

**BEFORE THE HARYANA REAL ESTATE REGULATORY  
AUTHORITY, GURUGRAM**

Complaint no. :	2141/2022
Date of filing complaint:	13.05.2022
Date of decision:	23.01.2024

	Gurgaon Greens Condominium Association R/O: Estate Management Office, Gurgaon Greens, Sector 102, Gurugram, Haryana	<b>Complainant</b>
<b>Versus</b>		
1.	Emaar Mgf Land Ltd. Regd. Office At: Emaar Mgf Land Ltd. Ece House, 28 Kasturba Gandhi Marg, New Delhi- 10001	
2.	Emaar India Community Management Private Limited Regd . Officeat: 306-308, Square One, C-2, District Centre, Saket, New Delhi, South Delhi-110017	
3.	Surender Kumar R/O: - 306-308, Square One, C-2, District Centre, Saket, New Delhi, South Delhi- 110017	
4.	Dinesh Jain R/O: - 306-308, Square One, C-2, District Centre, Saket, New Delhi, South Delhi- 110017	
5.	Jasveer Singh Panwar R/O: - 5306-308, Square One, C-2, District Centre, Saket, New Delhi, South Delhi- 110017	
6.	Jagdeep Kumar R/O :- 1102,Tower 24 , Gurgaon Greens ,	



Sector 102 , Gurugram , Haryana	<b>Respondents</b>
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**CORAM:**

Shri Vijay Kumar Goyal	<b>Member</b>
Shri Ashok Sangwan	<b>Member</b>
Shri Sanjeev Kumar Arora	<b>Member</b>

**APPEARANCE:**

Sh. Abhay Jain (Advocate)	Complainant
Sh. J.K Dang (Advocate) Sh. Harshit Batra (Advocate) Sh. Jagdeep Kumar (Advocate)	Respondents

**ORDER**

1. The present complaint has been filed by the complainant/association under Section 31 of the Real Estate (Regulation and Development) Act, 2016(in short, the Act) read with rule 29 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the rules and regulations made there under or to the allottee as per the agreement for sale executed inter se.

**A. Unit and project related details**

2. The particulars of the project, the details of sale consideration, the amount paid by the complainants, date of proposed handing over the possession and delay period, if any, have been detailed in the following tabular form:

S.No.	Heads	Information
1.	Name of the project	Gurgaon Greens , Village Dhankot Sector 102, Gurugram , Haryana
2.	Project Area	13.531 acres
3.	Nature of the project	Group Housing Colony
4.	DTCP License No. and validity status	75of 2012 dated 31.07.2012 valid up to 30.07.2020
5.	Name of Licensee	Kamdhenu Projects Pvt. Ltd. And another C/o Emaar MGF Land Ltd.
6.	HRERA Registered / not registered	Registered vide no. 36(a) of 2017 dated 05.12.2017 for 65829.92 sq. mtrs. Valid upto 31.12.2018
7.	HRERA extension of registration vide	01 of 2019 dated 02.08.2019. Valid upto 31.12.2019
8.	MOU	15.12.2018 (Page 192-198 of reply by respondent no. 1)
9.	Occupation Certificate	05.12.2018 30.06.2019 16.07.2019 (As per the website of DTCP)

**B. Facts of the complaint:**

3. That the complainant, Gurgaon Greens Condominium Association (hereinafter referred to as the "Association") is a registered society having registration no.03328 of 2018 dated 14.06.2018, under the Haryana Registration and Regulation of Societies Act, 2012, which was formed to protect the interests of the allottees/residents of the

project 'Gurgaon Greens' at Village Dhankot, Sector 102, Gurugram, Haryana. .

4. That the grievance of the complainant association relates to breach of contract, false promises, gross unfair trade practices and deficiencies in the services committed by the respondents-1 & 2 in regard to the project 'Gurgaon Greens' at Village Dhankot, Sector 102, Gurugram, Haryana. Gurgaon Greens Condominium Association, represented herein through its president, Mr Sandeep Fogaat. The present complaint is signed and verified by Mr Sandeep Fogaat, who has been authorised vide a resolution dated 28.03.2022 to file the present complaint. The respondent-1 is Emaar India Limited (formerly known as Emaar MGF Land Limited, respondent-2 is Emaar India Community Management Private Limited , respondents-3 to 5, are the founding members of the complainant association .
5. That the Director, Town and Country Planning, Haryana granted licence no.75 of 2012 dated 21.07.2012 to Emaar India Limited (in collaboration with others) for development of a group housing colony known as 'Gurgaon Greens' (hereinafter referred to as the "Project") at Village Dhankot, Sector 102, Gurugram, Haryana, measuring 13.531 acres. The respondent no. 1 invited application for sale of the apartments in its project 'Gurgaon Greens' at Village Dhankot, Sector 102, Gurugram, Haryana and subsequently apartment buyer's agreements were executed with the allottees from 2012 onwards. The 'Gurgaon Greens Condominium Association' was registered and bye-laws of the Association were approved by the District Registrar, Firms & Societies, Gurugram

