

**BEFORE THE UTTARAKHAND REAL ESTATE APPELLATE TRIBUNAL
AT DEHRADUN**

Present: Hon'ble Mr. Justice U.C.Dhyani

----- Chairperson

Hon'ble Mr. Rajeev Gupta

-----Member

APPEAL NO. 21 OF 2019

Ganga Realtor Private Limited, O/at: C-7, Suri Chowk, Race Course, Dehradun
through its authorized representative, Mr. R.N.Gupta.

..... Appellant

vs

Palm City Resident Welfare Association Through Its President, O/at: 1st Floor,
Commercial Complex, Palm City, Dehradun.

.....Respondent

Present: Sri Shivam Nagalia, Advocate for the appellant.

Sri Somesh Dobhal, Advocate for respondent.

JUDGMENT

DATED: JUNE 22, 2021

Per: Sri Rajeev Gupta, Member

1. The promoter-appellant has filed this appeal against the order dated 12.07.2019 of the learned Real Estate Regulatory Authority (RERA), Dehradun. The respondent is the Resident Welfare Association of the project. The impugned order was passed pursuant to a complaint filed by the respondent in RERA stating that M/s Ganga Realtors have not obtained the Completion Certificate of the Palm City from Mussoorie Dehradun Development Authority (MDDA) and the builder has not got the registration of the project done in RERA. It is also stated in the complaint that the builder has not complied with the provisions of the sanctioned plan and it is prayed that the builder (appellant herein) be directed to complete all the features mentioned in the scheme brochure such as Swimming Pool, Gymnasium, Club House, School for children, provision for rain water harvesting and proper drainage and sewage, within a time bound schedule and possession of the same be also handed

over to the complainant. It is also mentioned in the complaint that the promoter did not apply for sewage connection and for the same, the residents had to pay charges/fine and that the railing of the shopping complex was also built by the residents with their own money. It is also prayed that M/s Ganga Realtor Pvt. Ltd. be punished for not getting the project registered with RERA.

2. In their replies, M/s Ganga Realtor Pvt. Ltd. have stated that RERA does not have the jurisdiction to hear the complaint and that the complaint is also barred by limitation. They have not violated any provision of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as 'the Act'). They had completed the Palm City Project in year 2012 itself and according to Section 15-A of the U.P. Urban Planning and Development Act, 1973 (hereinafter referred to as 'the Act of 1973'), the Completion Certificate shall be deemed to have been granted on 10.10.2012. In view of their written submissions, they have requested RERA to dismiss the complaint.

3. Learned Authority below framed the following issues for adjudication:

- (i) Whether the Authority has the jurisdiction to hear the complaint?
- (ii) Whether the complaint is barred by limitation of time?
- (iii) Whether the promoter has defaulted in providing the facilities in the project as mentioned in the complaint?
- (iv) To what relief, the complainant is entitled?

4. According to the impugned order, the decision of learned Authority below on issues No. (i) & (ii) is as follows:

According to the details provided by the complainant and information sought from MDDA on the complaint, map dated 23.05.2008 and map dated 09.03.2009 have been sanctioned in the name of M/S Ganga Realtor Pvt. Ltd. MDDA has also informed that against the

sanctioned map dated 09.03.2009, Completion Certificate has not been issued. According to the sanctioned maps, development of plots, EWS Housing, Commercial Complex, School, Park, road etc., drainage and other facilities have been mentioned in the project. The sanction is valid upto 5 years i.e. upto 08.03.2014. The promoter has filed a sale deed dated 02.11.2012 in favour of Dr. Sushma Gupta of one Eco-home No. A-101, probably to prove that the project had been completed in the year 2012. The complainant has filed the copy of the brochure published and distributed for the project according to which only Villas are proposed in this project.

The promoter has stated that they had sent a written notice to MDDA on 11.07.2012 stating that the work has been completed and on the same, since no reply was received from MDDA within a period of three months, the Completion Certificate of the project is deemed to have been received. A perusal of this letter dated 11.07.2012 reveals that this letter is a reply, given by the promoter to MDDA, to the sealing order/letter dated 09.07.2012 issued by MDDA. The promoter has also filed a copy of letter dated 21.03.2012 requesting for Completion Certificate. The promoter's contention is that according to Section 15-A of the Act of 1973, the Completion Certificate is deemed to have been issued, if the same is not issued within a period of three months and accordingly, the Completion Certificate of this project has been granted on deemed basis.

Sub section (1) Section 15-A of the Act of 1973 is as follows:

"15-A Completion Certificate.-(1) Every person or body having been granted permission under sub-section (3) of section 15, shall complete the development according to the approved plan and send a notice in writing of such completion to the Authority, and obtain a completion certificate from the Authority in the manner prescribed or provided in the bye-laws of the Authority.

Provided that if completion certificate is not granted and refusal to grant it is not intimated within three months after receipt of the notice of completion, it shall be deemed that the Completion certificate has been granted by the Authority."

