



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.	2566 of 2022
Date of filing:	04.10.2022
Date of first hearing:	24.11.2022
Date of decision:	28.03.2023

Vinod Kumar Handa

R/o E- 124 Windsor Park Elegant Tower plot no.5,

Vaibhav Khand Indirapuram

Ghaziabad, Uttar Pradesh- 201014

.....COMPLAINANT(S)

VERSUS

1.Ex- Sainik&Karamchari House Building Society

Sector-49, Sainik Colony Faridabad

2. Mr. Rakesh Dhunna

B-705, Sainik Colony, sector 49, Faridabad

3. Ms. Anju Chowdhary

D 1157, Sainik Colony, Sector 49, Faridabad

4. Mr. Mahaveer Singh

32900, Sainik Colony Sector 49, Faridabad

5. Ms. Poonam Ahuja

E-1481, Sainik Colony, Sector 49, Faridabad

6. Mr. Sunil Kadian

Inspector Cooperatives Faridabad ARCS Faridabad,

1268, Sector 8, Faridabad

....RESPONDENT (S)

CORAM: Dr. Geeta Rathee Singh Member
Nadim Akhtar Member

Present: - Mr. Siddharth Handa, learned counsel for the complainant

None for the respondent

ORDER (NADIM AKHTAR-MEMBER)

Present complaint dated 04.10.2022 have been filed by complainant under Section 31 of the Real Estate (Regulation & Development) Act, 2016 (for short Act of 2016) read with Rule 28 of The Haryana Real Estate (Regulation & Development) Rules, 2017 for violation or contravention of the provisions of the Act of 2016 or the Rules and Regulations made thereunder, wherein it is inter-alia prescribed that the promoter shall be responsible to fulfil all the obligations, responsibilities and functions towards the allottee as per the terms agreed between them.



A. UNIT AND PROJECT RELATED DETAILS:

The particulars of the project, the details of sale consideration, the amount paid by the complainant, date of proposed handing over possession, delay period, if any, have been detailed in the following table:

S.N.	Particulars	Details
1.	Name of the project	Sainik Vihar
2.	Location of the project	Sector 88, Neharpar, Faridabad
3.	Nature of the Project	Group housing Society
4.	RERA Registered/not registered	Un-registered
5.	Name of the respondent	Faridabad Ex- Sainik Karamchari Corporation House Building Society
6.	Unit area admeasuring	150 sq. ft

B. BRIEF FACTS OF THE CASEAS STATED IN THE COMPLAINT FILED BY THE COMPLAINANT

1. That in the year 2011, the complainant had purchased the plot admeasuring 150 sq. yards from the respondent and the membership was duly approved by ARCS Faridabad in the same year. However, the



respondent/ society despite taking full payment for the plot, failed to get the license for the township due to which possession of the plot could not be handed over to the complainant. In the year 2014, the management of society illegally entered into collaboration agreement with Fantabulous Town Planners and forcibly converted the 150 sq. yards plot into the 180 sq. yards Floor on the payment of ₹11,59,000/-.

2. That in the year 2014, a general body meeting was conducted and as per the meeting, draft for collaboration agreement was sent to the Registrar Co-operative Panchkula for the approval. However, Registrar Co-operatives Societies, Panchkula had raised certain objections in the draft collaboration agreement and issued a memo dated. 31.10.2014. A copy of the memo has been annexed as Annexure-1 of the complaint.
3. That RCS Panchkula had further ordered the compliance of the said memo, however, the managing committee of the society instead of complying with the orders of RCS Panchkula had obtained the NOC from Asst. Registrar of co-operative Societies, Faridabad by stating the concocting facts. Subsequently, on 20.01.2015, the RCS office had initiated departmental inquiry and issued show cause notice against the ARCS Faridabad and Deputy Registrar Gurugram for the same.
4. That in the year 2016, on complaint of one of the residents of sainik colony, RCS Panchkula had ordered the inquiry and Inspector cooperatives, Faridabad conducted inquiry, on the basis of which, RCS

Panchkula issued a memo dated 13.12.2021, wherein he ordered the compliance of aforesaid order dated 31.10.2014 and further ordered to conduct the valuation of the total assets of the society which will be transferred to the builder. It has been further stated in the said order that if excess amount is not recovered from the builder, then the surcharge proceedings will be initiated against the signatories of the contract for the recovery from the builder. Subsequently, the society has filed a revision petition in the court of Additional Chief Secretary, Chandigarh against the aforesaid order dated 13.12.2021.

