



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

1. COMPLAINT NO. 75 OF 2020

NeelamCOMPLAINANT(S)

VERSUS

M/s HL Residency Pvt. Ltd.RESPONDENT(S)

2. COMPLAINT NO. 155 OF 2020

Poonam DeviCOMPLAINANT(S)

VERSUS

M/s HL Residency Pvt. Ltd.RESPONDENT(S)

3. COMPLAINT NO. 160 OF 2020

Girdhari lal ShardaCOMPLAINANT(S)

VERSUS

M/s HL Residency Pvt. Ltd.RESPONDENT(S)

4. COMPLAINT NO. 161 OF 2020

SeemaCOMPLAINANT(S)

VERSUS

M/s HL Residency Pvt. Ltd.

....RESPONDENT(S)

5. COMPLAINT NO. 367 OF 2020

Suman

....COMPLAINANT(S)

VERSUS

M/s H.L. Residency Pvt. Ltd.

....RESPONDENT(S)

**CORAM: Dr. Geeta Rathee Singh
Nadim Akhtar
Dilbag Singh Sihag**

**Member
Member
Member**

Date of Hearing: 21.09.2022

Hearing: 3rd

Present through video call: - Sh. Naveen Single, learned counsel for the complainants in all cases
Sh. Sandeep Dahiya, learned counsel for the respondents in all cases

ORDER (DILBAG SINGH SIHAG- MEMBER)

1. While initiating his pleadings, learned counsel for the complainants Sh. Naveen Singal submitted that matter was heard at length on the last date of hearing i.e. 07.07.2022, whereby Authority has directed the respondent to place on record documents showing 2/3 consent taken from the allottees

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before constructing fourth floor of the building in question. Operative part of the said order after perusal is reproduced below for ready references:

“ 2. While initiating his pleadings, learned counsel for the complainants submitted that captioned complainants were disposed of by the Authority vide its orders dated 03.11.2020 passed in complaint nos. 75,155,160,161,367 of 2020. Appeals were filed by the appellants/ complainants aggrieved by said Composite orders. Accordingly, an order date 07.04.2022, was passed by Hon'ble Appellant Tribunal, whereby these complaints were remanded back to the Authority for adjudication upon following two issues:

- I. Necessary direction to the respondent to stop illegal construction of third floor in building.
- II. Necessary direction to the respondent to remove transformer installed near building and to restore green area.

1. On the other hand, learned counsel for the respondent argued that construction carried out by the respondent-promoter for third/fourth floor in building is absolutely legal since construction has been under taken after approval of revised building plans. The letter of approved building plans is placed at page no14-19 of reply. These building plans were approved by the concerned department on 22.02.2020. In support of his contention, he further referred to clause 40.3 of the builder buyer agreement which was executed between parties. Said para is being reproduced for ready reference.

“That the vendee(s) agree/s that in case further construction on any portion of the said land/ unit or building or on the terrace becomes permissible, the vendor company shall have the exclusive right to take up or complete such further construction as belonging to the vendor notwithstanding the designation and allotment of any common area as limited common area or otherwise. In case of construction of a residential floor above the second floor/

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third floor, an amount of Rs. Two lakh (extra amount charged in lieu of usage of terrace rights) shall be refunded only to the concerned vendee/s without any interest or compensation or whatsoever. It is agreed that in such a situation or with a view to complying with the provisions of the Haryana Apartment Ownership Act, 1983(as amended), the proportionate share of the vendee(s) in the common areas and facilities, the limited common areas and facilities and in the land underneath the building shall stand varied accordingly, without any claims from the vendee(s). The vendor company shall be entitled to connect the electric, water, sanitary, power backup and drainage fittings on the additional structure(s)/ storey(ies) with the existing such facilities/installations.”

From perusal of above clause of the agreement, it is quite clear that allottees cannot challenge the construction made above second/ third floor when construction has been undertaken after getting approval from the competent Authorities, which respondent-promoter has already taken on 22.02.2020. Further respondent's counsel argued that none of the allottees residing in building in question has paid any extra money to enjoy the benefits of roof top. Therefore, respondent-promoters have constructed fourth floor well within their rights.

