



Complaint no:- 513/18, 536/18, 656/19, 658/19,
659/19, 703/18, 704/18, 705/18, 706/18,
707/18, 709/18, 710/18, 711/18, 1092/18
697,785,1347,1348,1025 of 2018

HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

1. COMPLAINT NO. 513 OF 2018

Sunil Yadav and Laxman Yadav ...COMPLAINANT(S)

VERSUS

Saera Auto India Pvt. Ltd.RESPONDENT(S)

2. COMPLAINT NO. 536 OF 2018

Prem RustagiCOMPLAINANT(S)

VERSUS

Saera Auto India Pvt. Ltd.RESPONDENT(S)

3. COMPLAINT NO. 656 OF 2019

Sayed Jamal AhmadCOMPLAINANT(S)

VERSUS

Saera Auto India Pvt. Ltd.RESPONDENT(S)

4. COMPLAINT NO. 658 OF 2019

Manish GuptaCOMPLAINANT(S)

VERSUS

Saera Auto India Pvt. Ltd.RESPONDENT(S)

5. COMPLAINT NO. 659 OF 2019

Anil Kumar SharmaCOMPLAINANT(S)

VERSUS

Saera Auto India Pvt. Ltd.RESPONDENT(S)

6. COMPLAINT NO. 703 OF 2018

Sandeep KumarCOMPLAINANT(S)

VERSUS

Saera Auto India Pvt. Ltd.RESPONDENT(S)

7. COMPLAINT NO. 704 OF 2018

Vinod KumarCOMPLAINANT(S)

VERSUS

Saera Auto India Pvt. Ltd.RESPONDENT(S)

8. COMPLAINT NO. 705 OF 2018

Radhay Shyam RohillaCOMPLAINANT(S)

VERSUS

Saera Auto India Pvt. Ltd.RESPONDENT(S)

9. COMPLAINT NO. 706 OF 2018



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Vikram Lamba and Preeti LambaCOMPLAINANT(S)

VERSUS

Saera Auto India Pvt. Ltd.RESPONDENT(S)

10. COMPLAINT NO. 707 OF 2018

Amit SingalCOMPLAINANT(S)

VERSUS

Saera Auto India Pvt. Ltd.RESPONDENT(S)

11. COMPLAINT NO. 709 OF 2018

Mukesh Kumar Jain and Sanjana JainCOMPLAINANT(S)

VERSUS

Saera Auto India Pvt. Ltd.RESPONDENT(S)

12. COMPLAINT NO. 710 OF 2018

Subhadra DeviCOMPLAINANT(S)

VERSUS

Saera Auto India Pvt. Ltd.RESPONDENT(S)

13. COMPLAINT NO. 711 OF 2018

Sant LalCOMPLAINANT(S)

VERSUS

Saera Auto India Pvt. Ltd.RESPONDENT(S)



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14. COMPLAINT NO. 1092 OF 2018

Bhoop Singh Soni and Rakesh Singh SoniCOMPLAINANT(S)

VERSUS

Saera Auto India Pvt. Ltd.RESPONDENT(S)

15. COMPLAINT NO. 697 OF 2018

Kailash SharmaCOMPLAINANT(S)

VERSUS

Asian Developers Ltd.RESPONDENT(S)

16. COMPLAINT NO. 785 OF 2018

Tajinder JassalCOMPLAINANT(S)

VERSUS

Asian Developers Ltd.RESPONDENT(S)

17. COMPLAINT NO. 1347 OF 2018

Brajesh Kumar TripathiCOMPLAINANT(S)

VERSUS

Asian Developers Ltd.RESPONDENT(S)

18. COMPLAINT NO. 1348 OF 2018

Neeraj RathoreCOMPLAINANT(S)

VERSUS

Asian Developers Ltd.RESPONDENT(S)



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697,785,1347,1348,1025 of 2018

19. COMPLAINT NO. 1025 OF 2018

Kusum Sharma

....COMPLAINANT(S)

VERSUS

Asian Developers Ltd.

....RESPONDENT(S)

CORAM: Rajan Gupta

Anil Kumar Panwar

Dilbag Singh Sihag

Chairman

Member

Member

Date of Hearing: 29.10.2019

Hearing: 5th in 656, 658, 659 of 2019.

10th in 513, 536, 703, 704, 705, 706, 707, 709, 710, 711, 1092 of 2018.

