

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

Complaint no. : 6057 of 2024
Date of filing : 13.12.2024
Date of decision: 20.01.2026

Park View Grand Spa Apartment Owner Association
R/o: - Park View Grand Spa Apartment Owner
Association
, Sector-81, Gurugram.

Complainant

Versus

Bestech India Pvt. Ltd.
Regd. Office at: Plot-51, Bhagwan Mahaveer Marg,
Sector-44, Gurugram, Haryana-122002.

Respondents

CORAM:

Shri Arun Kumar
Shri Phool Singh Saini

**Chairman
Member**

APPEARANCE:

Sh. Rahul Dahiya (Advocate)
Sh. Ishaan Dang (Advocate)

**Complainant
Respondent**

ORDER

1. The present complaint dated **13.12.2024** 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. Facts of the complaint

2. The complainant-association has made the following submissions: -
 - I. That the complainant in instant complaint submits that the complainant is an Apartment Owners Association namely Park View Grand Spa Apartment Owner Association. The residents of the complainant society booked their respective units in the said project and consequently, the respondent allotted the units to the respective members of the society while also executing builder buyer agreements with the complainant society members on individual basis, the agreements entailing the contractual terms and conditions and other details of the project.
 - II. The members of the complainant's society executed builder buyer agreement with the respondent which consists of terms and conditions and other details of the project. The members of the complainant's society made timely payments to the respondent as per their payment plan and as and when demanded from the respondent but the construction of the project got delayed. The complainants' members approached the respondents several time to enquire about the handing over of possession of the unit as the project was delayed due to the reasons best known to the respondent. However, the respondent despite knowing the fact that the project has been

delayed inordinately, kept on demanding the payment as per the payment schedule.

- III. That further, on 22.04.2024, the complainants received an email from the respondent stating that, following a meeting held between the complainants and respondent on 09.03.2024, chaired by the Executive Director of the respondent company, the "common area maintenance rate" was increased from Rs. 2.99/- to Rs. 3.45/- per sq. ft. Additionally, the email mentioned that CAM arrears for the financial year 2022-2023 and club charges would be collected. The respondent also indicated that due to a critical fund flow situation, they had no choice but to revise the CAM rate to a minimum of Rs. 3.35/- per sq. ft., w.e.f 01.04.2024. To this, the complainants via email dated 27.03.2024 replied that during the meeting held on 09.03.2024, it was clearly agreed between the parties that the current Apartment Owner Association (*herein referred to as "AOA"*) will not approve any increase in CAM charges and deposition of arrears for the Financial Year 2022-2023 as the elections of the association for the said period were announced and the new AOA will take charge in the month of April/May and the same will be responsible for conducting audit and address the afore-mentioned issues.
- IV. That the respondent kept on enforcing the complainants to revise the CAM rate whereby on 29.03.2024, the complainants sent an email to the respondent clearly stating that the increase in CAM rate is not agreed by anyone in present AOA. The previous increase in CAM rate was also followed by a due procedure, apt auditing and expense review thus, it cannot be

implemented without the approval of AOA. Additionally, since the new AOA is expected to be formed in the month of May, 2024, the increase in the CAM rate should be postponed. The complainants requested the respondent company not to increase the CAM rates without AOA's approval and also requested the respondent company to wait for formation of new AOA by the month of May, 2024 for further discussions but to no avail.

- V. That the complainants' astonishment, the respondent sent another email on 02.04.2024, announcing an increase in the CAM rate to Rs.3.30/- per sq. ft., claiming they had no other option. In response, the complainants emailed the same day, emphasizing that there was no agreement or approval from the AOA regarding this increase in CAM rate or the payment of arrears. It had been agreed that a formal audit would be conducted for the cost sheets of the financial year 2022-2023, and any decisions about arrears and payments would only be made after securing the owners' consent and completing the audits. Additionally, discussions included reducing overall markup charges from 15% to 10% and removing add-on and enhancements. The complainants urged the Park View Facility Management (*herein referred to as "PVFM"*) to review these adjustments to alleviate the financial burden on residents and ensure transparency in billing. Furthermore, the respondent company has shown incompetence in maintaining the society within the defined budget. Therefore, the complainants requested that the respondent initiate the handover process, which should include the urgent completion of necessary equipment installations, as well as DG set and transformer

