BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no. :	31 of 2021
Date of complaint :	12.01.2021
Order Pronounce On:	22.10.2024

Dr (Col.) Subhash Chandra Talwar
R/o: F-803, Ambience Lagoon, NH-8, Gurugram

Complainant

Versus

1. Raj Singh Gehlot
   Address: L-4, Green Park Extension, New Delhi-110016
2. M/s Ambience Developers & Ambience Facilities Management Pvt. Ltd.
   Office at: L-4, Green Park Extension, New Delhi-110016

Respondents

Coram:
Sh. Arun Kumar — **Chairperson**
Sh. Vijay Kumar Goyal — **Member**
Sh. Ashok Sangwan — **Member**

APPEARANCE:
Sh. Vijay Mishra (Advocate) — **Complainant**
Sh. Dharmender Sehrawat (Advocate) — **Respondents**

ORDER

1. The present complaint has been filed by the complainant/allottee 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).

A. **Facts of the complaint:**

2. The complainant has made the following submissions in the complaint:

a. The plaintiff is in receipt of a continually escalating bill each month for more than a decade, now amounting to Rs.5,00,825/- as last received on 27.06.2020 (No. 894/19-20 dated 31.03.2020) despite regular payment of his maintenance bills scrupulously and religiously to the agencies deployed by Respondent No.1 through decades even while he was supposed to have handed over the maintenance alongside the premises to the association formed by the residents at the very beginning but kept changing its name from time to time for not being seen in default otherwise, in an agreement for 3 years at one time as per one-sided Buyer's Agreement. The dispute arose when besides charging regular maintenance that was being paid for, he further raised additionally as a onetime bill of an amount though not exceeding Rs.10 K, more than a decade back for repainting of the façade as also re-surfacing the internal road which the undersigned besides many other residents refused to pay, being in addition to the regular maintenance that was paid for by the undersigned. As a matter of fact, the poor quality of the initial painting of the façade as also shoddy construction of internal road in a matter of five years was entirely due to his poor quality of construction. The road had to be repaired once again in 2019 by the association and the so-called repainted façade, presently displays a picture no better than slums.

b. That once the society's Resident Welfare Association (RWA) is formed, and the maintenance work is handed over to it, the builder can no longer charge for maintenance. RWA can then devise its own set of rules for maintenance charges. However, the

builders deny the residents any authority while foisting a maintenance agency on the residents through forming a fake society, in order to thwart the actual residents from taking over, having already forced them at the outset to sign on an untenable and one-sided adhesive Tri-partite Covenant as a part of Buyer's Agreement. Respondent No.1 too, in our case continued through the same modus operandi from the year 2002 when the residents moved into The Ambience Lagoon Complex, right through twelve long years before the association of residents namely ALARWA, wrenched control of maintenance on 21st November 2014 after his failure to make regular payments to his own agency that started to default on services. Further, the Respondent No. 1 though failing to file the deed of apartment at the time of sale of flats, instead filed a copy of the similar fake association being run by himself with members of his families and close relatives/ employees. Non-filing of the preliminary instrument of transfer of deed of apartment i.e. DOD within a period of 90 days under section 2 of The Haryana Apartment Ownership Act of 1983, in order to sell them in the meanwhile under a Conveyance Deed, an illegal instrument of transfer, is punishable under the proviso of its Section 24 (a). The respondent filed the same 7 years too late in 2009 that too while the DTCP was subpoenaed by one of the lawyer residents within the complex since it tantamount to putting the cart before the horse or entering a locked apartment without opening its doors. The DTCP is also squarely to be blamed for being complicit in such a humongous fraud from letting it happen.