7th in 697/2018

6th in 785/2018

5th in 1347, 1348 of 2018

8th in 1025/2018

Present: - Mr. Himanshu Raj, Counsel for complainant.

(In Complaint no. 513, 536, 703,704, 705, 706,707,
709, 710, 711,785,1025,1347,1348,697, 1092 of 2018)

Mr. Manuj Chadha, Counsel for complainant.

(In Complaint no. 656, 658, 659 of 2019)

Mr. Deepak Girotra, Counsel for respondent no.1.
(In all the complaints.)

ORDER (RAJAN GUPTA-CHAIRMAN)

1. In the captioned complaint serial number 1-14, first respondent is M/S Saera Auto India Pvt. Ltd., and in complaint serial numbers 15-19, the first respondent is M/S Asian Developers Ltd. As will be borne out from the facts contained in this order all the complaints actually pertain to the same project for which the land was allotted to M/s Saera Auto India Pvt. Ltd. by the Haryana State Industrial & Infrastructure Development Corporation, but project was constructed/developed by M/s Asian Developers Ltd. under the authority of M/s Saera. Grievances of all the complainants being similar as, also the facts and cause of action, the entire bunch of 19 complaints have been taken up together for disposal through this common order. The complaint No.513 of 2018 is being taken as lead case. Repeated notices were sent to the M/s Asian Developers Ltd. and the same were never delivered to them as the respondent was not found at the given address. A publication in the newspapers was also done in "Indian Express" on 10.09.2019. Despite notices nobody has appeared before the Authority. Since repeated efforts have been made to seek reply



of M/s Asian Developers Ltd. and they have failed to appear, now they are being proceeded against ex-parte.

2. Today is the 10th hearing in large numbers cases. During the course of proceedings of this matter the Authority had passed several orders including order dated 6.3.2019 in which some important facts of the matter had been captured. The said order dated 06.03.2019 being relevant for disposal of this matter, is reproduced below:-

“1. The brief facts as emerging from the record are that Haryana State Industrial Infrastructure Development Corporation (herein referred as HSIIDC); Respondent No. 4, had allotted a plot to Saera Auto Pvt. Ltd. (hereinafter referred as Promoter) measuring 8300.70 Sq. Mtrs bearing No. GH-16, Sector-2, Phase-I, IMT Bawal, District Rewari (Haryana). Said promoter entered into an agreement with Asian Developers Pvt. Ltd. (hereinafter referred as a Developer) for construction of a group housing project on the aforesaid plot.

2. The complainants herein had booked flats with the developer who allotted them distinct flat numbers and had received part payments against the total sale consideration agreed between the parties. The terms and conditions of allotment and purchase were reduced into writing by the parties in the form of buyer's agreement. The developer was duty bound to deliver them the possession within the time prescribed in the buyer's agreement and said period has already lapsed in the year 2016.

3. The complainants came to know that the developer has changed the original plans of the flats and constructed the building only upto 5th floor. The apartments allotted to some of the complainants on the upper stories were then re-allotted. Along with the letters intimating the complainants about the change of floor, the developer has also raised additional demand on the pretext of preferential location charges and open car parking charges. The complainants somehow learnt that the promoter and the developer had no authority to sell flats to persons other than promoter's employees. So, they filed complaints before the police and also at CM's grievance Redressal and Monitoring System, Haryana. Finding no relief on his



grievances, they approached this Authority by instituting the present complaints.

4. The promoter has contested the complainants pleading that he had engaged Respondent No. 2 as a contractor for construction of flats for his employees and had never authorized to him to sell the flats to the complainants or any other person. According to him, the developer had prepared false and fabricated documents for projecting him to be an authorized person for sale of flats. He has further pleaded that the sale of flats to the complainants came to his knowledge when some of the allottees had instituted complaints against him and he had received summons from the National Consumers Disputes Redressal Commission on 24.05.2018. According to him, he had also filed a suit before the Civil Judge (Junior Division), Bawal for declaring the allotment made in favour of the complainants as illegal and not binding on his rights.

5. The Authority vide its order dated 30.01.2019 has directed the promoter to furnish the following documents:-

“(i) *To place on record the resolution passed by the Board of Management authorizing the respondent No. 1 to enter into agreement with respondent No. 2 to market, sell, develop and construct the project land; and*

(ii) The sources of its funds which were available to the respondent to raise the construction.”