- installations, which are crucial for the safety and efficiency of the society. This will ensure accountability and effective management of the community.
- VI. That despite numerous requests made by the complainants, the respondent failed to address the issues and concerns raised. Consequently, on 12.04.2024, the complainants sent another email to the respondent notifying them of their final decision to take over the society from the respondent company and PVFM. The complainants again urged the respondent to fulfill their outstanding commitments to improve the living conditions in the society and to initiate the handover process, including the return of the interest-free maintenance security (*herein referred to as "IFMS"*). The complainants expressed their disappointment and frustration at the ongoing neglect of their concerns. It is submitted that throughout this period, the complainants along with the other apartment owners regularly and repeatedly followed up with the representatives of the respondent and inquired about the status of the issues raised but to no avail.
- VII. That subsequently, on 04.06.2024 the complainants sent an email to the respondent company to notify them about the appointment of newly elected AOA members following the elections held on 13.05.2024. The email outlined various issues related to the mismanagement of PVFM, which had led to a premium society with high-profile residents appearing poorly maintained. The complainants expressed concerns about the high costs charged to residents in relation to the quality of services provided. The owners bear all the costs but there is complete lack of transparency in terms

of services being purchased, the cost of services etc. while keeping the AOA in complete darkness about the expenses as neither approvals were taken nor the accounts were shared on monthly basis. Moreover, the complainants also requested the respondent to acknowledge the issues raised time and again via various emails while demanding the handing over of all the operational matters of the society, the IFMS given, all the collections for CAM and a complete list of assets and liabilities. It is pertinent to mention here that the respondent not only disparages the issues raised but is also charging highly from the complainants and other owners without the approval of AOA while keeping the complainants under threat of disconnection of electricity which is clear violation of Haryana Apartment Ownership Act, 1983 and other acts.

- VIII. That the illegal activities of the respondent company continued to escalate. On 21.07.2024, the complainant expressed concerns regarding the Sewage Treatment Plant (*herein referred to as "STP"*) water being disposed of by tankers, which added over Rs. 60-70 lakh per annum to maintenance costs. Although as per the NOC issued by the Department of Town and Country Planning, the respondent company was supposed to operate on a Zero Discharge basis. However, an average of 20 tankers were being used to manage the STP water, causing significant mental distress and financial burden for the complainants and other residents.
- IX. That the residents of the society are living in a precarious situation, where any incident could occur at any moment. On 21.07.2024, the complainants

again approached the respondent company via email requesting an urgent attention to the breakdown of the lift in Tower-S, as well as other issues, including the frequent sudden stoppages and near-free falls of the lifts on an almost daily basis. Subsequently, the respondents have failed to restore lift services which would cause a serious hazard to the life and limb of the complainants and other allottee in case of any catastrophe in the said project. On 29.07.2024, a resident of the said project experienced a life-threatening incident while using lift car P1. The lift descended smoothly to the 12th floor but suddenly crashed down to the 10th floor, leaving the resident stunned by a loud thud and a jolt, which caused significant injury to his back. However, the complainants on various occasions raised their concern regarding the same but the respondent failed to comply with the requests of the complainants.

- X. That on 29.07.2024, the respondent company, sent an email confirming that he had engaged the Branch Manager and their Regional Service Head in discussions regarding the issues raised by the complainants. Consequently, the complainants expressed their disappointment with Mr. R.P. Singh and his team, noting that they merely performed temporary fixes, resulting in the lift functioning properly for a few days before recurring problems arose. Additionally, Mr. R.P. Singh refused to share the RCA report, which appeared to indicate that nothing had occurred.
- XI. That the project in question is having several structure defects due to poor construction quality and use of inferior quality material construction

material in the construction of the project and further poor workmanship. The quality of bad construction was visible soon after of the occupation certificate of the project as the exterior plaster of the project started falling off and resulting into big holes and cracks in the walls. It is further to note that due to use of poor quality of construction material, the basement of the project is having seepage and rainwater leakage issue and during the rainy season, the walls, beams, columns start leaking rain water and the same is causing a threat of short circuit and electrocution to the residents of the society. On 10.08.2024, the frustrated complainant further wrote an email to the respondent in regard with raising seepage issues in basement of Signature Tower which is causing residents to have to step in big puddles of water to reach out to their respective cars. It is further to note that water gets overflow/back flow from the roof and poles causing heavy water logging in the parking area. Upon this, the respondent simply mentioned that the required repairing won't be carried out and leakage problem won't be resolved due to the rainy season via email dated 10.08.2024.