c. As such, continued profiteering through maintenance charge from the residents of Ambience Island Lagoon Apartments, by the Respondents No.1 and 2 on the pretext of maintenance of external services like street lights, external security, street road, STP etc. is illegal as per Section 3 (3)(A)(III) of the Haryana Development and Regulation of urban Areas Act, 1975. It was not only responsibility of Respondents No.1 and 2 but incumbent upon them to maintain the premises for any defects to emerge for a period of 5 years, from the date of issue of completion certificate of the building free of cost and thereafter, the responsibility of government for maintenance of external services, therefore all the maintenance charge, collected by respondents on the pretext of maintenance of external service is as such illegal and need to be refunded to all the residents of the Ambience Island Lagoon Apartments. Respondents in addition, are liable to be punished with imprisonment of three years and also pay fine, under section 10 of the Haryana Development and Regulation of urban Areas Act, 1975, for illegally taking the maintenance charge, on the pretext of maintenance of external services, from plaintiff. Even the internal maintenance was supposedly the prerogative of the Association instead of the residents being forcibly bound into a one-sided adhesive contract which cannot be said to have legal sanction. The Amount is being claimed through NCDRC as well in another judgment wherein the respondents have been levied a penalty to pay 70 % of all the maintenance charge to a group of 66 residents due to defective and deficient lifts.

d. The plaintiff was a senior citizen at the time of purchase of the property in March 2002 and being a social activist, was associated with exposing misdeeds of respondent no.1. The grouse of the respondent that the plaintiff is a chronic litigant is not unfounded, having become chronic through the system having failed him due to the compromised authorities and even judiciary at lower levels, due to the power and pelf, besides a definitive political influence of Respondent No.1. Though now at 80 years of age, the plaintiff is too old and should have given up on securing justice, he cannot allow himself paying approx. Rs.5 lacs shot up from a paltry sum of less than Rs.10K. Despite making payments to Respondent No. 2, being the alter ego of respondent no.1, on a sq. ft. rate of purported Super Area as framed by his own self without any default, such further colossal levy was uncalled for, despite and especially after our RWA having taken over maintenance having suffered for almost 12 years and to whom the maintenance bill is again being regularly paid. Correspondence on this score that largely went unreciprocated. It became protracted so much so that Respondent No.1 and 2 threatened to disconnect essential services such as water and electricity to my apartment and the plaintiff had to write to various authorities in order to prevent Respondent No.1 and 2 from disconnecting the essential services as can be seen from the communication. The respondents no.1 and 2 continues sending a bill for same, month after month, year after year which started as a one-time payment of Rs.7437/- @ Rs.2.80/- as assessed though erroneously and misguidedly, by the then President ALARWA. That through the years has mounted to

Rs.5,08,025/- as per his latest bill, given the 24 % interest, surcharge and penalties over such a paltry sum, unpaid as a matter of principle. To justify raising this bill in addition to that which is being now paid to our association, the Respondents No.1 and 2 as above, have started sending a parallel bill of External Maintenance instead of the entire bill being raised and paid for by our association. Respondents as above are taking EXTERNAL maintenance charge from the residents of Ambience Island Lagoon Apartments, on the pretext of maintenance of external services like street lights, external security, outside roads, horticulture, STP etc. which is illegal as per section 3(3)(A)(III) of the Haryana Development and Regulation of urban Areas Act, 1975. Maintenance of external service was responsibility of Respondents No.1 and 2 for a period of 5 years, from the date of issue of completion certificate of the building and that of the government thereafter, therefore all the maintenance charge, collected by the respondents on the pretext of maintenance of external service is illegal and should be refunded to all residents of the Ambience Island Lagoon Apartments.

e. In this connection, it may be stated that there cannot be two maintenance agencies demanding bills on separate accounts, one for the entire maintenance and yet another for maintenance of external services. The Respondents have started forwarding separate bills for such services to all the residents in order not only to collect such charges which even the government agencies are not entitled to levy, being in receipt of taxes for the purpose, but to further justify the so-called illegal charges on account of

which they had initiated an illegal levy in the first place such as collection on account of repair to the internal roads and painting of building façade as a separate levy in addition to the regular maintenance charge. In this connection, it is stated that most of the residents have refused to pay any such additional levies.

