adjusted from the corpus deposit account. However, in such case upon receipt of the outstanding dues, the same will be adjusted to the maintenance corpus deposit. As per clause 2 (g), if the advance maintenance charges collected for the period of two years fall short of meeting the maintenance cost of the entire year, the additional cost was to be adjusted from the maintenance corpus deposit account. As per clause 2 (h), the developer shall transfer the maintenance corpus deposit after deducting any amount utilized, without interest, to the association of apartment owners within 30 days of the taking over of the management and maintenance of common areas and facilities of the complex by the said association or at the end of the initial two years period, whichever is earlier. As per the condition in the application form, RWA was to be formed

within two years of maintenance period and accordingly NBCC intimated the residents several times to form the RWA for smooth handing over and taking over of the operation and maintenance. Accordingly, the residents of the project formed their association on 30.6.2022 in the name and style “NIRWA”. On 16.7.2022 NIRWA took over the operation and maintenance of the residential complex by appointing a maintenance agency. Audit was carried by the NIRWA in respect of different equipments installed in the residential complex and a snag list of maintenance work was issued by it to the NBCC. As the NBCC had not participated in the audit carried by the NIRWA it clarified that the snag list would be verified and checked and accordingly the maintenance work will be done from the corpus fund. When the NIRWA issued handing over and taking over letter to the NBCC the latter rejected it and himself issued the handing over and taking over letter on 16.7.2022. The respondent-developer further submitted that it never committed to separate the services of EWS from the residential complex as EWS was a part of the residential complex. The respondent-developer denied the allegation of the complainant-association that NBCC had deviated from its commitment to refund the corpus amount. It is also made clear by the respondent-developer that it had never denied for the rectification of the works pointed by the NIRWA. It is claimed by the respondent-developer that it was the NIRWA who had rejected its submission to make expenditure from the corpus fund and asked it to return the entire amount of corpus fund without any deduction in violation of the application form as well as maintenance agreement. The respondent-developer has pointed out that after expiry of two years of maintenance period,

it is not duty bound for maintenance of any flat and the NIRWA is free to take the service of any independent agency for rectification of the snags pointed out by it. The respondent further contended that it is the decision of the BDA to shift the electrical sub-station in the campus of the project and as the residential complex is having sufficient space to establish the electrical sub-station, the respondent had discussed the matter with NIRWA, but the latter has not given permission for the said establishment. So finding no other alternative the NBCC had to place the electrical sub-station in the EWS area. The respondent has claimed that NBCC having maintained the project through maintenance agency with full dedication and hard work for two years has rightly rejected the claim of the NIRWA that the expenditures incurred will have to be borne by the NBCC, but as a goodwill gesture it has requested M/s Techno Facility Management and Services and M/s. Kunal Structure India Ltd. to resolve the issues raised by NIRWA. The respondent has categorically denied to own the responsibility for the deterioration of the condition of the critical equipments on the ground that it was the NIRWA which did not allow it to complete the snags which it had pointed out. The respondent claimed that the occupancy certificate obtained on 8.4.2021 is for commercial complex and EWS but does not relate to the residential complex and so NIRWA's liability to take up the maintenance is not from 8.4.2021 to 7.4.2023 as claimed by the complainant-association and also there is no question of the NBCC to bear the cost of the maintenance till 7.4.2021. The question of payment of interest on corpus fund also does not arise as the NBCC is entitled to deduct from this fund the expenditures made towards maintenance. As regards the

seepage related issues the respondent has made it clear that only those cases in which there has been no modification by the residents on their own, will be attended by the NBCC. It is categorically denied by the respondent that critical assets of the project have the alleged defects. However, the respondent has assured to attend any defect which may have occurred solely due to the act of the contractor. The respondent has ruled out separation of services to the EWS tower on the contention that work has been carried out for the EWS as per the drawings and designs approved by the BDA and if at all there is any possibility of such disconnection, the same will be explored only after consultation with the B.D.A. and H & UD Department but the cost thereof has to be incurred by the NIRWA. As regards the complainant's prayer for parking spaces for the allottees and visitors, the respondent has claimed that the details of the same were published in the website of NBCC with intimation to the allottees and therefore the question of additional parking space for the visitors at this stage is not possible. The respondent has claimed to have provided space to the NIRWA for its society office where the said office is actually functioning. However, the provisions relating to the community hall and park garden having not been committed by the NBCC the said amenities cannot be provided at this stage. As regards the video door phone the respondent has made it clear that the said amenity is not within its scope to provide. The respondent has however confirmed that all the CCTV equipments installed were made operational during handing over and taking over process with the NIRWA. With the aforesaid contentions, the respondent prayed to dismiss the complaint with cost.

