



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	3247 of 2022
Date of filing:	06.12.2022
Date of first hearing:	07.12.2022
Date of decision:	06.03.2025

Ravinder Kumar and Others
R/o Block S-2, Flat no. 0202,
GT Karnal Road TDI Kingsbury,
TDI City Kundli,
Sonipat, Haryana- 131028.

....COMPLAINANTS

VERSUS

**1. M/s TDI Infrastructure Limited through its Managing Director/
Chairman/ Director**
Registered office: Mahindra Tower 2A,
Bhikaji Cama Place,
2nd Floor, New Delhi-110066

2. S Block Kingsbury Resident Welfare Association
Kingsbury Apartments, Sector-61,
Kundli, Sonipat- 131030

....RESPONDENTS

CORAM:

Parneet S Sachdev	Chairman
Nadim Akhtar	Member
Chander Shekhar	Member

Present: Mr. Kamal Dahiya, Id. counsel for the complainants through VC.
Mr. Shubhnit Hans, Id. counsel for respondent no. 1, in person
Mr. Abhiraj Singh, proxy counsel for Adv. Shashwat Prateek Panda, for respondent no. 2 through VC.
Mr. Tarjit Singh, proxy counsel for Adv. Shashwat Prateek Panda, for the respondent no. 2.

ORDER (PARNEET S SACHDEV -CHAIRMAN)

1. Present complaint dated 06.12.2022 has been filed by the complainant's association under Section 31 of the Real Estate (Regulation & Development) Act, 2016 (for short Act of 2016) read with Rule 28 of the Haryana Real Estate (Regulation & Development) Rules, 2017 for violation or contravention of the provisions of the Act of 2016 or the Rules and Regulations made thereunder, wherein it is inter-alia prescribed that the promoter shall be responsible to fulfil all the obligations, responsibilities and functions towards the allottee as per the terms agreed between them.

A. FACTS OF THE COMPLAINT

The present case pertains to a dispute involving the Kingsbury flat project located in TDI City, Kundli, Sonapat, Haryana, which is a group housing project being developed by Respondent No. 1. The facts of the complaint are as follows:

2. That respondent No. 1 is a private limited company responsible for the project's operations through its managing directors/chairman.



Respondent No. 2, the Resident Welfare Association, hereinafter referred as RWA, is tasked with maintaining the project and ensuring the welfare of its residents.

3. That the complainants, a group of allottees in the aforementioned project, share common grievances against the respondents and have collectively filed this complaint. The complainants, influenced by the assurances of Respondent No. 1's representatives, purchased units in the project and made timely payments of instalments as per the respondent's demands. They paid the total sale consideration, including car parking charges as and when demanded by Respondent No. 1 without any defaults.
4. The conveyance deed for the respective units was executed in favour of the complainants upon full payment. Subsequently, Respondent No. 1 granted ownership rights to the complainants for the units, including the right to use common areas and facilities within the building, as well as the exclusive right to covered car parking, as stipulated in the conveyance deed. Complainants have submitted that at the time of execution of CD, there were no outstanding dues against the complainants, as they had fulfilled all payment demands from Respondent No. 1 in a timely manner. A copy of the Conveyance Deed dated 22.12.2021 for Complainant No. 1 is annexed herewith as **ANNEXURE C-1.**

5. Further, the complainants received a letter dated 15.09.2020 from Respondent No. 2, stating that the parking spaces allotted to them by Respondent No. 1 were illegal. The complainants were instructed to vacate the parking area as a result so as to cover the same for emergency exit. The complainants informed Respondent No. 1 about this issue and requested either a correction of the parking details or the allotment of another stilt parking space in the S block parking area. However, their request was not addressed. Copies of the letter received from Respondent No. 2 and the letter sent to Respondent No. 1 are annexed as **ANNEXURE C-2** and **ANNEXURE C-3** respectively.
6. The main issue raised by the complainants is that they paid a substantial amount for the allotment of stilt parking. Complainant No. 1, for instance, paid ₹1,54,635/-, including service tax, for the allotment of stilt car parking (S-2-33S). Furthermore, the parking space was allotted to the complainants long before the establishment of Respondent No. 2, and they had obtained a 'No Dues Certificate' dated 26.09.2021, confirming the payment of maintenance charges. A copy of the 'No Dues Certificate' dated 26.09.2021 is attached as **ANNEXURE C-5**.
7. That despite payment of substantial amount against the units in question and payment of car parking spaces charged by all the complainants, the respondent no. 2 is trying to get the parking space to cover the same for emergency exit. The Respondent no. 2 had also sent an intimation



regarding order dated 10.08.2022 passed by this Hon'ble Authority to the complainants wherein it is stated that the stilt parking no. 4, 10, 16, 22, 27, 33, 39 and 45 are emergency exits that construes that stilt parking allotted to the complainants are illegal. However, the Respondent no.1 is not ready to give any information about the legal and valid parking meant for the complainants and Respondent no. 2 is trying to get the said allotted parking vacated by the complainants that is causing great mental and physical harassment to the complainants. The copy of order of this Hon'ble Authority dated 10.08.2022 passed in Complaint no. 1144 of 2021 is annexed herewith as **ANNEXURE C-6**.

