



# HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

## 1. COMPLAINT NO. 833 OF 2018

Agarwal Agencies Pvt. Ltd. ....COMPLAINANT(S)

VERSUS

M/S ABW Infrastructure Ltd. & Ors. ....RESPONDENT(S)

## 2. COMPLAINT NO.834 OF 2018

Salila Tewari ....COMPLAINANT(S)

VERSUS

M/S ABW Infrastructure Ltd. & Ors. ....RESPONDENT(S)

## 3. COMPLAINT NO.835 OF 2018

Ranjitjit Singh & Suzy Singh ....COMPLAINANT(S)

VERSUS

M/S ABW Infrastructure Ltd. & Ors. ....RESPONDENT(S)

## 4. COMPLAINT NO.836 OF 2018

Sanjeev Jakher ....COMPLAINANT(S)

VERSUS

M/S ABW Infrastructure Ltd. & Ors. ....RESPONDENT(S)

**5. COMPLAINT NO.837 OF 2018**

Gurveen Kaur .....COMPLAINANT(S)

VERSUS

M/S ABW Infrastructure Ltd. & Ors. ....RESPONDENT(S)

**6. COMPLAINT NO.838 OF 2018**

Tanmeet Singh .....COMPLAINANT(S)

VERSUS

M/S ABW Infrastructure Ltd. & Ors. ....RESPONDENT(S)

**7. COMPLAINT NO.839 OF 2018**

Vijay Kumar Sinha .....COMPLAINANT(S)

VERSUS

M/S ABW Infrastructure Ltd. & Ors. ....RESPONDENT(S)

**8. COMPLAINT NO.840 OF 2018**

Satya Prakash Arora .....COMPLAINANT(S)

VERSUS

M/S ABW Infrastructure Ltd. & Ors. ....RESPONDENT(S)

**9. COMPLAINT NO.841 OF 2018**

Manju Arora .....COMPLAINANT(S)

VERSUS



M/S ABW Infrastructure Ltd. & Ors. ....RESPONDENT(S)

**10. COMPLAINT NO.1119 OF 2018**

Vikas Chauhan & Anirudh Chauhan ....COMPLAINANT(S)

VERSUS

M/S ABW Infrastructure Ltd. & Ors. (12) ....RESPONDENT(S)

**11. COMPLAINT NO.1121 OF 2018**

Mrs. Nalini Sharma ....COMPLAINANT(S)

VERSUS

M/S ABW Infrastructure Ltd. & Ors. (12) ....RESPONDENT(S)

**12. COMPLAINT NO.1122 OF 2018**

Ravinder Bir Singh ....COMPLAINANT(S)

VERSUS

M/S ABW Infrastructure Ltd. & Ors. (12) ....RESPONDENT(S)

**13. COMPLAINT NO.1123 OF 2018**

Mrs. Maninder Sandhu ....COMPLAINANT(S)

VERSUS

M/S ABW Infrastructure Ltd. & Ors. (12) ....RESPONDENT(S)



**14. COMPLAINT NO.1124 OF 2018**

Mrs. Sheelawanti .....COMPLAINANT(S)

VERSUS

M/S ABW Infrastructure Ltd. & Ors. (12) .....RESPONDENT(S)

**15. COMPLAINT NO.1125 OF 2018**

Ms. Gurpreet Kaur & Anr. ....COMPLAINANT(S)

VERSUS

M/S ABW Infrastructure Ltd. & Ors. (12) .....RESPONDENT(S)

**16. COMPLAINT NO.1126 OF 2018**

Mrs. Amarjeet Thind .....COMPLAINANT(S)

VERSUS

M/S ABW Infrastructure Ltd. & Ors. (12) .....RESPONDENT(S)

**17. COMPLAINT NO.1127 OF 2018**

Gurdeep Kaur Bhatia .....COMPLAINANT(S)

VERSUS

M/S ABW Infrastructure Ltd. & Ors. (12) .....RESPONDENT(S)

**18. COMPLAINT NO.1128 OF 2018**

Gurcharan Singh Thind & Amarjeet Thind .....COMPLAINANT(S)

VERSUS



M/S ABW Infrastructure Ltd. & Ors. (12) ....RESPONDENT(S)

