



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	713 of 2019
Date of filing:	12.03.2019
Date of first hearing:	11.04.2019
Date of decision:	18.10.2023

Residents Welfare Association Golden Heights,

E-419A, Golden Heights, 82<sup>nd</sup> Mile Stone, Near Golden Huts Hotel,

NH-8, Dharuhera, Distt Rewari

.....COMPLAINANTS

**Versus**

M/s Landmark Apartment Private Limited,

Plot No. 65, Sector 44, Gurgaon

.....RESPONDENT

**CORAM: Dr. Geeta Rathee Singh**

**Member**

**Nadim Akhtar**

**Member**

**Present:** - Mr. Lobin Kumar, President of RWA through VC.

Sh. Shobhit Phutela, counsel for the respondent through VC.

**ORDER (NADIM AKHTAR- MEMBER)**

1. Background of the case was that captioned complaint was filed on 12.03.2019 before Authority and notice was successfully served upon respondent on 16.03.2019. Complaints have filed the captioned complaint seeking various reliefs such as transfer of maintenance including IFMS amount, electricity connection and water supply be handed over to RWA; respondent be directed to obtain CLU/license for the project etc. Respondent on the other hand had filed short reply on 13.06.2019 and detailed reply on 12.11.2020 wherein respondent has challenged the jurisdiction of the Authority to adjudicate the captioned complaint on various grounds. On, 09.10.2019 a detailed order was passed by the Authority, whereby respondent plea for non-maintainability of captioned complaint was rejected. Said order is reproduced below for ready references:

*" This complaint was filed by the Resident Welfare Association(RWA) of a project named "Golden Heights" located in village Khijuri, District Rewari and the grievances raised therein are broadly as under: -*

*(a) The respondent despite the fact that the project in question falls under additional controlled area declared by the Government in the year 2007, had not yet handed over the maintenance services along with the amount of approximately Rs. 3.00 crores collected from the allottees for providing maintenance services. Said amount was allegedly paid by the allottees to M/s Land Mark Facility and Property Management Pvt Ltd., a company to whom the respondent had appointed as Contractor for providing the maintenance and*





security services. There is also allegation that the aforesaid contractor is not providing the required services to the residents

(b) The respondent had obtained a commercial electricity connection in the name of M/s Golden Villa, a sister concern of M/s Landmark Apartment Pvt. Ltd. and is supplying electricity to the residents by charging Rs. 10/- per unit plus GST @ 18%. The respondent, as per the guidelines of DHBVN, is however obliged to charge different rates for electricity supplied by DHBVN and the electricity supplied through generator sets. Besides this, the respondent owes an obligation to transfer the electricity connection to the name of RWA after the project had achieved 50% occupancy by the allottees, which it already has achieved, and the tariff for electricity bills should have been only @ Rs. 6.50 per unit instead of Rs. 10/- per unit.

(c) The respondent had not set up sewerage treatment plant (STP) and the garbage of the colony rather is being discharged and burnt in the open.

(d) The respondent is not providing maintenance services for basic facilities such as roads, water from dedicated sources, electricity and cleanliness even though he has been charging the residents in the name of these facilities.

(e) The respondent is trying to sell the structure of club building though it is meant for the use of the residents.

2. The respondent has resisted the complaint by filing a short reply, wherein, the plea raised is that the project was completed prior to commencement of RERA Act in the year 2009 and, therefore, this Authority has no jurisdiction to adjudicate the present complaint.

3. During the course of arguments on the previous date of hearing i.e. 22.08.2019, the respondent had apprised the Authority that he had obtained the exemption under Section 9 of the HDRUA Act, 1975 from taking a license from the Government for development of the project. So, the Authority had directed him to produce the following documents. -

(a) A copy of exemption letter issued by the competent authority of the Government to develop the said project;

(b) A copy of occupation certificate, if obtained from the competent authority of the Government certifying that project has been completed way back 10 years;

(c) Details of total apartments to be constructed as per assured building plans;

(d) Details of allotted/unallotted number of apartments and status of constructions of such apartments;

(e) Components of the project which is yet to be completed.





4. Today, the respondent has produced a letter bearing Memo. No. 103 dated 17.01.2006 issued by District Town Planner, Rewari to support his contention on the point that an exemption was granted to the project. This document reveals that the Town and Country Planning Department while granting NOC to the respondent for the development of the project, had imposed following conditions on the respondent: -

(i) that the respondent will have to abide by all the terms imposed by the department whenever this area is declared as Controlled area or Urban area.