f. Under section 10 of the Haryana Development and Regulation of urban Areas Act, 1975 of the Haryana Development and Regulation of urban Areas Act, - 1975, all the concerned persons are liable to be punished with imprisonment of three years and also liable to pay fine.

g. As a matter of fact, Municipal Corporation of Gurgaon is collecting House-tax from all the residents and should be responsible/ accountable to provide such external services outside the periphery of our complex but the colonizer has the political clout, muscle to arm-twist and inducements to offer to the administration that makes him to perpetuate such ordeal on the residents.

h. At one time, the Respondents as above denied that the bill was due to painting of the façade as also repair into the internal roads but was due to non-payment of Insurance. This could be seen from his letter received after protracted correspondence through a bill. It however came as a rude shock since all the residents took comprehensive insurance cover for a period of 5 to 10 years at one time together from ICICI Lombard and the Respondents have had nothing to do with it. Besides, none of the residents ever got any insurance cover for any structure/ their respective flats whatsoever or ever received any bill thereof from the respondent

No. 1 and 2 by any residents within the complex. It can be seen from the insurance policy cover taken by the undersigned for a period of 10 years as was done by all the other residents as well.

i. It is further pertinent to mention that the DTCP letter signed as a Memo No. SIP-99-5499 dated 5.5.1999 under which all builders were directed to stop charging extension fee as also the maintenance fee from the flat buyers stating categorically that the same was not permissible under the law. A public notice to this effect was also carried out by DTCP in Times of India of 15th May 1999. The builders thereupon filed a Civil Writ petition No. 6704 in the High Court of Punjab & Haryana, Chandigarh on 17.05.1999 challenging the DTCP's authority to issue such a notice.

j. The other aspect that was supposed to have been kept in mind was that any additional services (other than those listed under Section 3(3) (a) (iii) referred to above and termed by the builders as "Value added" services and the charges billed therefore can be provided only after a bilateral agreement with the concerned Residents Association representatives who in turn shall obtain the mandate from the House before hiring the builder or any other agency. The wily developers however took umbrage under this clause and through formation of fake societies, defeated the ruling of Supreme Court while masquerading themselves as being the authorised representatives for the residents. It may be emphasised here that The Supreme Court provided this leverage due to Value added services such as providing guards for security, electrician, plumber, mali etc. that had nothing to do with the regular maintenance of the premises for which Respondents

continued to charge despite the verdict of the Supreme Court and the payment bill under question being raised by themselves is in addition to such illegal levy.

k. The respondent No.1 further went on to merge a standalone Housing Project such as The Ambience Lagoon Apartments Complex permitted under License No. 19 of 1993 with an inferred understanding with the compromised bureaucracy, into his overall development project within a 132 Acres land that in itself stood on the forest area and would be subject to a separate enquiry and called itself as an Integrated Township, within the Township of Gurgaon without any objection from the authorities, the validation being, to remove Common Areas and Facilities pertaining to such a standalone project as ours and merge the same within his overall so-called illegal Township, the objective being to make the residents as perpetual tenants of Respondent No.1, in order to bleed them as paymasters in perpetuity and after demise of respondent as well as residents, to have his off-spring continue to receive the spoils from the off-spring of the residents, akin to revival of Zamindari system long abolished in independent India soon after its creation with the first amendment to the constitution of India under the right to property as shown in Articles 19 and 31.

l. It would be pertinent to mention here that on one hand so much bungling has been carried out by the respondents, on the other, his nephew Shri Surinder Singh continues to occupy one of the apartments i.e. I- 101 without any payment whatsoever, his maintenance/ energy bill being made complimentary from out of

the pockets of all other residents even while labelling such residential premises as their office and part of Common Areas. Further, he was being paid an amount of Rs.25,000/- per month as State Manager and the younger brother of the Respondent No.1 an amount of Rs.75,000/- as the Director of APMS per month.