**19. COMPLAINT NO.1129 OF 2018**

Nageena Tandon ....COMPLAINANT(S)

VERSUS

M/S ABW Infrastructure Ltd. & Ors. (12) ....RESPONDENT(S)

**20. COMPLAINT NO.1130 OF 2018**

Chandeep Singh ....COMPLAINANT(S)

VERSUS

M/S ABW Infrastructure Ltd. & Ors. (12) ....RESPONDENT(S)

**21. COMPLAINT NO.1131 OF 2018**

Shivom Tandon ....COMPLAINANT(S)

VERSUS

M/S ABW Infrastructure Ltd. & Ors. (12) ....RESPONDENT(S)

**22. COMPLAINT NO.1132 OF 2018**

Mrs. Narinder Chona & Col. P.K. Chona ....COMPLAINANT(S)

VERSUS

M/S ABW Infrastructure Ltd. & Ors. (12) ....RESPONDENT(S)

**23. COMPLAINT NO.1133 OF 2018**

Mrs. Anuradha Sharma ....COMPLAINANT(S)



VERSUS

M/S ABW Infrastructure Ltd. & Ors. (12) ....RESPONDENT(S)

**24. COMPLAINT NO.1134 OF 2018**

Rajesh Arora ....COMPLAINANT(S)

VERSUS

M/S ABW Infrastructure Ltd. & Ors. (12) ....RESPONDENT(S)

**25. COMPLAINT NO.1135 OF 2018**

Pankaj Miglani & Mukesh Miglani ....COMPLAINANT(S)

VERSUS

M/S ABW Infrastructure Ltd. & Ors. (12) ....RESPONDENT(S)

**26. COMPLAINT NO.1137 OF 2018**

Grish Arora ....COMPLAINANT(S)

VERSUS

M/S ABW Infrastructure Ltd. & Ors. (12) ....RESPONDENT(S)

**27. COMPLAINT NO.1139 OF 2018**

Asheet Taneja ....COMPLAINANT(S)

VERSUS

M/S ABW Infrastructure Ltd. & Ors. (12) ....RESPONDENT(S)

**28. COMPLAINT NO.1140 OF 2018**

Ashish Hotels Pvt. Ltd. ....COMPLAINANT(S)

VERSUS

M/S ABW Infrastructure Ltd. & Ors. (12) ....RESPONDENT(S)

**29. COMPLAINT NO.1142 OF 2018**

Akhil Chopra ....COMPLAINANT(S)

VERSUS

M/S ABW Infrastructure Ltd. & Ors. (12) ....RESPONDENT(S)

**30. COMPLAINT NO.1143 OF 2018**

Abhay Chopra ....COMPLAINANT(S)

VERSUS

M/S ABW Infrastructure Ltd. & Ors. (12) ....RESPONDENT(S)

**31. COMPLAINT NO.1144 OF 2018**

Vinod Wadhwa & Rakhi Wadhwa ....COMPLAINANT(S)

VERSUS

M/S ABW Infrastructure Ltd. & Ors. (12) ....RESPONDENT(S)

**32. COMPLAINT NO.1148 OF 2018**

Archana Bhasin & Prakash Bhasin ....COMPLAINANT(S)

VERSUS

M/S ABW Infrastructure Ltd. & Ors. (12) ....RESPONDENT(S)



**33. COMPLAINT NO.1149 OF 2018**

Manpreet Kaur & Iqbal Singh ....COMPLAINANT(S)

VERSUS

M/S ABW Infrastructure Ltd. & Ors. (12) ....RESPONDENT(S)

**34. COMPLAINT NO.1150 OF 2018**

Deepti Saraf ....COMPLAINANT(S)

VERSUS

M/S ABW Infrastructure Ltd. & Ors. (12) ....RESPONDENT(S)

**35. COMPLAINT NO.1151 OF 2018**

Sunita Arya ....COMPLAINANT(S)

VERSUS

M/S ABW Infrastructure Ltd. & Ors. (12) ....RESPONDENT(S)

**36. COMPLAINT NO.1152 OF 2018**

Damodar Das Binani & Uma Binani ....COMPLAINANT(S)

VERSUS

M/S ABW Infrastructure Ltd. & Ors. (12) ....RESPONDENT(S)