- XII. That subsequently, even after the dismissive attitude of the respondent against the issues raised, the complainant kept on making multiple emails in order to enquire about the issues which keep increasing but to no avail. On 14.07.2024, 06.08.2024 and 05.09.2024, the complainant issued several reminders via email, urging the respondent to facilitate a smooth handover of project maintenance to the AOA, as discussed in the meeting held on 13.07.2024, at the Grand Spa site. The complainant emphasized that this

handover is essential to minimize disruptions and ensure continued operational efficiency. However, the respondent's response was disheartening and troubling, as they failed to address these reminders despite being contacted multiple times.

- XIII. That the respondent has developed a community hall in the society as per the sanctioned layout plan and the said community hall is being maintained out of the amount paid by the residents of the Society. However, the respondent is also charging a hefty amount to use the said Community Hall. The complainant humbly submits that the community hall is a part of common area and is being maintained by the complainant along with other residents of the society but to the utter shock and dismay of the complainant, the revenue generated out of the said community hall is being kept by the respondent only. Furthermore, the Electricity Charges, Water Charges, House Keeping and Security along with the maintenance of the building and other expenses is being paid by the complainant and other residents only. In view of the aforementioned facts, it is clear that the respondent is malafidely using the common area of the society and generating profit. It is pertinent to mention here that the said club is operational for the outsiders by charging hefty amount. The said act of the respondent is a clear case of breach of contract and misrepresentation. Further while all the expenses of the club are born by the residents but the revenue generated either from renting out the Club Hall for different purposes as well Saloon operational in the club is booked by the respondent. The said act of the respondent clearly shows the

malafide intentions of the respondent to earn profits by using the common area of the project as well.

- XIV. The respondent, during the process of handover of the units of the project to the Allottees, promised that the final coat of painting of facade will be done at a later stage by the respondent and the entire cost shall be paid by the respondent but despite the lapse of more than 8 years, the respondent has failed to do the same. The complainant along with other residents of the society raised the same issue before the respondent several times but to no avail.
- XV. That the complainant raised the demand seeking refund of IFMS and Sinking Fund to the society as the project has already received Occupation Certificate and the respondent is under obligation to handover the IFMS and Sinking Fund to the complainant i.e. Resident Welfare Association but despite several requests from the complainant, the respondent has clearly refused to hand over the same to the complainant and the same is resulting into a serious violation of the RERA Act and Haryana Apartment Ownership Act.

B. Relief sought by the complainant:

3. The complainant has sought following relief(s):
- I. Direct the Respondent to Handover the Maintenance of the Society on immediate basis to the Complainants i.e. Apartment Owners Association (AOA).
 - II. Direct the respondent to remove all the snags in the project before handing over of the project.

- III. Direct the respondent to not charge arbitrary maintenance charges till the handover of maintenance to the complainant.
 - IV. Direct the respondent to ensure the Structural Audit of the said project as the project is not habitable and dangerous due to the use of poor construction quality.
 - V. Direct the Respondent to rectify the Structural Defects of the Society within a time framed manner.
4. On the date of hearing, the authority explained to the respondent /promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

C. Reply by the respondent.

5. The respondent has contested the complaint on the following grounds: -
- i. That the present complaint is not maintainable in law or on facts. The provisions of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the 'Act') are not applicable to the project in question. The occupation certificate in respect of the apartment/tower in question was received on 25.05.2017, i.e. well before the notification of the Haryana Real Estate Regulation and Development Rules 2017 (hereinafter referred to as the 'Rules'). Thus, the project in question is not an "Ongoing Project" under Rule 2(1)(o) of the Rules. This Hon'ble Authority does not have the jurisdiction to entertain and decide the present complaint. The present complaint is liable to be dismissed on this ground alone. In fact, this Hon'ble Authority vide order dated 15.10.2018

