



# HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

**COMPLAINT NO. 1465 OF 2020**

Ess Vee Apartments Home Buyers Association Through Vice President Sh.  
G S Baidwan ...COMPLAINANT(S)

VERSUS

M/s Samar Estate Pvt. Ltd.

....RESPONDENT

**CORAM:**

**Rajan Gupta  
Anil Kumar Panwar  
Dilbag Singh Sihag**

**Chairman  
Member  
Member**

**Date of Hearing: 09.03.2021**

**Hearing:**

**3<sup>rd</sup>**

**Present: -**

Mr. Vishal Madaan, Counsel for complainant-association  
Mr. Tarun Gupta, Counsel for the respondent  
(through video conference)

**ORDER (RAJAN GUPTA-CHAIRMAN)**

This is a complaint filed by M/s Ess Vee Apartments Home Buyers Association against the respondent M/s Samar Estate Pvt. Ltd. seeking following reliefs: -

- i. to conduct forensic audit into the account of respondent company
  - ii. to attach immovable properties and bank accounts of the respondent company
  - iii. to take action against respondents for diversion and misappropriation of funds
  - iv. to punish the respondents in pursuance of Section 59(2) of RERA Act 2016.
2. A similar complaint No. 1328 of 2019 has been filed before this Authority, in which the following orders dated 12.12.2019 and 09.01.2020 were passed, which are reproduce below respectively: -

**Order dated 12.12.2019:**

1. The complainant, Ess Vee Apartments Home Buyer Association is an association of home buyers who had booked apartments in respondent's project named 'Ess Vee Apartments' situated in Sector 20, Panchkula. The respondent had assured them that possession will be offered to allottees of Phase I of the

project up to 31.12.2018 and to allottees of Phase II up to 31.03.2019. The members of complainant association have been paying all the amounts as per demands raised by the respondent but the latter has failed to even start the construction work at the site. So, the members of complainant association are now seeking following reliefs:

- v. to conduct forensic audit into the account of respondent company
- vi. to attach immovable properties and bank accounts of the respondent company
- vii. to issue directions to State Government to take over the project.

2. The respondent claims that the members of the complainant association have filed various complaints in different forums including RERA Authority on the same cause of action and therefore, the present complaint deserves dismissal being not maintainable.

3. After hearing the parties, it has transpired that some of members of the complainant association in the complaints earlier filed by them had been granted relief of refund by this Authority vide order dated 09.10.2019. So, a crucial question arises as to whether or not the same complainants in the guise of members complainant association can seek more reliefs of different types when such reliefs are prima facie barred by principle of constructive res judicata.

Faced in this aforesaid situation, the complainant counsel seeks adjournment to address the Authority in this regard and the case is accordingly adjourned to **24.12.2019**.

**Order dated 09.01.2020:**

1. Present complaint is not maintainable before this Authority on the ground that some of the members of the complainant association in the complaints earlier granted relief of refund by this Authority vide order dated 09.10.2019. Further, on perusal of record, it finds that the present complaint was already disposed of on 09.10.2019 with other matters related to the same respondent on similar cause of action. Authority observes that the complainants cannot claim more reliefs when



the matter was already disposed on the same cause of action. Therefore, the present complaint is disposed of in the same terms of order dated 09.10.2019 passed in lead complaint case no.865 of 2019 titled Mamta Gupta versus Samar Estates Pvt Ltd.

**2. Disposed of.** File be consigned to record room after uploading of this order on the website of the Authority.

3. The respondents had filed an application for registration of their project and the same was registered vide Registration No. 54 of 2018 dated 05.10.2018. The promoters, however defaulted on numerous counts in fulfilling their obligations casted upon them by law as well as under the conditions of the Registration. Consequently, the Authority had passed the orders dated 28.01.2020 suspending registration of the promoters' project. The said order of the Authority dated 28.01.2020 is reproduced hereunder: -

1. This project was registered by the Authority vide Registration No. HRERA-PKL-PKL-54-2018 dated 05.10.2018. In the registration, the date of completion of the project is shown as:

- Phase I – December'2018
- Phase II – March' 2019
- Phase III – December' 2019

2. While adjudicating upon the bunch of complaints with lead Complaint Case No. 865 of 2019 titled as Mamta Gupta Vs Samar Estates this Authority has observed as follows:

*9. The Authority has gone through the proceedings of the matter over the course of last one year. It has gone through all the facts and documents placed before it. It has also gone through the documents submitted by the respondents while getting the project registered before this Authority. Keeping in view the facts and circumstances of the matter, it observes and orders as follows: -*

*i) The project of the respondents was registered in this Authority vide registration certificate dated 05.10.2018. The entire project is comprised of 24 towers*

with 925 apartments, out of which 464 apartments have been allotted/sold. The respondents had assured the Authority, while getting the project registered, that Phase-I of the project will be completed by December, 2018 and Phase-II by March, 2019. The fact however is that for the last more than one year not even a brick has been laid in the project. No efforts whatsoever have been made by the respondents for completing the project and handing over the apartments to the complainants. No investment at all has been made in the project. The promoter does not appear to be having any Plan of Action for doing so. Accordingly, it is concluded that the respondent has severally defaulted in fulfilling its obligations. Respondent has been making only false assurances without arranging funds for investment. Respondents have thus violated even the conditions of registration. Accordingly, a Show Cause Notice deserves to be issued to the respondents for cancellation of the registration granted to the project.

Law Associate shall send a copy of this order to the Project Section with the direction of the Authority to issue a Show Cause Notice to the respondents for cancellation of the registration certificate.

ii) The respondent has severely mis-managed the project. If assurances made by him at Sr. No. (ix) of Para-4 of the order dated 30.04.2019 are taken into account, against the projected cost of Rs. 340 crores, the respondent claims to have already invested Rs. 208 crores against which about 94 crores only could be collected from the allottees. The respondents appear to have commenced construction of much larger number of apartments than booked/sold whereas they should have constructed the project in phases in tandem with the sale of apartments. The respondent has also clearly has mis-managed his finances. Apparently, the respondent also raised loans from banks and financial institutions, the non-repayments of which may have resulted into a piling up of huge interest liability.

The Real Estate (Regulation and Development) Act 2016 provides for payment of interest @ prescribes in case, the apartments are not delivered in time. Apparently, with delay of 4 to 10 years, interest liability of the respondents towards allottees will also be huge.

It is a well-known fact that the property market is down at present and sale of apartments projects like this is not likely to easy. Furthermore, the allottees who have lost faith in the promoter and have been waiting for possession of their apartments from the last more than 4-10 years are unlikely to pay more money to the promoter.

*In these circumstances, the promoter is unlikely be able to arrange funds for completion of the apartments of complainants as well as rest of the project. As noted by the Authority earlier also, this has become a stuck project which the promoter is unlikely to be able to complete.*

(iii) *In accordance with the provisions of Section-8 of the RERA Act, efforts have been made to constitute associations of the allottees so that they may take over the project and complete it at their level at least to the extent of the towers in which their apartments are located. The allottees have repeatedly expressed their inability to join together and to constitute an association for this purpose. Accordingly, the option of handing over the project to the association of the project is not available.*

(iv) *As per the conditions of the license, in case a promoter defaults in completion of the project, the Town and Country Planning Department of the State Government can take over the said project for completion. A letter had been written to the Town and Country Planning Department in this regard, to which they have submitted their reply dated 11.09.2019, the operative part of which is as under: -*

*"Since, the applicant company has not submitted the bank guarantee of Rs. 98.65 lacs on account of IDW conveyed vide this office memo dated 04.06.2019 (CP/2014). Hence the request of the applicant for approval of service plan estimates and renewal of license cannot be processed due to non-deposition of bank guarantee and the same will be examined after deposition of Bank Guarantee on account of IDW. Therefore, the Department cannot take any action to take over the Project at this stage."*

*In simple words, the department is only concerned with recovery of Rs.98.65 lacs on account of internal development works and they would not bother themselves to the problems of the allottees. For all practical purposes, the department has flatly denied the responsibility for completion of the project.*

(v) *It is but natural that the promoter of the project would have incurred multiples liabilities during the last 10 years including liability of repayment of loans along with interest to the financial institutions; liability towards the operational creditors; and liabilities towards State Government agencies. Most importantly, they have liabilities towards the allottees comprised of principal money received and interest liability incurred on account of delay caused in completing the project.*