m. It may further be observed that in the bills being raised, respondent No.1 and 2 has of late started to offer a rebate of 0.33/- Paisa per month purportedly on the Interest-Bearing Maintenance Security (IBMS) that he collected prior to occupation in March 2002 @ Rs.538.20/- per sq. M which amounts to Rs.1,32,800/- and is yet to be returned, let alone pay a similar 24% interest, surcharge and penalties levied by Respondent No.1 and 2 as stated above, that under similar magnitude may amount to more than Rs. One Crore to each of the residents. The rebate as above on IBMS however was never offered earlier and is a ploy for him to justify issuing of a parallel bill even after take over by the association. As a matter of fact, the Respondents not only failed to return this amount from the very inception of the condominium, they have not even paid the interest over it as stated by themselves in a printed booklet by the name of Apartment Buyer's Agreement under their Section 14.2.

n. The respondent no.1 had charged an amount of Rs.400,000/- against getting the registration of the apartment No. F-803 sold to the plaintiff right at the time of purchase but failed to carry out the same and instead compelled him to accept a Conveyance Deed, an illegal instrument of transfer which was done under protest with the case filed against the respondent as per The Haryana

Apartment Act, 1983 as also written submission by the DTCP, Haryana. What being earlier offered was Rs.1 per sq. ft. on the Registration Fee of Rs.4,00,000/- that he collected from the plaintiff prior to occupation which itself was delayed by 14 years (2.11.2016) and actually cost Rs.2,07,000/-, the remainder amount of Rs.1,93,000/- is yet not handed over, let alone continuing any rebate, the amount taken as forfeited by the respondents. The rebate of Rs.1 per sq. ft. per month on an amount of Rs. 4 Lac too was discontinued when the association run by the residents themselves relieved Respondent No.1 and 2 from maintenance on 21 Nov'2014. The amount of interest on the same should be calculated by similar standard that the respondent laid out for the residents including the plaintiff. The first reminder to return this amount of Rs.4,00,000/- lying with the Respondent No.1 and 2 was sent on 11 May 2011.

o. As per Para 4 (vii) of The Group Housing Colony Schemes, issued by Town & Country Planning prior to the Haryana Ownership Act, 1983 coming into force, the covered parking shall not be less than 50% of covered area of each dwelling units, implying that in the case of plaintiff, an area of 1328 sq. ft. should have been allotted as against 2656 sq. ft. as the total area of the flat. The Respondent No.1 has sold the flat on super area basis without even remotely mentioning the carpet area. Even if 30% loading was conceded that is done by all colonizers though illegally, the Respondent No.1 would owe an area of 930 sq. ft. but instead allotted an area of merely 100 sq. ft. that barely fits in one car, that too sold out to the plaintiff illegally against all norms besides the ruling of Supreme

Court, charging him Rs.1,75,000/- for the same before taking possession of the flat. As per definition given under Section 4 of Haryana Apartment Ownership Act, 1983, each apartment owner has undivided interest in common areas and facilities. As per Section 3 (f) (3) of the said Act, car parking falls within the definition of 'common areas and facilities' and cannot be sold out separately to any person as per Section 6 (3) of the aforesaid Act.

p. To a real estate development company who took the plea that they are entitled to sell garages or stilt parking areas as separate flats to owners who intend to use it as parking facilities, a bench of Justices A K Patnaik and R M Lodha of Supreme Court, ruled that builders or promoters cannot sell parking areas as independent units or flats as these areas are to be extended as "common areas and facilities" for the owners. The court passed the judgment while dismissing the appeal of the promoter, Nahalchand Laloochand Pvt Ltd, who challenged the Bombay high court's ruling that under the MOFA Maharashtra Ownership Flats Act) a builder cannot sell parking slots in the stilt area as independent flats or garages. The apex court accepted the argument of the flat owners of Panchali Co-operative Society in Dahisar (E) that even if they had entered into any prior agreement or contract with the builder that they would not lay any claim on the parking areas, the same would not have any legal sanctity. The court also disclaimed the appeal of the promoter that by treating these parking spaces as common areas, every flat purchaser in any case will have to bear proportionate cost for the same even if he may not be interested in such parking space at all. Justice LM Lodha wrote in

the judgment that the promoter has no right to sell any portion of such building which is not a 'flat' within the meaning of Section 2(A-1) and the entire land and building has to be conveyed to the organization. The only right that remains with the promoter is to sell unsold flats.