(ii) that the respondent will have to pay internal and external charges whenever required by the HUDA/Department of Town and Country Planning.

(iii) that this exemption would not provide any immunity to the respondent from applicability of any other Act/Rules of State and Central Government.

5. So, the document relied by respondent itself proves that he, in view of the conditions imposed in the exemption letter, is bound to abide the laws and rules of the Town and Country Planning Department from the date on which land of his project was included in the additional controlled area. It is not disputed that the land of his project was included in the controlled area in the year 2007. This fact is evident from the field book report, a copy of which is attached as Annexure B with the documents today filed by the respondent. Said document was prepared by the Patwari and counter-signed by the representatives of Town and Country Planning Department.

6. The respondent by virtue of the conditions imposed in the exemption letter, thus, became liable to abide by the laws and rules of Town and Country Planning Department from the year 2007 when the area of the project was declared controlled area.

7. Viewed from the perspective discussed above, the objection on the ground that the present complaint is not maintainable before this Authority, is not tenable. Accordingly, the Authority directs the respondent to file a detailed reply in respect of all the grievances agitated by RWA in order to enable the Authority to decide as to which of the RWA's grievances deserve redressal subject to law of limitation. Such reply shall be filed and its copy be supplied to the complainant at least five days before the next date of hearing.

8. Case is adjourned to 04.12.2019."



2. Thereafter various detailed orders were passed by the Authority to decide whether or not project was completed before commencement of the statue of the Town and Country Planning or after?
3. Further, vide order dated 06.10.2020 passed by the Authority in the captioned complaint, respondent had apprised the Authority that an appeal bearing no. 273/2020 has been filed before Hon'ble Appellate Tribunal against order dated 09.10.2019 passed by the Authority with respect of maintainability of the captioned complaint. Said appeal was decided by Hon'ble Appellate Tribunal on 16.03.2022 whereby the impugned order dated 09.10.2019 has been set aside and case was remanded back to Authority to decide afresh on issue of maintainability.
4. Thereafter matter was listed for hearing on 04.05.2022; 12.08.2022; 29.11.2022; 09.02.2023 and 25.04.2023. Both the parties were directed to file their respective written submissions with regard to arguments on issue of maintainability of the captioned complaint.
5. In compliance, complaints have filed their written submissions on 30.1.2023, wherein it is stated that complaint was filed in the year 2019 seeking transfer of maintenance of society to RWA including interest free maintenance security charges; dedicated water supply, electricity connection; working STP; basic amenities to be completed such as road, water etc. Further, complainants have alleged that till





date project is not complete in all aspects rather there are numerous deficiencies in basic amenities as well as structural defects in the project developed by respondent-promoter. Complainants have stated that respondents had relied upon letter dated 17.01.2006 issued by DTP, where by respondent was not under an obligation to take completion certificate. Although, as per said letter respondent was under an obligation to abide by all terms and conditions imposed by the department whenever the area wherein the project in question is located, will be declared as Controlled Area. Further, it is evident from letter dated 18.12.2017(annexed as annexure R-14), that the area wherein project in question is located, was declared as Controlled Area on 09.02.2007. Therefore, respondent was required to take CLU/License for developments and construction of flats from competent Authority. However, respondent had failed to take CLU/ license from concerned department till date.

6. Further, complainants have referred to a judgment passed by Authority in case no. 144 of 2018, titled as, "Sanjay Jain Vs. TDI Infrastructure", whereby it is specifically mentioned by the Authority that to the extent of subsisting obligation, the Authority would continue to have jurisdiction to get those obligation discharged.
7. Further, vide order dated 23.01.2020, a report from DTP, Rewari was also called upon. In compliance, report was filed on 28.02.2020 which



states that details of the construction and dimension of the sites are not available in the said structural plate, however an un-authorised construction was detected adjoining to existing colony.

