

**RAJASTHAN REAL ESTATE REGULATORY AUTHORITY
JAIPUR**

Comp. No. RAJ-RERA-C-N-2023-6809

**RADIANCE RESIDENT ASSOCIATION
THROUGH ITS PRISEDENT ASHOK KUMAR**
Society Office, Radiance 1, Airport Plaza,
Durgapura, Tonk Road, Jaipur 302018

COMPLAINANT

Vs

NEEMRANA DEVELOPERS
6th Floor, Apex Mall, Lal Kothi,
Tonk Road, Jaipur, Rajasthan-302015

RESPONDENT

HON'BLE MEMBER: SUDHIR KUMAR SHARMA

PRESENT

1. Adv Ankit Totuka on behalf of the complainant
2. Adv Prashant Daga on behalf of the respondent

ORDER

17.06.2025

1. The complainant filed the present complaint on 05.11.2023 vide Form - N under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as 'the Act'), regarding the project "**Radiance**", situated at Khasra No./ Plot No.1 , Village- Jaipur , Airport Plaza, Tonk Road, Jaipur - 302016 (Rajasthan) registered with the Authority bearing registration no. **RAJ/P/2017/036**.

2. Radiance Residents Association, a resident welfare association of flat owners of the project 'Radiance', and registered under the Rajasthan Societies Registration Act,





1958 has filed the said complaint stating that the said project was expected to be completed by 31.03.2020, which was later granted extension by the Authority until 31.03.2021 subject to submission of valid building plan approval from Jaipur Development Authority (JDA). Earlier JDA building plan approval was valid until 26.04.2019 and no extensions were sought by the respondent since then. JDA issued notices under Section 32 and Section 33 of the JDA Act, 1982, on 20.12.2023 and 22.12.2023, respectively, to stop illegal construction on 12th Floor of Block A and Block B, but the respondent promoter continued and installed a gate with a lock. The 12th-floor area has been sold illegally increasing the net saleable area, despite not being part of the originally approved maps wherein it was earmarked as 'common terrace area' to be transferred to the RWA upon completion. The building is not constructed as per the approved JDA maps. Architect has given a false certificate under regulation 6.4 stating minor changes, while there is complete change in the design. The terrace of 12th floor was approved as 'Open Terrace Garden' in the original JDA approved plans as well as in the 'As-built' plan uploaded on the RERA website. The respondent sold the 'Open Terrace Garden' of Block A & B at 12th floor and made this area private. The construction made at this floor is not approved and nor even shown in



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the revised as build drawings. That, as per Model Building By-laws an open space is required at 39 meter height and thus open terrace area should remain open and freely accessible in term of approved building plan. Moreover, all the sanitation, electricity, water etc. basic facilities can only be accessed for Tower 'A' & 'B' Block through this terrace only. The complainant sent a detailed letter to the Respondent on 24.06.2023, specifying issues and seeking timelines, but received no reply and rather had acted arbitrarily.

There is no operational fire safety mechanism and No Fire NOC has been obtained which is posing great safety risk to the residents. Amenities promised either not available or have been withdrawn.

The association sought relief as to demolish all construction on the 12th Floor open terrace area in Blocks A and B, remove existing unauthorized construction within 3 days, hand over vacant possession to the Complainant ensuring free resident access, and declare any sale transactions for this common area null and void ab-initio.

3. Reply to the complaint was submitted by the respondent on 15.10.2024 stating that said project consists of three blocks, each with a ground floor, 17



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floors, an additional service floor, and three basements. The respondent promoter secured a Lease Deed/Patta for the scheduled land from the Jaipur Development Authority (JDA) on 27.04.2016 and subsequently got it registered on 29.04.2016. The Building plan was initially approved by JDA in 2016, with further approvals in 2017, and final approval was given on 27.02.2018 for all 17 floors. That, at no point in the approved maps was the terrace area in question designated as a common area. The scheduled initial completion date of project was 31.03.2020 but due to unforeseen circumstances and challenges the extension was allowed for one year till 31.03.2021. The completion certificate for the said project was issued by empanelled architect on 29.03.2021 and acknowledged by the RERA Authority. The completion certificate cannot be challenged before RERA as per numerous pronouncements by the RERA. The unit B-1201 along with terrace area has been validly transferred to Shri Ajeet Jon Sax on through sale deed dated 27.08.2023. Access to this particular terrace area on 12th Floor is exclusively through the entrance connected to Unit B-1201, thereby confirming its status as a 'private terrace area/ exclusive balcony with terrace area' for the sole use of that unit's owner.