[Emphasis supplied]

The learned Authority below has observed that according to the above Section 15-A, the process of obtaining the Completion Certificate has to be in the manner prescribed or provided in the Byelaws of the Local Development Authority. Promoter has not sent the information/application for grant of Completion Certificate in accordance with the Byelaws. '*Bhawan Nirman Evam Vikas Upvidhi/Viniyam-2011*' are the applicable Byelaws in this matter, whose para 5.8 is regarding Completion Certificate which requires that after completion of the development work *Anugyapit Takniki Vyakti* (licensed technical person) shall provide the information and with the same shall submit copy of the map/computerized drawing in C.D., on the basis of which, the Completion Certificate shall be issued. *Anugyapit Takniki Vyakti* (licensed technical person) implies such professional, who is registered under *Bhawan Nirman Evam Vikas Upvidhi/Viniyam-2011* under the relevant provisions of the Act of 1973 or under some Body established under some Act under which, the above profession is governed or is a Structural Engineer empanelled by the Housing Department of Uttarakhand Government.

The promoter has not placed any evidence of sending the information/application for getting Completion Certificate to MDDA under the Section 15-A of the Act of 1973 read with the Byelaws and the promoter's letter dated 11.07.2012 or letter dated 21.03.2012 sent to MDDA are in no way the information/application under Section 15-A of the Act of 1973. In this situation, neither the Completion Certificate has been received nor the application to obtain the Completion Certificate has been made according to the provisions mentioned in the Act and Rules, the Completion Certificate for the Doon Palm City project cannot be held to have been granted on deemed basis.

It has also been stated in the complaint that instead of single housing units, multistoried buildings have been made in 43 plots by the promoter and the school has also not been provided. In the map

sanctioned by MDDA, group housing (probably EWS) has been shown in a big plot and the remaining plots are for single housing. Plots of land have also been shown for school and commercial purposes. In the publicity material, issued by the promoter about the luxury Villas in Palm City, educational facility for children has been mentioned.

In its written replies, the promoter has not mentioned anything about the construction of multistoried buildings in plots meant for single housing and for school, it has been stated that the same was not constructed on the refusal for the same by the homebuyers and the land for the same is lying vacant. Thus, the promoter has made changes and not constructed the project as per the declared and sanctioned map and not made arrangement for the school and on this basis, it is clear that the project is incomplete, i.e. ongoing.

On the instructions of the RERA, its Technical Officer, Sri Sarvesh Mittal made a site inspection on 27.06.2019 in the presence of both the parties. According to the inspection report also, the school and club house have not been constructed, illegal construction has been made, which has been sealed by MDDA and on some plots, the land owners have constructed separate units on different floors. Regarding common infrastructure/facilities, it is clear that there is lack of upkeep/maintenance which has resulted in ending of some facilities and for their construction, both the sides have made mutually opposite claims.

According to first proviso to Section 3(1) of the Act, projects that are ongoing on the date of commencement of this Act and for which the Completion Certificate has not been issued, are required to be registered with the RERA and the Act becomes applicable to such projects and RERA has the jurisdiction to take action/hear the complaints about such projects.

The promoter has also contended that the possession of the project has been handed over in 2012 and since then more than 5 years have elapsed and according to Section 14(3) of the Act, the time limit for removal of defects/shortcomings of the construction is upto five years of handing over the possession. The learned Authority below has observed that the promoter has not produced any such document, in which the possession of the common use facilities/infrastructure mentioned in the complaint is proved to be given to the *Samiti*/Association of the allottees or Competent Authority. The responsibility to give possession is on the promoter under Section 17(1) of the Act. When the handing over of possession is not proved, the ground of completion of 5 years time period, as stated by the promoter, cannot be accepted.

The learned Authority below has observed that when the construction is not complete as per the sanctioned and declared plan and Completion Certificate of the project is not received and possession of common use infrastructures/facilities has not been handed over to the *Samiti*/Association of allottees or to competent authority and in between, the Act has become effective in the Uttarakhand State from May, 2017, then the responsibility of the compliance of the provisions of the Act comes on both the promoter and the allottees.

On the basis of the above conclusions, the learned Authority below has held that it has the jurisdiction to hear the complaint and the complaint is not barred by limitation of time.

5. Regarding the issue No. (iii), learned Authority below has held that according to the documents, presented by the complainant, it is clear that the Swimming Pool, Gym, Club house, Educational facility for children, Rainwater harvesting and arrangements for drainage according to the sanctioned map were to be made in the project. In the layout plan of the sanctioned map, a place for school has been marked and place for group housing (Probably EWS) has also been marked. In its written reply to the complaint, the promoter has said that the full drainage system was

constructed and swimming pool and Gym were also constructed which are present even today. It is also said that the promoter has additionally laid the sewer line and got it connected to the government sewer line. It is further said that the complainant organization and other buyers of the project had asked the promoter not to construct the school and presently, the land for school is lying vacant. It is also said that due to construction of additional flats, load on water, sewerage and road has not increased.

Learned Authority below has observed that according to section 14(2)(i) of the Act, the promoter has no right to make any change in the sanctioned map. Even otherwise, according to the Act of 1973 also, no construction different from what is sanctioned can be done. It is a matter of common understanding that the facilities which were proposed for a certain number of persons according to the sanctioned map and publicized information, will be subjected to additional burden due to the increase of additional persons. The sealing order letter dated 09.7.2012 issued by the MDDA and its reply by the promoter *vide* letter dated 11.07.2012 make it clear that the promoter had constructed multistoried residential houses on plots meant for single housing. Construction of multistoried buildings will naturally lead to extra burden on the common use infrastructure/facilities of the earlier sanctioned project which had plots for single housing. In addition, the promoter has not produced any proof of handing over the possession of common use infrastructure/facilities constructed/developed in the project to the *Samiti*/ Association of allottees. According to Section 17 of the Act, it is the responsibility of the promoter to hand over their possession to the *Samiti* of allottees or Competent Authority. According to Section 11(4)(d) of the Act, provision and maintenance of essential services is the responsibility of the promoter till they are taken over by the *Samiti* of allottees.