**37. COMPLAINT NO.1153 OF 2018**

Devashish Binani ....COMPLAINANT(S)

VERSUS





M/S ABW Infrastructure Ltd. & Ors. (12) ....RESPONDENT(S)

**38. COMPLAINT NO.1243 OF 2018**

Nitya Kukreja ....COMPLAINANT(S)

VERSUS

M/S ABW Infrastructure Ltd. & Ors. (12) ....RESPONDENT(S)

**39. COMPLAINT NO.1244 OF 2018**

Sidharth Kukreja & Nitya Kukreja ....COMPLAINANT(S)

VERSUS

M/S ABW Infrastructure Ltd. & Ors. (12) ....RESPONDENT(S)

**40. COMPLAINT NO.1245 OF 2018**

Grish Arora & Rita Arora ....COMPLAINANT(S)

VERSUS

M/S ABW Infrastructure Ltd. & Ors. (12) ....RESPONDENT(S)

**41. COMPLAINT NO.1246 OF 2018**

Alben Chemicals Pvt. Ltd. ....COMPLAINANT(S)

VERSUS

M/S ABW Infrastructure Ltd. & Ors. (12) ....RESPONDENT(S)



**42. COMPLAINT NO.1247 OF 2018**

Savitri Kapoor & Rajiv Kapoor ....COMPLAINANT(S)

VERSUS

M/S ABW Infrastructure Ltd. & Ors. (12) ....RESPONDENT(S)

**43. COMPLAINT NO.1248 OF 2018**

Jatin Manghani & Meenakshi Manghani ....COMPLAINANT(S)

VERSUS

M/S ABW Infrastructure Ltd. & Ors. (12) ....RESPONDENT(S)

**44. COMPLAINT NO.47 OF 2019**

Renu Saraf ....COMPLAINANT(S)

VERSUS

M/S ABW Infrastructure Ltd. & Ors. (12) ....RESPONDENT(S)

**45. COMPLAINT NO.520 OF 2019**

Mrs. Shubha Shrivastava ....COMPLAINANT(S)

VERSUS

M/S ABW Infrastructure Ltd. & Ors. (12) ....RESPONDENT(S)

**46. COMPLAINT NO.521 OF 2019**

MS Vibhuti Verma & Anr. ....COMPLAINANT(S)

VERSUS



M/S ABW Infrastructure Ltd. & Ors. (12) ....RESPONDENT(S)

**47. COMPLAINT NO.522 OF 2019**

Suruchi Food Pvt. Ltd. ....COMPLAINANT(S)

VERSUS

M/S ABW Infrastructure Ltd. & Ors. (12) ....RESPONDENT(S)

**48. COMPLAINT NO.523 OF 2019**

Mrs. Dakshina Sharma ....COMPLAINANT(S)

VERSUS

M/S ABW Infrastructure Ltd. & Ors. (12) ....RESPONDENT(S)

**49. COMPLAINT NO.525 OF 2019**

Anil Jaiswal ....COMPLAINANT(S)

VERSUS

M/S ABW Infrastructure Ltd. & Ors. (12) ....RESPONDENT(S)

**CORAM: Rajan Gupta  
Dilbag Singh Sihag**

**Chairman  
Member**

**Date of Hearing: 23.04.2019**

**Hearing: 4<sup>th</sup> (in lead case Complaint No. 1121 of 2018)**



**Present: -** Mr. A.P. Dubey, Counsel for complainant

(in Complaint No. 833, 834, 835, 836, 837, 838, 839, 840, 841, 1119, 1121, 1122, 1123, 1124, 1125, 1126, 1127, 1128, 1129, 1130, 1131, 1132, 1133, 1134, 1135, 1137, 1139, 1140, 1142, 1143, 1144, 1148, 1149, 1150, 1151, 1152, 1153, 1243, 1244, 1245, 1246, 1247, 1248 of 2018; 47, 520, 521, 522, 523, 525 of 2019)

Ms. Kanika Jain & Mr. Pranjal P. Chaudhary, Counsels for respondent no. 8,11 and 12

