

BEFORE THE HARYANA REAL ESTATE APPELLATE TRIBUNAL

Appeal No. 263 of 2024
Date of Decision: 21.04.2025

Ajay Enterprises Pvt. Ltd., 8th Floor, Eros Corporate Tower,
Nehru Place, New Delhi-110019.

Appellant

Versus

Kenwood and Clifton Apartment Owners Welfare Association, C-604,
Kenwood Tower, Charmwood Village Surajkund Road, Faridabad-
121009.

Respondent No. 1

2. Senior Town Planner, Faridabad, HSVP Office Complex, Sector-12, Faridabad;
3. Raghuvendra Bhadana, B5/B6, Lakewood City, Surajkund Road, Surajkund, Faridabad.
4. Kairos Hospitality Services LLP, 110, SFC Yusuf Sarai, New Delhi.

Proforma-Respondents

CORAM:

Justice Rajan Gupta
Shri Rakesh Manocha

Chairman
Member (Technical)

Present: Mr. Aashish Chopra, Sr. Advocate, (Joined through VC)
assisted by Mr. Yashpal Sharma, Advocate,
for the appellant.

Mr. Nitin Kant Setia, Advocate,
for respondent no. 1 (Joined through VC).

ORDER:

Rajan Gupta, Chairman (Oral):

M/s Kenwood and Clifton Apartment Owners Welfare
Association filed a complaint before the Authority¹ seeking following
reliefs:-

*“i. Call for records of the amounts collected by
respondent no. 1 under various head particularly
under Interest Free Maintenance Security (IFMS),
replacement fund, repair fund etc. and supply the*

¹ Haryana Real Estate Regulatory Authority, Panchkula

accounts detailing utilization, deposit and interest accrued thereon.

ii. Direct respondent no. 1 to handover the administration, management, and maintenance of common areas and facilities in the 'block' consisting of towers D3, D4 and D5 (Kenwood Towers) and A5 (Cliffon Tower) in the society "Charmhood Village, Sector 39, Chandigarh.

iii. Direct the respondent to restore the possession of the community site which has illegally been converted to a banquet hall and hotel and is being operated under the name and style 'Royal Imperio'.

iv. Direct respondent no. 1 to not to interfere with the management of the Kenwood and Cliffon Towers after handing over the management and maintenance of the towers to the complainant association.

v. Any other relief which the applicant is entitled for under the Real Estate (regulation and Development) Act, 2016 and the Haryana State Real Estate (Regulation and Development) Rules, 2017."

2. It appears that notice was issued thereafter to the respondent. After they completed their pleadings, they were allowed to address arguments. Admittedly, a local commissioner was also appointed during the proceedings, and his report is on record. The complaint remained pending for almost two years. Thereafter, order was reserved on 29.02.2024. It appears that matter was subsequently listed for hearing again and respondent no. 1 (appellant herein) was asked to furnish the following information.

- a. "To get conducted a financial audit from the Chartered Accountant firm appointed by the Authority. The respondent company shall make all the documents and records available to the audit party as necessary for carrying out proper audit.*
- b. To provide bank account statements in which the proceeds received from the flats/plots applicants/allottees were deposited and withdrawn*

for the development of the project and the supporting documents in support of the receipts/collections from the applicants/allottees and details when received in the above bank statements and details/reconciliation of the receipts/collections received in cash and subsequently deposited in the above bank accounts.

- c. To provide the details of the expenses incurred on the project along with the supporting documents that will enable the auditor to verify that the payments made are for the projects and are in proportion to the development work carried out. To also provide the audited financial statements of the project along with the books of accounts since the inception of the project.*
- d. Details of the total flats/plots, allotted, resumed/ surrendered and lying unsold/ un-allotted and layout and zoning plans of the project along with approval letters/ documents from the relevant authorities to be provided.*
- e. To place on record related Certificates of Engineer / Architect /Chartered Accountant in support of the claims made by the promoter regarding withdrawals made from the dedicated bank account for the purpose of utilization in the project.*
- f. In case loan/s have been obtained from Banks/Finance Institution towards the construction of the project, necessary loan account statement/s and loan utilization to be provided.*
- g. Total corpus of replacement fund collected until 31.03.2024 (mentioned as ₹0.27 per sq. ft. per month as per the BBA) from the residents of three towers of Kenwood Apartinents (Blocks D3, D4, D5 of Charmhood village) through the maintenance bills raised by AEPL on quarterly basis including the accrued interest thereon till 31.03.2024.*
- h. Expenditure incurred on replacement of any capital assets like lifts, Fire-fighting equipment, DG sets, and water pumps for three towers of Kenwood Apartments (Blocks D3, D4 &D5 of Charmwood Village) till 31.03.2024. with the clear demarcation of*

capital expenditure spent on (Blocks D3, D4 & D5, in case the spend is for entire charmwood)