In the above situation, the responsibility of maintenance and upkeep of the common infrastructure/facilities, which have been developed/constructed by the promoter, is of the promoter and construction/development of the infrastructure, which has not been constructed/developed, is also the responsibility of the developer/promoter. The promoter has defaulted in the construction/ development of common infrastructure and the maintenance/ upkeep. Under Section 34(f) of the Act, RERA is authorized to ensure compliance of the obligations cast upon the promoter. Not only this, by constructing additional houses against the sanctioned map, the promoter has caused additional burden on the common infrastructure/facilities.

6. Regarding issue no. (iv), learned Authority below has held that the complainant is entitled to the desired reliefs according to which as per the promises made in the project, the common infrastructure/facilities, which have not been built by the promoter are required to be built/developed by the promoter and up-to-date maintenance and upkeep of the constructed common infrastructure/facilities is also required to be done by the promoter. Afterwards, the possession and the responsibility of future maintenance/upkeep of these common infrastructure/facilities is required to be handed over to the *Samiti*/Association of the allottees meaning here the complainant/Palm City Resident Welfare Association (or Competent Authority). Consequently, learned Authority below has passed the following order:

- (i) In the housing project named 'Doon Palm City' those common infrastructure/facilities like school etc. which have not been constructed as per the sanctioned map/promises made, be constructed/developed at once by the promoter. For this, the promoter may make arrangements for extension of the sanction of the map or re-sanction of the map from MDDA.

- (ii) The up-to-date maintenance and regular upkeep of the common infrastructure/facilities constructed by the promoter, be done by the promoter.
- (iii) After the up-to-date maintenance/upkeep of the common infrastructure/facilities, their possession be handed over to the *Samiti* of allottees/Palm City Resident Welfare Association/Competent Authority.
- (iv) Keeping in view that the project is ongoing, the promoter to get the registration of the project done in RERA.

The learned Authority below directed the promoter to produce a time bound plan for compliance of its order and imposed a penalty of Rs. 30,000/- on him for adopting improper work procedure about the project and for not following his responsibility under the Act/Rules.

7. According to the memo of appeal, the learned Authority below erred in appreciating the facts which were put forth before the learned Authority in respect of procuring the Completion Certificate. When the appellant had got the permission from the Competent Authority to construct/develop the project, at that time, the terms and conditions of the Commencement Certificate at Point No. 8 clearly stated that on completion, the appellant should have to simply intimate the authority within one month of the said completion of the work. The appellant after completion had sent a letter to the MDDA dated 21.03.2012 but did not receive any reply to the same. As per Section 15-A of the Act of 1973, if the competent authority does not grant a Completion Certificate within three months, then a Completion Certificate is deemed to have been granted. If anyone is to be held responsible for the Completion Certificate not being granted, it is the Competent Authority and the appellant cannot be made liable for the same. The appellant had handed over all the maintenance to the Association in 2012 and same can very well be seen from the fact that the respondent through its President had issued an email dated 06.09.2012 whereby the Association had written to the

appellant to give an NOC in respect to the changing of electricity connection. The said NOC was drafted by the President of respondent-Association in 2012 and the appellant had issued the said NOC in 2012.

8. The memo of appeal further states that the complainant association had started maintaining the said premises back in 2011 as is evident from the Bank Account statements of the complainant association, which clearly show that the association had started collecting and using the maintenance money from 2011 itself. The Association has raised the issues, which have been stated in the complaint back in 2011 and the same were resolved by the appellants. It can be clearly seen in the letter dated 25.12.2011 of the respondent and the reply of the appellant dated 14.1.2012 that all the required work was complied with. Regarding the school not being made, it was informed to learned Authority below that in a minutes of the meeting with the Association, the idea of making the school being non-feasible was dropped by the Association. The learned authority below has majorly erred in holding that it had the jurisdiction to try the matter at hand. Since as per Section 15-A of the Act of 1973, deemed completion was already granted, hence, the said project would not fall under the ambit of RERA. Further, since the project has been completed in 2011-12 and has been handed over more than 7 years back, hence under law, the complaint was hopelessly barred by time. The swimming pool was constructed by the appellant but because of lack of use by the complainant association and lack of maintenance by the association, it has been left to the natural wear and tear. From the submissions of the appellant before the lower Authority and also looking at the documents filed, it can be clearly seen that the common amenities were handed over to the association in 2012 and that it is the Association who is maintaining the said project ever since. The Gym was also constructed by the appellants but the Association has not maintained the same. It is also pertinent to note that the road of the said project, which was made and completed in the year 2012 by the appellants, was further re-carpeted by the MDDA in 2016, thus clearly showing that the

maintenance of the roads and other amenities has been taken over by the residents of the project. No Government agency would have bothered with the re-carpeting of the road if the said project would have been incomplete. Learned Authority below has erred in holding that the appellant needs to get the sanctioned map extended from the MDDA; the appellant needs to repair wear and tear done in the said project; common areas need to be handed over to the association; the appellant is required to register the project with RERA and learned Authority has erred in imposing damages of Rs. 30,000 on the appellant. The impugned order dated 12.07.2019 passed by RERA is illegal, *malafide* and it is prayed that the same may be quashed and set aside.

