



HARERA
GURUGRAM

Complaint No. 1100 of 2022

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

Complaint no. : 1100 of 2022
Complaint filed on : 09.04.2022
Decided on : 23.04.2024

Resident Welfare Association of Orris Aster Court Society
Address: 3B 2001, Orris Aster Court,
Sector 85, Gurugram, Haryana-122004

.....Complainant

Versus

Orris infrastructure Pvt. Ltd.
Address: J-10/5, M.G. Road, Gurugram, Haryana-122002

.....Respondent

CORAM:

Shri Arun Kumar
Shri Ashok Sangwan
Shri Sanjeev Kumar Arora

Chairman
Member
Member

APPEARANCE:

Ms. Manju Singh, Advocate
Shri Charu Rustagi, Advocate

On behalf of the complainant
On behalf of the respondent

ORDER

1. The present complaint has been filed by the complainant under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 14(3) of the Act wherein it is inter alia prescribed that the promoter is liable to rectify any structural defect or any other defect in workmanship, quality or provisions of services if such defect is brought to the notice of the promoter within a period of five years from the date of handing over

possession without further charge within 30 days. Further, in the event the promoter fails to rectify the defect within such time, the aggrieved allottees shall be entitled to receive appropriate compensation in the manner provided under the Act.

A. Facts of the case

2. The complainant has made the following submissions:
 - i. That the residents have been inconvenienced with leaking in basement since inception which has been taken up in successive meetings within site facilities department of the builder. As on today water continues to seep inside the basement round the year, weakening the foundation of towers. There is foul smell emanating from the walls of the basement owing to continuous seepage.
 - ii. That the leakage in the basement is posing a serious safety risk for residents in the event the towers collapse during an earthquake or during heavy rain. The leakage from shafts is in almost all towers of society and is also posing a serious health risk to the residents.

B. Relief sought by the complainant:

3. The complainant is seeking the following reliefs:
 - i. The respondent be directed to rectify the issue of basement leakage and leakage from the shafts in a time bound manner and definitely before handing over of the facility management of the society to the RWA.

C. Reply by the respondent:

4. The respondent has submitted as under:
 - i. That complaint pertaining to possession along with compensation for a grievance under section 18 of the Act and is required to be filed before the Adjudicating Officer under rule 29 of the Rules read with



section 31 and section 71 of the said Act and not before this Hon'ble authority under rule 28 of the rules. In the present case, the complainant is seeking relief other than the relief of possession and refund and thus, the said relief is comprised under the category of compensation and thus the present complaint should be outrightly disposed. It is submitted that the possession of the apartment along with compensation, and other reliefs. It is submitted that the complaint, if any, is required to be filed before the Adjudicating Officer under rule 29 of the Rules and not before this Hon'ble Authority under rule 28 as this Hon'ble Authority has no jurisdiction whatsoever to entertain such complaint and as such the complaint is liable to be rejected on this ground alone.

- ii. That the Act is a complete code in itself and as per the provisions of the Act, the Legislature had categorically formed two separate bodies i.e. the Authority under section 20 for regulatory functions under the Act and the Adjudication Officer under section 71 of the Act for adjudicatory function. Thus, there is a clear distinction under the said Act including the regulatory and adjudicatory functions as provided under the Act.
- iii. That the present complaint filed with prayer for rectifying the defects within the society, which is nowhere related to possession or refund, cannot be awarded by this Hon'ble Authority, as this Authority does not have the jurisdiction to award any reliefs qua compensation as provided under section 18 of the Act and in accordance with the rules framed thereunder.
- iv. That the respondent had obtained license no. 39 of 2009 dated 24.07.2009 and license no. 99 of 2011 dated 17.11.2011 for



construction of group housing complex. The respondent has successfully developed 12 towers in the project namely, Aster Court, Sector 85 for which the respondent had obtained OC dated 06.04.2017 and 18.10.2018.

v. There was a meeting held on 15.12.2018 wherein certain problems were highlighted by the residents for which the respondent along with the maintenance agency had provided due timelines for completion of the work. The following were the problems enshrined and its resolution:

- Permanent solution for basement leakage for which the project and facility team ensured to provide date wise timeline and final closure of project by 24.12.2018 wherein almost 85% of leakages have been rectified and the remaining will be closed by 31.12.2023.
- New Sewage treatment plan is in process and shall be functional by 26.01.2019 in which it was promised that all the STP related problems will be solved wherein all STP treatment plants have already been installed and the same is duly operational.
- Gate construction till Orris Gallery project is in process wherein the Gate Construction is all completed.
- Connectivity from Gate 2 and Gate 3 since there is no land issue involved but the operations from the said gates are not functional wherein connectivity of Gate 2 and Gate 3 has already been done.
- The issue involved in the basement of tower 3H, 3I and 3J wherein all the issues related to the basements have been rectified and completed.