6. Today, the promoter has filed copies of Memorandum of Understanding (MOU) and Agreement which he had entered into with the developer. The promoter in these documents has been referred to as the First Party and the developer i.e. Respondent No. 2, has been referred to as the Second Party. Clause No. 3 of the MOU reads as under:-

“That the second party has a right to sell, allot the flats to the respective buyers on a terms and conditions as agreed between the second party and the allottee and the first party has no role therein; and he is not permitted to obstruct or object the second party to do the same.”

And clause no.10 of the agreement reads as under:-

“That in consideration of the First Party providing the land and the Second Party developing under this construction agreement, the First Party shall make payment to the Second Party as per schedule attached as per payment plan (Annexure-III) attached to this agreement. In case first party fails to make payment to the second party as per payment plan, then the same shall adjusted against the sale proceeds of the flat and receipts in the shape of advances/full payment or whatsoever nature from the prospective buyers

(preferably the employees of the First Party) the proceeds shall be deposited in the account of the Second Party.”

7. Evidently, the above clauses vest a right in the developer to allot and sell flats and also to receive the sale proceeds and to deposit the same into his account. So, the Authority is prima facie of the considered opinion that the promoter has allowed the developer to market, allot and sell flats. That being the situation, there is prima-facie no merit in the contention of the promoter that the respondent No. 2 had sold the flats to the complainants un-authorizedly and without his consent or that he is not liable to discharge the obligations towards the complainants. Rather, the promoter being the licensee and having allowed the developer to sell the flats is jointly and severally liable for discharging obligations towards the complainants in terms of the buyer's agreement.

8. The promoter's plea is that when the department of HSIIDC had objected against the sale of flats by the developers to the complainants, he had issued an addendum to delete those clauses by which Respondent No. 2 was allowed to market, allot and sell the flats. Such act on the part of the promoter itself eloquently proves that incorporation of the clauses in the MOU and agreement permitting the developer to sell flats was rather not the result of any fraud and was a deliberate act on the part of the promoter. So, the institution of civil suit by the promoter in a court at Bawal or even the fact that the police had not taken any action against him, will not save him from the consequences of the sale made in favour of the complainants.

9. The Authority while dictating this order has found that the developer (respondent no.2) who has sold the flats to the complainants has not been served as yet. He being the person who had sold the flats and had signed the agreement entered with complainants, is a necessary party and deserves to be heard before passing any order fixing his responsibility. Notices were issued to him several times but the same were received back with the report that he has shifted from the given address. So, the complainants are directed to file his present address within seven days of uploading of this order and in case they are not in the knowledge of the present address of the developer then they may move an application for effecting substituted service as per law.”

3. Briefly stated, the case of the complainant is as follows :

- (i) A letter of allotment was issued by the HSIIDC in respect of plot No.GH-16, Sector-2, Phase-I, Growth Centre, IMT, Bawal for land measuring 8300.70 sq.mts. (42 acres) in favour



of M/s Saera Auto Pvt. Ltd. In October,2006 an agreement was executed between M/S Saera Auto Pvt. Ltd and HSIIDC for setting up of the Group Housing Society on the said plot. After handing over its possession in September, 2010 conveyance deed was executed in favour of M/s Saera Auto Pvt. Ltd in November, 2010. Building plans of the Group Housing Society were approved in 2012. Accordingly, M/s Saera Auto India Pvt. Ltd. became full owner in possession of the plot in question for setting up of Group Housing Society on the plot in question.

- (ii) Even though it has not been explicitly stated in the letter of allotment or the possession letter or the conveyance deed that the apartments in the Group Housing Society shall be allotted only to the industrial workers and officials of the Industrial unit concerned but it is made out from the correspondence that took place between M/s HSIIDC and M/s Saera that the apartments in this Group Housing Society could not have been sold to the general public for profit. These were intended to be allotted to the industrial workers on reasonable terms.
- (ii) That M/s Saera Auto, respondent No.1 signed an undertaking dated 29.7.2012 appointing Shri Dinesh Sharma S/o Shri Om Parkash Sharma, Director, Asian Developers Ltd. as their "true and lawful special attorney". The said special attorney was authorised by M/s Saera "to receive and deposit all the relevant documents and pending dues or as was demanded by the related department in relation to the above -mentioned land" and "to sign, verify, present and pursue all kinds of



applications, affidavits etc. for all the Govt. departments in relation with the land above mentioned". M/s Saera Auto specifically undertook to agree to confirm, and ratify all the acts and deeds done by Mr. Dinesh Sharma the said special attorney.