2. On the contrary, learned counsel for the complainant refuting the defence of the respondent argued that respondent has cheated all the allottees and acted against the law of the land. To support his contention, he pleaded that respondent has changed building plans after signing of builder buyer agreements with the allottees. Builder Buyer agreement was executed between parties on 01.11.2018 whereas respondent got first time approval of building plans from concerned department on 30.11.2018, thereafter revised building plans were approved by competent

Authority on 05.03.2020. So, it could be clearly made out that respondent has changed the building plans after signing of agreements with the allottees. While getting approval for revised building plans, respondent has avail increased FAR without their consent that's violation of Section 14 of RERA Act 2016. Building plans got revised by the respondent without consent of the 2/3rd allottees as required under provisions of Section 14 of the RERA Act 2016. Accordingly, construction of third/fourth floor without taking consent of 2/3rd allottees is not permissible without adhering procedure as per provision of Section 14 of Act abid. Therefore, respondent promoter be directed to either demolish construction of fourth floor or continue with it only after having consent of atleast 2/3 allottees residing therein.

3. After hearing both parties and going through records, Authority is of the considered view that complainants on agitating against construction of fourth floor. Nevertheless, such construction is in conformity with revised building plan but respondent has taken consent of 2/3rd affected allottees or not, no document placed on record. In the absence of such consent, allottees are well within their rights to raise their objection before the Authority when respondent-promoter failed to seek consent of 2/3rd allottees before constructing said floors. Although respondent has constructed said floor after seeking approval of building plans from the competent Authority but fact remains that revised building plans got approved by concerned Authority in the year of 2020 that is after execution of the builder buyer agreements with the allottees. So, respondents are supposed to take atleast consent of 2/3rd allottees before undertaking construction of these floors. Therefore, prayer of complainants become admissible in case it is proved that no consent of allottees has been sought while initiating said construction and respondent has to choose one way either to take consent of 2/3rd affected allottees or settle the matter out of Court. Authority advises



respondent-promoter to settle the matter with the allottees before next date of hearing.

4. As far as, second issue raised by the complainants is concerned learned counsel for the complainant sought time to produce relevant documents to substantiate his claim. Request allowed”

2. On the other hand, learned counsel for the respondent Sh. Sandeep Dhaiya, apprised the Authority that in compliance of the order dated 07.07.2022, he has submitted additional documents on 20.06.2022 in the registry of the Authority. He further argued relying upon those documents that Annexure C of said document placed at page no. 38-89, shows that consent of 2/3 allottees was duly taken before constructing the fourth floor as required and approved policy of the department of Town & Country Planning Department under Section 14 of the RERA Act 2016. He further submitted that construction has already been carried out by the respondent-promoter after taking prior permissions from the concerned department following all procedures as prescribed under the laws of the land. So, in nutshell he submitted that allegation of the complainants are baseless without any merit and deserves to be dismissed in the light of above said documents.

3. After going through entire records especially the documents placed on record by the respondent under his affidavit dated 08.09.2022, Authority observes that captioned complaints were remanded back by Hon'ble Appellate Tribunal for adjudication of the issues that respondent- promoter



had illegally constructed fourth floor in violation of section 14 of the RERA Act.

4. Today learned counsel for the respondent has placed on record relevant documents mentioning that consent of 2/3rd allottees were already taken by the respondent before undertaking construction work of fourth floor in the building.

After perusal of said documents, Authority is of the considered view that respondent has followed all procedures as prescribed under the statues of RERA and Town and Country Planning as well, while seeking prior approvals of the building plans from the competent Authority. The requirement under Section 14 of the RERA Act 2016 has already been fulfilled by the respondent-promoter as construction raised on fourth floor by respondent-promoter^{is} in accordance with the approved revised building plans issued by the concerned department in the year 2020 that too after getting consent of 2/3 allottees, proof of the same has been annexed as annexure C at page no. 38-89 of documents. Hence, in the light of above observations and documents place on record by the respondent dated 20.06.2022, Authority concludes that respondent has raised legal construction of fourth floor well within their rights after adopting due course of law.

5. Last, contention of learned counsel of the complainant is that a transformer has been installed near this building, which makes the building unsafe to reside. On this issue, learned counsel for the respondent argued that



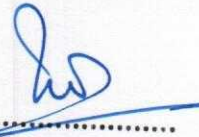
transformer was installed strictly as per provisions of approved layout plan of the colony. To support his contention, he referred to Annexure G at page no. 39-8 of the said document. After Perusing of said documents, Authority is of the view that transformer installed in colony is strictly as per provisions of the layout plans. Therefore, second issue raised by the complainant has also no merit in it.

5. In the light of forgoing discussion, Authority is of the view that present complaints have no merit to intervene since respondent has proven that no violation of law has been committed by him while constructing 4th floor and grievances raised by the complainants are baseless and hold no merit in it.

6. **Disposed of.** Files be consigned to record room after uploading of this order on the website of the Authority.



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DR. GEETA RATHEE SINGH
[MEMBER]



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NADIM AKHTAR
[MEMBER]



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DILBAG SINGH SIHAG
[MEMBER]