8. On 22.08.2022, Complainant No. 1 sent a letter to Respondent No. 1 requesting clarification on the allotted parking and proper marking, and asking for an alternate parking space in Tower 17, if the current one was illegal. The complainant also requested Respondent No. 2 to resolve the issue. However, neither Respondent No. 1 nor Respondent No. 2 responded, leaving the complainants in a difficult situation despite having paid substantial amounts for the unit, parking and maintenance. A copy of the letter is attached as **ANNEXURE C-7**.
9. That the complainants allege that officials of Respondent No. 2, particularly, Mr. Tarjeet Chhikkara, husband of the RWA president, are threatening them in collusion with Respondent No. 2. They assert that instead of filing an execution petition, Respondent No. 2, along with



others, is unlawfully trespassing in their parking area. Additionally, respondent no.2 has deployed bouncers and musclemen who threatened the complainants of dire consequences of using car space allotted to them and subsequently a police complaint was also filed against Mr. Tarjeet Chhikkara, husband of President of RWA.

10. That despite said police complaint, the respondent no.2 is trespassing the parking area of the complainants and has forcefully constructed the wall to obstruct the complainants illegally from using their car space.
11. That the complainants submit that they have suffered substantial loss and hardship due to the false assurances and misrepresentations made by the respondents. In view of the same, the complainant respectfully prays that the respondents may be directed to refund the entire amount collected towards car parking charges, along with appropriate compensation and interest, as there has been an inordinate delay of over 16 years from the date of booking and allotment, till a valid parking space is allotted to the complainants.
12. The Respondents have committed a breach of trust by luring the Complainants through impressive pictures and false promises, causing the Complainants to part with their hard-earned money and thereby cheating them. The Respondents, by indulging in unfair trade practices, have intentionally misappropriated the Complainants' funds and committed the offence of criminal breach of trust. Due to the wrongful



acts, conduct, behaviour, and deficient services on the part of the Respondents, the Complainants have suffered significant losses, including financial loss equivalent to the consideration amount paid for the unit/apartment since 2006 and the loss of valuable time spent in pursuing the matter with the Respondents.

B. RELIEFS SOUGHT

13. In view of the facts mentioned above, complainant prays for the following relief(s):-

- i. To give necessary directions to the Respondents to provide alternate Stilt Parking to the complainants in Tower-17 ,i.e., S Block having S1, S2, S3 or S4 Blocks with proper demarcation of the parking.
- ii. To give necessary directions to the respondents for refund of the payment received in lieu of Car Parking Charges from the complainants along with the prescribed rate of interest if legal/valid Car parking could not be allotted to the complainants.
- iii. To impose penalty upon the respondent as per the provisions of Section 60 of RE(R & D) Act for willful default committed by them.
- iv. To impose penalty upon the respondent as per the provisions of Section 61 of RE(R&D) Act for contravention of Section 12, 13, Section 14 and Section 16 of RERA Act.



- v. To direct the respondent to provide detailed account statement against the amount collected from the complainants in lieu of Car Parking.
- vi. To issue directions to make liable every officer concerned ,i.e., Director, Manager, Secretary, or any other officer of the respondent company at whose instance, connivance, acquiescence, neglect any of the offences has been committed as mentioned in Sec.69 of RERA Act,2016 to be read with HRERA Rules, 2017.
- vii. To recommend criminal action against the respondents for the criminal offence of cheating, fraud and criminal breach of trust under section 420,406 and 409 of the Indian Penal Code.
- viii. To issue direction to pay the cost of litigation.
- ix. Any other relief which this Hon'ble Authority deem fit and appropriate in view of the facts and circumstances of this

C. REPLY SUBMITTED ON BEHALF OF RESPONDENT NO.2

A reply has been filed on behalf of Respondent No.2, i.e., the President of the S-Block, Kingsbury Apartment, Kundli, Sonipat, on 13.03.2023 who is duly authorized to submit the same in accordance with law and facts. In the reply respondent no.2 has stated as follows:



14. At the outset, he submitted that the contents of the Complaint are vehemently denied in their entirety, save and except those specifically admitted herein.
15. That the complainants have not annexed any documentary evidence to substantiate the allegations levelled against Respondent No.2.
16. That no cause of action has arisen in favour of the complainants against respondent no.2 so as to justify the filing of the present complaint.
17. That the present Complaint is barred by the principle of res judicata. It is respectfully submitted that Respondent No.2 had earlier filed Complaint No. 1144 of 2021 before this Hon'ble Authority, which was disposed of vide order dated 10.08.2022 on the basis of a statement made by the learned counsel for Respondent No.1 to the effect that no additional car parking had been allotted in front of the lift lobbies of S1, S2, S3, and S4. Parking spaces were allotted only in accordance with the sanctioned plan of stilt parking of Tower-17. Accordingly, the present Complaint amounts to seeking a review of the aforementioned order, which is impermissible as this Hon'ble Authority does not have the power to review its own order dated 10.08.2022.
18. That Respondent No. 2 reserves the right to produce additional documents or evidence as and when required to support its contentions.