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A Fire NOC has been duly obtained on 15.04.2024. There is no change in saleable area as per approval obtained from JDA. The brochure of the project made available to all the prospective buyers prior to commencement of construction also highlight the layout of 12th floor which include super built up area, carpet area, balcony area and terrace area. The society has no legal or factual basis to claim this terrace area as a common space. The site inspection report conducted by RERA officials also confirm that there is no provision made in the approved building plan for a common terrace on the 12th floor.

Hence, the respondent prayed that the Authority shall dismiss the present complaint and seek affirmation that their actions are legally compliant with the Act of 2016, and the terms of relevant sale deeds.

4. On the reply of respondent the complainant has given rejoinder mentioning that the status of the project got changed from '**LAPSED**' to '**COMPLETED**' on 25.10.2023 with retrospective effect from 29.03.2021 relying on Architect's Certificate dated 29.03.2021 which is prima facie illegal in nature. The building was substantially incomplete as there was no external windows, door, paint work on most of the floors. It was further stated that the changes made by **undated** addendum issued by



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empanelled architect amounts to 'major structural changes' and not merely 'minor changes' in the originally JDA approved maps. As per approved map for 13th to 17th floor, 2 flats are to be constructed on every block whereas only one flat has been constructed. Application filed by the respondent for map revision before RERA shows increase in saleable area. Further, the brochure nowhere mention that open terrace garden on 12th floor is part of 4 BHK. If Fire NOC is obtained in April, 2024 then how can be the project be deemed to have been completed in March, 2021. No occupancy certificate has been obtained so far. The site inspection report conducted by the RERA Authority on 30.09.2024 clearly mentions on point no. 4 that there is an absence of 'Refuge Area' on the 12th Floor. It was contended by the complainant that there has been an increase in net sellable area from 44879 sq. meters to 70,658 sq. meters which is evident from data on RERA portal. The respondent has no right to sell common area and merely execution of sale deed in favour of buyer does not confer an valid title in favour of the buyer.

5. In the sur-rejoinder filed by the respondents, it was stated that the said completion certificate dated 29.03.2021 has been obtained by competent authority i.e. JDA. That, the 12th Floor 'Open Terrace Garden' forms the



part of saleable area and is not common area. In the brochure, the terrace area is shown separately as forming part of saleable area. The promoter have right to sell the exclusive terrace area. The area may be treated as 'private or exclusive terrace area of flat owners' as per the registered sale deeds with Shri Ajeet Jon Saxon on 27.08.2023 for unit no. B-1201 and Section 2(k) of the Act of 2016. Although, the complainant sought declaration qua sale deed in question being void ab initio and in the rejoinder has sought relief against the individual owner and Empanelled Architect. However, complainant has failed to make both of them necessary party and hence, the complainant shall be vitiated on grounds of non-joinder of necessary parties. In case of maintenance of building, under the law, an apartment owner has right to access the private area solely for the purpose of carrying out maintenance work with prior intimation and consent of the owner. In absence of consent, the necessary consent may be obtained from competent court under easementary rights but, merely such an exercise of right does not make private area as common area. As building plan was approved prior to 2020, reliance on the JDA Bye laws of 2020 now for determining validity of said plan is invalid. A final Fire NOC has been duly obtained by the respondent promoter on 14.04.2025. Against the total area approved



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of 70,748.54 sq. meters in the originally approved plan, the respondent promoter has only constructed 70,650.13 sq. meters which means there has been a decrease in Built in area and it is well within the approved limit. As per actual constructed area, there is loss of salable area to the respondent for 13th to 17th floor as there was loss of terrace area. Also, map revision has resulted in increase in open area from 4736.60 sq. meters to 5183.34 sq. meters. Thus, the issue of sale of common area cannot be dealt here. JDA has the exclusive jurisdiction with regard to completion certificate/ violation of building bye-laws.

