

**BEFORE THE HARYANA REAL ESTATE REGULATORY
AUTHORITY, GURUGRAM**

Complaint no. : 3711 of 2023
Date of filing : 08.08.2023
Date of decision: 27.05.2025

Amstoria Country Floors Residents Welfare Association
R/o: - A-31, Ground Floor, BPTP Amstoria, Sector-102,
Gurugram, Haryana

Complainant

Versus

M/s BPTP Private Limited.
Regd. Office at: OT-14, 3rd Floor, Next Door Parklands,
Sector-76, Faridabad, Haryana

Respondent

CORAM:

Shri Arun Kumar
Shri Vijay Kumar Goyal
Shri Ashok Sangwan

Chairman
Member
Member

APPEARANCE:

Sh. Arun Sharma (Advocate)
Sh. Harshit Batra (Advocate)

Complainant
Respondent

ORDER

1. The present complaint dated 08.08.2023 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) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that

the promoter shall be responsible for all obligations, responsibilities and functions under the provisions of the Act or the Rules and regulations made thereunder or to the allottee as per the agreement for sale executed *inter se*.

A. Details of the project:

S. No.	Heads	Description
1.	Name of the project	'Amstoria', Sector 102 & 102A, Gurugram, Haryana.
2.	Nature of the project	Residential
3.	Project area	9.4292 Acre
4.	DTCP license no. and validity status	58 of 2010 issued on 03.08.10 and valid upto 02.08.2025
5.	Name of the license holder	Shivanand Real Estate Pvt. Ltd.
6.	RERA registration number	Registered
7.	List of buyers who have entered into a conveyance deed	06 July 2021 to 02.12.2022 (page 25-61 of reply)
8.	Date of maintenance and service agreement	12.01.2021 (page 97 of reply)
9.	Date of legal notice sent by the complainant with regard to the deficiencies in project	28.11.2022
10.	Approval for electrification scheme	20.05.2024 (page 115 of reply)

B. Facts of the complaint:

2. The complainant has made the following submissions: -
- I. That the respondent no. 1 launched a project namely 'Amstoria Country Floors' at Sector- 102, Gurugram and through different advertisement published by the respondent, the members of the association/complainant came to know about the said respondent's project. Relying on such advertisements published by the respondents in various leading newspapers showing impeccable facilities, residents/complainants had booked their respective units in the Respondent's project above mentioned.
 - II. That the respondent no. 1 thereafter issued allotment letter and then entered into the buyer's agreement with the complainants and after receiving the entire consideration, possession letters were also issued in respect of their independent residential floors in favour of the complainants.
 - III. That thereafter respondent no. 2 i.e. M/s Business Park Maintenance services Private limited, a company having its office at the above mentioned address was appointed by the respondent no. 1 to provide maintenance service to the individual floor owners. That maintenance and service agreements were also executed between the respondent no. 2 and the complainants.
 - IV. That the respondents had cheated the residents by taking the payment under different headers in respect of the floors and failed to provide those facilities/services. Facilities and services which the respondent failed to provide to the complainants even after paying for the same are as follows:

- a. **Electrification and STP:** The respondents had taken an amount of Rs. 1,68,264/- as electrification and STP charges from all the residents/members individually but failed to provide such facility till date. Moreover, the builder is still doing project related work and taking the electricity from the common area meter as the same is a domestic connection and the entire bill of the common area is charged from the complainants. It is important to mention over here that the respondent failed to pay the EDC and IDC to government and the respondents are extracting the sewerage water through tractors and pump out in other's land leading to disturbance to the peace of the residents and mainly the residents of A-44 to A-52 and A-32 Part-III.
- b. **Club House:** The respondents took an amount of Rs. 2,00,000/- as the club membership charges but did not deliver the possession of the club house till date the respondent had fooled all the floor owners/complainants by showing the physical raw structure of the club.
- c. **Fire Fighting and Power Backup:** The respondents also took an amount of Rs. 1,50,000/- as fire fighting and power backup charges. The residents/complainants are operating with 6 DG sets which are unequally distributed and thus often lead to breakdowns.
- d. **Basement:** The respondent no. 2 is taking the maintenance charges of the basement from the members of the complainant but till date the respondents failed to provide the basement in usable condition. The

basement is always filled with water and there is a constant problem of seepage. It is important to mention over here that the respondent no. 2 is still charging the maintenance for those basements