- has held that the project in question, i.e. Park View Grand Spa, Sector -81, Gurugram, is exempted from registration under the provisions of the Act.
- ii. That the present complaint filed by the complainant is not maintainable in law or on facts. The complainant does not have any locus standi or cause of action to institute the present complaint or to claim any relief from this Hon'ble Authority. The complainant claims to be an association of apartment owners in the residential group housing project developed by the Respondent, known as 'Park View Grand Spa', located in Sector 81, Gurugram. However, the complainant has failed to provide the list of its so called members and their particulars. It is submitted that the complainant does not represent the majority of flat owners in the project. In fact, out of about 599 flats in the project, it is believed that about 334 flat owners are members of the complainant association.
- iii. That the respondent is a reputed and renowned real estate developer, enjoying an impeccable reputation in the real estate industry for the disciplined and time bound execution of projects undertaken by it. The projects implemented by the respondent are considered to be architectural landmarks. The respondent has successfully developed residential, commercial and IT projects in Gurgaon after obtaining necessary permissions and approvals from the competent authorities in accordance with law. The associate companies of the Respondent have also constructed and made operational Radisson Hotels in Gurgaon, Indore (Madhya Pradesh), Mohali and at Nagpur. The Respondent has

- promoted and developed "Bestech City" a duly approved residential colony in Dharuhera, District Rewari.
- iv. That the respondent has conceptualized, constructed, promoted and developed residential group housing projects known as "Park View Ananda" and "Park View Grand Spa" in Sector 81, Gurugram, on land admeasuring 29.7 acres after obtaining License bearing No. 112 of 2008 dated 31.05.2008 and License bearing No. 55 of 2009 dated 27.08.2009 from Director, Town and Country Planning, Haryana, Chandigarh (hereinafter referred to as DTCP).
- v. That the respondent had also obtained approval of Zonal Plan for the said Land (29.7 acres) from DTCP vide approval Memo No. ZP-459/JD (BS)/2010/5528 dated 03.05.2010. The building plans of the proposed Multi-Storied Residential Group Housing Complex were approved by the Town and Country Planning Department in part vide Memo No.ZP-459/JD (BS)/2011/8939 dated 04.07.2011. Revised Plans for the entire Multi-Storied Residential Group Housing Complex (29.7 acres) has been approved by Town and Country Planning Department vide Memo no. ZP-459/JD (BS)/2012/4519 dated 20.03.2012.
- vi. That the occupation certificate in respect of "Park View Grand Spa" had been granted by the Director, Town and Country Planning, Haryana vide Memo No. ZP-459/SD (BS)/2017/11181 dated 25.05.2017. The Respondent has also received completion certificate for whole project

from DTCP vide memo no. LC-1232 Vol-II/JE(SB)/2022/603 dated 06.01.2023.

- vii. That it is pertinent to mention herein that both projects, "Park View Ananda" and "Park View Grand Spa" have their own Resident Welfare Associations. It is also pertinent to mention herein that several services and facilities are common to both projects. In fact, it has been clearly mentioned in clause 8.5 of Maintenance Agreement, that several services/facilities/amenities including but not limited to DG Room, STP, water treatment plant, fire pump room, HSD tank are common for the balance licensed parcel of land (Anand Project). In view of aforesaid services/facilities/amenities which are common for whole project i.e. for Park View Ananda as well as the present project, i.e. Park View Grand Spa, handover of the Project can be given to only one RWA. Accordingly, the respondent has called upon the RWA's of both projects to either form a single association or decide which RWA is competent to take hand over the entire project. In the event both RWA's want to take hand over, then to mutually determine how to reconcile services/facilities/amenities which are common for entire project. However, the RWA's of both projects have not been able to come to any decision and hence the respondent has not been able to hand over the project to any Association of Apartment owners.
- viii. That moreover, the complainant itself is also not keen to take over the project as its members cannot find the time to assume the responsibility

of maintaining the project due to their professional commitments. copy of text message whereby the president of the complainant has categorically admitted that most of the Association (AOA/RWA) members have reservations in taking over possession from the respondent as they are working professionally.

- ix. That until the common areas and facilities of both projects, i.e Park View Grand Spa and Park View Ananda, which have been developed on the same parcel of licenced land are handed over to a common RWA or to one RWA with the consent of the residents of the other project, the Respondent has entrusted the task of maintaining the projects to M/s Park View Facilities Pvt Ltd. M/s Park View Facilities Pvt Ltd. Has been maintaining the project in question and has been demanding maintenance charges from residents in accordance with the terms and conditions of the maintenance agreements executed between the respondent, M/s Park View Facilities Pvt Ltd. and the apartment owners. Pertinently, M/s Park View Facilities Pvt Ltd. is not a party to the present complaint.
- x. That the occupation certificate in respect of the project was issued as far back as on 25.05.2017. Thereafter, possession of most of the apartments in the project have already been handed over to the owners. Since then, no issues or concerns have been raised about any so-called structural deficiencies or defects till the institution of the present false and frivolous complaint. The Respondent has duly constructed the project in accordance with applicable norms and as per agreed specifications, in accordance

with the plans as sanctioned by the competent authority. There are no defects or deficiencies in the project as falsely alleged in the complaint. It appears that the false and frivolous allegations have been raised in the complaint with a view to avail maintenance facilities and services without making payment of maintenance charges.