q. Thus, it is clear that the promoter has no right to sell stilt or open parking spaces or the basement parking as these are neither flats nor apartments and are thus part of the common areas. While the basement parking are to be allotted to the residents by the respective societies and not by Respondent No.1 and 2., surface parking that are meant for the guests and being part of the common areas, carry a proportionate interest of all the residents and cannot be sold or even allotted to some residents, to the exclusion of others. Unfortunately, the respondent No. 1 in his ever-insatiable greed, has sold every inch of parking space in basement or in open area on the surface which is illegal and in contravention to all the norms clearly spelt out by The Apex Court itself. The right of the plaintiff to park on the surface having a proportionate interest in the common areas and facilities was thus denied by some of the other residents who were sold such surface parking from the year 2002 till date and should not only be restored but denial to use the same should be adequately compensated by the respondents by way of levying a stiff penalty for continuing to infringe the law over two decades with such impunity. It may be worth mentioning here that the Respondent No.1 who was served with a legal notice pointing such illegal sale of surface parking, instead of responding to the notice and in

connivance with one of the illegal buyers of a surface parking, slapped an FIR against the plaintiff levying serious charges of molestation while conniving with the Haryana Police and lower judiciary. It took all the time, energy, agony and suffering besides the pension on the part of the plaintiff for five long years before the case was quashed by The Hon'ble Haryana High Court, leaving a criminal as well as a civil suit filed by the plaintiff against such a propped resident in place.

B. Relief sought by the complainant:

3. The complainant has sought following relief(s).

a. Direct the respondent to quash the amount that started illegally towards painting of facade and repair to the road as a paltry sum of Rs. 7,437/- now escalated by respondent no. 1 and 2 to Rs.5,00,825/- through penalty, surcharge, interest and whatever else. Further compensation towards a harrowing experience undergone at their behest, for last two decades forcing him as an eighty years old citizen through the trauma of filing this plaint.

b. Direct the respondent to quash the amount being levied as a parallel bill by the respondents on account of payment towards the maintenance of external services despite the residents paying their maintenance bill's being levied by LRACA, the present association on behalf of the residents.

c. Direct the respondent to refund an amount of Rs. 1,32,800/- along with a similar and appropriate rate of interest towards the IBMS as above as has been always levied, keeping in mind the heavy rate, surcharge and penalty levied by them. After all, the respondents cannot create double standards one for themselves

and the one for others. Even the rate of 12% that the respondents promised in the buyer's agreement has been ignored.

d. Direct the respondent to refund an amount of Rs. 1,75,000/- illegally charged towards the basement parking along with an appropriate rate of interest. The respondents should further get the sold surface parking vacated by such residents as having purchased the same. They should further compensate for the loss of reputation and harrowing time suffered by a senior citizen at their behest.

e. The amount of Rs. 25,000/- paid by the plaintiff alongside each of the residents at the time of taking residency in the Ambience lagoon, should be returned along with interest as decided by the Hon'ble court of Rera.

4. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

C. **Reply by the respondent.**

5. The respondent has contested the complaint on the following grounds:

a. That present complaint is not maintainable against respondent no. 1, since the respondent no.1 has in no manner acted in his personal capacity or gave any undertaking to the complainant. The complainant with malafide intention has impleaded the name of the respondent no. 1 in the complaint, thus on this ground alone present complaint qua respondent no. 1 is liable to be dismissed, due to mis-joinder of parties.

b. That the present complaint is barred by limitation since the project in question was completed in 2002, when OC was received and further there is no cause of action to file present complaint, thus present complaint is not maintainable before this Hon'ble forum.

c. That present complaint is also not maintainable since no provision of RERA Act, was applicable to the project when it was completed and at present none of the provisions of RERA act have been violated by the respondent no. 2, present complaint is nothing but a bundle of lies and is liable to be dismissed.