- V. That despite the promise of the delivery of the services and facilities above mentioned at the time of taking of the possession of the unit, the respondent company failed miserably in delivering the same and resorted to charging illegitimate charges. Being aggrieved, the complainant has preferred the present complaint for the refund of above mentioned charges with prescribed rate of interest.
- VI. It is important to mention over here that the complainant also sent a legal notice to the respondent for the refund of these amounts along with interest but the respondents ignored the genuine request of the complainant.
- VII. That the respondents were bound to handover the mentioned facilities but the same has not been delivered till date. But the respondents have been enjoying the money paid by the complainant, even though, the complainant has been devoid of the facilities or services which makes losses to the complainants.
- VIII. That the respondent has never been provided any reason by the complainant for the delay in providing such facilities/services. The respondent company has been causing harassment and mental agony to the complainant.
- IX. That the members of the complainant being the bonafide purchaser always in touch with respondent company through personal visits and letters requested to provide the facilities but the respondent company always put

excuses to one pretext to another. That the dishonest and deceitful conduct of respondent company is also borne by its acts of continuously misleading and misrepresenting to the complainants amounts to unfair trade practice.

C. Relief sought by the complainant:

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

- I. That this Hon'ble authority may graciously be pleased to direct the respondent/s to refund the electrification and STP charges of Rs. 1,68,264/- along with 18% interest from the date of payment till actual realization to each member of the complainant individually, in the interest of justice.
- II. Direct the respondent/s to refund the club house charges of Rs. 2,00,000/- along with 18% interest from the date of payment till actual realization to each member of the complainant individually, in the interest of justice; and.
- III. Direct the respondent/s to refund the firefighting & power backup charges of Rs. 1,50,000/- along with 18% interest from the date of payment till actual realization to each member of the complainant individually, in the interest of justice; and
- IV. Direct the respondent/s to refund the basement maintenance charges along with 18% interest from the date of payment till actual realization to each member of the complainant individually, in the interest of justice; and

- V. Direct the respondents to not to add basement charges qua maintenance in future till its actual handover in the maintenance bill of each and every member of the complainant, in the interest of justice.
- VI. Direct the respondents not to charge the common area electricity charges till the complete handover of the project to the complainant, in the interest of justice.
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.
- D. Reply by the respondent.**
5. The respondent has contested the complaint on the following grounds: -
- i. That it is pertinent to note that the present complaint has been filed post-concealment of facts and with wrong submissions. it is pertinent to highlight herein that the complainant is a Residents Welfare Association (RWA) of "*Amstoria Country Floors*" however, no proof of the Complainant being a registered association has been annexed. That moreover, the Complaint is allegedly filed by one Mr. Lalit Lamba, who has been authorized by purported president Smt. Indira Yadav to file the present Complaint, however, neither any Memorandum of Association, Articles of Association, of the purported RWA, etc, have neither been filed nor has any information with regards to the same been disclosed by the alleged RWA. That hence, the Complaint should be dismissed at the very outset.

- ii. That respondent no. 2 is a maintenance agency which has executed bilateral agreement with the respective allottees and being a maintenance agency, respondent No. 2 does not fall within the ambit of the Real Estate (Regulation and Development) Act, 2016 (the "Act"). That the entire Act deals with the regulation of the conduct and affairs of the three stakeholders, as explained in the Act, which are: the allottee, the promoter, and the agent thus the maintenance agency cannot be extra judiciously brought into the ambit of the Act and jurisdiction the Authority.
- iii. That the complainant has no cause of action against respondent no.1 as respondent no. 1 has duly constructed the project and obtained the occupancy certificates for the respective units. That moreover, conveyance deeds have also been executed between almost all members of the complainant RWA.
- iv. That with the execution of the conveyance deeds the obligations of the respondent no.1 comes to an end and there remains no privity of contract remains between the complainant and respondents and thus, the present complaint is liable to be dismissed.
- v. That the present complaint has been drafted on the basis of an alleged premise that the amenities and facilities have not been provided. that however, the baseless allegations are far from having been substantiated and hence, as noted above, the claim of the complainant should be dismissed at the very outset.

- vi. That however, without prejudice to the rights and submissions of the respondents, it is most humbly stated that the development of the project has been completed along with all the amenities in the project. That all amenities and facilities are available and functioning in the project. That it is reiterated that the complainant has failed to show any evidence in regards to assurances of such services having been given.
 - vii. That the club-house is fully functional with facilities such as gym, swimming pool, auditorium, activity area, cafeteria etc
- 6. All other averments made in the complaint were denied in toto.
 - 7. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority

- 8. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E. I Territorial jurisdiction

- 9. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram District, therefore this authority has complete territorial jurisdiction to deal with the present complaint.