6. During hearing, the counsel for complainant argued that the said project's status was retroactively changed from '**Lapsed**' to '**Completed**', based on a completion certificate dated 29.03.2021, and an undated addendum obtained from empanelled architect. The architect used two different sets of JDA's approval in completion certificate and Addendum to completion certificate. The respondent did not submit revised building plan within 30 days at the time of extension sought. The project was in lapsed category for one and a half year. The Architect acted beyond it's authority and used clause 6(iii) of Model Rajasthan Building Regulation, 2020. The respondent suo-moto decided to reduce numbers of flats from 2 to 1 which



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resulted in reduced terrace area from 13th floor to 17th floor and increase in terrace area on 12th floor. These changes are not minor changes. That, the project is not completed, and committed common amenities/facilities are not provided till date. That, amenities like library cum café, basketball ring, 22-yard cricket pitch with automatic bowling machine, skate ring, mechanized parking, have been withdrawn. That, significant discrepancies between JDA approved maps and the brochure uploaded by the builder on RERA website, including changes in lift/stairs layout, bedroom sizes, common area sizes, and parking are on record. That, the construction on the 12th Floor (Block A and B) is unauthorized as the area was designated as an 'Open Terrace Garden' in both the JDA-approved plans from 27.02.2018 and the As-Built plans uploaded on the RERA website. That, the site inspection report submitted by the Authority is solely based upon sale deeds executed for 12th Floor units and not in accordance to the original maps of said project. That, the 12th-floor open terrace is crucial for refuge area/fire safety evacuation/rescue and access to sanitation, electricity, and water facilities for A and B Blocks. That, the entrance for 12th Floor open terrace area as per originally approved maps is common. Occupancy certificate is still not on website of RERA. Therefore, the lack of occupancy



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certificate, environmental clearance, and fire safety certificate jeopardizes the safety and security of residents. The consent given by the residents as claimed by the respondent was for minor modification. Completion Certificate is blatant error on part of Empanelled Architect. Fire-Escape is on this floor and entry to this has been changed. The project was not complete on 31.07.2021, it was completed in 2024. Hence, the complainant humbly prays that the Hon'ble Authority immediately direct the Respondent to cease all construction on the 12th Floor open terrace area in Blocks A and B, direct the removal of existing unauthorized construction within 3 days, hand over vacant possession to the complainant for free resident access, and declare any sale deeds executed for this area null and void.

7. The counsel for respondent argued that the specific terrace area on the 12th floor was never designated as a "common area" in any of the officially approved maps and also not factored into the Building Area Ratio (B.A.R) measurement calculations. That, respondent promoter has consistently honored all commitments outlined in the project brochure and have not engaged in any misrepresentation or concealment of facts. That, as per the amended bye law 15.1 of JDA Regulations, 2020, in case



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more than 50% of the construction work is completed then failure to complete the remaining construction work within the prescribed limit is not considered a violation. That, the complainant's claims regarding an unauthorized increase in saleable area are unsubstantiated and without any evidence. That, the site inspection report submitted by the Authority clearly states that the open terrace area on 12th Floor is exclusively private/individual ownership as per executed sale deeds. That, in light of the agreement to sell executed for 12th Floor units, clause 2.9 of the Sale Deed clearly defines "*exclusive open terrace area*" as a portion of the open terrace solely for the private use of the buyer, affirming its exclusive nature and association with the unit owner's property rights. That, access to this particular terrace area is exclusively through the entrance connected to Unit B-1201, thereby confirming its status as a private terrace area for the sole use of that unit's owner. That, the association retains the right to access private terraces for maintenance and repair purposes. Hence, the respondent prayed that the Authority shall dismiss the present complaint and also sought affirmation that their actions are legally compliant with the Act of 2016, and the terms of relevant executed sale deeds.