under the Haryana Registration & Regulation of Societies Act, 2012, having registration no.03328 of 2018 dated 14.06.2018, which was formed to protect the interests of the Allottees/Residents of the project 'Gurgaon Greens' at Village Dhankot, Sector 102, Gurugram, Haryana.

6. That the respondent 1, incorporated a bogus Association with members who were not the allottees in the project, instead they were employees of the respondent no. 1 .As a matter of fact, the founding members and the Officer Bearers of the Governing Body of the Gurgaon Greens Condominium Association were also the founding members and officer bearers of the Governing Body of 'Imperial Gardens Condominium Association' of the project viz. 'Imperial Garden' being marketed and developed by Respondent-1, Emaar India Limited, at Village Kherki Majra, Sector 102, Gurugram, Haryana.
7. That the respondent-1 received the occupation certificates from the Town and Country Planning, Government of Haryana, vide Endst. No. ZP-835/AD(RA)/2018 33199 dated 05.12.2018, Endst. No. ZP-835/AD(RA)/2018 13011 16 dated 30.05.2019 and Endst. No. ZP-835/AD(RA)/2019 16821 dated 16.07.2019, for the said project 'Gurgaon Greens'. Thereafter, the respondent-1 started handing over possession of the units, but the possession was being offered without completing common area amenities and facilities. Moreover, there are multiple defects and deficiencies in the said project, completely due to lapses and failures.
8. That the deed of declaration was registered vide document Registration No. 8415 in Book No.1, Volume No. 210 at Page

No.153.75 and Volume No. 336 at Page No.56 to 60 on 01.03.019, in the Office of Registrar/Sub-Registrar, Kadipur, Gurugram, Haryana. The respondents-1 & 2 in connivance of respondents-3, 4 & 5, held the 3rd Annual General Body Meeting on 20.01.2021 and subsequently members of the governing body and office bearers were changed. It is shocking and deceiving that whereabouts of the office bearers are best known to the respondents-1 & 2, because none of the officer bearers were the allottees in the said project.

9. That the allottees of the said project 'Gurgaon Greens' made various representations before different forums for conducting fair elections and formation of governing body from amongst the allottees of the association. After much efforts of the allottees, the District Registrar, Firms & Societies, Gurugram, issued Order dated 17.09.2021 for appointment of the Administrator for completing the process of election of the said association within the stipulated time. Initially, the respondent-1 with malafide intention got registered the said association on 14.06.2018, wherein all seven office bearers, viz., Mr Surender Kumar (President), Mr Sunil Kumar Tarar (Vice President), Mr Dinesh Jain (Secretary), Mr Parvesh Sharma (Joint Secretary), Mr Jasveer Singh Panwar (Treasurer), Mr Ravi Bansal (Executive Member), Mr Manoj Kumar (Executive Member), of the Gurgaon Greens Condominium Association, were not the flat owners of the Emaar Gurgaon Greens, Sector 102, Gurugram, but were just the puppets of the respondent-1
10. That after the formation of the association, the respondent-1 in order to manage and control the funds in the Bank Account No.

309006629520 of Gurgaon Greens Condominium Association being operated at RBL Bank Limited, got all six authorised signatories, viz., Mr Rahul Bindle, Mr Sumit Seth, Mr Ajit Pavithran, Mr Vivek Singh, Mr Eustace Dilawar, Mr Anup Chauhan, whose position and capacity of being members was best known to the respondent-1, as none of these six persons have a unit in the said project 'Gurgaon Greens.