(in Complaint No.1119, 1121, 1122, 1123, 1124, 1125, 1126, 1127, 1128, 1129, 1130, 1131, 1132, 1133, 1134, 1135, 1137, 1139, 1140, 1142, 1143, 1144, 1148, 1149, 1150, 1151, 1152, 1153, 1243, 1244, 1245, 1246, 1247,1248 of 2018; 47, 520, 521, 522, 523, 525 of 2019)

None for respondent no. 1 to 7, 9 &10

**ORDER (RAJAN GUPTA- CHAIRMAN)**

This bunch of 49 complaints is being disposed of through this single order because it pertains to the same project and facts of all the complaints are similar. The captioned 49 complaints have been received in the office of the Authority on different dates. From time to time orders were passed to club together all the complaints for uniform disposal of the matters. Complaint No. 1121 of 2018 titled as Mrs. Nalini Sharma Versus M/S ABW Infrastructure Ltd. has been treated as lead case.



2. The respondent no.1 despite services has chosen not to file its reply or to represent itself in any manner during the proceedings before this Authority. The respondent no.1 however, is fully aware of these proceedings because an application had been received from him earlier requesting the Authority to dispose of all the complaints in terms of the orders passed in **Complaint Case No.94 of 2018 titled as Shashi Kanta Thapar Versus ABW Infrastructure Ltd.** For deliberately choosing not to participate in the proceedings before this Authority, the respondent no.1 is being proceeded against ex-parte.

3. A bunch of 37 complaints, which is also a part of the captioned bunch of 49 complaints, was listed for hearing before this Authority on 17.1.2019 when a detailed order was passed settling some of the issues. The said order dated 17.1.2019 is reproduced as below: -

“This Authority vide its orders dated 30.10.2018 had disposed of a bunch of six complaints with lead **Complaint Case No.383 of 2018- Gurbaksh and Anr. Versus M/s ABW Infrastructure Ltd. & Ors.** Against the same respondent and with similar cause of action another bunch of above listed 37 complaints has been received which are being dealt with in this order. It is presumed that the orders dated 30.10.2018 passed by the Authority are in the knowledge of all the complainants as well as respondents.

2. At the outset, Learned Counsel for the complainant Shri A.P. Dubey requested this Authority to dispose of all the complaints in the same terms as the bunch matter disposed of earlier

with lead case **Complaint No.383 of 2018.**

Learned counsel also requested that the allottees of the project should be allowed to form an association to take over the project and complete the same at their own level. He also requested to grant them liberty to file a replication to the reply filed by the respondent No.1 and respondent No.8.

3. Smt. Kanika Jain and Shri Pranjal who appeared for respondent Nos. 8, 11 and 12 filed an affidavit on behalf of the respondent No.8 and made following submissions:

(i) That the Respondent No.8 is a special purpose vehicle promoted by three shareholders/developers i.e. Realtech Infrastructure Ltd. having 36%; BNB Construction Pvt. Ltd. having 10% and M/s ABW Infrastructure Ltd. having 54% stakes in the project. Further, Realtech Infrastructure Ltd. and BNB Construction Pvt. Ltd. constitute one group comprising total of 46% share and M/s ABW Infrastructure Ltd. constitutes another group with 54% share of the sanctioned FSI/FAR.

(ii) That the licensed project is divided into two separate projects namely 'FBD-One' being developed by M/s Realtech infrastructure Ltd.; and M/s BNB Construction Pvt. Ltd. and the 2<sup>nd</sup> project 'Gateway Towers' being developed by M/s ABW Infrastructure Ltd. Learned counsel stated that the present complaints pertain to 'Gateway Towers' being developed by Respondent No.1 M/s ABW Infrastructure Pvt. Ltd.

(iii) That the Respondent No.8 M/s Dove Infrastructure Pvt. Ltd. is the licensee and the landowner of the entire land. Internally, Respondent No.1 & other two shareholders of the Respondent No.8 Company are owners of totally distinct and separate projects and the Respondent No.8 by itself has never dealt with any of the complainants directly. The Respondent No.8 has neither developed or developing any part of the project of respondent no. 1 and has never sold any

apartment to customers. The agreements for sale/purchase in question were executed between the complainants and Respondent No.1, accordingly, the relief being demanded by the complainants should be directed against the Respondent No.1 only. Further, if there has been any breach of contract by the Respondent No.1, the Respondent No.8 cannot be held answerable for the same. Learned counsel further states that the directors of the Respondent No.8 Company i.e. Respondent Nos.9, 10,11 and 12 have nothing at all to do with the complainants, therefore, their names ought to be deleted from the array of respondents.

