



Complaint no. 2188,2189,2684,
2687,2690,2691 of 2019

HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 2188 OF 2019

Jindal Realty Pvt Ltd

....COMPLAINANT(S)

VERSUS

Veena Singhla

....RESPONDENT(S)

COMPLAINT NO. 2189 OF 2019

Jindal Realty Pvt Ltd

....COMPLAINANT(S)

VERSUS

Jaswant Singh

....RESPONDENT(S)

COMPLAINT NO. 2684 OF 2019

1. Jindal Realty Pvt Ltd

....COMPLAINANT(S)

2. Metro Facility Management Pvt Ltd

3. Jagran Developer Pvt Ltd

VERSUS

Sharmila

....RESPONDENT(S)

COMPLAINT NO. 2687 OF 2019

1. Jindal Realty Pvt Ltd

....COMPLAINANT(S)

2. Metro Facility Management Pvt Ltd

3. Jagran Developer Pvt Ltd.

VERSUS

Neelam

....RESPONDENT(S)

COMPLAINT NO. 2690 OF 2019

1. Jindal Realty Pvt Ltd

....COMPLAINANT(S)

2. Metro Facility Management Pvt Ltd

3. Jagran Developer Pvt Ltd

VERSUS

Kamlesh Rani

....RESPONDENT(S)

COMPLAINT NO. 2691 OF 2019

1. Jindal Realty Pvt Ltd

....COMPLAINANT(S)

2. Metro Facility Management Pvt Ltd

3. Jagran Developer Pvt Ltd

VERSUS

Keshav Bharti

....RESPONDENT(S)

CORAM: Rajan Gupta
Anil Kumar Panwar
Dilbag Singh Sihag

Chairman
Member
Member

Date of Hearing: 06.04.2021

Hearing: 9th

Present : - Mr. Sanjeev Sharma, Counsel for the complainants in all cases
(through VC)

None for the respondent in all cases.

ORDER (RAJAN GUPTA-CHAIRMAN)

The captioned bunch of complaints has been filed by the Developer-complainant's seeking directions against the respondent-allottees to pay maintenance charges @ Rs 3 per sq yards per month which they are bound to pay in terms of builder buyer agreement and maintenance agreement. As a matter of fact, possession has already been handed over and conveyance deed already got executed in the aforesaid complaints between the period ranging from 2011 to 2014.

2. These matters were heard on 25.02.2020 whereby it was tentatively observed that the present complaints do not fall under the jurisdiction of this Authority as there does not exist any provision of law to get the contract of maintenance agency and respondent-allottee enforced for recovery of maintenance charges because there is no provision in RERA Act,2016 to enforce agreements separately entered into between the maintenance agency and respondent-allottee for maintenance charges of the project.

3. Thereafter aforesaid bunch of cases was heard on 26.08.2020 when learned counsel for complainant has filed his written arguments in respect of question of maintainability of the complaints and office was directed to supply copy of said arguments to respondent -allottees. Accordingly, copy of the written arguments was supplied to respondent -allottees.



4. It is pertinent to mention here that respondent-allottee in complaint no. no. 2189/2019 and 2684/2019 could not be served till date. The complainant-developer was directed vide order dated 15.10.2020 to furnish correct address of respondent -allottees and to take dasti notice for service, but correct address of respondent- allottee has not been yet furnished by the complainant. Reply however has already been filed in complaint no. 2188/2019 and 2691/2019. In complaint nos. 2687,2690,2691 of 2019 no one is appearing on behalf of respondent- allottees to present their respective cases despite service of notice.

5. On the last date of hearing no one was present on behalf of respondents except Mr. Vivek, proxy for Mr. Akshat Mittal, respondent's counsel, in complaint no. 2188/2019, and the cases were adjourned for today for final arguments.

6. Initiating the arguments, ld. counsel for complainant submits that the present complaints are maintainable in view of provision of section 31, 11(4) (a) and section 11(4) (d) of RERA Act,2016 (hereinafter referred as Act). He pleaded that his client is fulfilling his duty cast upon him to maintain the project and in doing so certain charges are being incurred, which are as such recoverable from the allottees in terms of maintenance agreement and builder buyer agreement, but respondent-allottees are not paying maintenance charges to the developer/maintenance agency. The present complaints therefore have been jointly filed by developer and the maintenance agency seeking direction against

4

the respondent-allottees to pay the due amount towards common maintenance charges alongwith interest.

7. He has further argued that respondent- allottee is duty bound to pay the maintenance charges in terms of clause 11 of builder buyer agreement and clause 2 of maintenance agreement executed by them in view of provision of section 19 (6) of the Act. Said provision the Act casts a duty on every allottee to make necessary payments towards maintenance charges. Further, as per provision of section 19 (9) of the Act allottee is also duty bound to participate towards the formation of an association or society of the allottees. Relevant clause of builder buyer agreement and maintenance agreement is reproduced below for reference:-

11. In order to maintain the roads, streets, green area/landscaping, the security boundary wall/secured gates/regulated entry to the township, the developer may appoint a Maintenance agency, until the same is handed over to the Association of Owners/Government/Local body/Municipal Corporation in due course and in accordance with the applicable law. The Allottee shall pay maintenance charges to the said Maintenance Agency as per the bills to be raised by it from time to time.