*It is evident that the promoter does not have any liquidity to discharge any of the obligations besides funds needed for completion of the project.*

*For these reasons also, it is for unlikely that the respondent-promoter would be able to complete the project.*

(vi) *In the above circumstances, provisions of Section 18 of the RERA Act, provides for grant of relief of refund of the money paid by the allottees along with interest @ prescribed. The Authority accordingly orders that the respondents shall refund the money paid by the complainants along with interest @ prescribed in Rule-15 of the HRERA Rules, 2017. All the complainants shall file their claims before the respondents and the respondents shall be liable to pay the amount as calculated in accordance with this order.*

(vii) *This Authority realises the fact that since respondents have not been able to arrange the money for completion even first phase of the project, now, they may not be able to arrange money for giving refund to the allottees. Accordingly, the Authority orders that allottees may use the provisions of any law of the land for enforcing their rights for getting the money refunded including considering class action against the respondents by invoking provisions of Insolvency and Bankruptcy Code, 2016 (IBC, 2016).*

*So that the respondents do not alienate their properties to the prejudice of the complainants and other similarly placed allottees, the Authority considers it just and fair to prohibit the respondents from alienating any of their properties including the properties of the project without permission of this Authority.*

*This Authority can grant the permission to sell the properties of the project, if justified, with a stipulation that proceeds of the sale shall be put into an escrow account which shall be devoted first for refunding money to the complainants and rest for investment in the project.*

(viii) *While disposing of a bunch of cases in lead case No.383/2018 titled Gurbaksh Singh versus ABW Infrastructure Pvt Ltd., the Authority had inter alia ordered as follows: -*

*"13. We are of the considered view that the right granted to an allottee by the amendment ordinance of 2018 is a value-able right and that right can be pressed before the appropriate forum/authority for satisfaction of their claims against the promoters/debtors.*

However, we are of the further view that the rights guaranteed by the RERA Act, 2016 for protection of allottees are very wide in nature and must be interpreted accordingly. As already stated in the arguments listed in Para 10 above that the allottees of a project, after having paid the EDC and substantial amount of money to the developer should be treated as deemed owners of the proportionate piece of the land and assets of the project, and their rights cannot be alienated by way of an agreement made between the promoter and the lending financial institution. Rights of the allottees must be treated superior to the rights of the lending financial institutions. The financial institutions, in so far as the assets of the related real estate project are concerned, are free to satisfy the claims from the remainders of the assets of the project after satisfaction of the claim of the allottees, and in addition they are free to set their claim satisfied from other assets of the promoters. They can press their claim even against the sureties and guarantees offered by the promoters.

14. The aforesaid conclusion that the rights of the allottees should be treated superior to those of other financial creditors are also supported by the principles of natural justice and the express provisions of RERA Act, 2016. In support of these arguments, it is observed as follows: -

(i) The financial institutions are expert agencies which carry out due diligence about the promoter as well as his project before taking decision to lend money. They have expert manpower and machinery to adjudge the viability of the project and creditworthiness of the promoters. They have capability to understand risk factors involved. Accordingly, at the stage of lending, either they are fully aware of the facts that full or a portion of the project has been allotted to the allottees, thus creating third party rights or they are fully aware that the allotments will be made by the promoters in future, thereby creating third party interests in the assets hypothecated or kept with them as security. It is to be presumed that lenders have factored-in these facts at the time of lending.

Lending institutions are also supposed to monitor progress of the project in order to ensure that money lent by them is safe and is invested properly in the project. If the money lent by them is diverted or siphoned away, they must also share burden for the same for the purpose of protecting the rights of ordinary citizens. If the lenders fail to monitor the Project closely and if their loan is not repaid in time, they themselves also must share the blame. The allottee, however, must not suffer on behalf of the promoter or the financial institution.