5. That in the year 2016, when RERA Act came into the force, complainant requested the society to register the project under RERA Act before making any further demands from the members. However, the management of society has paid no heed towards the same and continued to collect the payment from the members. Complainant had continuously reminded the respondent to comply with the provisions of the RERA Act but no satisfactory response has ever been given.
6. That in the year 2021, society illegally terminated the membership of the complainant on non-payment of the instalments. The termination was challenged in the ARCS Faridabad office where in its order dated 09.02.2022, society was ordered to restore the membership of the complainant and further directed to reply all the queries raised by the complainant. Copy of the said order has been annexed as annexure -4.



However, the society failed to comply with the ARCS, Faridabad order and hence an execution petition was filed before ARCS, Faridabad but the society has failed to produce any documents.

7. That it came to the knowledge of the complainant that the society is in huge debts to the government agencies and is in no position to pay the debts. The society management is wilfully avoiding the compliance of the orders of the government agencies, however, at the same time it has transferred more than half of the society assets at throwaway price to the developer.
8. That in the year 2022, RCS, Panchkula had also removed the signatories to the contract from the Board of Administrators and pronounced them as guilty of signing the contract. A copy of letter dated 09.05.2022 is annexed as Annexure-6.
9. That in response to revision petition filed by the society, Additional Chief Secretary, Chandigarh, vide its order dated 29.08.2022 has ordered the society to comply with the orders of the RCS Panchkula, however, the society is issuing fresh demand letters without complying with the orders of the authorities.
10. That the society management despite been aware of all these illegalities has cheated the members and entered into the agreement with developer and illegally used complainants 150 sq. yards plot in the deal, for which they had not taken any permission from the RCS Panchkula. The



government authorities had given the ample of opportunities to the society to abide by the law and comply with the government orders but in vain.

11. That the management of society is challenging the state supremacy and defying the orders. Their ulterior motive is to sell the plots after collecting the full payment from the members. It converted the plots to floors and that too on the payment of construction charges and gave more than 50% of the prime society land to the builder for free along with the commercial FAR for the whole 45-acre property. This is clear-cut case of breach of trust and causing loss to the member for their ulterior motives.
12. Thus, aggrieved of the above facts and circumstances, complainant had filed this present complaint.

C. RELIEF SOUGHT:

The complainant has sought following reliefs which is stated as below:

- i) Registration of the project under the RERA Act to safeguard the rights of the complainant and restraining the respondent from creating third party interest in the membership.
- ii) To direct the respondent to handover the plot admeasuring 150 sq. yards of the complainant or compensation of the total value of the plot at today's market price.



iii) To impose strict penalties on the directors of the sainik colony and the current board of administrators, who are evading the compliances of orders of govt. Authorities.

iv) To direct the respondent to comply with the order Additional Chief Secretary, Chandigarh for valuation of commercial FAR and land being transferred to the builder.

D. REPLY SUBMITTED BY THE RESPONDENT NO. 1:

Learned counsel for the respondent filed detailed reply on 26.12.2022 pleading therein:

13. That the Hon'ble Authority has no jurisdiction to adjudicate upon the present complaint as complainant has sought relief against termination of his membership, however, as per the provisions of Haryana Co-operative Societies Act, 1984, the appeal against the termination of membership of the Society lies before the Registrar Cooperative Societies, Panchkula. Therefore, the present complainant is not maintainable before this Hon'ble Authority.
14. That the other issues raised by the complainant are already sub-judice before Sh. Additional Chief Secretary to Government, Haryana, Cooperative Department, Chandigarh in Revision Petition No. 09 of 2022.



15. That respondent no.1 (Faridabad Ex-Sainik & Karamchari Co-op House building Society Ltd) is an organisation being managed by the members and respondent is working for the welfare of the members and providing luxury plots/houses/flats with all the basic amenities to the members.
16. That the management of the respondent is being elected by the members through elections under the supervision of Assistant Registrar Cooperative Societies, Faridabad. The day-to-day activities are managed by the elected management of the society in coordination with general house.
17. That all the major decisions of the respondent are duly discussed and approved by the general house and without approval of general house, no decision is being implemented or finalised.
18. That the relation between the members and the management is not of a developer, builder and a prospective buyer.
19. That land is owned by the members of the respondent. The authorised members of elected body have the power to sign the documents on behalf of the members of the Respondent as all the members cannot sign the documents.
20. That respondent do not hold any title of the land. Respondent is not owning the land for its own interest, but only managing the interest of the members of the society.