8. Heard and perused the record.



9. The status of said project on the official website of the Authority is verified by the Law Officer. The project is currently marked under the "**COMPLETED**" category. Total one extension was sought by the respondent, and the said extension expired on dated 31.03.2021(Force Majeure). The force majeure extension period expired on 31.03.2021. Quarterly Progress Reports (QPRs) are filed up to the quarter of January to March, 2021 in which percentage completion of construction work (as per Project Engineer's Certificate, R-2) showing the value of 95% work completed. Annual Progress Reports (APRs) have been filed upto year 2020-21 on the portal for said project. The said project status on the official website of the Authority is taken in judicial notice by the Authority.

10. The dispute in the instant complaint is mainly focused on the alleged construction on the 12th floor which was marked as '**Open Terrace Garden**' in the map approved by the Jaipur Development Authority as well '**As built plan**' uploaded on the RERA portal. The sale of 'open terrace garden' which was neither saleable in Jaipur Development Authority approved plan nor in 'As built plan' is also disputed. As per complaint this is clear violation of building bye-laws by the Respondent-Builder. This has resulted into restriction on access to this terrace to the



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Resident Welfare Association i.e. Radiance Residents Association, for maintenance of basic facilities such as sanitation, electricity and water etc.

11. The other issues in disputes are more or less inter-linked with the changes in maps mentioned in the completion certificate with "Undated Addendum" issued by the empanelled Architect, like issue of completion certificate before completion of the building and subsequently issuing of 'Undated' Addendum to the completion certificate to cover up changes in saleable area, shifting of utilities, not providing promised amenities or change in size & location of these amenities.

12. It is on record that the Jaipur Development Authority's approval was taken in three stages 17.11.2016, 07.09.2017 and 27.02.2018. While executing the project the builder made some changes which is as per empanelled Architect are internal changes in the project and he is permitted to certify these deviations under Model Rajasthan Building Regulations, 2020.

13. The respondent argued that examination of completion certificate issued by the Architect is out of jurisdiction of RERA Authority.



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14. To see the veracity of this submission the provision of Section 14 of RERA Act, 2016 are more relevant.

Section 14 of the RERA Act bound the promoter to adhere to sanctioned plans, layout plans and specifications as approved by the competent authorities. The section further bound the promoter not to make any additions and alterations in the sanctioned plans, lay out plans and specifications and the nature of fixtures and fittings and amenities without previous consent of the person agreeing to take one or more apartment in the building. The promoter can only make minor additions or alterations if required by the allottee or as may be necessary due to architectural and structural reasons duly recommended and verified by the Authorized Architect after proper declaration and intimation to the allottee. Importantly, this section further defines '**minor additions and alterations**' in the explanation given in this section 14. Structural changes including in addition to the area or change in height or removal of part of building or change to the structural such as the construction or removal /cutting in any wall or a part of wall, partition, column, beam, joist, floor including a mezzanine floor or other support, or a change to or closing of any required means of access ingress or egress or a change to the fixtures or equipment,



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etc. have been **excluded** from the '**minor additions or alterations.**' This section further provides that any other alterations or additions in the sanctioned plans shall not be carried out without previous consent of two-third allottees.

15. Thus, the respondent could only make minor additions or alterations as outlined in Section 14 of the RERA Act. Other changes shall require consent of the two-third allottees and of course with the approval of competent authority.

16. We, at this point are not examining when the building was complete in light of completion certificate. The Authority, in view of provisions of Section 14, can very well examine whether the promoter has adhered to the sanctioned plans and project specifications or not.

Now, it is to be seen whether the changes, be it major or minor or internal, were carried out with the consent/ approval of competent Authority.

17. The Empanelled Architect – Mishra Garg & Associates issued an Addendum to completion certificate dated 29.03.2021. **The Addendum certificate is un-dated.**



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The third para of the said completion certificate is reproduced below:-

"There were some variations in the JDA approved maps dated 27.02.20218 to onsite built-up maps and as per clause 6(iii) of Model Rajasthan Building Regulations, 2020, approval will not be required if there are any internal changes in the project after obtaining the building plan approvals from competent authority.