- (iii) Following the aforesaid undertaking a Memorandum of Understanding (MoU) was signed between M/s Saera (first party) and M/s Asian Developers Ltd.(second party), clauses (ii), (iii) and (iv) of the which are reproduced below:-

“(ii) That it is also agreed between the parties that the first party will permit the second party to construct the flat and allot the same to the prospective buyer.

(iii) That the second party has a right to sell, allot the flats to the respective buyers on a terms & conditions as agreed between the second party and the allottees and the first party has no role therein, and he is not been permitted to obstruct or object the second party to do the same.

(iv) That it is also agreed between the parties that once the construction on the said land is over and the completion certificate has been taken by the second party from the concerned authority, the transfer-deed of their respective flats will have been executed by the first party with the consent of the second party to the prospective buyer.”

- (iv) An agreement dated 16.11.2012 was also executed between M/s Saera Auto(first party) and M/s Asian Developers Ltd. (second party), the relevant Clauses (v), (vi) and (x) of the said agreement are reproduced below:

“(5) That the SECOND PARTY shall commence and accomplish the Residential Group Housing by providing



the entire finance, equipments inputs, material infrastructure and expertise necessary to construct and develop the said Residential Group Housing in accordance with the sanctioned site plans and any modifications thereof as may become necessary or agreed to during the progress of the development for construction works at the site.

(6) The FIRST PARTY shall render to the SECOND PARTY all necessary Assistance and sign all applications/s, representations/s, petitions/s, affidavits/s, plans/s and all such other documents/s including Power of Attorney(ies) as the SECOND PARTY may require in its name or In the name of its nominee for the purpose of the submissions to the HSIIDC/ Municipal Committee and/or any other government or statutory Authority to enable them to obtain necessary sanctions/s, permissions/s, and approvals/s, from all or any of the said authority/ies in connection with the Commencement and Development in the "Said Land", including Application for obtaining the building sanctioned plans and/or to carry out Any modifications or amendment thereof for obtaining controlled building material if any, for providing electric installations, lift and elevators, Water and sewerage connections and in general for fully effecting the Terms and conditions of this agreements.

(10) That in consideration of the FIRST PARTY providing the land and the SECOND PARTY developing it under this construction agreement, the FIRST PARTY shall make Payment to the SECOND PARTY as per schedule attached as PAYMENT PLAN (Annexure III) attached to this agreement. In case FIRST PARTY fails to make payment to the SECOND PARTY as per Payment plan, then the same shall adjusted against the sale proceeds of the flat and receipts in the shape of advance/full Payment or whatsoever nature from the prospective buyer(preferably the employees of the first party) the proceeds shall be deposited in the account of SECOND PARTY."

- (v) M/s Asian Developers Ltd. got a loan sanctioned for development of the project from the Corporation Bank. The Bank vide letter dated 30.11.2012 also requested M/s Asian Developers Ltd. to source housing loan application to them. M/s Asian Developers Ltd. having become authorised



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promoter and developers of the project at plot No.GH-16, Sector-2, Phase-I, IMT Bawal, started publishing advertisements in various media for purchase of residential property in the said project. The lead complainants Shri Sunil Yadav and Laxman Yadav were allotted unit measuring 1460 sq.mt. in the said project on 22.7.2013. Between July, 2013 and February, 2014 the complainants made payments to M/s Asian Developers Ltd. as follows:-

AMOUNT PAID BY THE COMPLAINANT

Sr. No	Date	Cheque/DD/Receipt No.	Amounts(Rs.)
1	27.07.2013	232612	361000
2	31.07.2013	629072	357700
3	02.09.2013	232608	100000
4	02.09.2013	629074	265000
5	15.02.2014	869858(bank loan)	1458137
		TOTAL	2541837

- (vi) An allotment letter-cum-buyers agreement was executed between the complainants and M/s Asian Developers Ltd. vide which residential apartment No. B-1/602 on 6th Floor measuring 1460 sq.ft. at a total cost of Rs.39,15,700/- was allotted to the complainant.
- (vii) As per the agreement the unit was to be handed over within a period of 30 months which expired on 12.01.2016. The lead complainant alleges that he was allotted the apartment No.B-



1/602, initially and later on was re-allotted apartment No.B-1/501 because the project was approved for construction till 5th Floor only. The respondent M/s Asian Developers Ltd. had sold the 6th floor apartment without any approval. The building itself was approved for construction upto 5th floor only.