8. Further, complainants have placed on record various documents to show that project was never completed as basic amenities such as water supply, domestic electricity connection were not provided to the allottees by respondent till date. Further, a report obtained through RTI, reply of which was given by SPIO cum DTP Rewari vide letter dated 25.07.2018 (Annexure 22) clearly establishes the fact that show cause notices dated 05.07.2017,19.04.2017,08.04.2016,25.04.2016 were served by the DTP, Rewari to the respondent developer to stop construction as per provision of subsection(1) of Section-7 of the Punjab Scheduled Roads and Controlled Area Restrictions of unregulated development Act, 1963. It clearly proves that the construction was continuing in the project of Golden villa and the project was not complete till 2017.
9. In view of above submissions, complainant prayed that captioned complaint is very much maintainable and respondent is liable to discharge all of their subsisting obligations.
10. On the other hand, respondent had filed written submission on 01.05.2023 and 02.05.2023 in the registry, wherein it is stated that



captioned complaint is not maintainable before Authority for the following reasons:

- i. Project in question was completed way back in year 2006 and people are residing there since then. Further, project was completed before the area, in which project is developed was declared as Controlled Area. Since, the project did not fall under the purview of Controlled Area, no license or occupation certificate was required to be obtained from the concerned department. Respondent referred to Section 9 of Haryana Development and Regulation Act, 1975, which provides exemption from obtaining license in certain cases which includes when land is not situated within Controlled Area, accordingly respondent case is covered under said exemption clause of Section 9 of Haryana Development and Regulation Act, 1975.
- ii. Further, respondent has also obtained "No objection Certificate" dated 17.01.2006 from the concerned department. It is important to note that on 09.02.2007, area on which project has been developed had come under Controlled Area. Later on 10.05.2007, field survey was conducted by office of District Town Planner, Rewari and a field book was got prepared, wherein the said area which stands constructed, was demarcated





and said report clearly acknowledges that project in question was already constructed at that time. Therefore, respondent company was never required to apply for any License/CLU/Occupation Certificate since the project was already complete before the area came under the purview of Controlled Area. Copy of field book was submitted by respondent on 02.05.2023 along with additional application.

- iii. Further, respondent stated that its been more than ten years since the project was completed by respondent and handed over the same to allottees in the year 2006, now after good long gap of more than 10 years of completion of project bars the Authority to have its jurisdiction to entertain any complaint of complainants/RWA as respondent had already discharged all obligations in the year 2006 itself.
- iv. Further, respondent stated that when the project was getting constructed then, at that time, RERA Act, 2016 was not in existence. Therefore, respondent could not have contemplated any violations and penalties thereof, as stated in RERA Act, 2016. In case provisions of RERA Act, 2016 will be given retrospective effect, will be onerous and cause undue grave hardship to respondent company. The same will disturb the



construction and development plan of the project of any developer including respondent company.

- v. Further, respondent referred to Section 14(3) of the RERA Act, 2016, which specifies that any defects have to be brought to the knowledge of the promoter within 5 years from date of possession, which in this case, complainants had failed to do so. Therefore, present complaint is not maintainable.
- vi. Further, respondent stated that project in question is not registered with the Authority as it was never required because project was completed in the year 2006, when RERA Act, 2016 was not even in existence.
- vii. Captioned complaint is also bad for misjoinder of parties, as most of the reliefs sought by complainants are with regard to maintenance company which is not even made party to the complaint.
- viii. Lastly, complaint is grossly barred by limitation and therefore same is not maintainable before the Authority.

**E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT:**

11. Today, Sh. Shobhit Phutela appeared for respondent through VC and stated that matter was already heard at length on 25.04.2023 and kept reserved for order. However, after hearing, certain documents were





filed on 01.05.2023 and 02.05.2023 in registry by respondent. Hence matter was listed for rehearing as copy of said documents were not supplied to complainants, therefore matter was listed for today i.e. 18.10.2023. He concluded his arguments by stating the all the averments of respondent are taken on record along with written submissions filed on 01.05.2023 and 02.05.2023 by respondent-promoter. In addition, he submitted that it is clearly mentioned in the field book that colony in question is an existing colony on total plot area of 51 acres 5 kanal. Both four story Golden Height and double Story Golden Villa Structure are clearly depicted which proves that the project was developed and very much existing on 10.05.2007, the day on which survey was done by DTP. Since, land on which project has been developed not been part of Controlled Area, therefore, there was no necessity of obtaining license/CLU. Accordingly, compliant be decided on the basis of written submissions filed by respondent. On the other hand, Mr. Lobin Kumar, president of RWA appeared through VC and stated that matter be decided on the basis of written submissions filed by both the parties.