(iv) That there is no privity of contract between the complainants and the Respondent No.8 or its directors particularly Respondent Nos. 9 to 12.

(v) Learned Counsel prayed that the names of the Respondent Nos.8 to 12 should be deleted and no order should be directed against them.

4. Learned Counsel also placed on record a **Company Application No.1529 of 2018 filed in the Hon'ble High Court of Delhi in the matter of Nitya Kukreja Vs. ABW Infrastructure Ltd.** through official liquidator. This information was taken on record.

5. None appeared for Respondent No.1 i.e. M/s ABW Infrastructure Ltd. In the office, however, an application in 28 of the above-mentioned complaints have been received stating that the bunch of captioned 37 complaints may be disposed of in the terms of the order dated 23.07.2018 passed by this Authority in **Complaint Case No.94 of 2018-titled Shashikanta Thapar & Anr. Vs. M/s ABW Infrastructure Ltd.** in which it has been held that *"this complaint is no more maintainable and is disposed of with the direction that the complainant can seek redressal of his grievances by filing an appropriate application before the official liquidator."*

6. The Authority has given a careful consideration to the submissions made by the Learned Counsels for the complainants, Respondent Nos.8 to12 and the application filed by Respondent No.1. The Authority has also again perused its orders passed in Complaint No.383 of 2018. It observes and orders as follows:

(i) It is admitted that Respondent No.8 is a company promoted by three promoters namely M/s Realtech Infrastructure Ltd. having 36% stake in the project; BNB Construction Pvt. Ltd. having 10% stake in the project and M/s ABW Infrastructure Ltd. having 54% stake in the project. The Director, Town & Country Planning Department, Haryana granted **licence no. 281 of 2007 dated 28.12.07** in favour of Respondent no. 8 M/s Dove Infrastructure Ltd. The project in question, accordingly, is a project licensed to the Respondent No.8. The grant of the said licence in favour of Respondent No.8 was the sovereign assurance to all the allottees of the project as whole that the project will be implemented in accordance with law. It was on the strength of the licence granted to Respondent No.8 that Respondent No.1 was able to float and market the project to the complainants and other similarly placed persons. The principal licensee, therefore, cannot avoid its responsibility because one of its partners has committed default towards its allottees.

(ii) It has been held many times by this Authority that along with the developers, the licensee of the land shall also be equally liable. The responsibilities of the developers and the licensee are joint and several. The licensee of the land could not have allowed default by one of its partners. The licence casts certain responsibilities upon the licensee entity. The conditions of the licence have to be fulfilled by the licensee. A licensee cannot turn around and say that one of its partners singularly is at fault and other partners should be allowed to go scot free. Prima-facie,



therefore, the contentions made by the learned counsel for respondent No.8 do not appear just and fair.

(iii) Regarding the request made by Learned Counsel for the complainants to allow them to form an association, they were advised to refer to certain interim orders passed by this Authority in a bunch of matters with lead case **Complaint No. 388/2018 Aditya Bhargava Versus Piyush Buildwell India Limited**. The Counsel was told that they may have to go through a similar process. Atleast two third of the allottees should form an association and prosecute this matter further by converting themselves into a juristic person. If two third of the allottees can form an association and exhibit their seriousness in the same manner as in the above-mentioned **complaint case No. 388/2018**, the Authority may consider their request and take appropriate decision thereon.

(iv) The request of Learned Counsel for the complainants for filing replication was accepted. They may do so and file the same before this Authority atleast one week prior to the next date of hearing. They should also supply a copy of the same to all the respondents.”

4. A bunch of 44 complaints included in the captioned bunch of 49 complaints including the afore-mentioned 37 complaints and 7 more was heard on 20.2.2019, when the following order was passed: -

“The Authority vide orders passed on the previous date of hearing turned down the prayer of the Respondent Nos. 8 to 12 for deletion of their names from the array of respondents on the ground that they have nothing to do with the development of “Gateway Towers” in which complainants were allotted commercial units because Authority was of the considered opinion



that Respondent No. 8 being licensee and Respondent Nos. 9 to 12 being its Directors are jointly and severally liable to discharge the obligation towards the complainants.