(viii) The complainant got a loan sanctioned from the Corporation Bank. Complainant alleges that one of the major reasons for him to buy the plot in the project was that the project had been approved by the Corporation Bank. He naturally assumed that the bank would have done due diligence in the matter before approving the project for granting loan. The complainant alleges that they are aghast to learn that even bank was hand in glove with respondent No.1 & 2. The complainant is shocked to find that the said residential colony is being developed by respondent No.1 &2 un-authorisedly and without due approvals.

4. Now since the project is not been completed and the respondent are not legally authorised to sell the apartments to general public there appears no scope for its completion and handing over legal possession of the apartments to them. Accordingly, complainant has sought relief of refund of the money paid along with due interest and compensation.

5. In response to the above averments of the complainants the respondent No.1 M/s Sarea Auto India Pvt. Ltd. has replied as follows:-



- (i) That M/s Sarea Auto Pvt. Ltd is totally unaware of the dealings of M/s Asian Developers Ltd. In fact they themselves have been defrauded by M/s Asian Developers Ltd. by their criminal acts of forging and fabrication of false documents.
- (ii) The respondent No.1 had no knowledge of selling of apartments by M/s Asian Developers Ltd. and the act of selling apartments to general public is totally contrary to the agreements executed between the respondent No.1 &2. Further, upon examination of the documents placed on record it is revealed that the title of M/s Asian Developers Ltd. as shown in the buyers agreement is imperfect. Clearly, neither the buyers nor their bankers have exercised due diligence before entering into transaction with M/s Asian Developers.
- (iii) That M/s Saera respondent No.1 has filed a civil suit bearing CC No.241 of 2018 titled Saera Auto India Pvt. Ltd. Versus Asian Developers Ltd.and others before the court of learned Civil Judge, Bawal. The respondent has annexed a copy of the Civil Suit filed by them and has requested that the ground set therein should be read as a part of their reply in their matters.
- (iv) In the Civil Suit, M/s Saera the respondent No.1 has sought to declare the said undertaking dated 29.7.2012 and MoU dated 16.11.2012 as null and void because allegedly they were never executed by them. They have also sought several injunction orders against several other respondents including the complainants herein and respondent No.2 etc.



- (v) That the respondents have also filed a criminal complaint in the court of learned Sub Divisional Judicial Magistrate under Section 156(3) CrPC for offences under Section 406/420/465/467/468/471/472/120B/34 of the Indian Penal Code. This criminal complainant was also filed in October, 2018

6. During oral arguments learned counsels for the complainants stated that the respondents No.1 & 2 i.e M/s Saera Auto India Pvt. Ltd. and M/s Asian Developers Ltd. should be held liable jointly and severally towards the complainants. The complainants have paid their hard earned money to M/s Asian Developers Ltd. who has been acting at the behest of the M/s Saera who is land-owner and licensee of the land. The land-owner licensee is primarily responsible towards the allottees and he cannot be absolved of his responsibility.

M/s Saera Auto have signed an undertaking dated 29.07.2012, and MoU dated 16.11.2012, and agreement dated 16.11.2012 with M/s Asian Developers, thus clearly and unequivocally conferring all powers for development of the project, for sale of the apartments in the residential colony. M/s Saera the respondent No.1 have expressly authorised the respondent No.2 to develop and market the project, and further undertook to execute all documents also at the relevant time, thus making respondent No.2 lawful collaborator cum developer of the project, in furtherance of



which the complainants have booked the apartments, paid huge amount of money and have also executed builder buyer agreement.

Even Corporation Bank have sanctioned the loans for the project as well as for the home buyers. The respondent No.1 i.e M/s Saera Auto may themselves have fully participated by showing documents relating to the ownership of the land to the Corporation Bank. Without such cooperation on the part of M/s Saera Auto the bank may not have sanctioned loan for development of the project.