19. That the Complaint has been filed by the Complainants in collusion with Respondent No.1, with the mala fide intention to prevent the proper execution and implementation of the order dated 10.08.2022.
20. That since 2018, Respondent No.2 has been maintaining the common areas including the lifts, fire exits and lift lobby. In the event of any mishap due to illegal parking in these areas, the association i.e., respondent no.2 may be held liable.
21. That Respondent No.2 had issued a letter to the Complainants in 2020 regarding the illegal parking, which is admitted by the Complainants themselves in **Annexure C-2**.
22. That on 22.08.2022, a legal notice was sent by Respondent No.2 to the Complainants by registered post, informing them that Respondent No.1 had clearly stated that parking slots nos. 4, 10, 16, 22, 27, 33, 39, and 45 were not allotted to anyone.
23. That complainant no.1, Mr. Ravinder, had filed Civil Suit No. 1999 of 2022 before the Civil Court, Sonipat, and made a statement that he would park his vehicle only in the space provided by the RWA. The Ld. Civil Court directed both parties to remain bound by the said statement. Copies of the order dated 24.12.2022 and the statement of Complainant No.1 are annexed as **Annexures R-2/1** and **R-2/2**.
24. That Respondent No.2 has filed several complaints with the competent authorities regarding the issue of illegal parking. On multiple occasions,



DTP Officers visited the site and confirmed that the said parking numbers are not meant for parking as per the sanctioned plan. However, the complainants continue to ignore these clarifications.

25. That despite several communications and directions, complainant nos.1 and 4 continue to illegally park their vehicles in emergency exits, stilt areas, and lift lobbies, thereby obstructing movement and causing inconvenience to other residents. Complainant No.3 has also parked his vehicle in such a way that the emergency exits and fire exits are completely blocked.
26. That Complainant No.1 had informed the Manager via email about an ex parte order dated 07.12.2022. In compliance with the same, respondent no.2 issued a letter dated 22.12.2022, allotting temporary parking space in the open courtyard between blocks S-1, S-2, S-3, and S-4. The same letter was also sent to respondent No.1, and respondent No.2 expressed willingness to hold a meeting with the complainants. A copy of the letter dated 22.12.2022 is annexed as **Annexure R-2/3**.
27. That all averments made in the complaint are specifically denied unless otherwise admitted in the detailed replies herein below.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT NO.1

A detailed reply has been filed on behalf of the Respondent No. 1 Company, TDI Infrastructure Ltd., on 18.03.2024 through its authorized representative as follows:



28. At the outset, all contents of the Complaint are denied in entirety, unless specifically admitted herein. It is submitted that the Respondent No. 1 Company has developed numerous real estate projects across India and has built a reputation for timely delivery, quality construction, and customer satisfaction. Due to this goodwill, the complainants and other allottees voluntarily invested in the Respondent's project "Kingsbury Flats" at Kundli, Sonapat, Haryana. The said project received Occupation Certificates between 2010 and 2012 and possession was accordingly offered and delivered.
29. The Complainants are not co-allottees or connected with one another and have filed a joint complaint. Therefore, the present complaint is liable to be dismissed for mis-joinder of parties. Moreover, the complainants have filed the complaint with the intent to arm-twist the respondent company and have failed to disclose material facts, thereby concealing vital information from this Authority.
30. It is reiterated that Occupation Certificates were obtained by the Respondent Company well before the enactment of the Real Estate (Regulation and Development) Act, 2016, and its applicability in the State of Haryana. The project is a completed one, with conveyance deeds already executed in favour of the majority of allottees. The Hon'ble Supreme Court of India, in *Newtech Promoters and Developers Pvt. Ltd. vs. State of UP & Ors.*, Civil Appeal Nos. 6745-6749 of 2021,



has categorically held that projects for which Occupation or Completion Certificates have been granted prior to the commencement of the Act fall outside the ambit of RERA. Therefore, the complaint is not maintainable and is liable to be dismissed for want of jurisdiction.

31. The Complainants have raised grievances that primarily pertain to the Resident Welfare Association (RWA), which has already been handed over the maintenance of the project vide Agreement dated 06.06.2020. Since then, it is the RWA that has been managing the site, albeit with arbitrary conduct and by exceeding their legal authority. The RWA has taken unilateral actions, misrepresented facts, and mistreated residents in a manner inconsistent with the role of an association under law. The complainants have also approached the respondent company without acknowledging that the maintenance and administration of the project were formally transferred to the RWA years ago.
32. The allegations regarding non-allotment or illegal allotment of parking are baseless. All car parking spaces have been allotted strictly as per the sanctioned plan approved by the competent authorities, and no parking has ever been sold in violation thereof. The sanctioned plan has already been placed on record. The respondent company denies having received any communications as alleged by the complainants seeking change or clarification in respect of their parking allotments. No issue was raised

by the allottees for over a decade until the present RWA management began interfering in matters beyond its competence.

33. The respondent company has always demonstrated willingness to resolve genuine issues, but the lack of cooperation by the RWA has made it difficult to extend such assistance in practical terms. Nonetheless, the respondent company reiterates its commitment to support the residents within the bounds of law and to provide clarifications or assistance where warranted.
34. The Complainants' assertions regarding deficiency in service, fraud, criminal breach of trust, and misrepresentation are wholly misconceived, denied in toto and unsupported by any material evidence. The complaint seeks adjudication of allegations that are criminal in nature and therefore beyond the jurisdiction of the Hon'ble Authority under the RERA Act.
35. The present project being a completed one with all statutory compliances fulfilled and conveyances executed and with its operation and maintenance handed over to the RWA long ago, no cause of action survives against the Respondent No. 1 Company. The complaint is frivolous, non-maintainable, jurisdictionally barred, and deserves outright dismissal.
36. The Respondent Company reserves its right to file additional documents in support of its submissions. All allegations in the complaint which are



inconsistent with the stand taken by the Respondent Company are specifically denied.