11. That Gurgaon Greens Condominium Association under the control of the respondent-1 had collected two years advance maintenance charges from all allottees at the time of giving possession from 2018 till 2021. The said Association, till formation of new Governing Body after election which was held on 09.01.2022, was working at the behest of the respondent-1. Moreover, the so controlled Association has not charged from the respondent-1, Emaar India Limited for the services and the facilities provided to the developer for completing the units which have not been handed over to the allottees. These expenses have been charged from the allottees who have taken the possession whereas this amount should have been charged from the developer.
12. That the so controlled Association (hereinafter referred to as 'Respondents no. 1 to 4 had charged common area maintenance charges at a very high rate of Rs.3.65/- per square foot from the flat owners. The respondents has cheated the allottees and committed embezzlement and scam worth crores of rupees by registering a bogus Association and thereby engaging Respondent-2 for maintenance of the project. The so-called office bearers made exorbitant collection in the name of Common Area Electricity

charges from the allottees. The respondents collected between Rs.800/- to Rs.900/- per month from one allottee for Common Area Electricity charges. There is a total of 672 allottees in the complex and thereby the respondents collected around Rs.5,37,600/- to Rs.6,04,800/- per month, but in actuality, total expense in the account of Common Area Electricity is hardly Rs.1,50,000/- to Rs.2,00,000/- per month. Thus, the Respondents 1/2/3/4/5 committed a fraud, embezzlement and scam of around Rs.4,00,000/- to Rs.4,50,000/- per month just in the account of common area electricity charges. The respondents also charged Minimum Monthly Electricity charges of Rs.860/- from one allottee. Thereby, Respondents collected Rs.5,77,920/- on the account of Minimum Monthly Electricity charges from the allottees. While the complex has only one bulk supply electricity connection wherein there is no such provision of Minimum Monthly Electricity charges in domestic bulk supply electricity connection. Since the process of giving possession of flats started in 2019, more than 50% allottees were remained unoccupied but the allottees were forced to pay Rs.860/- on account of Minimum Monthly Electricity charges per month to the respondents 1/2/3/4/5. Thus, thereby the respondents 1/2/3/4/5 committed a fraud of Rs.2,58,000/- per month for the past 24 months, roughly Rs.60 lakhs till date. In the name of security guards engaged for protecting lives and properties in the complex, the respondents incurred a huge expense of more than Rs.1,00,00,000/- per annum whereas actual expenses on security guards in actuality is hardly 60% to 70%. Thus, there is also a scam in the name of employing security guards for the complex. In the name of employing housekeeping also committed



fraud with the allottees. There is more than 30% to 40% embezzlement of amount between actually spent and accounted in the books.

13. That the respondents also signed a number of Annual Maintenance Contract (AMC) for maintaining lifts, generator sets, transformers and other such electrical equipment. In these AMCs, there is a high percentage of scam between actually spent and accounted in the books. On the account of electricity from diesel generator, the respondents charged Rs.21.78/- per unit from the allottees. But in actuality, the actual cost of running a generator was around Rs.11/- to Rs.12/- per unit. According to an estimate, the generator runs around 4 to 5 hours per day. The respondents also misappropriated and embezzled the funds of more than Rs.4 crore, which was taken by the developer in the name of ifms while giving possession to the allottees.
14. That the respondent-1, Emaar India Limited, with the nexus of Gurgaon Greens Condominium Association (Governing Body of the Association before election held on 09.01.2022) and respondent no. 2 (Emaar India Community Management Private Limited) forced the allottee to sign the 'Maintenance Agreement' having all above mentioned four parties. At present, the maintenance of the complex is managed by the newly elected governing body of Association, thereby respondent-1, and 2 have nothing to do with the complex legally and lawfully, and thus the Maintenance agreement must be signed between two parties, the association & the allottee.

15. That the respondent no. 2 had charged, as stated in Para 2.2 of page 4 of the Maintenance Agreement, 10% of the total annual budget of roughly Rs.5,00,00,000/- from the funds deposited by allottees to the Old Governing Body of the Association, by doing nothing but simply acting as a middleman between the then Association and the different actual maintenance agencies. Thus, the Emaar India Community Management Private Limited had filled its pockets with more than Rs.50 lakhs annually by doing nothing.
16. That after much struggle and efforts of the residents, the election for constitution new and fair Office Bearers/Governing Body took place on 09.01.2022 and a new governing body from amongst the allottees was formed for further managing the affairs of the said project 'Gurgaon Greens'. Unfortunately, due to non-compliance by four of the elected members of the Governing Body, the Governing Body was reconstituted vide resolution dated 12.02.2022 and the same resolution was approved by District Registrar, Firms & Societies, Gurugram vide Memo No.: 2022-02-0000099. But unfortunately, the previous Office bearers being puppets of the respondent no. 1 appointed respondent no. 2 as an agency for maintenance of the said project Gurgaon Greens. The respondent should have left the project, after handing over the control to the association of allottees, but the Respondents have till date failed to transfer the bank account of the association to the authorised signatories of new Governing Body of the Association. Therefore, from 16.03.2022, onwards the respondent-2 ought to leave the project. Instead, the respondents in connivance created a situation so difficult for the allottees, that at present proper resources

necessary for survival of the residents and leading a peaceful and happy life are not available.