d. That the complainant is a person who is involved in forum shopping and has filed various cases in different forums against the respondent, however when he was unable to procure any relief from the said forums. That present complaint is also not maintainable since the association of allotees is looking after the maintenance of the complex and now the respondents have nothing to do with the maintenance.

e. That present complaint is also not maintainable qua respondent no.2 since there is no entity by the name "Ambience Developers & Ambience Facilities Management Private Ltd.", the correct name of the company is Ambience Developers and Infrastructure Pvt. Ltd. and Ambience Facilities Management Pvt. Ltd., thus on this ground itself present complaint is liable to be dismissed for mis-joinder of parties.

f. That present complaint is nothing but a personal grudge of the complainant wherein he had been trying to get his arrears of maintenance charges to the tune of Rs. 4,90,155.80/- waived,

since he had failed to pay despite repeated demands and on this ground itself present complaint deserves dismissal.

I. Raising uncalled bill in name of maintenance charges.

g. That the bill no. 894/19-20 of Rs. 5,00,825/- is correctly issued, as the complainant has failed to make the payment of the due amount as per the demand by the maintenance agency. That out of Rs. 5,00,825/- a sum of Rs. 4,90,155.80/- is towards arrears, which the complainant is liable to pay. As far as the story of Rs. 10K created by the complainant, the same is totally false and baseless. That if the complainant would have been telling the truth then he should have filed the relevant bills/document, however no document qua the same has been placed on record. All this proves his malafide intention. Further the complainant is making false story regarding the poor quality work. It is submitted that the project was completed in 2002 and as such, regular maintenance is required from time to time. In case the re-paint or resurfacing of the road would have been required at the relevant time then the same was done by the maintenance agency for the better upkeep of the project.

h. That some members of Lagoons Apartment forcibly took over the maintenance of the complex from the elected body and thereafter they are managing the affairs of the maintenance. The fact of the matter is that the association was formed by the members only and the respondents had no role in the same. Further the issue of association have already be settled by the Hon'ble High Court of Punjab and Haryana, when the elections were held under the guidance/supervision of the observer appointed by the Hon'ble

Court, thus the assertions qua the same by the complainant is nothing but an attempt to misled this Hon'ble Forum and the same cannot be permitted.

i. That the Lagoon Apartments are part of the integrated township, being developed by the Ambience Group. The complainant have no right to raise issues relating to Haryana Development and Regulation of Urban Areas Act, 1973, in the present complaint, since the present forum is concerned is with the violation of RERA Act, and no provision of the RERA act have been violated by the respondent in any manner. Further as far as the external maintenance is concerned, the maintenance charges are claimed by the respondent no. 2(Maintenance agency with correct name) on account of STP Plant (which is common for entire integrated Township), Road Cleaning, external street lights, external security external horticultural etc., all this existing within the integrated township being developed by the ambience group. The charges at present is Rs. 0.37 per sq. ft. That all the residents are duly paying the charges and the assertion of the complaint is nothing but to put pressure upon the respondents so that the claim for arrears be waived by the respondent and the same will not be done.

j. That the statement of account of the complainant from 31.08.2013 till 01.09.2020 clearly shows the arrears of the amount and if the complainant do not pay the same then the arrears will continue to add in the record. That as per the services provided by the respondent no. 2, the complainant is liable to pay the maintenance charges. The complainant herein has filed the complaint in person however, without any authority he is alleging for the entire

residential of the complex, who are duly paying the maintenance charges. The complainant cannot be permitted to rope in diligent residents who are paying their charges, on the basis of false assertions on their behalf.

k. That no charges on account of insurance is claimed from the residents. The insurance is just a name in the books of accounts, which states maintenance and insurance charges. The complainant without any basis is making assertions so that the Hon'ble Forum can be influenced and misled.

