



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

(Reopened for deciding rectification application u/s 39 of RERD Act, 2016)

COMPLAINT NO. 1025 OF 2018

Kusum Sharma

....COMPLAINANT

VERSUS

1. Asian Developers Ltd.
2. M/s Flex Pack Technologies Pvt Ltd. Through its Director.
3. Dinesh Kumar Sharma s/o Sh. Om Prakash Sharma, Director of Asian Developers Ltd.
4. Deepak Gusain s/o Sh. Dinesh Singh Gusain, Director of Asian Developers Ltd.
5. Nitin Kumar, s/o Sh. Ved Prakash, Director of Asian Developers Ltd.

....RESPONDENTS

CORAM: Parneet Singh Sachdev
Nadim Akhtar
Chander Shekhar

Chairman
Member
Member

Date of Hearing: 24.04.2025

Hearing: 9th

Present: - Mr. Akshat Mittal, counsel for the complainant.
Mr. Shivam Dahiya, counsel for Mr. Dinesh Sharma, director of Asian Developers Ltd. through VC.

✓

ORDER (PARNEET S SACHDEV – CHAIRMAN)

1. An application dated 11.02.2025 has been filed by the complainant, Kusum Sharma, through her counsel, Advocate Akshat Mittal, seeking rectification of the order dated 29.10.2019 under section 39 of Real Estate (Regulation and Development) Act, 2016, wherein, the main complaint was disposed of by this Authority along with other complaints vide order dated 29.10.2025 and the complainant was granted the relief of refund of amount paid by the complainant along with delay interest calculated in accordance with Rule 15 of the RERA Rules to be paid to complainant by the respondents. Relevant part of order dated 29.10.2019 is reproduced below for reference:

“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 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 cognizance of the matter in 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."



2. The complainant has filed the present application seeking rectification of the order dated 29.10.2019 on the ground that inadvertently the present complaint has been disposed off along with bunch of other complaints against the same developer. It is submitted that, although Respondent No. 1 and Respondent No. 2 were held jointly and severally liable in the said common order, their respective roles in the present subject matter are distinct. Specifically, he pointed out that Respondent No. 2, M/s Saera Auto India Pvt. Ltd., is not the landowner of Plot No. GH-18, which is the subject of the present complaint. In contrast, the complaints disposed of in the said bunch pertained to Plot No. GH-16, wherein M/s Saera Auto India Pvt. Ltd. was indeed the landowner. Accordingly, he prayed that the liability of Respondent No. 2 be revoked and that directions be issued to Respondent No. 1, M/s Asian Developers Ltd., to refund the amount of ₹6,85,391/- paid by the complainant towards the flat in question, along with applicable interest. The application for rectification was allowed by this Authority vide order dated 31.05.2023.
3. Thereafter, on 04.03.2024 the complainant filed an application seeking deletion of Respondent No. 2, M/s Hyatt Associates from the array of parties and for impleadment of M/s Flex Pack Technologies Pvt. Ltd., through its Director, Sh. Sunny Goel, as a necessary party. It was submitted by him that impleadment is essential for effective adjudication



as M/s Flex Pack Technologies Pvt. Ltd. is the landowner of Plot No. GH-18 and had entered into a collaboration agreement with M/s Asian Developers Ltd. for development and sale of the project. Both entities, therefore, fall within the definition of 'promoter' under Section 2(z)(k) of the RERA Act and are jointly and severally liable. Reliance was placed on the order dated 19.01.2023 passed by this Authority in Complaint No. 546 of 2021, involving the same project and similar issues. A copy of the said order dated 19.01.2023 is annexed with the application as **Annexure A-1**. The said application was allowed by the Authority vide order dated 02.05.2024.

4. Further, multiple opportunities were granted by this Authority to all the respondents to appear and present their case. However, due to repeated failure in effecting service of notices, substituted service was carried out through publication in newspapers. Despite the same, neither of the respondents appeared before the Authority or filed any response. Consequently, on 04.06.2024 the complainant prayed for impleadment of the directors of Respondent No. 1. Thereafter, multiple opportunities were again granted to the newly impleaded directors and the respondents to appear and submit their replies. However, despite several adjournments, there was no effective participation or filing of a written statement. One of the directors, Mr. Dinesh Kumar Sharma, has appeared through his



counsel but failed to file any written reply till date. In view of this, the complainant requested that the matter be proceeded ex parte. Accordingly, the present application is being adjudicated based on the available record and submissions made.