17. That due to complete lapses and failures of the respondents, public utility services including water supply, STP, sewage, sanitation, electricity, lifts, Security and other related services required for survival of the residents are being impeded. The Bank Account No. 309006629520 of Gurgaon Greens Condominium Association being operated at RBL Bank Limited, IFSC: RATN0000116, Iffco Chowk Gurgaon Branch is not within the control of the New Governing Body of the Association of the Allottees, rather the respondents-1 & 2 are controlling and managing the said account. It is pertinent to highlight the fact that since the project premises were in a miserable condition the complainant association filed a miscellaneous application dated 29.03.2022, before the Hon'ble Real Estate Regulatory Authority, Gurugram. Based on the said application of the Complainant Association, the Authority passed an Order dated 31.03.2022, with directions to keep essential services operational in the said project. Based on the directions of the Hon'ble Authority, the District Registrar, Firms & Societies, Gurugram issued a letter subject "*Regarding handover of charge of association*", having Memo. No. DR/DIC/GGM/697 dated 19.04.2022.

**C. Relief sought by the complainant - association.**

18. The complainant have sought the following relief(s):
- i. Direct the respondent-1 to conduct a forensic audit of its records related to the said project 'Gurgaon Greens', with regard

to all the expenditure incurred on the project, maintenance and all the money received for the said project.

ii. Direct the respondents to organise a forensic audit of the account records of the Gurgaon Greens Condominium Association since the formation of the Association till date, including but not limited for the financial years, 2018-19, 2019-20, 2020-21 and 2021-22.

iii. Direct the respondents to clear all the dues of the employees till 16.03.2022, so that all pending dues towards public utility services like water, STP, sewage, lift and other alike services in the project 'Gurgaon Greens' are cleared by the respondents.

iv. Direct the respondent no. 1, to pay all the common area maintenance charges towards the unsold inventory in the project 'Gurgaon Greens' and to provide the details of the same from the date of receiving Occupation Certificates, till the date of handing over of Project to the duly election Association.

v. Direct the respondents, to handover the control and all documents regarding the account details, receipts and expenditure, to the Governing Board of the Association.

vi. Direct the respondents, to transfer the interest free maintenance security to the Gurgaon Greens Condominium Association.

vii. Direct the respondents, to give NOC in favour of the new governing body of the complainant association, for change in name of authorised signatories for operating the Bank Account

No. 309006629520 of Gurgaon Greens Condominium Association being operated at RBL Bank Limited.

viii. Direct the respondent 1, to provide the complete details like the address, allotted unit no., agreement for sale, contact no., email address, etc. of all the Office Bearers of the Gurgaon Greens Condominium Association before the elections held on 09.01.2022.

ix. Direct the respondent to pay legal expenses of Rs.5,00,000/- incurred by the complainant association.

**D. Reply by respondent no. 1:**

The answering respondent no. 1 by way of written reply made the following submissions.

19. That the present complaint is not maintainable in law or on facts. Mr. Sandeep Fogaat, a co allottee of apartment no GGN-18-0601, had executed the buyer's agreement with the respondent no. 1 on 30.01.2019. Upon receipt of the occupation certificate, the respondent no. 1 offered the possession of the apartment in question to Sandeep Fogaat vide letter dated 24.05.2019, and given the option to either pay the entire balance sale consideration as per the agreement including the stamp duty, registration charges and other amounts payable as per the agreement and complete the documentation and formalities to enable the respondent to hand over possession of the unit. Alternatively, the interim possession of the apartment was offered by the respondent for the fit outs. Mr. Sandeep Fogaat opted to take interim possession of the unit.