2. The Hon'ble High Court of Delhi has appointed official liquidator in respect of the property of the respondent. Learned counsel for the respondent Nos. 8 to 11 has submitted that his clients have filed an application before the Hon'ble High Court for consideration of a revised plan to complete the project for the benefits of the allottees and his request is for adjourning the present case beyond the date fixed before the Hon'ble High Court of Delhi for awaiting decision of said application.

3. The complainants herein have, on the other hand, expressed a desire to complete the project themselves and are seeking permission for handing over the project to them for completion. They were advised on the previous date to form an association and were also told that they may have to go through a process in a manner as this Authority has already explained in a bunch of matters with lead **Complaint Case No. 388 of 2018 titled as Aditya Bhargava V Piyush Buildwell India Limited.**

4. An affidavit is today filed in complaint No. 833 of 2018, wherein, it has been indicated that the deponent has discussed the matter with other fellow allottees regarding forming of a Welfare Cooperative Society for taking over the project for the purpose of its completion. The complainants seek some more time for forming an association having juristic entity and also to file the details of the manner in which such association will undertake the construction work for completing the project.”



5. This matter further came up for hearing on 20.3.2019 when the number of complaints had increased to 49. This Authority had passed the following order: -

“The complainants in their written pleadings have sought possession of the property booked with respondents in their project. Their counsel however, admits that the respondent company is already undergoing liquidation and its liabilities are more than its assets and all the assets of the company have been already attached by CBI and ED. So, the company is not in a position to handover the possession. Keeping in view the present situation, learned counsel for complainant states that the allottees are willing to form their association and take over the construction work of the project for its completion.

2. Learned counsel for respondent no. 8, 11 and 12, who are licensees of the project land, has contended that they have filed an application u/s 535(4) of the Companies Act, 1956 before Hon'ble High Court of Delhi for hiving off the 'Gateway Tower Project' from liquidation proceedings as the respondents want to bring an arrangement between ABW, the developer of the project and its creditors. Such an application was moved because any action taken against ABW Infrastructure will adversely affect the interests of the present complainants and other allottees of the project. The Authority finds merit in the point canvassed by learned counsel that adjudication of the said application will have implications on this matter as well. So, request for adjournment till the outcome of the application in Hon'ble High Court deserves acceptance.

3. Learned counsel for respondent no. 8, 11 and 12 also pleaded that in Complaint no. 833-841 of 2018 filed before this authority, they have not been impleaded as a party and therefore wishes to be impleaded as a party qua those complaints.

4. Learned counsel for respondent no. 8, 11 and 12 also filed Power of Attorney in Complaint no. 520, 521, 522, 523, 525/2019 and pleads that the reply submitted in all other cases shall be considered for these complaints as well.

5. After consideration of the matter, the Authority observes that it stands by its decision passed in **Complaint No. 383 of 2018 tiled as Gurbaksh Singh Versus ABW Infrastructure Ltd.** and directs the complainant to move an application in complaint no. 834-841 of 2018 for impleadment of M/S Dove Infrastructure Pvt. and its directors who are already respondents in connected complaints. The Authority is also of the view that the project is a stuck project and is difficult to complete, so in such a situation if an arrangement can be brought upon between the complainants and the respondent, then such a possibility should be kept open and should not be over-ruled.

6. The Authority hereby decides to await the outcome of the proceeding pending in Hon'ble High Court of Delhi. The Authority suggests the complainant either to seek refund or allottees may form an association and the Authority may hand over the project to them in exercise of the powers vested in it under section 8 of the Act."