- xi. That the present complaint raises issues of such a nature which cannot be decided by way of summary proceedings contemplated under the Act. The said issues require extensive evidence to be led by both the parties and examination and cross-examination of witnesses for proper adjudication. Therefore, the disputes raised in the present complaint are beyond the purview of the Act and can only be adjudicated by the Civil Courts. The present complaint deserves to be dismissed on this ground alone.
- xii. That the respondent has duly fulfilled its obligations under the buyer's agreement towards the apartment buyers in the project by completing construction and offering possession of the units within the agreed time lines as provided in the buyer's agreement. There is no default or lapse in so far as the respondent is concerned. Thus, the allegations levelled by the complainant against the respondent are totally baseless and do not merit any consideration by the Authority. It is submitted that the project in question has been completed on time and there has been no delay on the part of the respondent in offering possession to the allottees. Moreover, it is submitted that since the provisions of RERA are not applicable to the project in question, the question of alleged violation/contravention of the

same do not arise at all. The false and frivolous complaint deserves to be dismissed with costs.

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.

D. 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.

D. 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.

D. 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.

E. Findings on the relief sought by the complainants.

E.I Direct the respondent to handover the maintenance of the society on immediate basis to the complainants i.e. Apartment Owners Association (AOA).

E.II Direct the respondent to not charge arbitrary maintenance charges till the handover of maintenance to the complainant.

E.III Direct the respondent to remove all the snags in the project before handing over of the project.

E.IV Direct the respondent to rectify the structural defects of the Society within a time framed manner.

E.V Direct the respondent to ensure the structural audit of the said project as the project is not habitable and dangerous due to the use of poor construction quality.

12. The above-mentioned reliefs no. E. I to E.V as sought by the complainant is being taken together as these reliefs are interconnected.

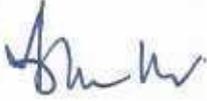
13. The RERA Act, 2016, is primarily intended to regulate ongoing and future real estate projects and does not operate retrospectively so as to govern projects that stood completed prior to its enforcement. Section 3 of the Act mandates registration of real estate projects only where such projects fall within the scope of the Act, while expressly exempting projects for which a completion certificate or occupation certificate has been received before the commencement of the Act or the notified State Rules.
14. It is important to note that the developer obtained the occupation certificate on 25.05.2017 before the state rules were fully implemented or before the registration deadline. Under Rule 2(1)(o), if a developer applied for or received an OC for the entire project prior to the notification of the rules, the project is not considered an "Ongoing Project." If the project isn't "Ongoing," the developer is not legally mandated to register the project with RERA. If the project isn't registered, the Authority does not have the jurisdiction to enforce the "Handover of Maintenance" clauses found within the Act. The complainants (AOA) may seek relief before competent forum.
15. Further, the complainant association is seeking removal of alleged snags/defects in the project. It is an admitted-on record that the occupancy certificate was obtained on 25.05.2017 and the project is not an ongoing project. As per Section 14(3) of the Real Estate (Regulation and Development) Act, 2016, the promoter is liable to rectify any structural defect or any other defect brought to its notice within a period of five years from the date of handing over possession. In the present case the statutory defect liability

period of five years expired in 2022. The complaint has been filed only in the year 2024, i.e., much beyond the limitation period prescribed under Section 14(3) of the Act, 2016. No material has been placed on record to show that the defects were raised within the defect liability period. Further, since the project stands completed and is not ongoing, the Authority does not have jurisdiction to entertain stale claims raised after expiry of the statutory period.

16. In view of the above facts and the clear mandate of the RERA Act 2016, the complaint filed by the complainant-association is barred by limitation and is not maintainable.
17. Complaint stands disposed of.
18. File be consigned to registry.



(Phool Singh Saini)
Member



(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

20.01.2026