20. That Sandeep Fogaat and co allottee agreed and undertook that the interim possession was limited possession for the purpose of undertaking fit outs and that the same shall not be deemed to be final possession or transfer of title in their favour in any manner. Sandeep Fogaat and co allottee recognized and admitted the respondent to be the lawful owner of the unit until registration of the conveyance deed in their favour. In view thereof, Sandeep Fogaat and co allottee undertook to vacate the unit immediately in the event of default under the buyer's agreement or when called upon to do so by the respondent.
21. That in violation of the undertaking executed by them at the time of taking interim possession of the unit as well as in violation of the buyer's agreement, Sandeep Fogaat and co allottee carried out unauthorized constructions in the unit and despite repeated requests and reminders from the respondent no. 1, failed to rectify/restore the unauthorized constructions in their unit. The present complaint has been filed as a counter blast to the notice sent by the Answering Respondent seeking eviction of Sandeep Fogaat and co allottee from the unit in question. Sandeep Fogaat and co allottee have also filed a complaint in complaint no 2513/2022 which is pending before this Hon'ble Authority.
22. That chapter II of the bye laws of the Gurgaon Greens Condominium Association, Bye Law 6 provides, inter alia, that the Society shall consist of all persons who own an apartment in the complex and have filed a declaration pursuant to Clause 3 of the bye laws and have paid a sum of Rs 100/- as membership fee. Bye Law 7 provides that in the case of joint apartment owners, membership of the

Society may be issued in joint names but only the person whose name stands first in the registered conveyance deed /sale deed shall have the right to vote. Thus, in order to become a 'member' of the Society, the first and essential condition is that a person has to be an apartment owner in the project, having a conveyance deed/sale deed executed in his or her favour. Chapter III of the Bye laws provides that there shall be seven Board of managers who shall be elected from the Association. Chapter IV of the Bye laws provides that the affairs of the Society shall be managed by a Board of Managers comprising of 7 'members' including five office bearers.

23. That Mr Sandeep Fogaat who claims to be the president of the complainant association is not an apartment owner but merely an allottee. The conveyance deed is yet to be registered in his favour. Even the affidavit that has been filed in support of the present complaint has been sworn by Sandeep Fogaat in his personal capacity and not in his capacity as the so-called president of the association. Thus, the present complaint is not maintainable in law and merits dismissal at the outset. It is submitted that the complainant has not annexed any authorization or resolution passed by the complainant association authorizing Sandeep Fogaat to institute the present complaint. The complainant has no locus standi to file the present petition.

24. That the present complaint is not maintainable at the behest of the complainant as the complainant is not an association of allottees as defined under the Act and the Rules. The present complaint is in fact a private dispute between the erstwhile office bearers of the

association with the so called present day Governing Body. This is evident from the impleadment of respondents no 2 ,3 ,and 4 who are ex office bearers of the Association, to the present complaint. In fact, the Hon'ble Authority vide its order dated 31.03.2022 while disposing off an application filed by the complainant seeking similar reliefs, has already given directions to the District Registrar, Firms and Societies, Gurugram in this regard. Relevant portion of the order is reproduced herein for ready reference: "However, in the present application, it is clearly mentioned that the association was formed long back in 2018 and any determination regarding the erstwhile association being lawful or not and thereafter, handing over of the requisite documents may be raised before the District Registrar, Firms & Societies, Gurugram. The District Registrar, Firms & Societies, Gurugram shall take necessary and appropriate action in this regard and intimate this authority w.r.t the same within 2 weeks from today. Furthermore, the District Registrar, Firms & Societies, Gurugram shall ensure transfer of bank account and other related documents to the duly elected governing body of association so approved by District Registrar, Firms & Societies, Gurugram vide memo no. 2022-02-0000099. Further, respondents no 1 and 2 are directed to keep the essential services including water supply, electricity, lifts and other related services, operational till the time requisite documents are handed over to the duly elected governing body of the Association/complainant along with the change of bank account to enable duly elected governing body of association to function effectively.

25. That it is pertinent to mention here and that the above-mentioned order dated 31.03.2022 passed by this Hon'ble Authority was



passed without issuance of any notice to respondents no 1 and 2 and without affording any opportunity to file their reply or present their defence. Respondents no 1 and 2 have not received any notice from the District Registrar, Firms & Societies, Gurugram. To the best of their knowledge, the complainant has not even approached the District Registrar, Firms & Societies, Gurugram in compliance with the order dated 31.03.2022.