The learned Regulatory Authority on going through the aforementioned pleadings of the parties and the copies of the documents relied on by them in support of their respective pleas and also upon hearing them passed the impugned order dtd. 8.6.2023 with the direction to the respondent to return the amount in the corpus fund to the extent of Rs.2,45,66,000/- to the complainant-association, rectify the defects in the critical assets and other structural defects leading to seepage in the stilt floor, make the 32 KVA line functional, handover documents such as building plan, land documents and occupancy certificate to the association, install the electric transformer and the sewerage treatment plant at their proper location as per the approved plan, provide parking slots to the allottees, construct park garden in the project area as per the approved plan, handover community hall and society office to the association, make CCTV surveillance functional and install video door phone as well as intercom, within a period of two months, making it clear that in the event of failure to comply with the order the same shall be enforced as per law.

4) In the hearing of the appeal, the learned counsel for the appellant has submitted that, while directing the appellant to refund the corpus fund the learned Regulatory Authority has not gone through the terms and conditions in the maintenance agreement to which the flat owners of the residential project were signatories. It is clear from the said agreement that the expenditures for the maintenance of the residential complex will be borne from the maintenance fund and if the said fund falls short, then expenditures will be made from the corpus fund. As the maintenance fund had already been exhausted the expenditures for the snag list pointed out by NIRWA would have

to be borne from the corpus fund and therefore the direction to the appellant to refund the corpus fund to the extent of Rs.2,45,66,000/- and also to repair the alleged structural defects are in contravention of the terms and conditions of the maintenance agreement agreed to by the parties. It is further submitted that at no point of time the learned Regulatory Authority has asked the appellant the details of expenditures made from the maintenance fund and therefore the finding of the learned Regulatory Authority that NBCC has not provided the details of the maintenance fund exhausted, is illegal. It is further contended by the learned counsel for the appellant that though as per records of the appellant the total amount of corpus fund is Rs.2,32,54,200/-, the learned Regulatory Authority without any documentary evidence has directed for the refund of Rs.2,45,66,000/- and therefore the direction for refund of this amount which is based simply on the averment of the complainant-association in the complaint petition is bad in law. It is further contended that the direction of the learned Regulatory Authority to rectify the alleged defects in the critical assets and other structural defects leading to seepage in the stilt floor is also illegal in absence of any documentary evidence. It is further submitted that the snag list pointed out by the NIRWA are part of maintenance only but there are no structural defects. It is further submitted that during pendency of the complaint the 32 KVA line has been completed and RMU has been installed for the residential complex and handed over to the complainant-association and hence the order directing to make the 32 KVA line functional is infructuous. It is further submitted that though the appellant has already made several endeavours to handover documents like the building plan, occupancy

certificate etc. to the complainant-association, but the association was not ready to sign the paper of handing over of the documents. The learned counsel for the appellant has claimed that, the required documents are already there with the complainant-association but still the appellant is ready to submit the copies of the documents again to the association if it is ready to acknowledge the receipt of the same. It is further submitted that the appellant has already carried out the installation work of the electric transformer and sewerage system as per the approved plan and there being no deviation from the approved locations of these installations, the direction of the learned Regulatory Authority to install the electric transformer and sewerage system in proper location is without any evidence. The learned counsel for the appellant has claimed that the appellant has already provided parking slots to all the allottees and the same have been uploaded in the NBCC website also. Car parkings have been marked and the allottees are using their respective parking spaces to park their vehicles. The learned counsel for the appellant has also claimed that park garden has been constructed as per the approved plan but there being no provision for community hall in the building plan approved by the BDA, no separate space can be provided for the same. However, space has already been provided to the complainant-association for their society office. The learned counsel for the appellant has further claimed that 17 CCTV cameras have been installed by the appellant in the residential premises and all were functional during handing over of the common areas and facilities to the complainant-association. It is further submitted that the appellant has provided intercom points in each flat as per the scope of work of intercom facility