E. ADDITIONAL DOCUMENT ON BEHALF OF RESPONDENT NO.1 IN COMPLIANCE OF THE ORDER DATED 19.03.2024

The deponent, Ved Prakash, son of Late Sh. Asha Ram, is an authorized representative of the respondent company and has filed an affidavit on 31.05.2024 in compliance with the order dated 19.03.2024, passed by this Authority stating as follows:

37. He submitted that the following car parking slots have been allotted to the respective complainants along with the corresponding unit and tower numbers:

- i. Ravinder Kumar – Parking No. S2-33, Unit No. S2-0202
- ii. Brijesh Anand – Parking No. S3-16, Unit No. S3-0404
- iii. Sumit Saini – Parking No. S4-45, Unit No. S4-0201
- iv. Anil Kumar – Parking No. S4-22, Unit No. S4-0404

A copy of the layout plan marking the respective parking slots of the complainants is annexed and marked as Annexure 1 (Colly).

38. He further stated that the aforementioned car parking allotments have been made as per the sanctioned layout plan and, to the best of the deponent's knowledge, are not in violation of any applicable law.

F. ADDITIONAL DOCUMENT ON BEHALF OF RESPONDENT NO. 2 FOR RECALLING OF THE ORDER DATED 19.03.2024

39. The respondent no. 2, a Resident Welfare Association, has filed an application on 31.05.2024 seeking recall of the order dated 19.03.2024, contending that the said order was passed without considering the submissions made by the applicant through its learned counsel during the hearing. He submitted that the order does not record or reflect the arguments advanced, resulting in grave prejudice to the applicant.
40. That the directions issued in para 12 of the order dated 19.03.2024 are contrary to and effectively review the earlier order dated 10.08.2022 passed in complaint no. HRERA-PKI.-1144-2021. In that earlier order, this Hon'ble Authority had acknowledged the installation of pillars/spikes by the applicant as a bona fide measure and affirmed that car parking was to be allotted as per the sanctioned stilt parking plan. Therefore, the subsequent finding that such installations were arbitrary and malicious is inconsistent and amounts to a review of a concluded matter, which is beyond the jurisdiction of this Hon'ble Authority.
41. That the pillars/spikes were installed in 2020 solely in the interest of maintaining peace and safety within the society premises. These installations prevented two-wheelers from misusing lifts as passages and causing damage to lift infrastructure, thereby averting conflict among residents and preserving the safety of society property and members. The structures also demarcated emergency exit parking spaces, and their

removal may adversely affect emergency access and security arrangements.

42. That the applicant, being a democratically elected Welfare Association, has no authority to allocate parking spaces, which is the obligation of respondent no. 1. However, it does bear the responsibility to maintain order, safety, and harmony in the society and all steps taken by it, including the installations in question, were done in that spirit.
43. That respondent no. 1 has failed to discharge its obligations by not providing the sanctioned site plan or clarifying the position of 192 parking spaces, despite directions issued in order dated 18.04.2023 passed in complaint no.1950/2022, which remains pending adjudication. The consistent inaction of respondent no. 1 has resulted in difficulties and compelled the applicant to take necessary steps to safeguard the interests of residents.
44. The present complaint is also not maintainable against respondent no. 2, as the complainants have sought no relief against it. In para 6 of the complaint, the reliefs claimed are only against respondent no. 1. Moreover, the matter is barred by the principle of res judicata, as the issues pertaining to the same parking spaces were earlier adjudicated and disposed of by this Hon'ble Authority in complaint no. HRERA-PKL-1144-2021 by order dated 10.08.2022. The Authority lacks jurisdiction to review that order under the current proceedings.

45. It is further pointed out that complainants no. 1 and 4 are presently parking their vehicles in the designated emergency exit areas, namely S-2 and S-3, and in case of any emergency situation, the applicant should not be held responsible, especially in light of the directions in the impugned order.
46. In view of the above submissions, the applicant most humbly prayed that the order dated 19.03.2024 be recalled, as the same has been passed without due consideration of the submissions made on behalf of respondent no. 2 and would result in grave injustice if allowed to stand.

G. ADDITIONAL DOCUMENT- REPLY ON BEHALF OF RESPONDENT NO. 1 TO THE ABOVE-MENTIONED APPLICATION FILED BY RESPONDENT NO. 2

Rebuttal to application dated 31.05.2024 of respondent no. 2 was filed on 03.12.2024 by respondent no. 1, through its authorized representative, stating herein:

47. That the Application filed by Respondent No. 2 is frivolous and devoid of legal basis, as it fails to mention any provision under the RERA Act, 2016, under which it has been preferred. Ld. Authority has no power to recall its own order and thus the Application is not maintainable.
48. Despite the directions issued by the Ld. Authority vide Order dated 19.03.2024, Respondent No. 2 has failed to comply and has instead filed the present Application, which is nothing but a misuse of the legal



process. The said order had clearly directed Respondent No. 2 to provide relevant documents authorizing coercive actions and to refrain from using force against the Complainants.

