



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	398 of 2023
Date of filing:	01.03.2023
Date of first hearing:	04.05.2023
Date of decision:	08.02.2024

Working Committee of Residential Society(Unregistered)
Type-B, GHS-3, Sector-31
Panchkula, Haryana
through its convener namely Ashok Kumar
R/o Flat no. 719, GH-3, Sector-31 Panchkula
134116

....COMPLAINANT

VERSUS

1. Housing Board Haryana;
through its Chief Administrator
C-15, Awas Bhawan, Sector-6
Panchkula- 134109
2. Executive Engineer
Housing Board Haryana
C-15, Awas Bhawan, Sector-6
Panchkula- 134109

....RESPONDENTS

CORAM: **Parneet Singh Sachdev**
Dr. Geeta Rathee Singh
Chander Shekhar

Chairman
Member
Member

Present: Adv. Yogeshwar Dayal. Ld. counsel for the complainant.
None for the Respondent.

ORDER (PARNEET SINGH SACHDEV- CHAIRMAN)

1. Present complaint has been filed by complainant on 01.03.2023 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 provisions of the Act, 2016 or the Rules and Regulations made thereunder, wherein it is inter-alia prescribed that promoter shall be responsible to fulfill all the obligations, responsibilities and functions towards the allottee as per the terms agreed upon between them.

A. FACTS OF THE COMPLAINT

2. In the present case, respondent "Housing Board Haryana" offered multi storeyed flats for "Serving / Ex-Defence and Para military personnel" of Haryana up to the rank of JCOs and equivalent on Hire Purchase Basis; and issued the brochures in the year 2014 & 2017 for inviting the applications from the "Serving and Retired Defence Personnels" for allotment of flats on draw of lots basis keeping in view to develop Sector – 31, Panchkula. The tentative cost of a flat was fixed at Rs. 19 Lacs and 23.70 Lacs, respectively. The price of the flats was worked out on the basis of rough cost estimate. As



per the terms of the said brochure; the price may be increased only due to:
(i) Enhanced Land Compensation, (ii). Arbitration award, (iii) Any Statutory taxes/levies, (iv) Construction period and (v) Litigation. However, respondents without assigning any justified reasons arbitrarily enhanced the price of the flats from 19 Lacs to Rs. 25,91,300/- and Rs. 23,70,000/- to 26,87,900/- respectively.

3. Residents of the aforesaid society raised their objections with regard to enhancement of costs of flats and wrote a letter to Housing Board Haryana on 22.07.2021 and asked for providing them the details of calculations as to how the cost become higher. In response to the said letter of the society Housing Board Haryana issued a detailed calculation sheet on 22.07.2021.
4. Further, essential services like shopping centre, community centre, solar water heating system etc. which were mentioned in the brochure/prospectus are not provided to its allottees and hence are in violation as per the provisions of RERA Act, 2016. Residents of the aforesaid society have made several complaints with regard to lift, Generator etc. With regard to same they had submitted a complaint to the Hon'ble Chief Minister Haryana through CM Window, Panchkula and also to the Executive Engineer, Housing Board Haryana; but no fruitful result has been received as no action has been taken on the said complaint.



5. Another grievance of allottees is that three phase meter (3 phase meter) connection is provided to the allottee (s) ,whereas, electrical wiring from electric meter point to the flats is still in single phase due to which allottees are unnecessary overburdened with 3 phase meter charges. Several flats are having heavy moisture problem on its walls and roofs due to substandard materials. Flats allotted to complainant/allottees are having construction defects like seepage problem, water in well of the lifts etc. due to use of poor construction materials. Housing Board Haryana is charging 12% interest rate for the construction, registration etc. but has not disclosed the interest rate on the rebate on actual deposit of allottees i.e. 3.56 Lac and 4.75 Lac respectively for 2014 & 2017 allottees till date.
6. Land to the Housing Board was allotted on 13.05.2014 in sector 31 Panchkula. Group Housing Project got approval after delay of 2 years i.e. on 11.05.2016. Construction was delayed by the promoter in 2018 as a result of which the cost of construction for each flat increased from Rs. 19 lacs to Rs. 29.50 lacs.

B. RELIEF SOUGHT

7. In view of the forgoing facts mentioned in para No. 4, the complainant prays for the following relief (s) :-



- (i) Directing the respondents to consider the complaint of Working Committee sincerely and further direct them to rectify the defects in construction like seepage problem, water in lift wells etc.
- (ii) Also directing the respondents to pay the compensation amount of delayed possession to its allottees as prescribed under law.
- (iii) Whether allottees of the aforesaid societies are liable to be compensated on the hands of Housing Board Haryana for using substandard material in construction?
- (iv) Directing the respondent No. 1 & 2 to pay sum of Rs. 2,00,000/- for mental harassment, torture, agony, pain suffering and humiliation, and a sum of Rs. 55,000/- as litigation expenses to the complainant in addition of aforesaid prayer clauses.
- (v) Whether construction cost is justified and sustainable in the eye of law when delay is caused on the hands of respondents itself?
- (vi) Any such other order / direction or relief (s) in favour of the complainant may kindly be pass, which this Hon'ble Authority may deem fit and proper as per the facts and circumstances of the present complaint, in the interest of justice.

