

PROCEEDINGS OF THE DAY

Day and Date	Thursday and 06.09.2018
Complaint No.	129/2018 Case titled as Mr. Anil Chaudhary V/s M/s The Shanti Niketan Cooperative Group housing Society Ltd. & Others
Complainant	Mr. Anil Chaudhary
Represented through	Complainant in person with Shri P.K.Sachdeva, Advocate
Respondent	M/s The Shanti Niketan Cooperative Group housing Society Ltd. & Others
Respondent Represented through	Shri Anil Mehta on behalf of respondent-company with Shri Rakesh Yadav, Advocate for respondent No.4. Shri Manu Jain, Advocate on behalf of the respondent no.6.
Last date of hearing	18.7.2018

Proceedings
The project is not registered.

It was brought to the notice of the authority that the project is registerable but so far it has not been registered which is in violation of Section 3 (1) of the Real Estate (Regulation & Development) Act 2016. The learned counsel for the respondent has been asked to advise the respondent to do needful at the earliest and this be treated as the notice as to why penal proceedings should not be initiated against the respondent under section 59 for violation of Section 3 (1) of the Act ibid, where under the penalty amount may extend upto 10% of the estimated costs of the Project.

The complainant has not submitted the list of respondents, hence, the proceedings cannot be held further although the complainant has raised charges of embezzlement of funds against the erstwhile management of the society and few persons have been mentioned in the complaint. Keeping in view the seriousness of the allegations and in ordinary delay in completing the project, the authority considers it expedient to appoint Assistant Registrar, Co-operative Society, Gurugram to make an enquiry in relation to affairs of the society being promoter for the project. The detailed status report, status of the construction, list of members of present management committee/Administrator, if any, the remaining construction to be carried out, availability of funds with the promoter society, details of bank account and other relevant information may be submitted alongwith the report. The Assistant Registrar Co-operative Society, Gurugram as Investigating Officer may also investigate whether the funds from the project have been diverted/embezzled etc. The Assistant Registrar is directed to submit the investigation report within a period of two months from today. In case, any violation of the Act, Rules or Regulation thereunder has come to the notice of the authority after submission of the Investigation Report, action shall be initiated by the Registration Branch. The matter stands disposed of. Order is pronounced. Detailed order will follow. File be consigned to the Registry.

Samir Kumar
(Member)

Subhash Chander Kush
(Member)

Dr. K.K. Khandelwal
(Chairman)
6.9.2018

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

Complaint No. : 129 of 2018
First date of hearing: 08.05.2018
Date of Decision : 06.09.2018

Mr. Anil Chaudhary,
R/o. Wood Stock 10, Ground floor Nirvana
Country Sector 50, south city 2, Gurgaon,
Haryana-122018

Complainant

Versus

M/s Shani Niketan Cooperative Group Housing
Society & Ors.
Regd. Office: Plot no. GH1, Opposite Tau Devi
Lal Park, Sector-52, Gurugram, Haryana

Respondents

CORAM:

Dr. K.K. Khandelwal
Shri Samir Kumar
Shri Subhash Chander Kush

Chairman
Member
Member

APPEARANCE:

Shri Anil Chaudhary
Shri P.K Sachdeva
Shri Anil Mehta
Shri Rakesh Yadav

Complainant in person
Advocate for the complainant
On behalf of respondent
Advocate for the respondent

ORDER

1. A complaint dated 04.04.2018 was filed under section 31 of the Real Estate (Regulation & Development) Act, 2016 read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 by the complainant, Mr. Anil



Cooperative Group Housing Society. Ltd., tripartite agreement executed on 16.12.2013 in respect of plot no. 1, Sector-52, Gurugram, in the building called Souvenir Apartments.

2. The particulars of the complaint case are as under: -

1.	Name and location of the project	Souvenir apartments, Plot no. 1 Sector-52, Gurugram
2.	Flat measuring	2050 sq. ft.
3.	Date of execution of the Tripartite agreement	16.12.2010
4.	RERA registered/ not registered.	Not registered
5.	Total amount paid by the complainant till date	Rs.54,00,000/-
6.	Date of delivery of possession	31 st December 2011

3. The details provided above have been checked on the basis of record available in the case file which have been provided by the complainant and the respondent. An tripartite agreement is available on record for the aforesaid flat according to which the possession of the same was to be delivered by 31st December 2011. Neither the respondent has delivered the possession of the said plot till date. Therefore, the promoter has not fulfilled his committed liability as on date.

4. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and appearance. The respondent appeared on 08.05.2018. The case came up for



hearing on 08.05.2018, 06.06.2018, 18.07.2018 & 06.09.2018. The reply filed on behalf of the respondent has been perused on 18.07.2018. The respondent has supplied the details and status of the project along with the reply. The complainant has filed a rejoinder dated 16.07.2018 wherein he has re-asserted the contentions raised in the complaint.

Facts of the complaint

5. Briefly stated, the facts of the case as culled out from the case of complainant are that Mr. Anil Sharma who is associate with builder was building the flats for the society at that time and joined the society as member of the society in the year 2010. The managing committee of the society promised the complainant to provide the possession of the flat by 31st December 2011. The complainant deposited an amount of Rs. 54,00,000/- towards the cost of the flat.
6. The society miserably failed to deliver the possession of the flat as on the due date. The builder has been issued notice under different sections of Haryana Cooperative Societies Act and has been charged for receiving payment of more than Rs. 12,00,00,000/- illegally in connivance with the managing committee of the society.