6. Today again nobody was present on behalf of the respondent no.1 M/S ABW Infrastructure Ltd. Ms. Kanika Jain and Shri Pranjal P. Chaudhary appeared on behalf of the respondent No.8, 11 and 12. Ms. Jain stated that insolvency proceedings under Insolvency & Bankruptcy Code 2016 against the respondent no.1 are going on in the National Company Law Tribunal (NCLT), Delhi, in which Interim Resolution Professional (IRP) is likely to be appointed soon. Further, the respondent no.8 have applied to the Town &



Country Planning Department, Haryana for division of this license so as to segregate the portion of the land being developed by the respondent No.1 into a separate license for which the respondent no.1 itself shall be answerable. This request has been made with an objective to facilitate smooth and trouble-free development of the portion of land falling into the share of respondent no.8 and their associate company. Learned counsel Ms. Jain also filed an application in complaint No.1129 of 2018 stating that this matter had been listed for hearing before the Hon'ble High Court of Delhi on 29.3.2019 in which a notice has been issued to the respondents. It has further been stated that some of the customers have approach the Hon'ble NCLT for appointment of IRP under the Insolvency & Bankruptcy Code 2016. Further, the respondent no.8 had appeared before the Hon'ble NCLT to inform that since an official liquidator has already been appointed by the Hon'ble Delhi High Court, IRP need not be appointed. This request of respondent No.8 was not considered positively, however, the orders have been reserved. Learned counsel quoted a judgement dated 28.3.2019 in the matter of **Punjab National Bank Versus M/S Hanung Toys &Textiles Ltd.** stating that IRP can be appointed despite appointment of official liquidator.

MS. Jain also quoted judgement dated 11.4.2019 in Complaint No. 16 of 2018 titled as Mr. Sameer Yadav Versus M/S ABW Infrastructure Ltd. passed by Gurugram Bench of RERA, Haryana, stating that in similar



circumstances the learned Gurugram Authority has denied its jurisdiction and have concluded that home buyers will now be entitled to a seat on the Committee of Creditors of the corporate debtor.

In brief the contention of the learned counsel Ms. Jain was that the allottees should be treated as creditors and they should file their claims before the official liquidator or the IRP but this Authority now will have no jurisdiction to deal with this subject. She prayed that this Authority should not pass any further order in the matter. The application filed by the learned counsel is taken on record.

Learned counsel Ms. Jain again stated that the respondent No.8 has not been made a party in complaint case No.833 to 841 of 2018, therefore, any order in respect of those complaints may not be directed against respondent no.8.

7. Shri A.P. Dubey, learned counsel for the complainants stated that all the complainants demand possession of the apartments allotted to them. Further, the complainants also demand that the amount of assured monthly return the payment of which has been stopped for the last four years should be paid. The complainants also demand payment of compensation for the harassment and mental agony they have gone through.

8. The Authority has considered the matter in detail. It observes and orders as follows: -



- (i) That a bunch of six complaints against the respondent no. 1 and others had been disposed of by this Authority vide its orders dated 30.10.2018 with lead case titled **Complaint Case No. 383 of 2018 titled as Gurbaksh Singh Versus ABW Infrastructure Ltd.** The facts and circumstances of all the 49 complaints captioned above are quite similar to the facts and circumstances of six complaints disposed of vide orders dated 30.10.2018. This part of the order also adequately addresses the arguments of learned counsel for respondent no. 8, 11 and 12.

Now, in view of the fact that multiple civil and criminal proceedings are going on against the respondent no.1 and their promoters, a gist of which has been captured in the orders dated 30.10.2018 in complaint case No. 383 of 2018, there is no likelihood of the project being completed by the respondent no.1 for handing over the possession of the apartments to the complainants. Their request for getting possession of the apartments, even if theoretical allowed will mean nothing in practical terms. This is a failed and stuck project of which the resolution may be found over a long period of time through the complex maze of ongoing litigations. There may be several claimants to the assets of the respondents



In the circumstances all the captioned 49 complaints are disposed of in the same terms as the orders dated 30.10.2018 in **Complaint Case No. 383 of 2018 Gurbaksh Singh Versus M/S ABW Infrastructure Ltd.** A gist of the directions issued by the Authority in complaint No.383 of 2018 is reproduced below: -

“ (i)The allottees of the project in question shall be treated as deemed owners of the project. The promoters of the project and the lending financial institutions cannot alienate the ownership rights of the allottees at their own level without their consent. Therefore, the claim of the allottees against the assets of the project shall be treated superior to any other right of any other person or entity including the financial institutions and/or other creditors.

(ii) If claims of the allottees are not satisfied fully from the assets of the project in question, they shall be treated creditors of the promoters at par with other creditors for satisfaction of their claims from the assets of the promoters other than the assets of the project in question.