II. IBMS

l. That the IBMS was collected as per the provisions of the agreement. Further the maintenance agency had been giving rebates to the residents on the maintenance bills, to all the residents. Prior to 2014, the rebate was decided with the discussion and consent of representative body of the residents of lagoon apartments and thereafter the rebate is being given @ Rs. 0.33 per sq. ft. Rest of the contents of the para under reply are wrong and denied being without any basis.

III. Rebate on charges collected for registration of apartment

m. That the owner of flat no. F-803, paid a sum of Rs. 4,00,000/- for getting the conveyance deed registered, however despite numerous letters, he did not come forward for the purpose of execution of the deed.

n. That the complainant filed a complaint in the NCDRC vide complaint no. 28/2005, however the Hon'ble NCDRC directed the complainant to file the complaint in his individual capacity which,

he failed to do so with malafide intention as he was duly aware that he do not have any case. Further the complainant, filed a suit in the Dist. Court Gurgaon vide Civil Suit No. CS/334/2015 and the conveyance deed have been executed as per the directions of the court, thus now nothing remains to be agitated.

IV. Illegal sale of car parking including surface parking.

o. The contents of paras (i) to (iii) under reply are wrong and denied. The complainant is making false assertions without any iota of truth. It is submitted that the issue of car parking stands settled as the conveyance deed have already been executed and the car parking are duly mentioned in the name of the owner. Further the complainant is making false stories, now to harass the Respondents. It is submitted that neither the Respondent No. 1 nor Respondent No. 2 sold the car parking to the complainant. Further the issue of car parking is almost 19 years old when the alleged sale was completed. Now, the complainant is filing false cases by raising false pleas with a sole motive to put pressure upon the Respondents so that his maintenance charges arrears be waived, however the same will not be done. The complainant is a habitual litigant and have been indulging in forum shopping despite the fact that he has no case on merit, however the same is done to harass the respondent on this ground itself present complaint deserves dismissal.

V. Payment towards the club

p. That the complainant has no right to raise the issue of payment of the club charges after 19 years. The present issue is not within the period of limitation. In case the complainant had any issue with

respect to the payment of any charges then he should have filed appropriate case at the relevant time and now after 19 years, he cannot be permitted to raise the false issues done with a sole motive to harass the complainant.

VI. Wholesale usurpation of land

q. That this issue as raised by the complainant is already sub-judice before the Hon'ble Supreme Court of India, wherein interim orders have been passed in favour of the respondent, thus present complaint on this issue is not maintainable and is liable to be dismissed. Even the claims of the complainant are barred by limitation as the same have been raised after 19 years.

6. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of those undisputed documents and submissions made by the complainants.

7. The complainant has filed multiple written submissions along with the documents for kind consideration of the authority, the same have been taken on record and has been considered by the authority while adjudicating upon the relief sought by the complainant.

D. Findings on the relief sought by the complainants.

8. Before adjudicating upon the relief sought by the complainant it is relevant to through light upon the detailed facts of the case. In the present matter the complainant was allotted a flat bearing no. F-803 admeasuring 2656 sq. ft. on 8th floor in F block, in the project Lagoon Residential Apartment Complex vide an apartment buyer's agreement dated 24.04.2001. Thereafter, on 08.04.2002 the peaceful and vacant possession of the subject unit was handed over to the complainant by

the respondent. The occupation certificate in respect of the said project was received by the respondent on 31.12.2001. The conveyance deed was executed by the respondent in favour of the complainant on 03.11.2016. Thereafter, on 15.04.2024 the complainant filed supplementary documents and attached the copy of the part completion of the said project received by the respondent on 05.12.2016 wherein it is clearly mentioned that area admeasuring 10.98 acres & 16 acres (part of the whole licenced area of the project) for which the part completion certificate stand granted on 10.01.2002 & 07.11.2007 respectively. The complainant has also stated in the complaint that the association of residents namely ALARWA, took over control of maintenance on 21st November 2014.