#### **H. OBSERVATIONS AND FINDINGS OF THE AUTHORITY**

12. The Authority has gone through the rival contention and the documents placed on record. Authority observes that today is 21<sup>st</sup> hearing of the



matter. Main issue with regard to maintainability of the captioned complaint was once dealt by the Authority vide order dated 09.10.2019, whereby earlier bench had adjudicated upon the said issue and had rejected the plea of respondent that complaint is not maintainable before Authority. Thereafter, various orders were passed by the Authority while issuing directions to both parties. However, order dated 09.10.2019 passed by the Authority was challenged by the respondent by filing an appeal bearing no. 273/2020 before Hon'ble Appellate Tribunal with respect of maintainability of the captioned complaint. Said appeal was decided by Hon'ble Appellate Tribunal on 16.03.2022 whereby the impugned order dated 09.10.2019 has been set aside and case was remanded back to Authority to decide afresh on issue of maintainability. Relevant part of the order is reproduced below:

*" This is an appeal against the interim order dated 09.10.2019 passed by the Haryana Real Estate Regulatory Authority, Panchkula (hereinafter referred as 'the Authority'), whereby the plea raised by respondent-promoter with respect to maintainability of the complaint was decided against the appellant.*

*2. We have perused the impugned order. The learned Authority has concluded the matter with the following observation:-*

*"5. So, the document relied by respondent itself proves that he in view of the conditions imposed in the exemption letter, is bound to abide the laws and rules of the Town and Country Planning Department from the date on which land of his project was included in the additional controlled area. It is not disputed that the land of his project was included in the controlled area in the year 2007. This fact is evident from the field book report,*





*a copy of which is attached as Annexure B with the documents today filed by the respondent. Said document was prepared by the Patwari and counter-signed by the representatives of Town and Country Planning Department.*

*6. The respondent by virtue of the conditions imposed in the exemption letter, thus, became liable to abide by the laws and rules of Town and Country Planning Department from the year 2007 when the area of the project was declared controlled area.*

*7. Viewed from the perspective discussed above, the objection on the ground that the present complaint is not maintainable before this Authority, is not tenable. Accordingly, the Authority directs the respondent to file a detailed reply in respect of all the grievances agitated by RWA in order to enable the Authority to decide as to which of the RWA's grievances deserve redressed subject to law of limitation. Such reply shall be filed and its copy of supplied to the complainant at least five days before the next date of hearing."*

*3. The above quoted observation of the learned Authority shows that the learned Authority has only discussed that the exemption granted to the appellant-promoter by the Town and Country Planning Department was no more available as the area of the project had fallen in the controlled area in the year 2007. But, there is no discussion, at all, as to how falling of the area of the project within the controlled area will determine the issue regarding the jurisdiction of the Authority under the provisions of the Real Estate (Regulation and Development) Act 2016. So, in our opinion, this issue requires reconsideration by the learned Authority on appreciating the documents produced or to be produced by the parties.*

*4. Consequently, the present appeal is hereby allowed. The impinged order dated 09.10.2019 passed by the learned Authority with respect to the maintainability of the complaint is set aside. This issue shall be decided afresh by the learned Authority along with the main complaint on appreciation of the evidence/documents produced before it. Copy of the status report dated 08.01.2022 and the objections to the status report filed by the respondent-allottee be communicated to the learned Authority along with the copy of this order.*

*5. Copy of this order be communicated to the parties/learned counsel for the parties and the learned Authority.*

*6. File be consigned to the record."*

13. After considering above orders, passed by Hon'ble Appellate Tribunal,

Authority had directed both the parties to file their respective written



submissions on the issue of maintainability of captioned complaint. In compliance both parties had filed their written submission on 30.1.2023, 01.5.2023 and 02.05.2023 in the registry of the Authority. Submissions made by both parties stands recorded from para 5 to 11 of this order. After taking into consideration said submissions and orders passed in previous proceedings since 2019 by the Authority, it is observed that large number of findings have been recorded. All those findings will be considered as part of this order. Sum and substance of the matter now is that respondent had completed the project in the year 2006 and had handed over possession of the apartments to respective allottees. The allottees have been enjoying possession of their apartments since then.