26. That is most respectfully submitted that until and unless the issue of existence of a validly constituted and duly elected Association of apartment owners of the project and its Governing Body is determined by the District Registrar, Firms & Societies, Gurugram, after giving due opportunity of hearing to the respondents, the present complaint cannot be heard or decided by this Hon'ble Authority. The respondent no. 1 had engaged the services of respondent no 2 to provide property management services to the project in question. In terms of the MOU referred to aforesaid, the Association has agreed and undertaken that ifms amount shall be transferred by the respondent no. 1 to the Association after competition of hand over of all the units in the project and also subject to the adjustment of dues and outstanding of the respondent and the maintenance agency. The respondent no. 1 is holding the ifms amount paid by various allottees in trust on behalf of the allottees and the said amount cannot be handed over by the respondent unless it is determined that the Association of Apartment owners is a duly elected association constituted in accordance with law. Moreover, the IFMS amount has been paid by the allottees under the buyer's agreement to secure timely payment of maintenance charges by the allottees. The respondent no. 1 is in

the process of determining the maintenance charges payable by each allottee in the project and adjusting the shortfall, if any, from the ifms amount. The balance amount, along with interest accrued thereon shall be duly handed over to a legally elected governing body of the Gurgaon Greens Condominium Association to or to individual allottees if there is no such duly elected Condominium Association.

27. That the respondent no. 1 has duly handed over the project to the association of apartment owners in accordance with the Haryana Apartment Ownership Act, 1983. The answering respondent is not concerned in any manner with the disputes between the erstwhile and present-day governing body of the association. The respondent no. 1 has also come to know that against the order passed by the District Registrar, Firms and Societies, Gurugram dated 18.08.2022 (Annexure R8) whereby the present-day governing body of the Association with Sandeep Fogaat as its so-called President has been challenged by one of the erstwhile members of the governing body of the Association. Thus, the very legitimacy of the present-day governing body of the Association is under doubt.

28. That in so far as provision of day-to-day essential services of the project is concerned, it is submitted that respondent no 2 had initially questioned the operation of the bank account of the Association by the present day governing body headed by its so called President Sandeep Fogaat. However, in compliance of the orders passed by this Hon'ble Authority and so that no inconvenience is caused to the residents of the project, respondent no 2 has requested RBL Bank to permit operation of the same by

the present day governing body, without in any manner assuming any responsibility for the misuse of funds by the present day governing body of the association.

29. That moreover, the present complaint raises several such issues which cannot be decided in summary proceedings. Therefore, the disputes raised in the present complaint are beyond the purview of this Hon'ble Authority and can only be adjudicated by the Civil Court. Therefore, the present complaint deserves to be dismissed on this ground alone. However, respondent no 2, which was providing maintenance services to the project until 16.03.2022, is neither a promoter, real estate agent or an allottee in the project and hence the complaint cannot be filed against respondent no 2 nor can any relief be sought against respondent no 2. Similarly, the complaint is not maintainable against respondents no 3, 4 who are ex office bearers of the complainant association and do not fall within the category of promoters, real estate agents or allottees.
30. All other averments made in the complaint were denied in toto.
31. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be denied on the basis of these undisputed documents and submissions made by the parties. Written submission filed by the respondent no. 1 have been taken on record and perused.
32. No written reply has been filed by respondent no. 3 to 5.

**E. Reply by respondent no. 6**

33. That pursuant to the order dated 21.11.2023 the respondent no. 6 Mr. Jagdeep Kumar - elected secretary - GGCA is filing the consolidated written submission.
34. That the respondent no. 5 was elected as Secretary of Gurgaon Greens Condominium Association on 09.01.2022 with highest vote margin and Approval of Elected Governing Body was done on 20.01.2022. The present complaint is neither maintainable nor tenable in the eyes of law in the present form against the any of the respondent, as the present complaint has been filed by the complainant without having the "Dominus Litus" and with ulterior motive just to initiate an exorbitant litigation on the cost of RWA funds and also to drag respondent in this false litigation.
35. That the complainant is stopped from filling the present complaint by his own act , conduct . acquiescence and latches etc against the respondents as there is no resolution was passed by the elected Governing Body members in favour of complainant (Mr. Sandeep Fogaat- President of Gurgaon Greens Condominium association).The complainant has concealed the true and material facts from the Hon'ble Authority and has not come with clean hands before the Hon'ble Authority, Complainant (Mr. Sandeep Fogaat President of Gurgaon Greens Condominium Association) did not inform the Hon'ble Authority that during the proceeding of this present case State Registrar of Societies, Haryana through his order dated 25.01.2023 (communicated on 17/02/2023) in Appeal No. 1209 of 2022 Jagdeep Kumar Vs. District Registrar, Firms & Societies, Gurugram held the complainant's resolution dated 12.02.2022 and subsequent approval of District Registrar, Firms &