Also, Regulation 16.2 states that

*The builder/ Developer shall be able to get the completion certificate (after the completion of construction as per these Regulations and the approved plans) either under Regulation 16.4 from the concerning body or under Regulation 16.5 from the Architect (registered under Regulation 20) Deviations from the approved plans and **Internal changes (falling within permissible limits as per earlier bye-laws or present Regulations) on a plot (so long they are not in contravention of Building Regulations), will not be taken as the deviation from the approved plans and the construction without permission."***

18. The clause 6(iii) of Model Rajasthan Building Bye-law is reproduced here:-

निम्न प्रकार के निर्माण कार्य हेतु स्वीकृति की आवश्यकता नहीं होगी यदि इन कार्यों/परिवर्तनों से भवन विनियमों के अन्य प्रावधानों का उल्लंघन नहीं हो:-

(क) भवन मानचित्र प्राप्त किये जाने के पश्चात निर्माण के दौरान आंतरिक परिवर्तन (ऐसा आंतरिक परिवर्तन यथा भवन/भवनों के ले-आउट प्लान में परिवर्तन, भवन परिसर में ब्लॉक्स



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की लोकेशन में परिवर्तन, पार्किंग के ले-आउट में परिवर्तन एवं ऐसे परिवर्तन जिसके कारण भवन के सकल निर्मित क्षेत्र, सैटबैक, आच्छादित क्षेत्र, भवन के बाहरी परिमाण एवं भवन विनियमों के किसी प्रावधान का उल्लंघन नहीं होता हों)

19. As per record, comparison of JDA approved plan & "As built" plan is produced below:-

**COMPARISON OF SOME PARAMETERS/FACTS IN JDA APPROVED PLAN &
AS BUILT PLAN
(IN TERMS OF PLANNING)**

S.No.	Particular	As per approval (JDA)	Available on site-As built
1	Change in FAR (Project) (In Sq.Mtrs.)	41378.78	39584.88
2	Change in 12 th Floor (In Sq.Mtrs.)		
	(A) GBA	849.31	533.97
	(B) FAR	721.11	426.59
3	Common Stair-case & Lobby	Changed	
4	Building profile	Changed	
5	No. of units on each floors	Changed	
6	Terrace size & profile	Changed	
7	Each flat planning & Area	Changed	
8	Change in parking numbers	720	689

20. When maps are compared, it is noticed that substantial changes were made by the Respondent and it is on record that 'Gross Built Up' area and FAR have been changed. These are not covered in the term "Internal Change." Other major changes are also depicted in above table. All these changes are material, and in our view the Empanelled Architect cannot cite regulation 6(iii) for declaring changes as 'Internal.' These changes were



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required to be considered and approved by Jaipur Development Authority.

21. Thus, it is evident that the promoter did not adhere to the sanctioned plan and project specification as mandate under section 14 of RERA Act. Whether saleable area increased or decreased or flat number in the project have increased or reduced in "JDA's approved plan" viz-a-viz "As built plan", are not material here. What material here is that in "As Built" map, the respondent carried out substantial changes without approval of competent Authority. In this case it is Jaipur Development Authority. These changes do not have valid permission from the competent authority, and thus, are clear violation of Section 14.

22. Next issue is whether the 'open terrace garden' is for use of an individual and can be sold by the promoter or whether it was required to be used for common services by the Resident Welfare Association. Whether Radiance Residents Association has right to get the access of this terrace, is to be decided.