14. The Association of allottees, however, alleges numerous deficiencies in the project. Varieties of documents have been tendered from time to time in regard to those deficiencies. The case of the respondent is that they had completed the project in the year 2006 and had received NOC from DTP, Rewari on 17.01.2006, who was the then existing competent Authority. Further, respondent has referred to a field book prepared by office of District Town Planner after conducting survey over the land in question, wherein it is stated that colony in question is spread over total plot area of 51 acres 5 kanal. Consisting of both four stories Golden Height and double Stories Golden Villa Structure were





clearly demarcated as developed and very much existing on 10.05.2007, the day on which survey was done by DTP. Hence, project was complete in year 2006 and at that time, project in question was not declared under Controlled Area. Since, land on which project has been developed not been part of Controlled Area, therefore, there was no necessity of obtaining license/CLU.

15. Considering aforementioned facts, Authority further observes that there are two issues for consideration/adjudication. Firstly, whether present complaint is maintainable before Authority or not? Secondly, whether further claim of complainants with regard to deficiency can be dealt with by this Authority.
16. To decide maintainability of the present complaint, it is important to look into the field book dated 10.05.2007 obtained by respondent for project in question. Field book was already filed by respondent vide application dated 02.05.2023 and same was also filed by DTP, Rewari on 28.02.2020 in registry. Perusal of said reports reveals that existing double storey Golden Villas and Four Storey Golden Heights have been shown hatched which clearly establishes that the project existed at the time of preparation of Filed book. Further, the question with regard to its completion was better clarified by DTP report itself filed



on 28.02.2020. Relevant part of the report is reproduced below for ready references:

*“ In view of above, it cannot be ascertained that two storey villas and four storey flats falling within Khasra Nos. 39/2140/24.....24,25(total 51 acre 05 kanal area) were complete in all respects on the date of notification of Controlled Area or not as neither level of construction nor the outer dimensions of construction have been shown in the structure plate. it also pertinent to mention here that construction raised within khasra no.s 43/12.....12,13 of village khijuri is totally unauthorised.”*

Further, perusal of website of Town and Country Planning Department also reveals that area on which project in question is developed now comes under Controlled Area declared in the year 2007, under the Haryana Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963 and the project land falls under agriculture zone of published Final Development Plan- 2031 AD of Rewari. However, the project site falls outside the boundary of "Urban Area" as declared by the Town and Country Planning Department under the provisions of Haryana Development and Regulation of Urban Area Act, 1975 (Act no. 8 of 1975).

In view of above circumstances, it could be concluded that project was already in existence in year 2006 as per above stated reports. At that point of time respondent was under an obligation to obtain NOC from Town and Country Planning department which respondent had obtained vide Memo no. 103/ dated 17.01.2006 issued by District





Town Planner, Rewari vide which respondent was granted exemption under Section 9 of the HDRA Act, 1975. From year 2006, situation has not been changed much since respondent had obtained relevant documents for project in question required in year 2006 and now, till date respondent project do not fall under "Urban Area", meaning thereby, project in question cannot be said to fall under RERA jurisdiction since project was in existence in year 2006 itself before declaring it under Controlled Area. Secondly, RERA Act, 2016 come into existence in year 2016, i.e., almost ten years later the project was then developed. Therefore, on careful re-examination of the matter, Authority is of the considered view that the present complaint is not maintainable before Authority.

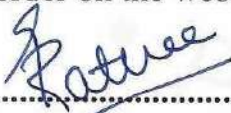
Furthermore, to deal with complainant's main grievances with regard to non- maintenance of the project. Complainants have to prove that which provision of RERA Act, 2016 has been violated by the respondent- promoter. Issue of non-maintenance cannot be raise for indefinite period, like in present case, seventeen years have already passed since building was completed by respondent which is also supported by filed report discussed above. Now, after seventeen years, it is very difficult to say that buildings do not depreciate. Some problems may have occurred on account of wear and tear and



improper maintenance over the years. It is not possible for Authority to go back to the year 2006 and determine whether the project was duly and properly completed at that time. One fact, however, is certain that the building is not being maintained properly. Authority also considers that there may have been gaps in infrastructure created by respondents at the time of handing over of possession. Therefore, Authority is of the view that since project was covered under Controlled Area in year 2007 but has not been till date. Therefore, project cannot be covered under any act prevailing at this time. In such cases, it will be appropriate to direct association to appear before local authorities and may file their grievances with regard to maintenance before them.

17. With these above directions, the matter is **disposed of**.

**Disposed of.** File be consigned to record room after uploading of this order on the website of the Authority.

  
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**DR. GEETA RATHEE SINGH**  
**[MEMBER]**

  
.....  
**NADIM AKHTAR**  
**[MEMBER]**