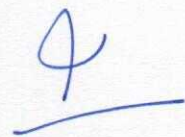
The Maintenance charges shall be payable by the Allottees to the Developer/their nominated Maintenance Agency with effect from the date of offer of possession. The maintenance charges shall be fixed by the Developer/heir nominated maintenance agency taking into consideration various inputs/overheads/charges etc, in its sole discretion. The determination of monthly maintenance charges by the Developer/their nominated Maintenance Agency shall be final and binding on the Allottee. Any tax payable on maintenance charges shall also be payable by the Allottees.



3. *That the maintenance company shall be paid @Rs 3 per sq yard per month as part of Maintenance charges in addition to the charges towards electricity consumption , water consumption, monthly , club charges etc. The maintenance company shall bill the operation/Maintenance charges quarterly, in advance. However, supply of electrical energy and water inside the unit shall be billed on the basis of actual consumption based on meter reading of the previous month and billed in the beginning of the succeeding month if electricity supply is distributed/made by the maintenance company. The charges or any exclusive Operation/Maintenance services, as may be specially required and provided to the User/Occupants shall be billed and payable by the Use/Occupants alone in addition to the aforesaid charges.*

8. Ld. counsel for complainant in support of his arguments has referred to a judgment dated 02.04.2019 passed by Hon'ble Chairperson, Real Estate Regulatory Authority, Punjab in complaint no. GC-1033 of 2018 whereby respondent-allottee was directed to pay due maintenance charges alongwith interest prescribed in Rule 16 (f) Punjab State Real Estate (Regulation and Development) Rules,2017.

9. In complaint no. 2188/2019 the respondent-allottee has filed his reply wherein it has been stated that common maintenance charges were paid to the maintenance agency for many years but the said agency miserably failed to provide facilities/amenities. Moreover, after time period of 9 years allotted plot is subject to Municipal Corporation so only civic authorities i.e. Municipal Corporation concerned is only entitled to charge maintenance.



10. In complaint no. 2691/2019 the respondent allottee- has filed his reply wherein it has been stated that common facilities being promised by the respondent at time of allotment are still not available/provided in the project. Further it has been submitted that RWA has already been formed by the allottees of society but complainants-developer instead of handing over the maintenance to said association is illegally carrying out the maintenance task/work.

11. Written and verbal submissions alongwith relevant record of both parties have been perused. First of all, it is pertinent to mention here that the project- Kurukshetra Global City had been developed by complainants in terms of license no. 288/2007 issued by DTCP on 29.12.2007 for total area of 88.725 acres. Completion certificate had already been granted to this project on 11.12.2017. Factual position reveals that conveyance deed of the plots allotted to respective allottee have already been got executed between the parties during the period 2011-2014. Present complaints have been filed in year 2019. Second, on perusal of provisions of Section 11 and 19 of the Act the Authority is of view that duty to maintain the project is cast upon the developer and allottee is accordingly duty bound to pay the maintenance charges but in the present case the relation of developer and allottee has already come to an end after execution of conveyance deed and as a result of which relation of allottee-developer does not exist between the parties and the dispute arising between them are ordinary civil disputes to be adjudicated by an appropriate Court of law and not by this Authority.

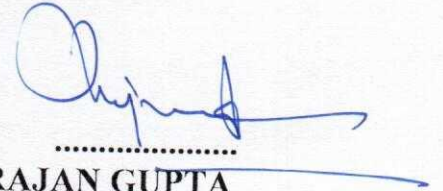


12. Regarding maintenance of project, developer is duty bound under section 11 (4)(c) of the Act to enable the formation of association to handover project to them but no relevant document has been placed on record by the complainant to show that any effort was ever made by him to form an association of allottee in order to handover the project to them for maintenance. In absence of it the allottee cannot be made liable to not to perform duty cast upon him by virtue of section 19(9) of the Act.

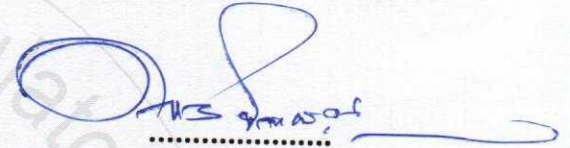
13. The judgement quoted by complainant's counsel has been perused and it is found that the reason and logic rendered by Hon'ble Chairperson of Real Estate Regulatory Authority, Punjab is not applicable in this case as factum of execution of conveyance deed was not involved in said judgement. In this case the Authority is of view that the contractual obligations of both parties stand fulfilled towards each other and there remains no relation of allottee-developer between the parties. So, the relief of recovery of maintenance charges being sought by complainants cannot be granted by this Authority because an agreement separately entered into between maintenance agency and allottee-respondent falls outside the purview of the RERA Act,2016 and as such there is no provision to enforce obligations of said agreement especially when there is no relation of allottee-developer between the parties. However, complainants are at liberty to approach appropriate Court of law for redressal of their grievances.



14. In view of aforesaid discussion it is decided that in the facts and circumstances of these cases the dispute of allottee and maintenance agency does not fall under purview of RERA Act,2016. So, captioned bunch of complaints are **dismissed as not maintainable**. Files be consigned to record room.



RAJAN GUPTA
[CHAIRMAN]



ANIL KUMAR PANWAR
[MEMBER]



DILBAG SINGH SIHAG
[MEMBER]