21. That respondent collects the actual amount i.e., cost of land and construction from the members along with the Government dues i.e., EDC & IDC charges.
22. That the respondent neither retain any amount collected from the members nor charge any amount toward service charge from the members.
23. That respondent is not engaged in selling the plot or constructed house or flats to the prospective buyers. Society is working for the members of the society, who agree to buy the plot, house or flat as approved by the GBM.
24. That respondent is liable to abide by the Punjab Co-op Society Act and the conditions of Department of Town and Country Planning (Government of Haryana) for getting the license for the development of the project.
25. That the respondent with the help of the members purchased 45 acres of land in Mauza Khen, Badshahapur, Palwali, Tikawali forming part of Sector 88 Faridabad, with a proposal to allot plots to 700 members, who have contributed money to buy land. The respondent could not procure more land to fulfil the criteria fixed by the Department of Town and Country Planning, hence the proposal to provide plots to the members has got delayed.



26. That one of the member Sh. Deep Chand Sharma, residents of Faridabad applied for a plot of 150 sq. yards and cleared the dues as decided by the general body. A Copy of application is annexed as Annexure A.
 27. That Sh. Deep Chand Sharma, the erstwhile member had transferred the membership in the name of complainant Sh. Vinod Kumar Handa, after completing formalities on 26.11.2011.
 28. That the complainant has failed to deposit money to the society as demanded from time to time.
 29. That the complainant could not be said to be the sufferer, rather the other members of the respondent society are suffering due to such members who have not contributed in making the due payments to the collaborator.
 30. That the respondent is not liable to register under RERA Act as respondent is neither a developer or a promoter.
- E. No reply has been filed on behalf of the respondent no.2, 3, 4, 5 and 6.

F. REJOINDER FILED BY THE COMPLAINANT:

31. Rejoinder has been filed by the complainant on 17.01.2023 wherein he has denied the averments made by the respondent in its reply with specific reference to issue of maintainability of the complaint.
32. He further denied the stand of the respondent that similar issues pertaining to complaint are pending before the court of ACS Panchkula.



The matter had already been decided by ACS Panchkula vide its order dated 29.08.2022 and copy of the same has been annexed as Annexure - 7 of the complaint file.

33. It has been submitted that the respondent has changed the demography of the land on the basis of illegal agreement for their ulterior motives. As per the general body meeting, conversion of 150 sq. yards plot into 180 sq. yards floor can be done only with the approval of the draft of the agreement by RCS Panchkula, however, RCS Panchkula has not approved draft of the collaboration agreement till date.
34. It has been further submitted that the Hon'ble Authority has issued registration certificates to many co-operative group housing societies in the year 2017. In support of this, he provided a list of co-operative group housing societies to whom the registration certificates have been issued. Copies of the same is annexed as Annexure no.3 of the rejoinder.
35. He has admitted the fact that Mr. Deep Chand Sharma had transferred the membership in the name of the complainant.

G. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT

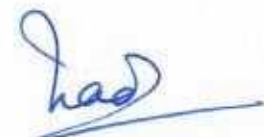
None appeared on the behalf of the respondents. Complainant reiterated the same facts as stated in the complaint and rejoinder. He prayed for the relief of the possession or the compensation of the plot.



H. OBSERVATIONS AND DECISION OF THE AUTHORITY

36. On hearing the complainant and perusing documents on file, Authority observes that the complainant Mr. Vinod Kumar Handa became the member of the Faridabad Ex-Sainik & Karamchari House Building Society Ltd. and got transferred a plot of 150 sq. yds. from the erstwhile member of the Society Shri Deep Chand Sharma, son of Shri Bhuli Ram Sharma, resident of House No.158, Colony No.9, Mohalla Barh, Faridabad after completing all formalities on 26.11.2011. It is the grievance of the complainant that the respondent society and its management failed to comply with the provisions of RERA Act by not applying for registration of the residential project. It is also his grouse that the respondent society despite taking full payment for the plot failed to get the license for the township due to which possession of the plot would be handed over to the complainant. Further, he alleges that in the year 2014, management of the society illegally entered into a collaboration agreement with the fantabulous town planners and forcibly converted the 150 sq.yds. plot into 180 sq.yds. floors, that also on the payment of ₹ 11,59,000/-.

The complainant being aggrieved by the act of the respondents have filed the present complaint seeking the relief of possession or compensation of the total value of the plot at today's market price. He has also prayed for imposing strict penalties on the directors/current board of administration of the society for illegally selling the colony. Further, he has requested that the respondent be



directed to comply with the orders of ACS, Chandigarh for violation of commercial FAR and land being transferred to the builder.