It has further been argued on behalf of the complainants that they had booked the apartment in 2013 and the construction of the project began in right earnest. The construction of the project continued for a period of two years and structures of 5th and 6th floor stands erected. In the meantime M/s Asian kept advertising and kept selling the apartments, but M/s Saera Auto never took any steps to stop them. It is very clear that M/s Asian was building the apartments on behalf of and under clear authority of respondent No.1. Such massive bungling, forgeries and cheatings as are being alleged by M/s Saera are impossible in the face of the narrated facts. M/s Saera Auto was constant witness and party to all that was going on.

Further, when the complainants approached this Authority in September, 2018, the respondent No.1 became aware of the legal



consequences of their acts of omission and commission. It is only to safeguard themselves against legal consequences that they filed the civil suit and the criminal complaint in October, 2018. It is inconceivable that for five years the respondent No.1 was unaware of the wrong doings of the respondent No.2 and he suddenly became aware of it after filing of complaints before this Authority.

The complainants has given strength to the their arguments by quoting the correspondences which happened between the respondent No.1 and HSIIDC which is as follows:-

- “(i) A letter dated 13.12.2013 was written by HSIIDC to M/s Saera Auto India Pvt. Ltd. seeking their explanation that since the respondents have no right to transfer the plots by way of sale, gift, mortgage or otherwise without prior permission of HSIIDC then how it that M/s Asian Developers Ltd. are booking flats in the said group housing colony on the plot allotted to M/s Saera. It was stated by HSIIDC that it amounts to violation of the terms and conditions of the agreement.
- (ii) Based on the above letter of HSIIDC, M/s Saera Auto wrote a letter to M/s Asian Developers seeking their clarification as to whether they have done any act of booking or sale of plots?

No averment has been made by any party whether M/s Asian Developers responded to this letter of seeking clarification from them. Even learned counsel for the respondents have not made any



statement whether M/s Asian had ever responded to the clarification sought by M/s Saera nor did they made any averments whether any follow up action was taken by them against M/s Asian Developers.

- (iii) M/s Saera wrote a letter sometimes in early 2014 to HSIIDC telling them that M/s Asian Developers Ltd. are simply a construction company which has been assigned with the job of raising construction at the site and they are not having any right, title or interest over the said property. Further, "the question of booking or sale having been done by them does not arise". They also wrote that "we have also come to know from a recent publication in some local daily regarding such activities of M/s Asian Developers Ltd. and we are trying to ascertain the genuineness of allegations made and needful shall be done in this regard if any such illegal act so transpires".

It has been contended on behalf of the complainants that except for writing a mere formal letter dated 31.3.2014 no follow up action was taken by M/s Saera against M/s Asian, which proves that both of them were fully hand in glove with each other.

A reference was also made to a letter dated 7th July, 2014 written by M/s Saera to the Additional General Manager, HSIIDC in which M/s Saera have tried to justify the inclusion of MoU dated 16.11.2012 executed by M/s Saera with M/s Asian. M/s Saera has tried to justify the said MoU for the reason that the Authority to sell apartments to M/s Asian has been given as a part of securing the payment for the developer. The complainants



stressed that this is a clear admission that M/s Saera had conferred the requisite authority upon M/s Asian to sell/market the apartments and both the parties were fully hand in glove with each other.

- (iv) A reference has also been made another letter dated 6.9.2014 written by M/s Saera Auto India Pvt. Ltd. to the Additional General Manager, HSIIDC Para(i) of which is reproduced below:-

“With regard to justification with reference to the inclusion of Annexure-III in the MoU dated 16.11.2012 executed by us with M/s Asian Developers Ltd. which provides for sale of built up flats and sharing of sale proceeds. We wish to bring your kind attention to our reply dated 7th July, 2014 wherein we have agreed to alter this clause with the consent of the builder, if corporation has any objection to any clause. A copy of our reply dated 7th July, 2014 is being enclosed.”

This further corroborates that M/s Saera Auto India Pvt. Ltd. had given due authority to M/s Asian to develop sale and market the project. This act on the part of M/s Saera was patently illegal and wrongful for which they cannot be absolved of their responsibility towards the complainants. M/s Saera has to be treated as a joint developer of the project along with M/s Asian Developers Ltd.”