7. In spite of Real Estate Regulatory Authority Haryana the society has not yet got the project registered with the authority. Till date the suspended managing committee of the society is trying to cheat the general public in the name of increasing the membership of the society from original 98 to more than 200 and trying to collect the money from them in the name of flats.
8. The purpose of increasing the membership of the society illegally, the vested interests in the society have convened an illegal general body meeting on 26th March 2017 and got the resolution of increasing the membership passed by illegal means and through the voting of the non members. They tried to increase the membership of the society from original 98 to 174. The original membership has been confirmed by the office of assistant registrar by way of audit report for the financial year ending 31st March 2011.
9. **Issues raised by the complainants are as follow:**
- Whether the society has committed an offence under the real estate regulatory authority under the provision of the act?
 - Whether the managing committee of the society is liable to punishment as prescribed under the act?



- iii. What is the total strength of the members of the society as on date, as per bye laws of the society and confirmation by office of assistant registrar?
- iv. Whether the list of the members as submitted by the office of assistant registrar in its audit report for the financial year ending 31st March 2011 is the only authentic list of the members?
- v. Whether the benefit of increased FAR and the TOD policy are available to the society, if so what will be the criteria of admitting the new members and increasing the strength of the society members?
- vi. Who are the persons responsible for embezzlement of the society money and how much money has been siphoned off by them and how to recover that money from them?
- vii. Who are the persons responsible for not initiating and action against the erring persons?



10. Relief sought:

The complainant is seeking the following relief:

- i. Appoint the competent administrator to look into the affairs of the society and take over the management of the society.

- ii. To get the accounts of the society audited by an independent auditor to determine the amount of embezzlement in the society and persons liable for this misappropriation
- iii. To bring the culprit of embezzlement to the books and to take immediate legal action for recovery of amount from them by attaching the assets.
- iv. To direct the administrator/auditor to ascertain the original and genuine members of the society.
- v. To direct the administrator to conduct the fair elections under this supervision on the basis of membership so ascertained.
- vi. To direct the administrator to work in tandem with the newly elected managing committee and arrange for the earliest possible delivery of the flat to the original members.
- vii. The administrator auditor may be directed to ensure that society members do not get involved in to passing the illegal resolutions to get the irregular activities of erstwhile managing committee members regularized.
- viii. To pass any other order which the hon'ble authority may deem fit and proper in present facts and circumstances of the case for imposing the penalties under the



provisions of the act upon the erring persons or authorities.

Respondent's reply

11. The respondent submitted that the complaint is not maintainable in the present form against the answering respondent. The complainant has no locus-standi to file this complaint against the answering respondent.
12. The respondent submitted that the society never authorized Mr. Anil Sharma to invite any persons to join as member of the society and the society never promised to hand over the possession till 31st December 2011 to the complainant..
13. The Real Estate (Regulation and Development) Act, 2016 is not applicable in the present case as the project in question was sanctioned much prior to the act came into force.
14. The respondent sets forth that as per the contents of the complaint it is clear that the dispute is related to membership, society election, general body meetings and formation of managing committee.
15. The respondent raised that on terms of section 102 of the Haryana Cooperative Societies Act, 1984 the registrar of cooperative societies has exclusive jurisdiction in matter of disputes pertaining inter alia to the management and



business of cooperative societies between the members of the society and its managing committee. In addition to, section 102 also overrides provisions of all the other laws by operation of a non-obstante clause and ousts jurisdiction of all the other courts to deal with and adjudicate these disputes.

16. The respondent submitted that the dispute and reliefs sought fall squarely within the scope of clause 61 of the bye laws of the society and bear no reference to the act.
17. The answering respondent has already ceased to be a member of the society on 11th February 2011 and no proceeding can be initiated against him for any alleged breaches by the society.
18. The respondent capitulates that since he ceased to be a member he is not aware of the status of the construction and not involved in or concerned with the subsequent developments like increase in total membership of the society or increase in FAR under TOD policy.
19. The respondent raised that the issues to be issued pertains to management of the society which cannot be decided in the present proceedings.



Determination of the Issue:

After considering the facts submitted by the complainant, the authority is of the view as :

The issues raised by the complainant cannot be decided as the complainant has not submitted the list of respondents and has not even given any concrete document to decide the issues.

The complainant reserves his right to seek compensation from the promoter for which he shall make separate application to the adjudicating officer, if required.

Decision and directions of the authority:

20. After taking into consideration all the material facts as adduced and produced by both the parties regarding the relief sought by the complainant the authority exercising powers vested in it under section 35 of the Real Estate (Regulation and Development) Act, 2016 hereby the authority issues the following directions in the interest of justice and fair play:

- (i) The complainant has raised charges of embezzlement of funds against the erstwhile management of the society and few persons have been mentioned in the complaint. Keeping in view the seriousness of the allegations and in ordinary



delay in completing the project. Assistant Registrar, Co-operative Society, Gurugram to make an enquiry in relation to affairs of the society being promoter for the project. The detailed status report, status of the construction, list of members of present management committee/Administrator, if any, the remaining construction to be carried out, availability of funds with the promoter society, details of bank account and other relevant information may be submitted along with the report. The Assistant Registrar Co-operative Society, Gurugram as Investigating Officer may also investigate whether the funds from the project have been diverted/embezzled etc. The Assistant Registrar is directed to submit the investigation report within a period of two months from today.

- (ii) In case, any violation of the act, rules or regulations comes to the notice of the authority after submission of the investigation report, action will be initiated by the registration branch.




21. The authority has decided to take suo-moto cognizance against the promoter for not getting the project registered &

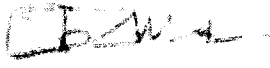
for that separate proceeding will be initiated against the respondent u/s 59 of the Act by the registration branch.

22. The order is pronounced.

23. Case file be consigned to the registry. Copy of this order be endorsed to registration branch.

(Samir Kumar)
Member


(Subhash Chander Kush)
Member


(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram
Date: 06.09.2018