9. After admission of the appeal, an application dated 21.09.2019 for taking additional documents on record was moved on behalf of the appellant. The list of these documents is as below:

1. Letter by Palm City Welfare Association dated 25.10.2016 to UPCL for change of electricity connection.
2. Letter dated 25.11.2012 by Ganga Realtors Pvt. Ltd.
3. Letter dated 16.11.2011 by Ganga Realtors Pvt. Ltd.
4. Photographs of the amenities.
5. Minutes of meeting dated 13.08.2017.

10. The respondent has filed objection against the above application dated 21.09.2019 stating that this application is against the Rule 27 of Order 41 CPC and that these documents are old documents and the appellant has not provided any reasonable excuse for not presenting them before the RERA, even though, ample opportunity was provided to the appellant for filing the same. It is nowhere mentioned in the application that what is the relevancy and importance of these documents. The ulterior motive of the appellant is to start de-novo proceedings of the dispute. The application is also liable to be rejected since the same is not supported by an affidavit.

11. After hearing both the parties on the above application and objections thereon, this Tribunal observed on 21.10.2019 that the admissibility of additional evidence thus filed, shall be considered at the time of hearing of appeal, on merits in accordance with the decision rendered by Hon'ble Apex Court in Union of India vs. Ibrahim Uddin & Another, (2012)8 SCC 148. Hon'ble Apex Court has observed in para 49 of this decision that an application under Order 41 Rule 27 CPC is to be considered at the time of hearing of the appeal, on merits, so as to find out whether the documents or the evidence sought to be adduced, have any relevance/bearing on the issues involved.

It may be clarified here that the learned Authority below and this Appellate Tribunal are not bound by the procedure laid down by CPC and, subject to the provisions of the Act, have the powers to regulate their own procedure.

12. Further an affidavit dated 28.11.2019 has been filed by Mr. Ram N. Gupta, Director, Ganga Realtor Pvt. Ltd. stating that none of the residences or plots of the Ganga Realtor Pvt. Ltd. had been sealed by the MDDA as the same had been handed over prior to the sealing notice with just one exception of one residence for which possession had been offered but the same had not been taken over by the buyer. All the residences had been developed and have been handed over to the buyers much prior to the sealing notice and none of the residences barring one has been sealed by the MDDA. The residences which are sealed are constructions which are done on plots which were sold by the appellant company back in 2008 to Mr. Sanjay Bansal and Mrs. Seema Bansal. The project had been completed back in 2012 and all the residences/plots have already been sold and possession of the same has also been handed over back in 2011/12. Hence, the present project cannot be considered to be an ongoing project.

13. Objections against the documents presented by the appellant were again filed on behalf of the respondent and the learned Counsel for

the respondent was granted time to file documents in support of his objections. The documents filed by the respondent in rebuttal are the extract of Khatauni, Khata No. 1545, village Dehrakhas and copy of the minutes of the meeting dated 13.10.2019.

14. We have heard learned Counsel for the parties who have also filed written submissions and perused the Xerox copy of the RERA record regarding online complaint No. 193/2018, in which impugned order has been passed.

15. Learned Counsel for the appellant has argued that RERA has gone beyond the prayers of the respondent and illegally directed the appellant to complete the construction of school which is not possible since the society itself has imposed a restriction on outside children to come and study there. Further the learned Authority below has illegally directed the appellants to again get the sanctioned map re-sanctioned. The impugned order has directed the appellants to repair the common facilities and to maintain the common facilities. It is extremely important to note that the possession of the units of the project have already been handed over back in 2011/12. It is also pertinent to note that even if for the sake of argument it is to be found that the present project comes under the jurisdiction of RERA, then also under Section 14(3) of the Act, it is clearly stated that the promoter shall be liable for any sort of lack of quality or workmanship for only 05 years from the date of possession. The members of the society have been handed over their respective units as well as the common areas since 2011 and same can be gauged from the fact that the registration of the resident welfare association had happened on 25.01.2012 as can be seen from the society registration certificate. The association president had vide an email dated 06.09.2012 written to the director of the Appellants and had sent a No Objection Certificate draft whereby it was categorically mentioned that all the common areas including water, security, street lights, parks, swimming pool, gymnasium, hall, office etc. have been handed over and the