- i. *Total corpus of the Interest free maintenance security and the Interest bearing maintenance security collected at the time of possession handover from the Apartment Owners/ Residents of Kenwood and Clifton Apartments (Blocks D3, D4, D5 and A5 of Charmwood Village) along with the interest accrued thereon till 31.03.2024.”*

3. Aggrieved by this direction, present appeal has been preferred before this Tribunal. Mr. Chopra inter alia contends that after the order was reserved, only option available to the authority was to pronounce the final judgment. It, however, reopened the entire issue and raised numerous queries to the respondent-builder. As per him, this approach of the authority is unsustainable in law.

4. Mr. Setia, on the other hand, submits that the welfare association raised several grievances. It was only with a view to redress those grievances that the Authority passed order dated 29.02.2024 eliciting certain relevant information from the builder. As per him, this information is necessary for arriving at a final decision in the matter.

5. We have heard learned counsel for the parties and given careful thoughts to the facts of the case.

6. At the outset, it appears that on 12.07.2024 during the pendency of this appeal, statement was made before this Bench by Mr. Setia that the welfare association is no longer interested in relying upon the information sought by the Authority in paras 4 (a) to 4(f). The case was then adjourned to 30.09.2024, when the following order was passed in this case.

“It appears on 12.07.2024, statement was made before this Tribunal that the Authority is no longer interested

in relying upon the information sought in para 4 (a) to (f) of the impugned order. Same reads as under:-

“a. To get conducted a financial audit from the Chartered Accountant firm appointed by the Authority. The respondent company shall make all the documents and records available to the audit party as necessary for carrying out proper audit.

b. To provide bank account statements in which the proceeds received from the flats/plots applicants/allottees were deposited and withdrawn for the development of the project and the supporting documents in support of the receipts/collections from the applicants/allottees and details when received in the above bank statements and details / reconciliation of the receipts/collections received in cash and subsequently deposited in the above Bank Accounts.

c. To provide the details of the expenses incurred on the project along with the supporting documents that will enable the auditor to verify that the payments made are for the projects and are in proportion to the development work carried out. To also provide the audited financial statements of the project along with the books of accounts since the inception of the project.

d. Details of the total flats/plots, allotted, resumed/surrendered and lying unsold/un-allotted and layout and zoning plans of the project along with approval letters/ documents from the relevant authorities to be provided.

e. To place on record related Certificates of Engineer / Architect / Chartered Accountant in support of the claims made by the promoter regarding withdrawals made from the dedicated bank account for the purpose of utilization in the project.

f. In case loan/s have been obtained from Banks / Finance Institution towards the construction of the project, necessary loan account statement/s and loan utilization to be provided.”

Mr. Chopra submits that other information sought by the Authority is also not relevant. He prays for some time.

In the interests of justice, the case is adjourned to 05.11.2024.”

7. Only question that survives for adjudication by the authority is as to whether information sought in para 4(g) to 4(i) is relevant for the purpose of adjudication of the matter pending before the Authority.

8. We make it clear that we do not approve the procedure adopted by the Authority of passing piecemeal orders in the matter. Once arguments are heard in a case and order is reserved, proceedings therein come to an end and normally same would be listed for pronouncement of judgment.

9. It has been brought to our notice that after arguments were concluded on 29.02.2024, it was uploaded on the web portal that the order has been reserved. Thereafter, the Authority was expected to act as per settled law and give its verdict. However, in the peculiar facts and circumstances of the case, there is no legal impediment in case the information sought by the Authority in paragraph 4(g) to 4(i) is furnished by the promoter. This is necessary for expeditious disposal of the case pending before the Authority. Besides, the provisions of the special enactment have to be kept in mind while dealing with the case of this nature. Even if plea of the appellant is accepted and order of the Authority, in so far as it seeks information is declined, the Authority has power under Section 35(1) of the Real Estate (Regulation and Development) Act, 2016 to initiate *suo moto* proceedings within the legal parameters set out in the said provision.

10. In view of the above, the appeal is partly allowed with the observation that the appellant need not to submit information sought by the Authority in paragraph 4(a) to 4(f) of the order. However, rest of the information be furnished to the Authority within two weeks of uploading of the order.

11. Needless to observe that the Authority thereafter will expedite the proceedings and conclude the same at the earliest, in any case not later than four months.
12. Copy of the order be sent to the parties/learned counsel and the Authority.
13. File be consigned to records.

Justice Rajan Gupta
Chairman
Haryana Real Estate Appellate Tribunal

Rakesh Manocha
Member (Technical)

April 21,2025
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