C. REPLY SUBMITTED ON BEHALF OF RESPONDENT

8. Learned counsel for the respondent filed reply on 25.07.2023 pleading therein:



- (i) Present complaint is not maintainable against the answering respondents and the instant complaint is liable to be dismissed as no cause of action has accrued in favour of the complainant to file the present complaint. The complainant has filed the present complaint without exhausting the proper remedies available to them and without approaching the Housing Board authorities for redressal of their grievance. Complainant is neither a registered body nor having any legal entity and hence cannot maintain and file the present complaint and is liable to be dismissed out rightly.
- (ii) Complainant has portrayed the answering respondents as respondents are the Developer of Real Estate whereas Housing Board, Haryana (hereinafter 'the Board' is an establishment of Government of Haryana under the Haryana Housing Act 1971 (Haryana Act No. 20 of 1971). Hence, answering respondents are a statutory body and not a mere Real Estate Developer and works on no profit and no loss basis.
- (iii) Residents of the said society had formed a Welfare Society under the name and style of "The Army Hill Welfare Society GHS-3, Sector 31, Panchkula Haryana," which is duly registered with the District Registrar, Panchkula vide Certificate No. 00652 of 2022 and holding the affairs with regard to maintenance and management of the Group Housing and looking after day-to-day affairs.



- (iv) That it was clearly mentioned in the brochure that the price mentioned is tentative and it is subject to the revision as per reasons mentioned in the brochure. Initially, the cost was worked out on the basis of rough cost estimates. The cost has increased on many accounts, e.g.
- (a) due to High Rise Building heavy structural design has been involved considering bearing capacity of soil.
- (b) Due to unlevelled land i.e. it was hilly at one side and it was low lying at another side, heavy cutting and filling and involved.
- (c) The stilt area at ground floor was not accounted for in the covered area of flats. The covered area for type-B flats has increased to 680 sq. ft. per flat and in the brochures of the year 2014 and 2017 it was shown as 600 sq. ft. and 645 sq. ft. per flat respectively.
- (d) Due to hilly terrain on two sides and a water course (Nallah) on another side which has changed its course significantly over the time, therefore, a RCC retaining wall has been constructed on riverside with average depth of 12 metre resulting in increase of cost.
- (e) The impact of GST was not considered during initial costing and it was introduced later on by the Govt.
- (v) The specifications mentioned were only indicative subject to change with the approval of competent authority. Therefore, work has been got done as per drawings approved by HSVP only. Meter has been installed by UHBVN as per their guidelines only. As per Load Norms, for flats of



group housing societies having covered area of 601 to 900 square feet, connected load is 6 KW (**Annexure – R4**).

9. Respondents have also submitted that the specifications mentioned in the brochure were only indicative, subject to change with the approval of competent authority. Further, it was mentioned in the brochure that any change in facilities, specifications, design, overall covered area, scope of work etc. shall be binding on the applicants. The applicants got themselves registered for the flats on the basis of this brochure only so they were well aware of all these things. It is clearly mentioned in the brochure that monthly instalments will be worked out along with interest @ minimum 12% PA (monthly compounding) or actual charged by lending institution, excluding collection charges. The board itself has taken loan from financial institution to complete the project as only 25% amount was taken from allottees. Further as per point No. 14 of costing sheet, no interest has been charged on actual deposit of allottees and rebate has been given for same at the interest rate of 12%
10. The project has been registered with RERA and registration certificate issued by Executive Director HRERA, Panchkula vide Reg No. HRERA-PKL-PKL-31-2018 dated 07.08.2018. Certificate for extension of registration upto June 2021 was also issued by Executive Director, HRERA Panchkula vide memo no HRERA-25-2021 dated 28.01.2021.

The brief history of the project is that the physical possession of land was taken on 27.06.2014. The drawings were got prepared by Architectural Consultant and the same were submitted to HSVP for approval on 05.12.2014 which were approved by HSVP on 22.06.2015. After getting the estimates approved, tender was invited for the work on 04.02.2016 after following due procedure. After taking approval from the competent authority, the work was allotted to contractual agency on 01.07.2016. The agency was given time extension to complete the work due to various reasons up to 31.03.2020 after getting approval from the competent authority. Due to COVID-19, the external developments works could not be completed in time. Completion of project was delayed and extension for the same reason was also granted by HRERA vide memo no. HRERA-25-2021 dated 28.1.2021.

11. With respect to increase in price respondents have submitted that GST has been charged as per advice of consultant M/s VNS & Co. Chartered Accountant.
12. Further with respect to condition of the flats it has been submitted that the physical possession of flats was taken by the allottees in good condition to their complete satisfaction only after inspecting the flat. There is no pending complaint with Housing Board Haryana regarding issue of seepage. The work of waterproofing of lift pits has been got done through



contractual agency by calling tenders after taking approval from the competent authority and the work stands completed. The construction work has been executed as per the provisions of Contract Agreement to the full satisfaction of Engineer- in-Charge with all necessary periodical routine material testing which is evident from the quality control register maintained at site.