association wanted the electricity connection to be changed from the name of the appellants to the Respondent society. The most important proof that the society has taken over the common amenities can be seen from the fact that the Respondent society has been maintaining a bank account in which the members have been depositing the maintenance amounts since July 2011. The impugned order has illegally directed the appellants to register the project before the Real Estate Regulatory Authority Dehradun. It is pertinent to note that the provisions of the Act under Section 3 clearly provide as to what projects require a registration before RERA. It is pertinent to note that the first proviso of the Section 3(1) reads as *“Provided that projects that are ongoing on the date of commencement of this act and for which the completion certificate has not been issued, the promoter shall make an application to the authority for registration.....”* Thus, there are two pre-conditions which are required for any project for registration. That if one of the pre-conditions is not fulfilled then registration is not mandatory. That it is pertinent to note that the appellant’s project has been completed back in 2011/12 and thus the present project is not an ongoing project. The Director of the Appellants has filed an affidavit on oath dated 28.11.2019 stating very clearly that all the residences of the said project have been developed and have been handed over to the buyers much prior to the commencement of the RERA Act. That the appellants have also added a list of sale deeds which show that the sale deeds were executed from 2009 to 2011/12 which was much prior to the coming of RERA and thus the project does not come under the terminology of “on-going” project. That further, it was also brought on record that the appellants have sold certain plots in the said project to Mr. Sanjay Bansal and Mrs. Seema Bansal on 31.12.2008 and that it was the buyers who have subsequently done construction on these plots which were sealed by the MDDA. That the sale deeds to Mr. and Mrs. Bansal were also attached as part of the affidavit. Thus it is amply clear that the said project is not an ongoing project as per the act. That with respect to the Completion Certificate, it is clarified that

when the appellants had got the sanction of the map pertaining to the project, the sanction letter at para 08 clearly stated that after completion of the project, the appellants were supposed to send a notice of completion of project within 01 month to the authority. That as per the said terms, the appellant had sent a letter dated 21.03.2012 to the MDDA intimating the MDDA that the project has been completed. Thereafter another letter dated 11.07.2012 was again sent to the MDDA pertaining to the completion of the project. It is pertinent to note that both the letters have the receipt of MDDA and stamp of MDDA on the said letters. That the MDDA has not bothered to either give the completion certificate or to give a reply stating the objections if any. That as per Section 15(A) of the Uttar Pradesh Urban Planning and Development Act, 1973, since no reply was given to the appellant, it shall be deemed that completion certificate has been issued. That, the respondent has tried arguing that the notice was not sent as per specifications, but it is clearly stated in Section 15(A) that a notice of completion was to be sent to the MDDA. That if the notice was not sent as per the specifications then the MDDA should have raised an objection to the form of notice but no such objection was raised by the MDDA. That the prayer of completion certificate was never raised by the complainants and the Ld. Lower authority has gone beyond the reliefs to conclude that completion certificate was not taken by the appellants as per process. That the Ld. Authority ought to have made MDDA a party before drawing conclusions pertaining to the development Byelaws. That further no such byelaws were produced by the respondent in the court and thus should not have been taken into consideration by the Ld. Authority.

16. Learned Counsel for the appellant has further argued that even if for the sake of argument it is assumed that deemed completion was not granted to the appellants, then also it is not disputed that the project is not ongoing and that the allottees had taken possession of their respective units from 2009 to 2011/12. That even in that scenario since the project was not ongoing, thus registration is not compulsory under the

Act. That the said observation was also laid down by the Ld. Maha RERA at Mumbai in Complaint No. SC 10000921 Sultana Dalal vs. Asia Group whereby the Para 03 and 04 clearly lay down the position of law. Learned Court has also erred in concluding that it has the authority to hear and pass orders pertaining to the present project. That since the present project was not registered and was not liable to registration on the ground of deemed completion and not being an ongoing project, thus the Ld. RERA Dehradun did not have authority to hear the complaint filed by the complainant. That the said position has categorically been clarified by the Maha RERA and appellate Tribunal of Maharashtra whereby the Ld. Appellate Tribunal has held that the provisions of this Act shall not apply to projects which are not required to be registered. If the appeal is not allowed, then a wrong precedent will be set that any old society or association can file a complaint against the promoters even if the project was completed and possession of units taken over by residents. That if the order of the Ld. Lower Authority is not struck down, then all projects in Uttarakhand since the beginning of time who have not got their completion certificate shall be forced to register themselves before RERA, even if the possession of the units have been taken by the allottees. That this will go against the very intent of the legislation and against the preamble of the Act and also against the law as has been laid down in *Neelkamal Realtors Suburban Pvt. Ltd. vs. Union of India* (Writ Petition 2737/2017-Bombay High Court) order dated 06.12.2017.

17. Learned Counsel for the respondent during arguments has mainly reiterated the grounds taken by learned Authority below in the impugned order. He has further argued that point No. 08 of the map sanction letter, states that within a month of completion of the work, *Pramana Patra* (Certificate) of completion of work will be produced to use the building. While point No. 13 states that the information of starting the construction work, shall be given approximately one week before the date of start. Therefore, point No. 8 does not require promoter to simply intimate the authority, as stated by the appellant in the appeal, but it