6. During oral submissions, Shri Amit Prasad, learned counsel for M/s Saera Auto maintained his stand as was submitted in writing that the complainants have been cheated and defrauded by the respondent No.2. i.e M/s Asian Developers because M/s Saera Auto had never authorised M/s



Asian Developers Ltd. to sell or market the apartment to general public in the group housing colony. Ld. Counsel stated that M/s Asian Developers was merely a building contractor for M/s Saera Auto and was never authorised to sell any apartment or execute builder buyer agreement or to raise loan from the Cooperative Bank. M/s Asian has defrauded the complainants without any express or implied authority of M/s Saera Auto. Even the loan was sanctioned by the Corporation Bank without their approval. Since the bank as well as the complainants have failed to exercise due diligence, now their remedies lie only against the M/s Asian Developers, M/s Saera Auto India Pvt. Ltd. is not responsible in this matter at all. In support of his contention he reiterated that they have filed a civil suit as well as a criminal complaint against M/s Asian Developers Ltd. which are pending before the court of law for adjudication.

7. The Authority has gone through all the facts and circumstances of the matter. It observes and orders as follows:-

- (i) Admittedly, M/s Saera Auto India Pvt. Ltd. is owner in possession of the plot in question on which a group housing colony was approved to be set up in accordance with the terms & conditions set out by HSIIDC. No documents have been placed before the Authority in this regard, but from various submissions made it can



be safely concluded that apartments in the group housing colony could have been allotted only to industrial workers and were not meant to be sold in the open market for profit. However, for having sold the apartments to the general public, an explanation of the allottee M/s Saera was called by HSIIDC.

- (ii) The building plans of the group housing colony was got approved from HSIIDC by the respondent M/s Saera Auto India Pvt. Ltd. Being owners of the plot as well as holder of the approved plans they were fully responsible and answerable for development and allotment of the colony in accordance with the approved plans and other terms and conditions of allotment. It was the duty of the M/s Saera Auto to ensure that the development of the colony took place in accordance with lawful terms & conditions agreed by them with HSIIDC. As the facts reveal, M/s Saera have failed to abide by the terms and conditions of allotment of land.
- (iii) A letter dated 13.12.2013 has been place on record by the complainants vide which an explanation of M/s Saera Auto was sought by HSIIDC for unauthorised selling of flats in the said group housing colony by M/s Asian Developers Ltd. As a consequence of the above notice M/s Saera wrote the letter dated

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31.3.2014 seeking explanation from M/s Asian Developers Ltd.

Thereafter, they sent a reply to the HSIIDC showing their complete ignorance about the activities of M/s Asian Developers.

M/s Saera has also pleaded that since they were basically an auto company had no knowledge regarding construction and allied activities, therefore, for development of the colony they executed the said undertaking and MoU with M/s Asian Developers.

This line of arguments of M/s Saera Auto is totally unacceptable. They are a large auto company. The terms & conditions settled between them and HSIIDC were very clear to them. They could have taken legal advice in the matter from their experts. They kept ignoring activities of M/s Asian Developers of selling the apartments and developing the colony and now they are pleading innocence in the matter which is difficult to accept.

In fact vide their letter dated 7.07.2014 and 6.09.2014, written to HSIIDCM/s Saera has sought to justify the MoU executed by them with M/s Asian vide which all the powers including for sale of apartments had been conferred by them in favour of M/s Asian. After having done so and after signing all the Authorisations, now M/s Saera cannot plead assume that activities of M/s Asian were

unauthorised and M/s Saera is not responsible at all for the same. The landowner-licensee is duty bound to ensure that development takes place as per conditions of allotment. The attending facts and circumstances, in fact, clearly proves that all the actions have been taken by M/s Asian with active consent and authorisation of the landowner i.e. M/s Saera.

- (iv) It is assumed that the respondent No.1 M/s Saera Auto India Pvt. Ltd. is a huge company. They have all kind of staff and managers and legal experts working with them. They initially got the allotment of the plot done in their favour at their own level. After allotment of the plot and after execution of the conveyance deed where was the need for signing the undertaking of the MoU with respondent No.2 vide which extensive powers were conferred upon the respondent No.1. Para No.3 of the MoU clearly confers the rights to sell and allot the flats to the respective buyers. Furthermore, para No.10 of the agreement dated 16.11.2012 facilitate the adjustment of the payments to respondent No.2 from the sale proceeds of the flats and receipts.