but the installation of video door phone is not within the scope of the work of the appellant and that is also not there in the agreement between the appellant and the respondent no.1. So, the direction of the learned Regulatory Authority in this regard is illegal. Further contending that the complaint petition filed by the complainant-association is not maintainable in absence of documents in support of the averments therein and also in view of the terms of the agreement between the appellant and the respondent no.1, the learned counsel has made the prayer as mentioned earlier in paragraph-2.

5) On the other hand, the learned counsel for the respondent no.1-association has stuck to the claims and allegations made in the complaint petition and therefore the same are not reproduced here to avoid repetition of facts. The learned counsel for the respondent no.1-association has termed the appeal as not tenable in the eye of law and also without any cause of action and accordingly has prayed for its dismissal.

6) The completion certificate of the project having not been obtained and the appellant-promoter having not taken the plea of completing the project prior to the commencement of the RE (R&D) Act, 2016, the project undisputedly comes under the purview of the Act. The finding of the learned Regulatory Authority that the provisions of the Act apply to the project also remains unchallenged. It is also not disputed that the appellant and the respondent no.1 are in a promoter-allottee association relationship in respect of the project “NBCC Imperia Residential Complex” at Gajapati Nagar near Press Chhak, Bhubaneswar.

7) In their direction to the appellant in the impugned order to refund corpus fund to the extent of Rs.2,45,66,000/- to

the respondent no.1-association, the learned Regulatory Authority have observed as follows :

> "The fact of advance maintenance amount collected is admitted. The agency who took over charge must have collected the monthly maintenance charges from the allottees for the purpose of continuing maintenance for a period of two years. The details of the amount collected and spent for the purpose of maintenance has not been produced before this Authority. In absence of such evidence in detail, it is not possible to say that the maintenance agency has spent more than what has been collected from the flat owners. In such a situation, we are unable accept the plea of the respondents that they have incurred some expenses from the corpus fund collected from the allottees in advance. The company should not have retained the corpus fund with him after completion of maintenance by the agency, for a period of two years."

The appellant-promoter has challenged the aforesaid reasoning of the learned Regulatory Authority on the plea that the finding of the learned Regulatory Authority is without any supporting evidence and is also not as per the terms and conditions of the maintenance agreement. The appellant has referred to clause 2 (b) of the Maintenance Agreement which clearly states that, the maintenance agency shall maintain two separate accounts, one for the maintenance of corpus deposit and the other one for the monthly maintenance charges. While the monthly maintenance expenses will be met from the second account, expenses relating to any sudden or major installation, repair or replacement required for common structures like boundary walls, gates, guard rooms, maintenance office, pump rooms, exterior building facade, electricity lines, water pipes, drainage, lifts, diesel generators, transformers, water pumps, painting, sewerage treatment plant, water filtration plants, white washing of the buildings, boundary wall etc. will be met out of

the maintenance corpus deposit. In the event of default in payment of maintenance charges by the buyers, the said amount may be adjusted by the maintenance agency from the maintenance corpus deposit. However, upon receipt of outstanding dues, the same will be adjusted to the maintenance corpus deposit. Clause no. 2 (g) of the maintenance agreement provides that the calculation of the monthly maintenance charges has been calculated on estimation. However, if the advance maintenance collected for the period of two years falls short of meeting the maintenance cost for the entire year, the maintenance agency shall not in any manner be liable for the same and such additional cost, as the case may be, will be adjusted from the maintenance corpus deposit. The appellant has contended that as the maintenance account has already been exhausted and the term of the maintenance agreement provided that expenditures for maintenance of the residential complex will be borne from the corpus fund if the maintenance fund falls short, the expenditure for the snag list pointed out by the respondent no.1-association would have to be borne out of the corpus fund. The appellant has taken the further plea that the total corpus fund amount lying with it as per record is Rs.2,32,54,200/- and not Rs.2,45,66,000/- as claimed by the respondent no.1-association. It is however notable that the show cause of the appellant to the complaint petition does not disclose what was the total deposit in the maintenance account, how much was spent for the maintenance and what was the excess expenditure amount required to be withdrawn from the corpus fund account. The appellant in his show cause to the complaint has not even disputed the amount of Rs.2,45,66,000/- which the respondent no.1-association has claimed to be the