49. The Application under Reply appears to be an attempt to shift the blame on Respondent No. 1, while avoiding any response to serious allegations made against Respondent No. 2 and the husband of the RWA President, Mr. Tarjeet Chikkara. The Complaint specifically alleges the use of threats, deployment of bouncers and illegal construction under the garb of orders of this Ld. Authority. These allegations remain unaddressed by Respondent No. 2.
50. Respondent No. 2 has relied on irrelevant orders passed in other unrelated matters, which cannot be said to have any binding effect in the present case. Every case is to be adjudicated upon its own facts and circumstances.
51. The conduct of Respondent No. 2 is wholly unjustified. The RWA has acted beyond its authority and without approval from either the members of the society or any competent authority. Such coercive and unauthorized actions disturb peace and harmony in the society and amount to abuse of the functions assigned to RWAs under the applicable laws.
52. The allegation made by Respondent No. 2 that the area where the pillars were erected serves as an emergency exit is entirely baseless. A valid

Fire NOC dated 17.06.2022 has already been obtained from the competent authority, confirming that the building structure, including parking layout, is in accordance with all applicable norms. A copy of the Fire NOC is annexed as **Annexure R-1**.

53. It is evident that Respondent No. 2 is selectively harassing the Complainants, possibly due to personal enmity. No other residents have raised such issues, and everyone has been residing peacefully. The actions of Respondent No. 2 now appear to be motivated and malafide.
54. All averments made by Respondent No. 2 in the Application under Reply are denied in totality unless specifically admitted. The submissions are false, misleading, and made with the sole intent to delay and derail the proceedings.
55. The Application deserves to be dismissed with exemplary costs, and Respondent No. 2 must be directed to comply with the Order dated 19.03.2024 forthwith.

H. ADDITIONAL DOCUMENT- APPLICATION ON BEHALF OF THE RESPONDENT NO. 1 FOR PLACING ON RECORD THE SANCTIONED PARKING PLAN AND MARKETING PLAN IN A0 SIZE

56. The respondent company filed an application on 07.01.2025 for placing on record the sanctioned parking plan (annexed as **Annexure A-1**) and marketing plan (annexed as **Annexure A-2**) in compliance of order

dated 05.12.2024 of this Authority. He submitted that both plans have been prepared and submitted in A0 size for clarity and convenience as directed or required for the purposes of this matter.

I. **ADDITIONAL DOCUMENT- REJOINDER ON BEHALF OF RESPONDENT NO. 2 TO THE REPLY FILED BY RESPONDENT NO. 1 VIDE APPLICATION DATED 03.12.2024 TO THE APPLICATION FILED BY RESPONDENT NO.2**

A rejoinder is filed by Respondent No. 2 (RWA, S-Block, Kingsbury Apartments) in response to the reply dated 03.12.2024 of Respondent No. 1 to the application filed by respondent no.2 on 31.05.2024 stating herein:

57. That the respondent No. 2 is not a promoter under the RERA Act and the complaint is not maintainable against it. The application was filed bonafide to ensure fair adjudication and to place on record submissions not captured in the order dated 19.03.2024. The application was not intended to mislead or harass. It was aimed at safeguarding residents' interests and maintaining peace in the society.
58. That the RWA acted within its statutory powers under the Haryana Registration and Regulation of Societies Act, 2012 and the Haryana Apartment Ownership Act, 1983. Installation of pillars in the parking area was acknowledged in the Authority's order dated 10.08.2022 in Complaint No. 1144 of 2021.



59. That the allegations against Mr. Tarjit Chhikara are defamatory, unfounded, baseless and made without any justification. He is legal counsel in multiple cases against Respondent no. 1, is clearly being singled out maliciously.
60. That the sanctioned parking plan was followed, and parking in front of lift lobbies was not allotted. The fire NOC referred to by respondent no. 1 does not address emergency exits. The pillars were installed to ensure these exits remain clear and to prevent misuse of lifts for transporting two-wheelers, which caused damage and disputes.
61. That the respondent no. 1 previously admitted that several parking slots were unallotted, but now avoids the issue, indicating suppression of material facts.
62. That no completion certificate has been obtained by respondent no. 1, nor has lawful maintenance been handed over to respondent no. 2. A separate complaint on this is pending.
63. That the allegations of nuisance or unilateral actions by the RWA are baseless. All steps have been taken in the interest of residents' welfare and society harmony.
64. That the complaint appears to be a collusive attempt between the complainants and respondent no. 1 to target respondent no. 2 and its counsel, which is not permissible under Section 31 of the RERA Act.

J. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENTS

65. **Arguments on behalf of the Complainants:** Learned counsel for the complainants reiterated the submissions already recorded in the previous orders of this Authority. He referred to paragraphs 6 and 7 of the order dated 19.09.2024, emphasizing that Respondent Nos. 1 and 2 had failed to address the concerns raised regarding car parking and other facilities. It was recorded in the said order that until the ninth hearing, the Respondent No. 2 (RWA) had not taken any action and only thereafter erected pillars in the car parking area without providing any justification. He also referred to the order dated 19.03.2024, wherein Respondent No. 2 was specifically directed to submit documents justifying the erection of the pillars in the car parking area. However, no such compliance has been made to date. He submitted that Respondent No. 2 had effectively trespassed upon the complainant's parking space and erected pillars without authority or justification and no explanation has been furnished as to the location or allotment of the complainant's parking space. He contended that such unauthorized conduct of Respondent No. 2 be recorded with concern and penal consequences be imposed.
66. He further argued that Respondent No. 1 has stated before this Authority that if parking is not provided as per the sanctioned plan, the

complainant shall be refunded the amount along with interest and be allotted alternate parking. The complainants clarified that their primary grievance is that (i) the pillars be removed and Respondent No. 2 be penalized, and (ii) they be allotted a parking space with proper demarcation or else be refunded the amount paid for parking. In response to the Authority's query regarding the absence of parking unit numbers in the sanctioned plan, learned counsel for the complainants submitted that the complainants seek actual parking space and not merely an alternate arrangement.