(iii)The Director, Town & Country Planning Department, Haryana is duty bound to protect interest of the allottees and to ensure that the project on the licenced land is completed in accordance with sanctioned plans. The Director shall immediately take steps to take over the project and get it completed in the manner considered appropriate. The Director shall take over the project regardless of any other proceedings pending against the project assets including under the SARFAESI Act, 2002 or the “Haryana Protection of Interest of Depositors in the Financial Establishment Act, 2013”.

(iv)\_ While all the captioned complaints are being disposed of by this final order, Executive Director shall file a suo-moto complaint against



respondents No.1 & 2 and also implead Director, Town & Country Planning Department, Haryana as a respondent for monitoring of follow up actions taken on these directions.

(v) The complainants and other similarly placed allottees may present these orders before any authority dealing with liquidation of assets of the Project, or the respondents and seek satisfaction of their claims on priority. It is, however made clear that the claims of the allottees shall be restricted to the refund of the money paid by them to the respondents along with interest as provided for in rule 15 of the HRERA Rules, 2017.”

- (ii) It is however clarified that the interest as per rule 15 of HRERA rules shall be payable with effect from the dates the respondent no. 1 stopped payment of assured monthly returns to the complainants.
- (iii) The Authority in its orders dated 17.1.2019 has already held that all the companies who are co-licensees of the project shall be responsible towards the complainants jointly and severally. Respondent no. 1, however, is privy to the contract with the complainants. This order therefore shall be primarily directed towards the respondent No.1 and in the event of their claim not being satisfied, the complainants shall be free to seek the refund of their money from the other licensees. All the co-licensees shall be liable towards the complaints jointly and severally accordingly.



- (iv) The complainants vehemently seek possession of their apartments which obviously is not possible to be granted keeping in view the current status of the respondent No.1. Learned counsel for the complainants stated that the complainants as well as other allottees are ready to form an association for taking over the project and complete it themselves.

Attention of the learned counsel was drawn towards sub para (III) of para 6 of the orders dated 17.1.2019 in which their request for handing over the possession to the association of allottees had been accepted in principle. However, the complainants along with other allottees were asked to form an association and exhibit their seriousness in the same manner as in the **Complaint Case No. 388 of 2018, Aditya Bhargava Versus Piyush Buildwel India Ltd.**

We order that the right of the complainants and other similarly placed allottees of the project to form an association to take over the project under section 8 of the RERA Act shall remain intact. If about two third allottees are able to come together and exhibit their seriousness to the Authority, they may approach the Authority by way of another complaint for considering their request for taking over the project. After



judging their seriousness, the Authority will decide to handover the project to them. This right of the complainants and other similarly placed allottees shall not be violated. This right however, must be exercised well before the finalisation of the proceedings in respect of the project in question before the official liquidator or the IRP.

A request was made by the learned counsel Sh. Dubey that for the purpose of forming association, instead of two third allottees, the allottees of two third space of the project may be considered. The Authority will not express any opinion in this regard at this stage. This matter will be considered when such an application is received from the association.

It is reiterated that the Town & Country Planning Department shall fully associate and assist the association of allottees, if and when formed, for taking over of the project and completing it themselves.


- (v) The Authority deems it appropriate to reiterate that rights of the allottees of the project, including the captioned complainants, shall have a superior most right over the assets of the project including their right to take over of the project for completing it themselves. This right if exercised within time shall supersede



Complaint No. 833, 834, 835, 836, 837, 838, 839, 840, 841, 1119, 1121, 1122, 1123, 1124, 1125, 1126, 1127, 1128, 1129, 1130, 1131, 1132, 1133, 1134, 1135, 1137, 1139, 1140, 1142, 1143, 1144, 1148, 1149, 1150, 1151, 1152, 1153, 1243, 1244, 1245, 1246, 1247, 1248 of 2018; 47, 520, 521, 522, 523, 525 of 2019

any order passed by the official liquidator or by the IRP because this superior right has been granted to the allottees of a project under section 79 and Section 89 of the RERA Act,2016.

**Disposed of** in above terms. Files be consigned to record room and this order be uploaded on the website of the Authority.



**RAJAN GUPTA**  
**[CHAIRMAN]**



**DILBAG SINGH SIHAG**  
**[MEMBER]**