total deposit in the corpus fund. It is therefore rightly observed by the learned Regulatory Authority that evidence showing details of the amount collected and spent for the purpose of maintenance has not been produced before them. Only during the hearing of the appeal, the learned counsel for the appellant referring to the Annexure-M series of his rejoinder dtd. 30.4.2024 has submitted that a total amount of Rs.83,71,512/- was deposited in the maintenance account by the allottees of the residential complex except two flat owners who had not taken possession of their respective flats and the deposit in the corpus fund by the allottees of the residential complex was Rs.2,32,54,200/- in total. It is further submitted by the learned counsel for the appellant that, as the total expenditure towards maintenance was Rs.1,18,85,606.76, the excess expenditure amount of Rs.35,14,094.76 has already been recovered from the aforesaid corpus fund deposit amount. After deducting an amount of Rs.1,01,201/- towards electricity bill for the period from 17.7.2020 to 16.7.2022 of the flat owners, who have not taken possession, the remaining balance in the corpus fund account is Rs.1,96,38,904.34. This is the corpus fund amount which according to the learned counsel for the appellant is refundable to the respondent no.1-association. As already mentioned earlier, the aforesaid facts presented by the appellant during the appeal are new ones as the same were neither pleaded nor proved in the hearing of the complaint case. On going through the Annexure-M series, the same are found to contain typed out tabular details of Maintenance charges and Corpus fund charges collected from 118 allottees of the NBCC Imperia residential complex and also a calculation sheet showing payments made from the maintenance account to

different service providers for various works, the total deposits in the maintenance fund account and the corpus fund account, the excess amount of expenditure towards maintenance already recovered from the corpus fund deposit and the total corpus fund amount refundable to the NIRWA after deduction of the electricity bill of two allottees (who have not taken possession) for the period from 17.7.2020 to 16.7.2022. However, there is no endorsement or certification of the Annexure-M series with regard to its aforesaid contents. The appellant should have produced copies of the bank statement of the maintenance account for the period from 17.7.2020 to 16.7.2022, the audited income and expenditure statement signed by the representatives of the maintenance agency, the promoter and the association of allottees showing collection of maintenance charges and expenses for the purposes as shown in Annexure-M series together with the verification certificate of the Auditor, bills/invoices from the vendors/ service providers showing the cost for the services as mentioned in Annexure-M series and payment proofs like bank transfer records/cheques/UPI payment receipts/cash vouchers etc. showing the bills/invoices to have been actually paid. Apart from the non-production of the aforesaid essential documentary evidence, it is also notable that serial nos.15,16,17, and 18 of the calculation sheet in the Annexure-M series show expenditures of Rs.1,17,500/-, Rs.57,534/-, Rs. 76,000/- and Rs.43,500/- respectively towards inspection fees to electricity department and electrical installation (other than DG set) made from maintenance fund beyond the period of maintenance taken up by the maintenance agency “Techno Facility and Management Services” i.e.

17.7.2020 to 16.7.2022. The aforesaid expenditures are therefore not acceptable.

On perusal of the maintenance agreement, it is seen that almost all the liability clauses therein are for the buyers and the maintenance agency has not been made accountable for any issue relating to maintenance. There is absolutely no term as to how the maintenance charges received from the allottees and the expenditures made there from for maintenance are to be maintained in a fair manner. There is absolutely no clause providing safeguard for a fair management of the maintenance account. Hence, in the light of the observation of the Hon'ble Supreme Court of India in Pioneer Urban Land & Infrastructure Ltd. Vrs. Govindan Raghavan (2019 SCC OnLine SC-458), the absence of the terms relating to a fair management of the maintenance account has certainly rendered the maintenance agreement a one sided contract.