E. II Subject matter jurisdiction

10. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

Section 11

.....
(4) The promoter shall-

(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

Section 34-Functions of the Authority:

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

11. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

F. Findings on the relief sought by the complainants

F. I That this Hon'ble authority may graciously be pleased to direct the respondent/s to refund the electrification and STP charges of Rs. 1,68,264/- along with 18% interest from the date of payment till actual realization to each member of the complainant individually, in the interest of justice.

F.II Direct the respondent/s to refund the club house charges of Rs. 2,00,000/- along with 18% interest from the date of payment till actual

realization to each member of the complainant individually, in the interest of justice; and.

F.III Direct the respondent/s to refund the firefighting & power backup charges of Rs. 1,50,000/- along with 18% interest from the date of payment till actual realization to each member of the complainant individually, in the interest of justice.

F.IV Direct the respondent/s to refund the basement maintenance charges along with 18% interest from the date of payment till actual realization to each member of the complainant individually, in the interest of justice; and.

F.V Direct the respondents to not to add basement charges qua maintenance in future till its actual handover in the maintenance bill of each and every member of the complainant, in the interest of justice.

F.VI Direct the respondents not to charge the common area electricity charges till the complete handover of the project to the complainant, in the interest of justice.

12. The above mentioned reliefs no. F.I F.II, F.III, F.IV, F.V and F.VI as sought by the complainant is being taken together as the findings in one relief will definitely affect the result of the other reliefs and these reliefs are interconnected
13. The complainant-association stated that despite the promise of the delivery of the services and facilities with regard to electrification charges, club houses, fire-fighting and power backup etc at the time of taking of the possession of the unit, the respondent company failed miserably in delivering the same and

resorted to charging illegitimate charges. Being aggrieved, the complainant has preferred the present complaint for the refund of above mentioned charges with prescribed rate of interest. It is important to mention over here that the complainant also sent a legal notice to the respondent for the refund of these amounts along with interest but the respondents ignored the genuine request of the complainant. The respondents were bound to handover the mentioned facilities but the same has not been delivered till date. But the respondents have been enjoying the money paid by the complainant, even though, the complainant has been devoid of the facilities or services which makes losses to the complainants.

14. On the contrary, the respondent-promoter stated that the name of the respondent no.2 should be deleted from array of parties as the respondent no.2 is a maintenance agency which has executed bilateral agreement with the allottee and being a maintenance agency. Respondent no. 2 does not fall within the ambit of the Act of 2016. The respondent further states that no cause of action lies against the respondent no.1 as respondent no.1 has obtained the occupation certificate for the respective units and also executed the conveyance deed with almost all members of the complainant RWA. Several members of the complainant RWA have entered into an amicable settlement with the respondent.
15. So far as issues raised by the complainant association in the above para F-I to F.VI are concerned, it is observed that vide orders dated 06.07.2021 and 17.08.2021 a committee headed by Sh. Manik Sonawane IAS (retired), Sh.

Laxmi Kant Saini CA and Sh. R.K. Singh CTP (retired) was constituted by the Authority to look into all such issues pertaining to a number of projects of the promoter including the project of the present complainant-association. The representatives of the allottees were also associated with the committee and a report was submitted and the same along with annexures was uploaded on the website of the authority. Both the parties were directed to file objections to that report if any. The complainant and other allottees did not file any objections. Though the respondents sought time to file the objections but, did not opt for the same despite time given in this regard.

16. After consideration of all the facts and circumstances, the Authority is of view that the committee report has already dealt with and resolved above mentioned reliefs and these cannot be re-claimed or re-addressed by the association on behalf of its members. Further, only the individual buyer can approach RERA with a complaint related to above mentioned reliefs with respect to the specific facts of his/her case and no such relief can be granted en-bloc.
17. Additionally, several members have already settled their claims as per the resolution outlined in the committee report. Therefore, the opportunity to make claims for reliefs has already been exhausted for those individuals. Any further claims can only be pursued by individuals who have not yet resolved their disputes or claims in accordance with their specific agreements. If any structural, workmanship, quality, or other defects are identified within five years of possession by the allottee, the promoter must rectify them within 30

days of being notified. If the promoter fails to make the necessary corrections within this period, the allottee is entitled to compensation as per the provisions of the Act. Hence, the present complaint is not maintainable and same is disposed of with the above observations.


File be consigned to registry.



(Ashok Sangwan)
Member



(Vijay Kumar Goyal)
Member



(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

27.05.2025