(ii) *On the other hand, an allottee typically is a middle-class person who harbours the dream of owning a house for his family. Savings of two or three generations usually have to be mobilized to own a house. He invests money on the basis of assurances held out to him by the promoters and the State Government agencies. He cannot access or understand the account of the project nor does he have any power to monitor progress of the project on day-to-day basis.*

*The principles of natural justice, therefore, dictate that the rights of the allottees should be treated superior and higher to those of the financial institutions.*

(iii) *It is relevant to quote here the provisions of ..... Section 79 and Section 89 of the Real Estate (Regulation & Development) Act, 2016.*

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**Section 79: Bar of Jurisdiction-** *No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Authority or the adjudicating officer or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.*

**Section 89: Act to have over-riding effect-** *The provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force."*

*It is observed that Section 89 explicitly mandates that provisions of RERA Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force. Further, Section 18 guarantees that in the event of a project not being completed he shall have a right to seek refund of his money along with interest without prejudice to any other remedy available. Similarly Sub Section 3 and Sub Section 4 of Section 19 assure the allottee that he will be given refund of the money deposited by him in the event of default in completion of the project by the promoters.*

*This Authority is, therefore, of the considered opinion that since these rights of the allottees have been held superior to any other law for the time being in force, the rights of the allottee, therefore, shall be treated superior to that of the rights of other creditors including the financial institutions.*



(i) *The allottees of the project in question shall be treated as deemed owners of the project. The promoters of the project and the lending financial institutions cannot alienate the ownership rights of the allottees at their own level without their consent. Therefore, the claim of the allottees against the assets of the project shall be treated superior to any other right of any other person or entity including the financial institutions and/or other creditors.*

(ii) *If claims of the allottees are not satisfied fully from the assets of the project in question, they shall be treated creditors of the promoters at par with other creditors for satisfaction of their claims from the assets of the promoters other than the assets of the project in question.*

(iii) \*\*\*

(iv)\*\*\*

*The complainants and other similarly placed allottees may present these orders before any authority dealing with liquidation of assets of the Project, or the respondents and seek satisfaction of their claims on priority. It is, however made clear that the claims of the allottees shall be restricted to the refund of the money paid by them to the respondents along with interest as provided for in rule 15 of the HREERA Rules, 2017.*

3. It was also decided by the Authority to issue a Show Cause Notice to the respondent-promoter as to why their registration be not cancelled for the reason of violation of the conditions of the registration. Despite repeated efforts, no reply has been submitted by the respondent.

4. The Authority observes that the investment made by 464 number of allottees is at stake. The only option left with the Authority is either to explore possibility of handing over the project to the Association of the allottees or to ask the State Government to take over the project and complete the same at their own level. Recently, the State Government has amended Section 8 A of the Haryana Development and Regulations of Urban Areas Act, 1975 vide which powers have been conferred upon the Town and Country Planning Department for taking over and completing the projects at their own level. The Authority also observes that despite efforts, allottees of this project have not been able to come together to form an association.



5. In the overall interest of the project as well as of the allottees, the Director, Town and Country Planning Department is requested to consider taking over this project and complete it at their own level.

6. In the meanwhile, the aforesaid registration No. HRERA-PKL-PKL-54-2018 shall remain suspended and the promoters of the project are prohibited from selling any more apartments or any asset of the project in question. The fact of suspension of the registration and prohibition of further sale of the project should be hosted on the website of the Authority and a public notice be issued in the newspapers.

7. The Director, Town and Country Planning Department shall submit his reply within 30 days for the issuance of this order.

8. Adjourned to **18.03.2020**.

4. Now this project is struck and registration of the same has also been suspended. In these circumstances, individual allottees who had approached the Authority seeking relief of granting them refund of the amounts paid have been granted the demanded relief. Now if more allottees wish to seek similar relief, they may file their individual complaint before the Authority. No purpose will be served by forming an Association only to obtain the information of the nature prayed for. This information would be relevant, if the association is praying to take over the project, in which case 2/3<sup>rd</sup> allottees may get together to form an association and follow the directions of this Authority to take over the project.

5. In view of the aforesaid facts, this complaint is not maintainable before the Authority at this stage.



6. **Disposed of.** File be consigned to the record room after uploading the order on the website of the Authority.



RAJAN GUPTA  
[CHAIRMAN]



ANIL KUMAR PANWAR  
[MEMBER]



DILBAG SINGH SIHAG  
[MEMBER]