The appellant-promoter having failed to produce proper accounts of the collected maintenance charges and expenditures there from together with supporting documents, his claim that the maintenance account had been exhausted and therefore the excess expenditure of Rs.35,14,094.76 towards maintenance had to be made from a total deposit of Rs.2,32,54,200/- in the corpus fund account and accordingly he is liable to refund only a corpus fund deposit of Rs.1,96,38,904.34 to the respondent not.1-association, is not acceptable.

The learned counsel for the respondent no.1-association during hearing of the appeal has submitted that though in the complaint case the association had claimed refund of an amount of Rs.2,45,66,000/- towards corpus fund deposit,

but two of the allottees having not paid their contributions, the respondent no.1-association now agrees to be refunded a corpus fund amount of Rs.2,32,54,200/-.

8) The learned Regulatory Authority's direction in the impugned order to make the 32 KVA line functional has been termed by the appellant as infructuous on the contention that during pendency of the complaint case he had made the 32 KVA line functional and after installation of the RMU in the residential complex the same has been handed over to the respondent no.1-assoication. The respondent no.1-association has not disputed this claim of the appellant. In fact, the respondent no.1-association in its complaint petition had averred that a 32 KVA 4 pole structure was installed and commissioned by the appellant at a corner plot adjacent to the EWS complex with due approval of the CESU, BDA, TPCODL and other concerned departments. The respondent no.1-association had also submitted in the complaint that power connection was given from the aforesaid pole structure to the residential towers, the EWS tower and the commercial complex. The respondent no.1-association had though prayed for a direction to the appellant to relocate the pole structure by allocating another space for it and to bear the relocation cost, but the learned Regulatory Authority with the finding that the EWS tower is a part of the same project wherein the residential towers exist, has categorically held that the facilities given to the EWS tower cannot be disconnected. The respondent no.1-association has not challenged this finding of the learned Regulatory Authority. So, the appellant having already commissioned the 32 KVA 4 line, is hereby directed to ensure

the power connection functional in respect of all the towers of the project including the residential towers ‘A’ & ‘B’.

9) As regards the learned Regulatory Authority’s direction to handover documents such as building plan, land documents and occupancy certificate to the respondent no.1-association, the appellant while admitting to have the copies of the said documents with him and showing his willingness to hand over the same to the respondent no.1-association has made a condition that on the approach of the respondent no.1-association and its acknowledging the receipt of the copies of the documents, he is ready to provide the same. In this context, the direction of the learned Regulatory Authority to the appellant to handover the land documents, building plan and occupancy certificate to the respondent no.1-association is confirmed subject to the association’s acknowledging the receipt of the same.

10) With regard to the learned Regulatory Authority’s direction to install the electric transformer and the sewerage plant at their proper location as per approved plan, the appellant has claimed that these installations are already as per the approved plan and there has been no deviation in the locations of these installations and therefore the direction of the learned Regulatory Authority is without any evidence. On perusal of the complaint petition, the same nowhere shows the allegation of the respondent no.1-association that the electric transformer and the sewerage treatment plant are not at the locations as per the approved plan. The learned Regulatory Authority has also not discussed any evidence on record for their arriving at this conclusion. In the show cause to the appeal memo also, the respondent no.1-association has not disputed the claim of the

appellant. In this context, it is held that the electric transformer and the sewerage treatment plant have already been installed by the appellant in their proper location as per the approved plan.

11) The appellant has claimed that he had already provided parking slots to all the allottees and the same had been uploaded in the website of the NBCC (I) Ltd. The appellant has further asserted that marking of the car parking space had been done and allottees are using their respective space to park their vehicles accordingly. This claim of the appellant has not been assailed by the respondent no.1-association in its show cause to the appeal memo and even in the complaint petition also no allegation relating to non-provision of parking space to the allottees had been made. The learned Regulatory Authority has also not made discussion of any material while directing to allot parking spaces to the allottees in the impugned order. So, the claim of the appellant that he has already provided parking space to all the allottees with uploading of the said fact in the NBCC(I) website and has also done the marking of car parking spaces and that the allottees are using their respective spaces to park their vehicles, is acceptable.