requires the promoter to send a certificate regarding completion of work to the authority within one month of completion. The word used in point No. 8 is '*Pramana Patra*' (certificate) and not '*Soochana*' (information). The word '*Soochana*' (information) has been used in point No. 13. Therefore, a simple intimation to the authority is not contemplated in point No.8 but a certificate of completion is contemplated. It is further clarified in the Byelaws that *Anugyapit Takniki Vyakti* (licensed technical person) shall provide the information and shall submit copy of the map/computerized drawing in C.D., on the basis of which, the Completion Certificate shall be issued. Therefore, a conclusion can be drawn that neither the completion certificate has been issued and nor it can be deemed to have been issued as the promoter has not fulfilled the conditions laid down in Section 15-A of the Act of 1973, Rule 5.8 of MDDA Byelaws and Point No. 8 of the Map sanction letter. Whether the project was ongoing on the date of commencement of this Act was also dealt with by the learned Authority by authorizing Shri Sarvesh Mittal to conduct a spot inspection. The report of the above spot inspection brought to the notice of the learned Authority that school and club house construction has not been done and since illegal construction has been done in the project, the same has been sealed by MDDA. The report further states that swimming pool had been constructed by the promoter but due to lack of maintenance, the said swimming pool is damaged and not in working condition. The report of the inspection officer nowhere mentions that the provision of rain water harvesting and proper drainage was constructed by the promoter. It merely states that the appellant/promoter averred that he had constructed proper drainage in the complete colony and to which the home owners replied that the present drainage was constructed by the home owners themselves. Therefore, the contention of the appellant that the project was completed in the year 2012 is wrong and based on misleading facts.

18. Learned Counsel for the respondent has further argued that Section 2(zn) of the Real Estate Regulation and Development Act provides

that “real estate project” means the development of a building or a building consisting of apartments, or converting an existing building or a part thereof, into apartments or the development of land into plots or apartments, as the case may be, for the purpose of selling all or some of the said apartments or plots or building, as the case may be, and includes the common areas, the development works, all improvements and structures thereon, and all easement, rights and appurtenances belonging thereto. Therefore, the complete project includes all the common areas and facilities which are yet to be completed by the promoter. The sealed construction on plot No. 91,92,93,94, 95, 96,99, 100,101,102, 116,218, 147, 148, 137, 138, 149 and 150 were part of the project got sanctioned by the promoter himself. The construction over the said plots until completed would make the project ongoing and incomplete. The respondent has filed the Khatauni of Khata No. 1545 (1416 to 1421 Fasli); a complete study of recent Khatauni indicates that after deducting the sold land, provisions for school, park, roads etc. the promoter owns 726 sqm. of land in the said project. Hence the averment of the appellant that he has sold his complete holding in the said project is wrong.

19. Arguments of learned Counsel for the respondent with respect to the handing over of possession of amenities such as Gymnasium, Swimming Pool, etc, are as follows:

The promoter himself admitted before the inspection officer that since the machines in Gymnasium were not being used and maintained, the same were removed by the promoter which proves that the possession of the common amenities still lies with the promoter.

That the minutes of the meeting dated 13.08.2017 have been filed by the appellant before the Hon’ble Tribunal in the present proceeding through an application dated 21.09.2019. As far as handing over of basic amenities is concerned the promoter himself admitted that there is no provision of handing over amenities by the builder to the resident welfare association in paragraph 2 of point No. 1 of the said minutes. Paragraph 2

of point 3 clearly states that the Gym equipment got rusted, so the builder had to move them from the Gym. The same statement was made by the builder before the inspecting officer which is stated in his report, therefore it can be presumed that the minutes of the meeting dated 13.08.2017 were recorded correctly and there was no alteration by the resident welfare association members. In the same paragraph the builder stated that since no contribution has been made by the members for the functioning of the pool, the same was not made functional and in case the swimming pool is made functional then resident welfare association will have to bear expenses of the pool which again proves that possession of the common amenities still lies with the appellant. Further the promoter in the said meeting admitted that he shall provide layout of water supply and sewer design to the resident welfare association. In point 7 of the minutes the builder intimated that he had handed over few amenities to the resident welfare association and when it was brought to the notice by the executive committee that no such letter is available in the files, the builder said that he will give another letter to this effect. Thereafter the builder proposed few points such as constructing villas in the land earmarked for the school and handing over community hall, second floor of commercial complex and building adjacent to water tank to the resident welfare association etc. which shows the real intention and nature of possession of common amenities in the project.

That the letter sent by Palm City Resident Welfare Association to the Uttarakhand Power Corporation Limited is related to changing the nature of electricity connection and the possession of the office of the association. It is nowhere related to the handing over of any common amenities as argued by the appellant. The letter dated 16.11.2011 sent by the appellant to the respondent confirms the above fact. All the above letters have been filed by the appellant through application dated 21.09.2019.

The resident welfare association is a legal person and for its day to day running, daily expenses, office expenses, etc. is charging maintenance from the members by the society. Because the promoter was not ready and willing to keep the society premises clean and tidy, the resident welfare association is bearing the expense for the same. Since the promoter refused to pay for the security guard, caretakers etc. at the time of inception of the Welfare Association, it became incumbent upon the Welfare Association to take over the said acts. The Welfare Association is presently taking care of Security and cleanliness of the society since the promoter refused to do the same. The appellant in paragraph 2 of his appeal has stated that the resident welfare association has been maintaining common areas and amenities since 2011 whereas in paragraph 9 the appellant states that he had handed over the maintenance to the association in 2012 which are contradictory to each other. The formation of resident welfare association does not indicate or mean the delivery of possession of common facilities. Letter dated 25.12.2011 (Annexure J of the appeal, page No. 131 to 133) of the Palm City Resident Welfare Association to the promoter, indicates that the construction of the project was not completed by the promoter until 25 December 2011 and the possession of common facilities was also not handed over till then. The reply of the above letter was sent by the promoter to the resident welfare association on 14 January 2012 (page No. 134 of the appeal), wherein the promoter himself admits that the construction in the project was ongoing in the year 2012 and the possession of the common facilities was not handed over to the resident welfare association. In the page 5 of the said letter, the promoter himself asks the association to collect expenses related to security, water and electricity.