67. Learned counsel further referred to paragraph 3 of the order dated 05.12.2024 to point out the malafide intent of Respondent No. 2. He questioned under what authority the RWA president acted and why there has been consistent non-compliance with the directions passed by this Authority. Reference was also made to page 63 of the complaint, stating that the term used was "additional car parking" and not "car parking," clarifying that the dispute pertains to additional car parking in Tower-17. He also argued by stating that since RWA is not the promoter, it is expected to act for the welfare of the allottees. However, by encroaching upon the complainants' parking space and selectively treating allottees, Respondent no.2 has acted contrary to its role. Further, it was pointed out that the RWA's role is suspended and that despite initiating

proceedings before this Authority, it opposes impleadment as a party in these proceedings.

68. **Arguments on behalf of Respondent No. 2 (RWA):** Today, initially, proxy counsel Mr. Abhiraj Singh appeared on behalf of the main counsel for Respondent No. 2, and after passover, Mr. Tarjit Singh Chikkara again proxy counsel appeared and addressed arguments at length on behalf of the main counsel for Respondent no.2. He submitted that the proceedings before this Authority are summary in nature and that the complainants have not prayed for any specific legal relief. He referred to a recall application filed in relation to the order dated 19.03.2024 and also to Complaint No. 1144 of 2021, filed by the RWA itself, which was also annexed by the complainants. The said complaint had sought demarcation of parking spaces or refund, indicating that the RWA was not acting against the complainants but in their interest. He asserted that repeated allegations of malafide intention on the part of Respondent No. 2 were baseless and unfounded.
69. Attention was drawn to paragraph 4 of the order dated 28.06.2022 in Complaint No. 1144 of 2021, wherein car parking numbers in Tower-17 were mentioned and agreed upon. The said order placed the burden of proof on Respondent No. 1 to establish that car parking spaces are as per the sanctioned plan and are not obstructing the lift lobby area. He submitted that the RWA is neither a promoter nor an allottee and hence

not within the purview of the complaint under Section 31 of the RERA Act, 2016. He argued that Respondent No. 1 is attempting to evade its own liability by pitting the complainants against Respondent No. 2. He also pointed out that no conveyance deed mentions any specific parking number and that no formal handover has been effected by Respondent No. 1 to the Association. It was argued that under Section 77(2) of the Haryana Registration and Regulation of Societies Act, 2012, sufficient powers have been conferred upon the Association and the proxy counsel is duly authorized. He further submitted that Complainant No. 4, Mr. Brijesh Anand, and Complainant No. 1, Mr. Ravinder Kumar, had previously filed similar complaints before this Authority. In particular, Mr. Brijesh Anand filed the present complaint without disclosing the existence of an earlier complaint bearing No. 1626 of 2022.

70. **Arguments on behalf of Respondent No. 1 (Promoter):** Learned counsel for Respondent No. 1 submitted that the proxy counsel appearing for Respondent No. 2 is not authorized to make final submissions, as no vakalatnama is placed on record. He further submitted that although Respondent No. 2 filed a recall application against the order dated 19.03.2024, it failed to address the allegations or comply with the directions issued therein. Reference was made to paragraph 12 on page 6 of the order dated 19.03.2024, wherein it was recorded that Respondent No. 2 used forceful methods to construct

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pillars on the complainants' parking space and failed to provide alternate parking, indicating a malafide intent on part of the RWA. Further, he submitted that the RWA has failed to conduct elections and has no registered bye-laws in place. Moreover, Respondent No. 2 has indulged in blame-shifting rather than resolving the issue. He reiterated that the parking was provided as per the sanctioned plan, and the project has received Fire NOC after due inspection, including photographs evidencing adequate parking space and movement clearance.

K. ISSUES FOR ADJUDICATION AND OBSERVATION OF THE AUTHORITY ON THE VARIOUS RELIEFS SOUGHT BY THE COMPLAINANTS.

Authority has restricted itself from going into the inter-se disputes between respondent no.1 and 2 as Authority observes that the same have been raised just to distract Authority from the core issue of provision of parking to the complainants.

(a) Whether the complaint is maintainable or not?

71. With respect to the objection raised by the respondent no. 1 regarding the maintainability of the complaint on the ground that the occupation certificate (OC) for the project was obtained before the enactment of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as "the Act"), it is observed that the provisions of the Act are

retroactive in nature. The Hon'ble Supreme Court in *M/s Newtech Promoters & Developers Pvt. Ltd. vs. State of UP & Ors. Etc.* has categorically held that:

"The clear and unambiguous language of the statute is retroactive in operation and by applying purposive interpretation rule of statutory construction, only one result is possible, i.e., the legislature consciously enacted a retroactive statute to ensure sale of plot, apartment or building, real estate project is done in an efficient and transparent manner so that the interest of consumers in the real estate sector is protected by all means and Sections 13, 18(1) and 19(4) are all beneficial provisions for safeguarding the pecuniary interest of the consumers/allottees."