12) In response to the learned Regulatory Authority's direction to construct park garden in the project area as per the approved plan, the appellant has claimed that he has constructed the park garden as per the approved plan and therefore the direction made by the learned Regulatory Authority is without application of mind. It is seen that the respondent no.1-association in its complaint before the Regulatory Authority has made no allegation with regard to non-construction of the park garden in the project as per the approved plan and the

learned Regulatory Authority has also not discussed anything while allowing the prayer made by the respondent no.1 for construction of the park garden as per the approved plan. The claim of the appellant with regard to construction of the park garden has also not been disputed by the respondent no.1 in its show cause to the appeal memo. So, it is held that the appellant has constructed the park garden in the project as per the approved plan.

13) As regards the direction to handover community hall and society office to the association, the appellant has claimed that society office has already been provided to the respondent no.1-association inspite of the fact that there is no provision for the same in the approved plan of the BDA. The appellant has further claimed that the respondent no.1-association has been running its society office from the said space provided by it. The appellant has however challenged the direction of the learned Regulatory Authority to provide community hall to the respondent no.1-association on the contention that the provision for a community hall is not there in the building plan approved by the BDA and the members of the respondent no.1-association knew it while signing the application forms and taking the possession of their respective flats. According to the appellant, the direction to provide the community hall is illegal for the reason that the learned Regulatory Authority has not gone through the plan and agreement. The respondent no.1-association having not made any allegation of non-provision of community hall in the complaint and also not disputed the aforesaid claim of the appellant, it is held that the appellant cannot be compelled to provide a community hall to the respondent no.1-association.

14) The appellant has claimed to have installed 17 CCTV cameras as per the scope of the work in the residential premises and according to him all the cameras were functional while the maintenance and management of the common areas and facilities were handed-over to the respondent no.1-assocation. The respondent no.1-association except making prayer in the complaint to make the CCTV surveillance functional in the project has no where alleged in the averments that CCTVs are not functioning in the project. The aforesaid claim of the appellant in the appeal memo has also not been disputed by the respondent no.1-association in its show cause. It is therefore held that the CCTV cameras have been installed and are also functional in the residential premises of the project.

15) While claiming that intercom points have been provided in each flat of the residential complex, the appellant has challenged the learned Regulatory Authority's direction to install video door phone on the ground that the same is not within the scope of the amenities provided by the NBCC (I) Ltd. and as such there is no agreement between the appellant and the respondent no.1 in this regard. The respondent no.1-association having not disputed the aforesaid claims of the appellant, the same are accepted.

16) In view of the detailed discussions of facts and law made in paragraphs-6 to 15, we are of the considered opinion that, the appellant is liable to return a corpus fund amount of Rs.2,32,54,200/- to the respondent no.1-association. The appellant shall also rectify the defects in critical assets and other structural defects (except the defects in individual flats) and also handover the documents like the authentic copies of the building plan, occupancy certificate and other necessary documents

relating to the project land to the respondent no.1-association, However, the direction to make the 32 KVA line functional, install the electric transformer and sewerage treatment plant at their proper location as per the approved plan, provide parking slots to the allottees, construct park garden in the project area as per the approved plan, handover the society office to the respondent no.1-association and make the CCTV surveillance functional inside the residential complex having already been complied with by the appellant, the same need no further compliance.

In the result, the appeal is allowed, in part, on contest against the respondents.

The respondent no.1-association be paid the amount of Rs. Rs.2,32,54,200/- towards corpus fund out of the statutory amount deposited by the appellant and the balance statutory amount, if any, alongwith the accrued interest be returned to the appellant on proper identification and application after the expiry of appeal period.

Send an authentic copy of this order along with the record of the complaint case No.263 of 2022 to learned Regulatory Authority for information and necessary action. Also send a copy of this order, each to the appellant and the respondent no.1.

Shri Justice P.Patnaik
(Chairperson)

Shri S.K.Rajguru
(Judicial Member)

Dr. B.K.Das
td (Tech./Admn. Member)