Annexure H (Page No. 112 of the appeal), the draft letter sent by the respondent for NOC for transfer of electricity connection, is an unsigned letter which was not acted upon either by the promoter or the resident welfare association, since the operation and maintenance of the

common facilities was not handed over to the resident welfare association. Further the same letter does not bear any date. The direction by the learned RERA to get the map sanctioned and complete construction is given since no construction can be carried out unless a map is sanctioned from MDDA. Unless a map is sanctioned by the MDDA, any construction raised shall be illegal and liable to be sealed.

The learned Counsel for the respondent has stated that for the above reasons, the appeal is liable to be rejected and the impugned order is not liable to be quashed or set aside.

20. On perusal of Xerox copy of the RERA complaint file received from the learned Authority below, we observe the following:

(i) The complainant has filed copy of the reply dated 11.11.2016 received from MDDA under Right to Information Act (R.T.I.) regarding the Completion Certificate to M/s Ganga Realtor Pvt. Ltd., which states that there is no mention in their file about any application for Completion Certificate, presented by the promoter.

(ii) The information sent by MDDA to Member, RERA, *vide* their letter dated 27.03.2019 states that according to available records, the Completion Certificate has not been found to be issued and 6 cases have been filed regarding the project, out of which two cases have been compounded and proceedings are going on in 4 cases. The list of these cases was also enclosed with this letter, which is as follows:

1. R-0051/2012, Sh. R.N.Gupta (Director), Gangal Realtors Pvt. Ltd. Doon Paam City Colony, Dehrakhas Dehradun, 1 C0 (on process).
2. R-0052/2012, Sh. Sanjay Bansal and Smt. Seema Bansal, Drishti Builders Developers, Doon Paam City Colony, Dehrakhas, D.Dun. 1 C0(on process).
3. R-0591/2013, Smt. Indu Agarwal W/o. Sh. Surendra Agarwal, Plot No. 97 Kh. No. 1465, Paam City, Dehrakhas, D.Dun, 1 C5 (Compounded).
4. R-0240/2012, Rajendra Singh Segal, 74 Palm City, Pathri Bagh, D.Dun, 1 C5 (Compounded).

5. R-0556/2017, Smt. Archana Barthwal, 147 Palm City, Dehrakhas, D.Dun, 1 CO(On process).
6. R-0649/2018, Sh. Satish Chand Kohli, Plot No. 126, Palm City, Dehrakhas, D.Dun., 1 CO (On process).

(iii) The promoter in his reply dated 28.05.2019 to the complaint has said that as per Section 15-A of the Act of 1973, they had sent a written notice to MDDA on 11.07.2012 wherein it was stated that “the work is completed according to the approved layout, which was inspected by the Junior Engineer and Assistant Engineer on 07.02.2012. No discrepancy was found in the layout.” Since there was no intimation regarding refusal to grant Completion Certificate from MDDA, upon expiry of three months from the date of letter dated 11.07.2012, the Completion Certificate for the said project was deemed received by M/s Ganga Realtor Pvt. Ltd. as per the existing law. Therefore, the Completion Certificate already stood obtained on 10.10.2012 and, thus the said project stood completed as on 10.10.2012.

In its subsequent reply dated 24.06.2019, it has been stated that the developer as per Section 15-A of the Act of 1973 had sent two intimations and had requested for obtaining completion certificate from MDDA. These intimations were dated 11.07.2012 and 21.03.2012. Copy of the intimation letter dated 11.07.2012 had already been provided with the written submissions dated 28.05.2019. Copy of the other intimation letter dated 21.03.2012 has been annexed with this reply dated 24.06.2019.

It is also notable that the letter dated 11.07.2012 does not make any mention or reference of the earlier letter dated 21.03.2012 and the letter dated 11.07.2012 is actually a reply to the sealing order/notice dated 09.07.2012 of the MDDA. The letter dated 21.03.2012 is a plain one page letter signed by the Director of Ganga Realtor Pvt. Ltd. and with the same, no map/computerized drawing in CD has been enclosed. This also does not show that the signatory to this letter is an *Anugyapit Takniki Vyakti* (licensed Technical Person).

Thus, this letter dated 21.03.2012 does not fulfill the requirement of the relevant Byelaws.

(iv) Sri Sarvesh Mittal, Technical Officer of RERA conducted a site inspection on 27.06.2019 in the presence of both the parties. According to the inspection report, the Association stated that the Club House has not been constructed. The representative of the promoter has not denied the same before the Inspecting Officer. About the School, the promoter has reported before the Inspecting Officer that the plot for School construction is available, but the school has not been constructed because sufficient demand is not there. While the Association members have stated that only after the construction of building of the School and its running, adequate number of students will be available. About the Gym, the promoter stated that the Gym was established in the Commercial complex, but due to lack of regular use and maintenance, the equipments of the gymnasium were removed. The promoter stated that the Gym is a Commercial activity which can be kept running only on availability of sufficient number of customers. About the Swimming Pool, the report states that it was constructed but due to lack of maintenance its taps in the changing room, doors and motor for filling water in Pool etc. are not available or are damaged. Regarding drainage, the report states that drains are constructed in part areas in front of the buildings. The promoter has stated that they had constructed the drainage in the entire colony but during construction of buildings, house owners damaged those drains, while the house owners have stated that the present drains have been constructed by them on their own. About the Rainwater Harvesting, the inspection report states that the Local MLA is getting one Rainwater Harvesting tank constructed from '*Vidhayak Nidhi*'. About two Rainwater Harvesting Tanks constructed by the promoter, members of the Association stated that no Rainwater Harvesting Tank has been constructed as per the specifications.

