



**BEFORE Sh. RAJENDER KUMAR, ADJUDICATING OFFICER,
HARYANA REAL ESTATE REGULATORY AUTHORITY GURUGRAM**

Complaint no. : 4550 of 2022
Date of decision : 19.04.2024

Park View Ananda RWA

Address : E 603, Park View Ananda Apartments,
Sector 81, Gurugram.

Complainant

Versus

1. M/s Bestech India Private Limited

Address: Bestech House, plot number 51,
Bhagwan Mahavir Marg, Sector 44, Gurugram.

2. Chief Town and Country Planner

Address: - Department of Town & Country
Planning Haryana, Plot No 3, Sector 18A,
Chandigarh.

3. Superintending Engineer, DHBVNL,

Address: - DHBVN, Opposite Petrol Pump, MG
Road, Gurugram.

Respondents

APPEARANCE:

For Complainant:

Mr. Ashwani Kumar Singla Advocate

For Respondents:

Mr. Ishaan Dang Advocate

ORDER

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19-4-24



1. This is a complaint filed by Park View Ananda Residents Welfare Association under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) against M/s Bestech India Private Limited (respondent no.1/ developer/promoter), Chief Town and Country Planner (respondent no.2), Superintending Engineer, DHBVNL (respondent no. 3).
2. According to complainant, "Park View Ananda Resident Welfare Association" Sector 81 Gurugram, (Ananda RWA) is a non profit, non commercial, voluntarily incorporated Society incorporated under section 9(1) of the Haryana Registration and Regulation of Societies Act 2012. It (complainant) being a registered Society, it can sue and be sued.
3. Respondent no.1 developed a plot measuring 29.7 acres of land under DTP license numbers 112 of 2008 dated 31 May 2008 and 55 of 2009 dated the 27th of August 2009. In all there are three distinct groups of towers Park View Grand SPA, Park View Signature (both developed on land measuring 19.7 acres having total residents 605 (594 flats and 11 villas). The third group of towers is Park View Ananda (710 flats + 14 villas) developed over a piece of land, measuring 10 acres.
4. From very beginning, respondent no.1 was avoiding to get 33 KV level electric connection as it required for creation of infrastructure which involves cost. On 01.01.2021, DHBVNL vide their memo 5473 issued show cause notice to respondent



- no.1 for not getting 33KV level connection and issued another notice number 5570 dated 09.03.2021.
5. As per the original plan, there was no piece of land earmarked for the Electricity infrastructure / Switch yard to be given/ donated/ gifted to DHBVNL. The buyers of the flats and Villas were never told that a piece of land measuring 500 sq yards will be gifted later on to DHBVNL. To meet the requirement of electricity and to save its cost, respondent no.1, without seeking consent of the flat owners/ allottees under the provisions of section 14(2) of the RERA Act, 2016, clandestinely sought approval of the DTCP to gift a piece of land from the existing land parcel belonging to the allottees as their right in undivided land.
6. The action of respondent no. 1 is illegal and against the provisions of section 14(2) of the ~~RERA~~⁸⁶ Act 2016, as respondent no. 1 has not taken prior consent of the 2/3 of the allottees to gift/ donate piece of land from the existing land parcel to the DHBVNL.
7. On 13.09.2021, complainant wrote a letter to respondent no.2, requesting him not to provide any approval till it was consented by HARERA and residents of Park View Ananda. But



respondent no.2 ignored the request and illegally approved the change in the lay out plan. Again email was sent to respondent no.2 on 10.03.2022, enquiring as when and how plan was changed.

8. It (complainant) filed a case on other issues , not relating to the present issue before the National Consumer Dispute Redressal Commission. The complainant by wrong interpretation of concurrent jurisdiction also filed a case simultaneously before HRERA, which was later allowed to be withdrawn.
9. On 16.05.2022, it(complainant) filled a separate application/ complaint along with this complaint under section 36 of the Act of 2016, seeking temporary injunction against allotment/ gift/ transfer approx.. 500 sq.yd. of land to DHBVNL from the common undivided land parcel of the complex.
10. Citing all this, the complainant has prayed for following reliefs:
 - a. Respondent no. 1 be restrained from alienating any piece of land by any means to any third party including including DHBVNL (respondent no.3).

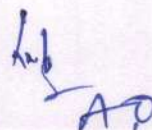
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- b. Respondent no. 2 be advised to cancel its approval in earmarking space for switch-yard from the area meant for open car parking. Order may be passed to restore original position.
- c. Respondent no 1 and 2 may kindly be ordered to pay a compensation of Rs. 5 lac each to the residents for their illegal design/ activity.
- d. Respondent no. 1 be ordered to pay Rs. 1,00,000/- to the complainant as the cost of the complaint.
- e. Any other relief which Hon'ble Adjudicating Officer may deem fit in the case.
- f. Temporary injunction restraining respondent no.1, not to alienate any piece of land and/or create any third party interest in the undivided common land of the project till the case is decided.

Respondent no. 1 and 3 contested the complaint by filing written reply separately. Notice was served upon respondent no.2, but same did not file any reply.

11. Apart from disputing the complaint on merits, respondent no.1 challenged very maintainability of this complaint.





12. It is contented by learned counsel for respondent no. 1 that, this forum (Adjudicating Officer) has no jurisdiction to try and entertain this complaint. The complainant, even if wanted any such relief, could have approached the Real Estate Regulatory Authority, Gurugram.
13. It is further plea of learned counsel that the Occupation Certificate in respect of the project was issued by the Competent Authority on 07.08.2015. Thus, the project in question is not an 'Ongoing Project' under Rule 2(1)(o) of the Rules of 2017. The Adjudicating Officer does not have jurisdiction to entertain and decide present complaint. The provisions of the act cannot be applied retrospectively to affect transactions that have been concluded prior to the coming into effect thereof.
- I heard learned counsels for complainant and respondent no.1 and went through provisions of law.
14. As mentioned above, the complainant has already filed a separate complaint before The Haryana Real Estate Regulatory Authority, Gurugram (in brief the Authority) under section 36 of the Act of 2016, seeking temporary injunction against allotment/ gift/ transfer of land to DHBVNL. Similar prayer has been made before this forum also. When complainant has already approached the Authority in this regard, there is no need to give any finding on para (a) and (f) of prayer clause, made by the complainant. Even otherwise, this forum (AO) has

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- no jurisdiction to grant injunction. Same has been empowered by the Act of 2016 to determine compensation ^{only} in view of sections 14,16,18 and 19 of the Act of 2016.
15. Similarly, the complainant has sought direction to respondent no.2 to cancel its approval in earmarking space for switchyard. Being out of jurisdiction of this forum, this prayer cannot be granted.
16. So far as award of compensation as claimed by the complainant in this matter is concerned, the plea of respondent that Occupation Certificate in respect of project in question had been issued by the competent Authority on 07.08.2015 and project had already been completed before that date, is not disputed on behalf of complainant. In these circumstances, I am in consonance with ^{LA} counsel for respondent no.1, claiming that Act of 2016 is not applicable in this case. It is worth mentioning that Act of 2016, came into force on 01.05.2016 and The Haryana Real Estate (Regulation and Development) Rules, came into force on 28.07.2017.
17. In circumstances mentioned above, present complaint is not maintainable. Same is thus dismissed.
18. Parties to bear their own costs.
19. File be consigned to the record room.

(Rajender Kumar)
Adjudicating Officer,
Haryana Real Estate Regulatory Authority,
Gurugram