72. It is further clarified by the Hon'ble Apex Court in the same judgment that:

"Merely because enactment as prayed is made retroactive in its operation, it cannot be said to be either violative of Articles 14 or 19(1)(g) of the Constitution of India. To the contrary, the Parliament indeed has the power to legislate even retrospectively to take into its fold the pre-existing contract and rights executed between the parties in the larger public interest."

Hence, the objection of the respondent that the provisions of the Act cannot be applied retrospectively is untenable in view of the settled position of law that the Act is retroactive in nature and covers ongoing projects at the time of its enactment.

73. With regard to the respondent's objection that the complaint is barred by limitation, it is observed that the provisions of the Limitation Act, 1963

are not applicable to proceedings under the Act, as the Authority constituted under the Act is a quasi-judicial body and not a court. The Hon'ble Supreme Court in *M.P. Steel Corporation vs. Commissioner of Central Excise, Civil Appeal No. 4367 of 2004*, has held that:

"A number of decisions have established that the Limitation Act applies only to courts and not to Tribunals. The applications must be presented to a court governed by the Code of Civil Procedure or the Code of Criminal Procedure. Quasi-judicial tribunals are not covered by the Limitation Act."

In light of the above legal position, the objection raised by the respondent regarding the bar of limitation is devoid of merit and deserves to be rejected.

- (b) **Whether the complainants are entitled to the reliefs as sought in the complaint or not?**

Relief no. (i): To give necessary directions to the Respondents to provide alternate Stilt Parking to the complainants in Tower-17 i.e. S Block having S1, S2, S3 or S4 Blocks with proper demarcation of the parking.

Relief no. (ii): To give necessary directions to the respondents for refund of the payment received in lieu of Car Parking Charges from the complainants along with the prescribed rate of interest if legal/valid Car parking could not be allotted to the complainants.

74. Authority has carefully perused the rival contentions of the parties, documentary record placed on file and the previous orders passed in

related matters. With respect to relief no. (i) and (ii), as enumerated in paragraph B of this order, it is submitted by the learned counsel for respondent no. 1 that all car parking spaces have been allotted strictly as per the sanctioned plan approved by the competent authority, and that no parking has been sold in contravention of the sanctioned layout plan. He also submitted that the sanctioned parking plan has already been placed on record by the respondent.

75. Upon examination of the documents and arguments presented, it is pertinent to refer to the previous decision of this Authority in Complaint No. 1144/2021. In the said matter, Authority had categorically observed as under:

"In view of statement made by learned counsel for respondent that they have not allotted any additional car parking in front of lift lobby in S1, S2, S3 and S4. Car parking spaces have only been allotted as per sanctioned plan of Stilt (Car) Parking of Tower-17, case stands disposed of. Liberty is being granted to complainant to file case afresh in case statement made by learned counsel for respondent on behalf of respondent are found to be false. In that case, Authority will also initiate action against respondent for making false statement as per provisions of the RERA Act, 2016. File be consigned to the record room and order be uploaded on the official website."

76. The above observation clearly indicates that the Authority had previously relied upon the assurance and representation made by respondent no. 1 through its counsel, to the effect that no unauthorised parking allocation had taken place and that the allocation had strictly

adhered to the approved sanctioned plan. Authority had also expressly granted liberty to aggrieved parties to revive their grievances in case such statements were found to be inaccurate or misleading.

77. During the present proceedings, Authority has meticulously examined the stilt car parking plans filed by respondent no. 1 and noted with concern that Car Parking Space No. S2-33; Unit No. S2-0202, Parking No. S3-16; Unit No. S3-0404, Parking No. S4-45; Unit No. S4-0201, Parking No. S4-22; Unit No. S4-0404, as referred to by the complainants, is not delineated or demarcated in any of the sanctioned parking plans. Despite being specifically pointed out during the hearing, respondent no. 1 was unable to produce any documentary evidence to prove the existence or allocation of car parking unit no's. of any of the complainants within the sanctioned stilt parking layout. Instead, some of sketches of parking plans were referred by respondent no. 1 showing car parking space units in question which bears no signatures/stamps of competent authority to prove their authenticity and hence cannot be relied upon by the Authority. This factual discrepancy casts doubt over the veracity of the earlier assertions made by respondent no. 1.
78. Furthermore, the complainants have brought on record, particularly at page 20 of their complaint, the details of the payments made by them towards the booking of parking space. It is significant to note that this factual assertion regarding payment has not been denied or rebutted by

respondent no. 1 at any stage of the proceedings, either through pleadings or oral arguments. In the absence of any denial, Authority is of the considered opinion that respondent no. 1 has impliedly accepted the factum of payment received from the complainants for the parking space.

