



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

1. COMPLAINT NO. 873 OF 2021

Ess Vee Cooperative Group Housing Society Limited Panchkula

....COMPLAINANT

VERSUS

Samar Estate Pvt Ltd. and others

....RESPONDENT

2. COMPLAINT NO. 1459 OF 2021

Ess Vee Cooperative Group Housing Society Limited Panchkula

....COMPLAINANT

VERSUS

Samar Estate Pvt Ltd. and others

....RESPONDENT

CORAM:

Rajan Gupta
Dilbag Singh Sihag

Chairman
Member

Date of Hearing: 04.05.2022

Hearing: 6th (in complaint no.873 of 2021)

2nd (in complaint no.1459 of 2021)

Present: -

Mr. Vishal Madan, Id. Counsel for the complainant-
association

Mr. Kamal Chaudhary, Counsel for the respondent

ORDER (RAJAN GUPTA-CHAIRMAN)

When this matter was heard on 15.02.2022, Authority had passed following orders: -

Initially, complainant bearing no.873 of 2021 was filed by Ess Vee Cooperative Group Housing Society Limited, Panchkula for taking over tower-I of the project under Section 8 of the RERA Act for its completion by association of allottees of Tower I at their own level. In the hearing dated 25.11.2021, Authority had observed and directed as follows:

“5. On consideration of the matter, the questions which should be determined in this matter are as follows:

(i) Whether the complainant-association is pursuing this complaint only for taking over of tower-I or entire project. If they want to increase the membership and take over entire project, then either this application should be amended or it should be withdrawn with a liberty to file a fresh complaint on behalf of association comprised of two third of the total allottees. A specific affidavit in this regard should be filed.

(ii) If the association wishes to take over only tower-I, then should explain how will infrastructure facilities to only tower-I would be possible to be provided. There is no separate planning done for tower-I. Service plan estimates have been approved in respect of total project. If the separate infrastructure in respect of tower-I is not possible to be provided then there may be no logic in handing over only tower-I to the complainant-association.

6. Let a clarity be given on aforesaid two issues, thereafter Authority will pass further appropriate directions. In the meantime, the association of allottees is suggested to go through large number of orders passed in complaint No. 89 of 2019 titled as Piyush Heights Residents Tower J And K Welfare Association V/S Piyush Buildwell India Limited and complaint No. 14 of

2019 titled as SRS Pearl Unity Sec 5 Palwal RWA versus SRS Infrastructure Pvt Ltd. in which projects had been handed over to the association of allottees. They should get guide by those orders as to the requirements to be met for taking over of the project.”

2. Now, complainant-association has filed fresh complaint bearing no. 1459 of 2021 for taking over whole project. So, complaint no. 873 of 2021 is merged with complaint No.1459 of 2021.

3. Learned counsel for complainant-association submitted that association is now having 72 existing members. Remaining allottees will become members of association when project is handed over to the association. He sought direction from the Authority to hand over project to the association for its completion at their own level and for handing over possession to the allottees.

4. Further, CTP HRERA was also directed to inspect the site and submit a report regarding status of infrastructure services provided by the respondent in various Towers.

5. Ld. CTP HRERA has submitted his report and has reported that only about 40-45% of the construction of apartments has been undertaken. However, no infrastructure has been provided nor any construction work was going on at the site.

6. Upon hearing the arguments of complainant-association and perusal of the documents placed on file as well as orders dated 31.01.2022 passed by Authority under item No.164.05, Authority observes as follows:

(i) There are 925 apartments in whole of the project out of which 464 apartments have been allotted by the builder. It has been alleged that some of the allotments are fictitious. Even if some complaints are fictitious still only 72 allottees have become members of the association which is way short of 2/3rd allottees which is required to make the association eligible for taking over the project for completion at their own level. Complainant-association, therefore, has to substantially increase its membership to be able to take over the project.

(ii) In another bunch of 54 separate complaints, orders have been passed by the Authority for refund of money paid by allottees along with interest. Against said 54 complaints, 46 executions have also been filed. In all those execution matters,

warrants of recovery have been issued by Authority to the District Collector for recovery of decretal amount as arrears of land revenue. As per available report action in this regard is being taken by District Collector.

(iii) While considering overall facts and circumstances of the case, Authority in its projects jurisdiction, in its meeting held on 31.01.2022 had passed an order in item No.164.05 in which certain important questions were highlighted. Those questions recorded in the order dated 31.01.2022 are reproduced below:

“4. While taking note of the above, the following issues have emerged: -

i. A question has arisen as to whether the properties of the project as a whole can be attached/ liquidated by the Collector, pursuant to the recovery certificates issued by the Authority for recovery of the amount as arrears of land revenue. A view has been expressed in the meeting that the Collector is entitled to liquidate/ dispose of the unsold inventory in the project.

ii. That now there are three sets of allottees/ complainants, one who have obtained orders from the Authority for recovery of the amount as arrears of land revenue; and second, whose complaints for refund of the amount and interest thereon are pending with the Authority; and third, who are keen to take physical possession of the apartment and have approached the Authority through their RWA for taking over the project under Section-8 of the RERA Act, 2016. In case, the Collector is entitled to dispose of the entire project of the promoter/ respondent, what would be the fate of the other allottees/ RWA.

iii. How the sale proceeds shall be distributed amongst the allottees/ complainants. What would be the priority of payment to the complainants?

5. All these questions require detailed deliberations with the allottees/ other stake holders. The Authority resolved to discuss the aforesaid issues under the complaint jurisdiction of the Authority on the next date of hearing, i.e. 15.02.2022. AO (Petitions) will place this matter on the said date at the time of hearing of the complaint cases.”

(iv) 30 more cases have been filed before the Authority by another bunch of allottees seeking refund of the amounts paid by them to the respondent company along with applicable interest.

7. In view of foregoing facts and circumstances, Authority deems it appropriate to take a holistic view in the matter. Authority decides to list this complaint No.873 of 2021 in which the complainant-association has prayed for taking over of the project as well as the complaints in which relief of refund have been sought together. Learned counsel for complainants as well as respondents should be present personally on the next date to submit their case and to assist Authority in arriving at a just and fair decision for protecting the interest of allottees as well as for exploring the possibilities of getting the project completed either by handing it over to the association of allottees or by any other means as provided in Section 8 of the RERA Act.

8. Adjourned to 04.05.2022.

2. Today, Shri Vishal Madan, learned counsel appearing for association of allottees again submitted that membership of their complainant-association has not increased from 72. However, efforts are being made for increasing membership of the association.

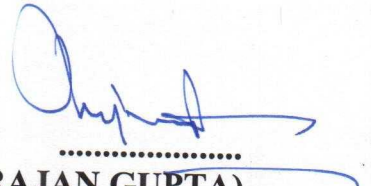
3. Authority observes as reported, 464 apartments have been sold/allotted in this project. Association which wishes to take over the project for completing at their own level must show that it has backing of at least majority of allottees. Ideally 2/3rd majority is required with for an association to qualify for taking over the project. Therefore, 72 is a very small number.

4. These complaints are hereby dismissed for the reason that complainant-association at present does not have adequate number of allottees



with them. However, complainant-association will be at liberty to file a fresh complaint once they are able to show support of adequate number of allottees.

5. **Disposed of.** Files be consigned to record after uploading of order on the website.



.....
(RAJAN GUPTA)
CHAIRMAN



.....
(DILBAG SINGH SIHAG)
MEMBER