Societies Gurugram is illegal, arbitrary and unilateral decision of President through which complainant Mr. Sandeep Fogaat remove the Four elected governing body members namely 1. Jagdeep Kumar (Secretary), 2. Ashwani Garg (Vice President), 3. Aniket Mathews (Joint Secretary) & 4. Harshit Agarwal ( Treasurer) and choose Four governing members by his own namely 1. Rashmi Singh (Vice President), 2. Pallavi Arora (Secretary) , 3. Anuradha Dwivedi (Joint Secretary) & 4. Alok Kumar Sani (Treasurer).Relevant para of the order of State Registrar of Societies, Haryana is reproduced for Hon'ble Authority Reference :-

*5.8 That from bare perusal of the record file, it transpired that the President himself has taken the decision to remove the 04 office bearers from the Governing Body and to add other 04 persons in place of them. There is no power vested with the President to remove or add the office bearers in the Governing Body. Therefore, the actin of the President is illegal, arbitrary and against the provisions of the HRS Act 2012.*

*In view of the above, the resolution dated 12.02.2022 is defective in the eyes of Law. The District Registrar also failed miserably and ignored the provisions of law while approving this resolution. The resolution dated 12.02.2022 and its subsequent approval by District Registrar are set-aside. The Governing Body as approved on 20.01.2022 to continue discharging its duties as per law. The appeal is hereby allowed."*

36. That the complainant filled a second appeal No. 532 of 2023 before the Registrar General of Societies, Haryana against the order dated 25.01.2023 of State Registrar of Societies, Haryana in appeal no 1209 of 2022, The Registrar General of Societies after hearing to all the parties to suit dismissed the appeal of the complainant through order dated 08.12.2023 by upholding the decision of State Registrar of Societies Haryana.

37. That the complainant has got no locus standi or cause of action to file the present complaint. The present complaint is based on an

erroneous interpretation of the provisions of the Act as well as an incorrect understanding of the code of civil procedure 1908 and liable to be dismissed on the maintainability of the facts and circumstance set out above, it is most respectfully prayed that this Hon'ble Authority please be dismiss the complaint on the ground of maintainability of complaint as the complainant does not have any resolution in his favour by Elected Governing body to initiate any such complaint on behalf of Gurgaon Greens Condominium Association. Present complaint was filed with ulterior motive just to initiate an exorbitant litigation on the cost of RWA funds to get personal benefit extracted by drag respondent in this false litigation.

**F. Jurisdiction of the authority:**

38. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

**F. I Territorial jurisdiction**

As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram district. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

**F. II Subject matter jurisdiction**

39. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

**Section 11**

.....

*(4) The promoter shall-*

*(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;*

**Section 34-Functions of the Authority:**

*34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.*

40. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

**G. Maintainability of the complaint**

41. While proceeding of the day dated 21.11.2023 the counsel for the respondent no. 2 stated that the respondent is a maintenance agency and no complaint as per provisions under section 31 lies against the maintenance agency and the name of the respondent no. 2 was deleted from the array of parties.

42. The present complaint is with regard to the Gurgaon greens condominium association which was formed / registered on 14.06.2018 with the District Registrar, Gurugram under the Haryana Registration and Regulation of Societies Act, 2012. The allottees of the said project 'Gurgaon Greens' made various representations before different forums for conducting fair elections and formation of governing body from amongst the allottees of the association. After many efforts of the allottees, the District Registrar, Firms & Societies, Gurugram, issued Order dated 17.09.2021 for appointment of the Administrator for completing the process of election of the said association within the stipulated time.
43. After much struggle and efforts of the residents, the election for constitution new and fair Office Bearers/Governing Body took place on 09.01.2022 and a new governing body from amongst the allottees was formed for further managing the affairs of the said project 'Gurgaon Greens' and the same was approved on 20.01.2022 wherein the following members were appointed :-
- 1) Sandeep Fogaat (President)
  - 2) Ashwini Garg, Vice President
  - 3) Jagdeep Kumar, Secretary
  - 4) Aniket Mathews, Joint Secretary
  - 5) Harshit Agarwal, Treasurer
44. Due to alleged non-compliance of the provisions of the HRRS Act , 2012 and bye-laws of the society by four of the elected members of the Governing Body, a resolution was passed by the Gurgaon greens



condominium association whereby four office bearers were removed from their post and the Governing Body was reconstituted vide resolution dated 12.02.2022 and the same resolution was approved by District Registrar, Firms & Societies, Gurugram vide Memo No.: 2022-02-0000099 on 18.08.2022 wherein the following four new members were appointed: -