21. Learned Counsel for the appellant has argued before us that the Club House has already been made and the Photographs of the same have been filed before us along with the application dated 21.09.2019 which show that the Club House has been made and is in a fit position. The impugned order was passed by the learned Authority below shortly after on-spot inspection by the Technical Officer and the appellant did not get an opportunity to produce the photographs of the Club House before learned Authority below. However, we find from the Xerox copy of the record of the RERA Complaint file that after Technical Inspection Report, learned Authority below has heard the arguments of both the parties on 04.07.2019 and then passed the impugned order dated 12.07.2019. In between, no request has been made on behalf of the promoter to produce photographs or some other evidence before learned Authority below.

22. On the basis of the documents and inspection report presented before learned Authority below, it was correct on the part of the learned Authority below to hold that the Club House and School are not constructed. It is also clear that the possession of the Gym is with the promoter only and has not been handed over to the respondent Association, as the promoter-appellant could remove the equipments of the Gym, which they could not have done, had the possession of the Gym been handed over to the respondent-Association. We, however, feel that about construction of drains, learned Authority below should have sought more evidence to come to a definite conclusion, whether they were constructed by the promoter-appellant or by house owners.

23. Learned Counsel for the appellant has argued that the letters dated 21.03.2012 and 11.07.2012 were sent to the MDDA about completion of the project. Both these letters have the receipt of the MDDA on them and the MDDA has not bothered either to give Completion Certificate or to give a reply stating its objections, if any. If notice of completion was not sent as per the specifications, then the

MDDA should have raised objection to the form of notice but no such objection was ever raised by the MDDA. Learned Counsel for the appellant has argued that the learned Authority below ought to have made MDDA a party before drawing conclusions pertaining to the developments byelaws. We observe that learned Authority below should have traced the action taken by the MDDA on these two letters dated 21.03.2012 and 11.07.2012. Learned Authority below should also have found out the details of the 6 cases, where were ongoing in MDDA regarding the project, one of which is against Sri R.N. Gupta, Director, Ganga Realtor Pvt. Ltd., second is against Sri Sanjay Bansal and Smt. Seema Bansal, who are alleged to have done illegal construction in the affidavit filed by Sri R.N. Gupta before us and other 4 cases against Smt. Indu Agarwal, Rajendra Singh, Smt. Archana Barthwal and Satish Chand Kohli respectively and assessed the effect of these cases on the completion of project. We also observe that there is mention of group housing for EWS in the project, but nothing about construction of EWS houses or of the common facilities regarding drainage, sewage, roads, park etc. in the EWS area has been mentioned by either side. It is relevant to find out as to how many flats have been built there, whether proper common use infrastructure/facilities have been developed for EWS and also for other areas of the project. All this is very relevant to determine whether the project has been completed in all aspects or not before coming into force of the RERA Act and what are the deviations from the sanctioned plan.

24. As per the above analysis, we observe that it is required on the part of the learned Authority below to find out in detail about the development/construction of all parts of the project including EWS, Commercial complex, Villas and other housing units and all common infrastructure/facilities and the deviations from the sanctioned plan/map. Learned Authority below can get further information/evidence on these aspects from MDDA, either through correspondence or by making it a party in the proceedings as argued by learned Counsel for the appellant.

Learned Authority below can also conduct further site inspections and seek required evidence under the powers given to it by the Act. The conclusive evidence on all these aspects will be relevant not only to further establish the jurisdiction of learned Authority below in the matter, but also to assess the requisite common infrastructure/facilities necessary for the number of persons inhabiting the project.

25. We, thus observe that it is a fit case to be remitted to the learned Authority below to seek further evidence/information on the various aspects of the project, as discussed above and also to give full opportunity to the appellant and respondent to produce additional documents/evidence. We are not considering the additional documents filed before us by the appellant and respondent which they can file before the learned Authority below. The following order is hereby passed.

ORDER

The impugned order dated 12.07.2019 is hereby set aside and the matter is remitted to the learned Authority below to seek further evidence/information, as stated above and to pass suitable orders in the interest of justice. The sum of Rs. 15,000/- deposited by the appellant in this Tribunal, in compliance of this Tribunal's order dated 16.08.2019, be remitted to RERA to be either treated as part of the penalty which RERA may impose upon the appellant in future or to be refunded to the appellant, if no penalty is imposed on it in future proceedings.

In the circumstances, no order as to costs.

Let copy of this order be sent to RERA for information and necessary action in terms of sub-section (4) of Section 44 of the Act.

(RAJEEV GUPTA)
MEMBER

(JUSTICE U.C.DHYANI)
CHAIRPERSON

DATE: JUNE 22, 2021
DEHRADUN
KNP