5. In view of the facts, circumstances, and documents placed on record, this Authority is of the considered opinion that there is no dispute regarding the payment of ₹6,85,391/- by the complainant to Respondent No. 1. The said payment is substantiated by duly issued receipts bearing details of allotted plot, i.e., Plot No. "B-208" admeasuring 605 sq. ft in respondent's project, which are annexed with the complainant's application dated 27.08.2019 in the complaint file. Although the complainant has averred that no formal allotment letter was ever executed, the issuance of receipts and subsequent demand letters raised by the respondent clearly establish the existence of a buyer-builder relationship. Hence, there remains no ambiguity that the complainant was allotted the said plot. Taking this into consideration the complainant is rightly entitled to a refund of the amount paid along with applicable interest in accordance with law.
6. The question that now falls for determination is with respect to the entity upon whom the liability to refund the amount ought to be fastened. In this regard, the Authority has extensively examined the relationship between M/s Flex Pack Technologies Pvt. Ltd. and M/s Asian Developers Pvt. Ltd.



in Complaint No. 546 of 2021, vide order dated 19.01.2023 wherein, it was held that both entities are jointly and severally liable for fulfilling their obligations under the Act. The Authority observed that their roles were intertwined in such a manner as to constitute a composite and collaborative effort in the development and sale of the project. Relevant part of order is reproduced below for reference:

“(v) Considering the three documents submitted by the complainants, it is observed that M/s Flex Pack Technologies Private Limited, i.e. respondent no.1, is the land owner of the project site. However, M/s Flex Pack Technologies Private Limited entered into arrangement with respondent no. 2, i.e. Asian Developer Limited whereby Asian Developers Pvt. Ltd. was to develop/construct and sell the project. Based on this inter se arrangement between respondent no.1 and 2, Asian Developer Limited entered into BBA with the allottees. It Is Pertinent to Mention Here That though Ms/ Flex Pack Technologies Private Limited was not a signatory party of the BBA(s), nevertheless one of the clauses of the BBA mentioned that Ms/ Flex Pack Technologies Private Limited has purchased the land from the HSIIDC and therefore is the landowner. Therefore both respondent no.1 and 2 fall within the ambit of the definition of promoter as provided under section 2(z)(k) of the RERA, Act, 2016 and are jointly and severally liable to fulfill their obligations as promoter towards the complainants. The complainants have paid their hard earned money to Ms/ Asian Developers Ltd. The land- owner is primarily responsible towards the allottees in case of any default in discharge of obligations on part of his collaborator/ developers and cannot be absolved of his responsibility just by entering into an inter se arrangement. In the light of the foregoing discussions and findings, this authority is of the view that the owner in possession of the plot M/s Flex Pack Technologies Private Limited shall be liable jointly and severally with the collaborator /developer /promoter of the project who was authorised to sell and develop the

apartments. For active participation or for the passive ignorance of the facts happening on the ground both respondent No.1 & respondent no.2 are jointly and severally answerable and liable towards the complainants.

H. DIRECTIONS THE AUTHORITY:

17. Taking into account above facts and circumstances, the Authority hereby passes this order and issues following directions under Section 37 of the Act to ensure compliance of obligation east upon the promoter as per the function entrusted to the Authority under Section 34(f) of the Act of 2016:

(i) Respondents are directed to refund the entire amount along with interest of @ 10.60 % to the complainant.

(ii) Both the respondents No.1 and No.2 are held jointly and severally liable towards the complainant(s) allottees. Authority has: observed above that Ms/ Flex Pack Technologies Pvt. Ltd, is the landowner and has assigned the work of development/construction of the project to M/s Asian Developers Ltd. M/s Asian Developers Ltd. was merely acting on behalf of Ms/ Flex Pack Technologies Pvt. Ltd. who is the landowner. However, M/s Asian Developers Ltd. is now shown as "strike of" on the website of MCA. Therefore, M/s Flex Pack Technologies Pvt. Ltd. who is the landowner and who has allowed/permitted/ delegated power of M/s Asian Developers Ltd. to enter into BBA with the allottees shall be liable to refund the amount along with interest to complainants. Nevertheless, Ms/ Flex Pack Technologies Pvt, Ltd. is at liberty to recover the amount from respondent no.2, if due. on account of any default on part of M/s Asian Developers Ltd. by approaching the appropriate forum/civil court."

7. Upon consideration of the submissions made, the rectification application placed on record, and the perusal of the case file, Authority finds that the error as pointed out by Id. counsel for the complainant, is apparent on record. In view of the same, and in exercise of the powers under Section

39 of the Real Estate (Regulation and Development) Act, 2016, the present application for rectification is allowed.

8. Accordingly, the liability of M/s Saera Auto India Pvt. Ltd. is rectified to the effect that M/s Flex Pack Technologies Pvt. Ltd. shall be jointly responsible, along with the M/s Asian Developers Pvt. Ltd. for the refund of the amount paid by the complainant. Therefore, order dated 29.10.2019 stands rectified to the effect as follows:

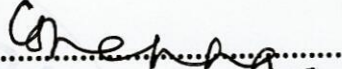
- i. In the light of the foregoing discussions and findings, this authority is of the confirmed view that the owner in possession of the plot, M/s Flex Pack Technologies Pvt. Ltd. shall be liable jointly and severally with the promoters of the project who was authorised by them to sell and develop the 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.
- ii. The respondents are directed to refund the amounts as per this order 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 and against any of their bank accounts or properties.

Further, it is directed that the said rectified order shall be read as an integral part of the final order in the captioned complaint

9. In light of the above, the complaint stands **disposed of** in terms of the above observations. File be consigned to the record room after uploading order on the website of the Authority.


.....
CHANDER SHEKHAR
[MEMBER]


.....
NADEEM AKHTAR
[MEMBER]


.....
PARNEET S SACHDEV
[CHAIRMAN]