Initially, the staff like plumber, electrician, sweeper, mali, security guards, were deployed by Housing Board Haryana through Outsourcing Agency on behalf of the society, only till they get the society registered as RWA. It was intimated to the allottees that due to new policy of Haryana Government, the outsourcing staff need to be deployed through HKRNL. The sanction of this staff was going to expire and extension was sought for their services but the same was rejected by competent authority and it was directed to hand-over the services to the registered RWA for further maintenance. Accordingly, notices were issued to the allottees on 01.08.22, 03.08.22, 05.08.22, 05.09.22 with the request to get the society registered and take over the maintenance services as Housing Board Haryana will not be able to deploy manpower on their behalf in future. The society was registered by some allottees on 04.10.2022 through District Registrar, Panchkula Housing Board Haryana did not deploy man power on behalf of society for maintenance w.e.f. October 2022



accordingly. The President of the Society (Sh. Balbir Singh) vide letter dated 31.10.22 requested to hand-over the services to society for further maintenance. The date for the same was fixed for 18.11.22 and the same was rescheduled for 05.12.22 on request of President of the society. A letter dated 21.03.2023 was also written by this office to the President for taking over the services and it was also intimated that Housing Board Haryana is not liable for any kind of maintenance services or watch & ward whatsoever, but the services have not been taken over by the society till date and no reason for the same has been intimated by the President of the Society.

D. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT

13. Ld. Counsel for the complainant reiterated his written complaint and requested that relief with respect to rectification of defects, compensation on delayed possession, compensation for mental agony and compensation for using substandard material in construction may be granted to the complainant.

E. ISSUES FOR ADJUDICATION

14. Whether the complainant is entitled to the relief as sought by it in terms of Section 18 of Act of 2016?

G. FINDINGS OF AUTHORITY ON RELIEFS CLAIMED BY THE COMPLAINANT



15. The Authority has gone through the rival contentions. In light of the background of the matter as captured in this order and also the arguments submitted by both parties, Authority observes that complainant has claimed mainly 4 reliefs ,i.e, direction to respondents to rectify the defects in construction like seepage problem, water in lift wells etc;, directing the respondents to pay the compensation amount of delayed possession to its allottees as prescribed under law;; compensation for using substandard material in construction;Directing the respondent No. 1 & 2 to pay a sum of Rs. 2,00,000/- for mental harassment, torture, agony, pain suffering and humiliation, and a sum of Rs. 55,000/- as litigation expenses

With respect to the relief of rectification of defects, reference is made to section 14(3) of RERD Act, 2016 and the same is being reproduced below for ready reference:

“In case any structural defect or any other defect in workmanship, quality or provision of services or any other obligations of the promoter as per the agreement for sale relating to such development is brought to the notice of the promoter within a period of five years by the allottee from the date of handing over possession, it shall be the duty of the promoter to rectify such defects without further charge, within thirty days, and in the event of promoter's failure to rectify such defects within such time, the aggrieved allottees shall be entitled to receive appropriate compensation in the manner as provided under this Act”

On a plain reading of the provisions of the Limitation Act, it becomes clear that in the event of promoter's failure to rectify structural defects within such time, aggrieved allottees shall be entitled to receive appropriate compensation in the manner as provided under this Act.

Further, reference is made to section 71 of the RERD Act, 2016, it clearly says that the power of adjudging compensation lies with the Adjudicating officer, Therefore, complainant may file a separate complaint before the Id. Adjudicating officer for the relief of compensation under section 14(3) of the RERA Act, 2016.

16. Further, with respect to the relief of delayed possession interest, Authority observes that separate individual complaint needs to be filed by the allottees as details such as date of agreement, deemed date of possession and amount paid by all the complainants along with relevant proof has to be submitted by them. Complainant may file individual complaints before the Authority for adjudication of this relief.
17. The complainant is also seeking compensation on account of mental agony, torture and harassment. It is observed that Hon'ble Supreme Court of India in Civil Appeal Nos. 6745-6749 of 2027 titled as "M/s Newtech Promoters and Developers Pvt Ltd. V/s State of U.P. & ors." (supra,), has held that an allottee is entitled to claim compensation under Sections 12, 14, 18 and Section 19 which is to be decided by the learned



Adjudicating Officer as per Section 71 and the quantum of compensation & litigation expense shall be adjudged by the learned Adjudicating Officer having due regard to the factors mentioned in Section 72. The Adjudicating Officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses. Therefore, the complainant is advised to approach the Adjudicating Officer for seeking the relief of litigation expenses.

18. In view of the observations made by the Authority in para 15-17 of this order, present complaint is hereby dismissed.



CHANDER SHEKHAR
[MEMBER]



DR. GEETA RATHEE SINGH
[MEMBER]



PARNEET SINGH SACHDEV
[CHAIRMAN]