9. The complaint submitted by the complainant pertains primarily to the following issues:

i. Escalated maintenance bills being charged by the respondent no. 2.

ii. Allegations regarding non filling of DOD in terms of the Haryana Apartment Ownership Act, 1983.

iii. Violations of the Haryana Development & Regulations of Urban Areas Act, 1975.

iv. Merger of the project of the complainant within the alleged illegal integrated township.

v. Irregularities in functioning of the RWA.

vi. Irregularities qua compliance with group housing colony scheme floated by TCP, Haryana.

10. A complaint can be filed before this Authority under section 31 of the Act of 2016, or rules and regulations made thereunder. It would be

relevant to refer to the provisions of Section 31(1) of the Act 2016 which provides as under:

> "Section 31(1) *Any aggrieved person may file a complaint with the Authority or the adjudicating officer, as the case may be, for any violation or contravention of the provisions of this Act or the rules and regulations made thereunder* ***against any promoter allottee or real estate agent, as the case may be.***
> *Explanation: For the purpose of this subsection person shall include the association of allottees or any voluntary consumer association registered under any law for the time being in force"*
>
> *(Emphasis Supplied)*

It is pertinent to note that some of the reliefs in the present matter has been sought against the maintenance agency which does not fall under the provisions of Section 31(1) as an entity against which a complaint can be filed under the Act of 2016.

11. Similarly, the complainant has also raised issues w.r.t. violations of the Haryana Development & Regulations of Urban Areas Act, 1975, & Haryana Apartment Ownership Act, 1983, which do not fall under the jurisdiction of this Authority. The complainant may, if he so wishes, raise these issues before the competent authority in this regard.

12. It is further observed that section 31 empowers an aggrieved person to file a complaint before the authority or the adjudicating officer on account of any violation or contravention of the provisions of the Act or rules and regulations. Sections 3 to 8 are the provisions which are related to the registration of the real estate project and Sections 9 and 10 deal with the registration of real estate agents and functions of real estate agents respectively. The functions and duties of the promoter are incorporated under Sections 11 to 18 of the Act and a complaint can be filed by the allottee in case a promoter or real estate agent fails

to fulfil those functions and duties incorporated under various sections of the Act. The reliefs sought in the present complaint do not pertain to any of the above provisions under the Real Estate (Regulation & Development) Act, 2016 which can be invoked and that too at this belated stage.

13. The complainant has filed the present complaint on 12.01.2020 i.e., after around 20 years of taking possession and after execution of conveyance deed. Further, in terms of Section 3 of the Act read with Rule 2(o) of the HARERA Rules, 2017 as amended from time to time, projects which had got the completion certificate before the commencement of the Act will not require registration and will fall beyond the purview of the term 'ongoing projects'. The completion certificate for the entire project of 132 Acres was issued by the DTCP, Haryana in three parts on 10.01.2002 for 10.98 acres, 07.11.2007 for 16 acres and on 05.12.2016 for remaining area. It is clear from the above that the present project in which the unit of the complainant is situated had attained completion before the enactment of HARERA Rules, 2017 and does not come under the definition of on-going project.

14. The present complainant has failed to point out as to which section of the Act, 2016 or Rules, 2017 has been violated by the respondents. Also, in the present complaint, the possession of the unit was taken by the complainant way back in the year 2002, after OC from the competent authority, issued on 31.12.2001. The project stands taken over by the RWA. The conveyance deed stands executed inter-se parties on 03.11.2016. The said complaint was filed on 12.01.2021.

15. The complainant neither filed the present complaint in the prescribed form CRA nor highlighted the Section of the RERA Act, 2016 or the Rules made thereunder, under which the complainant is filing the present complaint and has also failed to highlight the Sections or provisions of the Act have been violated by the respondent-promoter.

16. In view of the above, this Authority does not find the complaint filed by the complainant maintainable under the provisions of the Act, 2016 and the same is therefore dismissed being not maintainable.

File be consigned to registry.

(Ashok Sangwan)
Member

(Vijay Kumar Goyal)
Member

(Arun Kumar)
Chairperson
Haryana Real Estate Regulatory Authority, Gurugram

Dated: 22.10.2024