vi. There was meeting held on 06.07.2019 wherein some different problems were highlighted by the residents for which the respondent along with the maintenance agency had provided due timelines for completion of the work. The following were the problems enshrined and its resolution:

- Water drainage pipes from terraces were to be replaced with new one's hanging on stilt parking, making underground pipes defunct as far as possible wherein the water drainage pipes from terraces have been replaced with new ones and repaired whatever required.
- Individual collection pits with perforated walls in front of every flat was to be constructed to drain out water intercepting on green area wherein the pits with perforated walls have been already constructed.
- Height of expansion joints were to be raised by casting a parapet wall on expansion joint, wherein depending upon the criticality of problems, parapet walls have been casting.
- Fresh expansion joint treatment was to be carried out wherein the said issue has been rectified at all those placed wherever requirement arose.
- The entire procedure being changed by Mr. Sanjay and he assured that leakage will be controlled by more than 95%. During first monsoon, utter failure of entire treatment was witnessed wherein 85% of leakages have ben rectified and the project and facility team are actively working to control the remaining leakages by 31.12.2023.



- It was agreed upon no maintenance by residents if basement leakage is not resolved by 31.07.2019.
 - As confirmed by facility, there are 2 quantity of DG of 1250 KVA and 1010 KVA will be operational in Aster Court premises dedicatedly for Aster Court by 15.06.2019 wherein 2 nos. DG of 1010 KVA are operational in Aster Court Premises.
- vii. Although the seepage and water leakage issues have been rectified, despite that the project building are designed in the manner of earthquake resistant and thus, the sanctions for the construction and development of the project have been received by the respondent and subsequently the respondent was able to attain the requisite OC upon completion of the project after inspection.

D. Jurisdiction of the authority

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

D. I Territorial jurisdiction

6. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by the 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.

D. II Subject matter jurisdiction

7. 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)(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.

8. 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.

E. Findings of the authority

9. The case of the complainant is that the residents have been inconvenienced with a leaking basement since inception, which has been taken up in successive meetings within site facilities department of the builder. Water continues to seep inside the basement and the towers may collapse during earthquake, heavy rain may cause a leakage in the basement which may be a serious safety risk for the residents. Also, leakage from shafts in almost all towers may cause a serious health risk to the residents.



10. The authority vide its order dated 30.01.2024 has observed and recorded as under:

"Case has been called out but no one has appeared on behalf of the complainant today. However the counsel for the respondent states that all the defects those were brought out have been rectified and she has also submitted multiple photographs attesting to the same."

11. The authority observes that as per section 14(3) of the Act, the promoter is liable to rectify any structural defect or any other defect in workmanship, quality or provisions of services if such defect is brought to the notice of the promoter within a period of five years from the date of handing over possession without further charge within 30 days. Further, in the event the promoter fails to rectify the defect within such time, the aggrieved allottees shall be entitled to receive appropriate compensation in the manner provided under the Act.

12. As per the complaint, certain defects have been pointed out and a period of 3 (three) months is given to the respondent /builder to rectify the defects and deficiency in construction and services, if any, failing which the complainant association is at liberty to approach the adjudicating officer for failure to rectify such defect within aforesaid time and for seeking appropriate compensation in the manner as provided under the Act as per section 14(3) read with sections 71 & 72 of the Act.

F. Directions of the authority

13. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f) of the Act:

- i. A period of 3 (three) months is given to the respondent /builder to rectify the defects and deficiency in construction and services, if any,



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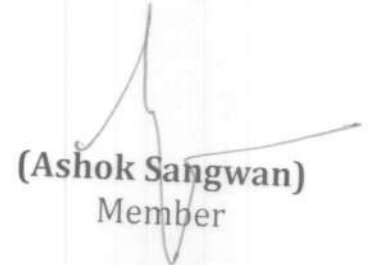
failing which the complainant association is at liberty to approach the adjudicating officer for seeking appropriate compensation in the manner as provided under the Act as per section 14(3) of the Act read with sections 71 and 72 of the Act.

14. Complaint stands disposed of.
15. File be consigned to registry.


(Sanjeev Kumar Arora)
Member



(Arun Kumar)
Chairman


(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 23.04.2024

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