However, the respondent in its reply has averred that the present complaint is not maintainable as there does not exist a relationship of an allottee and a promoter between the complainant and the respondents.

In this regard, on perusal of record, Authority observes that the complainant who is an aggrieved person has filed the present complaint under section 31 of the Real Estate (Regulation & Development) Act 2016 read with Rule 28 of the Haryana Real Estate (Regulation & Development) Rules 2017 for violation of the provisions of the Act and rules or regulations made therein. Section 31 provides for the procedure for filing of a complaint by "any aggrieved person" with the Authority or the Adjudicating Officer. The form, manner and the fee payable for filing of the complaint are prescribed by way of rules made by the appropriate government. Section 31 of the Act is reproduced herein below: -

Section 31

(1) Any aggrieved person may file a complaint with the Authority or the adjudicating officer, as the case may be for any violation or contravention of the provisions of this Act or the rules and regulations made thereunder against any promoter allottee or real estate agent, as the case may be.



Explanation – for the purpose of this sub-section “person” shall include the association of allottees or any voluntary consumer association registered under any law for the time being in force.

(2) The form, manner and fees for filing complaint under sub-section (1) shall be such as may be prescribed.

It is observed that section 31 provides that “any aggrieved person” may file a complaint with the Authority or the Adjudicating Officer, as the case may be. The expression “aggrieved person” means a person who has suffered a legal grievance i.e., a person against whom a decision has been pronounced which has lawfully deprive him or wrongfully affect his title to do something. The word “aggrieved person” implies that a person who makes an application must be the one having enforceable legal right. “Any aggrieved person” may include any allottee, promoter or real estate agent association of allottees or voluntary consumer organization and categories mentioned in section 2 (zg) i.e. (i) an individual, (ii) a Hindu undivided family, (iii) a company, (iv) a firm under the Indian Partnership Act 1932 or the Limited Liability Partnership Act 2008 (6 of 2009), as the case may be, (v) a competent authority, (vi) an association of persons or a body of individuals whether incorporated or not, (vii) a co-operative society registered under any law relating to co-operative societies,



(viii) any such other entity as the appropriate Government may, by notification, specify in this behalf.

However, as per section 31 of RERA Act 2016, complaint can only be filed against any promoter, allottee or real estate agent. There is no provision of filing complaint against competent authority or planning authority or any other authority from whom permission relating to real estate projects are required to be taken. In the present complaint, the complainant is aggrieved by the violation committed by the Faridabad Ex-Sainik & Karamchari House Building Society Ltd. and its office bearers. However, it is observed that the complainant is himself a member of the Faridabad Ex-Sainik & Karamchari House Building Society Ltd. which is a society formed by its members whose primary objective is to provide housing facilities at affordable rates to its members. Therefore, in this peculiar case, the complainant has filed a complaint against a body which comprises of members including the complainant himself. Further, it is observed that in a co-operative society, the members pool their resources to achieve their common goals. The co-operative societies established for providing housing facilities pool their land to achieve their goals to provide shelter at an affordable rate to all its members. There is no sale of land/plots by the society to its members. On the contrary, the members only have share in the property. In the captioned complaint also, it is observed that there has been no sale of an apartment, plot or building by the society to the complainant who is also a member of that society. Therefore, in case of co-operative societies, there



does not exist a relationship of an allottee and promoter amongst the members of the co-operative society. In fact, it would not be out of place to mention here that each member of the society are themselves the promoters and the real estate project is developed by them for their own usage. Nonetheless, in a scenario where a co-operative society decides to sell part of the real estate project being developed by them to a third party who is not a member of that society then that would create a relationship of an allottee and a promoter. Since in the present complaint, complainant is a member of the society and there was no sale of plot to him. Relationship of an allottee and a promoter could be established. Therefore, Authority is of a considered view that the complaint is not maintainable before the Authority. Consequently, this complaint is disposed of as not maintainable.

Further, for redressal of his grievances with respect to implementation of the decision of the ACS, Chandigarh, imposition of penalties on the directors of the Sainik Colony for effecting order of the Government, complainant is at liberty to approach the competent authority under the provisions of the relevant laws.



37. Hence, the present complaint is disposed of as not maintainable. File be consigned to the record room after uploading the order on the website of the Authority.



.....
DR GEETA RATHEE SINGH
[MEMBER]



.....
NADIM AKHTAR
[MEMBER]