To decide this issued clause 10.2.1(iii) of Model Rajasthan Building Regulations is important:-

10.21.1 अ (ii):- आवासीय भवन /बहु ईकाई आवास/प्लेट्स जिनमें पृथक-पृथक स्वामित्व की ऐसे आवास ईकाईयों की छत (टैरेस) जो कि सामान्यतः कॉमन फेसिलिटी (यथा पानी की टंकी, सोलर पैनल, डिश एंटीना आदि) हेतु ही उपयोग में ली जावेगी परन्तु उक्त



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सुविधाओं की पालना पश्चात रूफ टैरेस छत के शेष आंशिक भाग को स्वतंत्र उपयोग यथा टैरेस गार्डन आदि हेतु अंतिम मंजिल पर स्थित प्लेट स्वामी को हस्तांतरित किया जा सकेगा एवं इस क्षेत्र को भवन मानचित्र अनुमोदन के समय स्पष्ट दर्शाया जाना आवश्यक होगा।

The maps whether approved by the Jaipur Development Authority or 'As built' do not specifically mention or marking on the map that the terrace garden or open terrace garden was to be used for private purpose by the individual flat owner, as mandated above in the referred Regulation.

23. The site inspection report conducted by the officials of the Authority on 30.09.2024 confirm the sale of entirety of the units located on the 12th floor, installation of the service pipes including valves, sanitary pipes, electrical conduits, and other services which passes through the terraces of the 12th floor, construction of platform for kitchen use and plantation, temporary struction built by the unit owners, sealing of access door from the lobby to terrace by JDA, absence of designated refuse area etc.

It is concluded in the report that:-

In light of the aforementioned report derived from the site inspection, it can be concluded that the terraces on the 12th floor are designated as private property, owned by the respective owners, as evidenced in the sale deed. Nonetheless, it is essential to provide access to the maintenance society for servicing sanitary systems, valves, electrical components, and other utilities located on the terrace, without requiring a permit from the unit owners. In compliance with building regulations, a refuge area must be



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established beyond 39 meters in case of fire emergencies; consequently, a Fire No Objection Certificate (NOC) should be submitted in accordance with current site construction requirements."

24. From all the above facts on record, it is evident that the respondent made substantial changes in building profile. The respondent do not have the right to change the use of common terrace garden/ Terrace Area, as these are not marked 'Private' in original maps as well as in 'As Built' maps. The open terrace area belongs to Resident Welfare Association. The site inspection report confirms that various valves/ sanitary pipes/ electrical conduits passes through the terrace of 12th floor. Accessibility to this terrace should be unrestricted for maintenance purposes. The Radiance Resident Association (RRA) has every right to access this common space.

The argument of the respondent that "for maintenance of building, the allottee (in this case RRA) has right to access this area with prior permission & consent of the owner and if consent is not given, the necessary consent may be obtained from competent court under "easementary rights", is not logical. How an entity (RRA) is supposed to approach court, in case services are interrupted and RRA is required to carry out maintenance



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of emergent nature. The absence of refuse area makes the situation more worse. Thus, the sale of open terrace garden/ terrace area on 12th floor is clear violation of RERA Act.

25. So far declaring sale of Common Terrace Garden as void is concerned, it is essential an issue which cannot be adjudicated by this Authority.

26. In view of above discussions:-

(i) Under section 38 read with Section 61 of RERA Act, 2016 Penalty of Rs. 5,00,000/- (Rupees Five lacs only) is imposed on the respondent for selling the open terrace garden on 12th Floor,

(ii) The respondent is directed to:-

(a) re-store the 'Open Terrace Garden on 12th Floor' and allow it's access to Radiance Resident Association, to facilitate servicing sanitary system, valve, electrical components and other utilities located on the terrace.

(b) Establish a designated refuge area on the floor

27. The complainant will be a liberty to seek other relief i.e. compensation for violation of Section 14 of RERA Act and cancellation of sale deeds executed for Unit A-1201, B-



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1201 between Respondent & M/s. Buildcon Pvt. Ltd. & Sh. A J Saxon respectively at other appropriate legal forums.

28. This complaint stands disposed of with the abovementioned directions.

29. Compliance of the order shall be made within 45 days of the uploading of this order on the official webpage of the Authority.

30. The order will be uploaded on the webpage of the Authority and also a copy of order will be sent to concerned parties and place a copy of order in the file.




(**Sudhir Kumar Sharma**)
Member