79. In view of the above discussion and considering the admitted position of payment and the respondent's inability to establish the existence of the specific parking unit in sanctioned plans, Authority is compelled to conclude that the allocation of such a non-existent parking unit was impermissible and unsupported by any sanctioned plan. Consequently, the acceptance of consideration for the same renders respondent no. 1 liable to refund the amount so collected.
80. Accordingly, respondent no. 1 is directed to refund the respective paid amounts received from the complainants in lieu of car parking charges, as reflected in the ledger accounts, along with the prescribed rate of interest, within a period of 90 days from the date of uploading of this order. The calculation of the refund amount along with applicable interest shall be carried out with due diligence and transparency.
81. Authority observes that respondent no. 2 is a duly elected RWA of the residents of S Block and represents the complainants also. In order to protect the larger interest of the inhabitants of the society, in good faith, they have acted against the interests of the complainants by erecting



walls/pillars on the parking spaces allotted to them by the developer (respondent no. 1). Since the Authority has already held that such parking spaces are not approved by the competent authority and thus are not legal, the issue now arises to provide suitable parking spaces to the complainants who are also the residents of block-S. Authority also observes that the affairs of the society are being managed by the RWA (respondent no. 2) since 2020, the responsibility of providing designated parking space (may be open parking if covered parking is not at all available) to complainants lies on the RWA. Thus, respondent no. 2 is directed to take immediate steps to designate a proper and suitable parking bay for the complainants in the available parking area of the society. Such allocation must be done in a manner that it does not hamper or obstruct the movement of vehicular traffic within the society premises and must not interfere with the rights of other allottees holding validly designated parking spaces. Respondent No. 2 is granted a period of thirty (30) days from the date of uploading of this order to comply with the aforesaid direction and to ensure that the parking bay is duly allotted and made available to the complainants accordingly.

Relief no.(iii): To impose penalty upon the respondent as per the provisions of Section 60 of RE(R & D) Act for willful default committed by them.

Relief no.(iv): To impose penalty upon the respondent as per the provisions of Section 61 of RE(R&D) Act for contravention of Section 12, 13, Section 14 and Section 16 of RERA Act.

Relief no.(v): To direct the respondent to provide detailed account statement against the amount collected from the complainants in lieu of Car Parking.

Relief no.(vi): To issue directions to make liable every officer concerned i.e. Director, Manager, Secretary, or any other officer of the respondent company at whose instance, connivance, acquiescence, neglect any of the offences has been committed as mentioned in Sec.69 of RERA Act,2016 to be read with HRERA Rules, 2017.

Relief no.(vii): To recommend criminal action against the respondents for the criminal offence of cheating, fraud and criminal breach of trust under section 420,406 and 409 of the Indian Penal Code.

82. In respect of relief clause no. (iii) to (vii), Authority has examined the pleadings of the complainants as well as the oral submissions made during the course of hearing. It is observed that the learned counsel for the complainants has neither addressed any arguments nor pressed for adjudication with respect to the aforesaid reliefs during the proceedings. Furthermore, the pleadings are completely silent on any factual or legal

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basis in support of these reliefs. In the absence of any submissions, pleadings, or substantiating documents, Authority finds no ground to entertain or adjudicate upon reliefs (iii) to (vii). Accordingly, no order is being passed with regard to these reliefs.

83. In addition to the above, Authority has independently examined the nature and scope of reliefs no. (iii), (iv), (v) and (vi) and finds that such reliefs fall outside the jurisdictional competence of this Authority as defined under the provisions of the Real Estate (Regulation and Development) Act, 2016. These reliefs pertain to imposition of penalties upon the respondent and making specific officers individually liable for alleged negligence, as contemplated under Section 69 of the Act. It is pertinent to note that the power to initiate penal action under the said section lies exclusively with the Authority upon its own satisfaction or upon findings of statutory violations after proper proceedings, and not on a complainant seeking such relief directly in an adjudicatory capacity.
84. Furthermore, the relief sought under clause (vii) by the complainant relates to matters which fall within the realm of criminal law as defined under the Indian Penal Code. The Real Estate Regulatory Authority, being a quasi-judicial body constituted under the RERA Act, 2016, does not possess the jurisdiction to adjudicate upon criminal offences or to determine criminal liability. Such reliefs can only be sought before



competent criminal courts having jurisdiction over the matter under the Code of Criminal Procedure, 1973, read with the relevant provisions of substantive penal law.

85. In light of the above discussion, it is concluded that reliefs (iii) to (vii) are not pressed and are beyond the scope and jurisdiction of this Authority. Consequently, the same are not being adjudicated upon in the present order.

Relief no.(viii): To issue direction to pay the cost of litigation.

86. The complainants are also seeking the cost of litigation. With regard to this relief, it is observed that Hon'ble Supreme Court of India in Civil Appeal Nos. 6745-6749 of 2027 titled as "***M/s Newtech Promoters and Developers Pvt Ltd. V/s State of U.P. & ors.***" (supra.), has held that an allottee is entitled to claim compensation & litigation charges under Sections 12, 14, 18 and Section 19 which is to be decided by the learned Adjudicating Officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the learned Adjudicating Officer having due regard to the factors mentioned in Section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses. Therefore, the complainants are advised to approach the Adjudicating Officer for seeking the relief of litigation expenses.



87. In view of the aforesaid observation, the case is **disposed of**. File be consigned to the record room after uploading of this order on the website of the Authority.


CHANDER SHEKHAR
[MEMBER]


NADIM AKHTAR
[MEMBER]


PARNEET S SACHDEV
[CHAIRMAN]