- 1) Rashmi Singh, Vice President
- 2) Pallavi Arora, Secretary
- 3) Anuradha Dwivedi, Joint Secretary
- 4) Alok Kumar Saini, Treasurer

45. Later on, an appeal was filed by Mr. Jagdeep Kumar before the State Registrar of Societies, Haryana against the order passed by the District Registrar, Firms and Societies, Gurugram dated 18.08.2022. The State Registrar of societies, Haryana vide order dated 25.01.2023 in appeal no. 1209 of 2022 held that the resolution dated 12.02.2022 and subsequent approval of District Registrar, Firms and Societies Gurugram is illegal and arbitrary. The operating part of the order is reproduced as below :-

*5.8 That from bare perusal of the record file, it transpired that the President himself has taken the decision to remove the 04 office bearers from the Governing Body and to add other 04 persons in place of them. There is no power vested with the President to remove or add the office bearers in the Governing Body. Therefore, the action of the President is illegal, arbitrary and against the provisions of the HRS Act 2012.*

*In view of the above, the resolution dated 12.02.2022 is defective in the eyes of Law. The District Registrar also failed miserably and ignored the provisions of law while approving this resolution. The resolution dated 12.02.2022 and its subsequent approval by District Registrar are set-aside. **The Governing Body as approved on 20.01.2022 to continue discharging its duties as per law. The appeal is hereby allowed.***

46. After this the complainant i.e Mr. Sandeep Fogaat filed a appeal no. 532 of 2023 before Registrar General of Societies , Haryana against the order dated 25.01.2023 which was passed by the State Registrar of Societies , Haryana .The Registrar General of Societies after hearing all the parties dismissed the appeal of the complainant vide its order dated 08.12.2023 by upholding the decision of State Registrar of Societies , Haryana .The operating part of the order is reproduced as below :-

*" 4. After hearing the arguments and submission made by the parties, from the perusal of record available, bylaws of the societies and the provision of HRS Act, 2012 the following observation have been made:*

*(i) -It is matter of fact that the election of the Governing Body of the Society was conducted on 09.01.2022 and approval of the newly elected body was given by District Registrar on 20.01.2022. Appellant was elected as President and Respondent No. 1 was elected as secretary in the said election.*

*(ii) Just after 32 days of the election i.e on 12.02.2022, the appellant (President of the Society) in a General Body*

*meeting removed Vice President, Secretary, Joint Secretary and Treasurer. Interestingly the said General Body meeting was attended by 15 members only which cannot be considered as a valid quorum. Further there is nothing on record to show that any valid notice for the said General Body Meeting was served to all to 31 members of the Society.*

*(iii) The State Registrar of Societies, Haryana vide order dated 25.01.2023 has rightly set aside the proceeding of General Body Meeting dated 12.02.2022 and its subsequent approval dated 15.02.2022 given by the District Registrar.*

*(iv) The question of delay is not material here as no valid notice of General Body meeting was given so the contention of respondent No. 1 that he come to know about the resolution dated 12.02.2022 on 01.09.2022 seems to be genuine. Further immediately no having the knowledge of the above facts, he filled complaints in this regard before the District Registrar on 27.09.2022 which in record.*


*In view of the above, I am of the considered view that Ld. State Registrar has passed the impugned order with cogent reasons. I found no ground to interfere in the impugned order dated 25.01.2023 passed by the Ld. State Registrar of Societies, Haryana.*


The present Appeal is hereby dismissed. The pending applications, if any, also stand dismissed."

47. Therefore, in view of the above orders of the State Registrar and Registrar General of Societies, the Governing Body as approved on 20.01.2022 will continue to discharge its duties as per law.

48. Therefore in the present matter, the president who has filed this present complaint is not an authorised representative of the association i.e. Gurgoan Greens Condominium Association, as the resolution is invalid in the eyes of law and the same is also affirmed by the orders of the State Registrar of the Societies, Haryana and Registrar of General of Societies, Haryana. Thus, the complainant has no locus standi to file the present complaint and the present complaint is liable to be dismissed as non-maintainable.
49. In view of the factual as well as legal provisions, the Authority is of the view that the present complaint stands dismissed being not maintainable.
50. File be consigned to the registry.

  
(Sanjeev Kumar Arora)  
Member

  
(Ashok Sangwan)  
Member

  
(Vijay Kumar Goyal)  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 23.01.2024