The Corporation Bank sanctioned the loan in favour of respondent No.2 on the strength of the legal documents presented



to them. Shri Brij Bihari Lal Sharma, Advocate for the Corporation Bank has given a detailed legal opinion regarding the legal title over the land etc.by taking into consideration the documents executed by respondent No.1 singularly or respondent No.1 & 2 together.

- (v) Keeping the afore-mentioned facts and circumstances in view the authority rejects the pleas of M/s Saera that they were unaware of the activities of respondent No.2 and that they had never authorised the sale of the apartments in the colony. The facts captured in this order tells a totally different story. M/s Saera has been constantly defending to HSIIDC the signing of MoU with M/s Asian. It is further surprising that even after becoming aware of the facts of sales having been effected by M/s Asian in the year 2013, they merely sought an explanation from them in February,2014 and never proceeded to terminate their agreement or to file a civil suit or to lodge a criminal complaint against them. They took no action whatsoever to safeguard the interest of the group housing colony or of the allottees of the colony. It was only after when this Authority took recognizance of the matter in



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September 2018 that they filed a civil suit and a criminal complaint in November,2018.

From 2014 to 2018 M/s Saera was fully aware of the alleged wrongdoings of M/s Asian, but still they did not bother themselves at all to take corrective actions. It clearly proves that all that was done by M/s Asian was with the consent and with the approval of M/s Saera Auto. This Authority also is surprised as to why even HSIIDC failed to follow through the matter after taking recognizance of the violations of the conditions of the allotment letter by the respondent No.1. No correspondence whatsoever between the allottee respondent No.1 and HSIIDC has been brought on record for taking corrective steps. After becoming aware of the fact that respondent No.1 or his delegates were unauthorisedly selling the apartments in the colony, HSIIDC should have taken corrective steps. In the light of the foregoing discussions and findings, this authority is of the confirmed view that the owner in possession of the plot M/s Saera Auto India Pvt.Ltd. shall be liable jointly and severally with the promoters of the project who was authorised by them to sell and develop the apartments. For achieving their objective, both parties executed



several documents including an MoU and an agreement. For active participation or for the passive ignorance of the facts happening on the ground, both respondent No.1 & respondent no.2 are answerable and liable towards the complainants jointly and severally.

8. In the light of the foregoing discussions and findings, this authority is of the confirmed view that the owner in possession of the plot M/s Saera Auto India Pvt.Ltd. shall be liable jointly and severally with the promoters of the project who was authorised by them to sell and develop the apartments. For achieving their objective, both parties executed several documents including an MoU and an agreement. For active participation or for the passive ignorance of the facts happening on the ground, both respondent No.1 & respondent no.2 are answerable and liable towards the complainants jointly and severally.
9. Now this project is stuck. Sale of the apartments has been done in violation of the conditions of allotment of the land, as such, valid allotment of the apartments cannot be made in favour of the complainants. Legally and practically speaking there is no likelihood that the respondents will be able to complete the project. Accordingly, as provided under Section 18 of the RERA Act, all the complainants are entitled to get refund of the money



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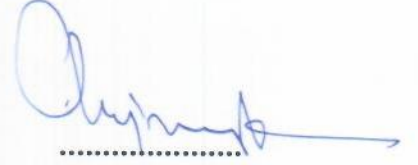
paid by them along with interest calculated in accordance with Rule 15 of the RERA Rules which is SBI MCLR+2%. This order shall be executable against both the respondents No.1 and No.2 jointly and severally. All the complainants shall calculate the interest payable as per Rule on each instalment paid from the date of payment upto the date of passing this order. A table of those calculation shall be sent to the respondent within 30 days with a copy to this Authority. If the respondent agrees with the calculations, the amount shall be refunded to the complainant. If they do not agree, then respondent may file an application with this Authority for settling the dispute regarding calculations. A copy of the said application shall be sent to the complainant also.

10. The respondents are directed to refund the amounts as per this order to the complainants within a period of 90 days failing which the complainant shall be free to file petitions for execution of these orders. The complainants are free to get these orders executed both against respondent No.1 & respondent No.2 or against any of their bank accounts or properties.

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11. **Disposed of** in above terms. Orders be uploaded on the website of
the Authority and file be consigned to the record room.



.....
RAJAN GUPTA
[CHAIRMAN]



.....
ANIL KUMAR PANWAR
[MEMBER]



.....
DILBAG SINGH SIHAG
[MEMBER]