



Complaint no. 899 & 900 of 2021

## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

### 1. COMPLAINT NO. 899 OF 2021

Rohit Kumar .....COMPLAINANT(S)

VERSUS

Himuday Housing Welfare and Maintenance Society ....RESPONDENT(S)

### 2. COMPLAINT NO. 900 OF 2021

Shweta Sood .....COMPLAINANT(S)

VERSUS

Himuday Housing Welfare and Maintenance Society ....RESPONDENT(S)

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

**Chairman**  
**Member**  
**Member**

**Date of Hearing:** 27.10.2021

**Hearing:** 2nd

**Present :-** Mr. Saksham Arora, Counsel for the complainant.  
Mr. R. S Thakur, Counsel for the respondent

### **ORDER (RAJAN GUPTA-CHAIRMAN)**

1. The captioned two complaints were heard by the Authority on 12.10.2021 when following orders were passed:

“1. This complaint has been filed by complainant Shri Rohit Kumar against respondent 'Himuday Housing Welfare

*and Maintenance Society' which is a society registered under the Societies Registration Act, 1860. The respondent society has been constituted for construction of housing apartments for members of the society. There is no builder buyer agreement executed and the society was meant to be managed by members themselves through their managing committee, and entire cost was meant to be met by way of contribution of members.*

2. *It was stated in the court today that initially society had planned to construct 66 apartments. 30 apartments were constructed in phase I and handed over to the members. In phase II, 6 apartments were constructed. Further, land in respect of 5 apartments was surrendered and 6 apartments are under construction.*

3. *Authority prima facie observes that complainant had voluntarily become a member of housing society. It is to be presumed that society has been functioning in accordance with its charter/articles of association. All members are entitled to participate in the proceedings of the society. If any member feels dissatisfied, he could express his grievance in the general body meeting of the society. If any member was aggrieved by the action of the society, he was entitled to raise the same before general body of the society or file complaint with the Registrar of Societies for charge of management.*

4. *Prime-facie, therefore, there is no builder-buyer relationship established between complainant and respondent to bring this complaint within the purview of the RERA Act. The respondent society does not appear to be covered in the*





*definition of promoter. As such the RERA may not have jurisdiction to entertain such like complaints. The complainant, however, could approach Registrar of Societies for redressal of his grievance against managing committee of the society.*

5. *Learned counsel for the complainant Shri Saksham Arora requested for adjournment to further argue the matter on maintainability of complaint before this Authority. Both parties shall submit their arguments on maintainability of the complaint before this Authority. Adjourned to 27.10.2021.”*

2. Proceeding further on the question of maintainability of these complaints, Shri Saksham Arora, Advocate, learned counsel for the complainant drew the attention of the Authority towards Section 2(zk) and Section 2(zg) of the Real Estate (Regulation and Development), Act, 2016 and stated that the respondent's society is squarely covered in the definition of a promoter and of legal person, therefore, they are liable towards the complainant. For this reason the respondent is a promoter and complainants are allottees, therefore, these complaints are maintainable before this Authority. In support of his arguments he drew the attention of this Authority towards certain decisions taken by the learned RERAs Maharashtra and Goa. He drew specific attention towards circular dated 4th December, 2017 issued by the Maha Rera and circular issued in February, 2018 by Goa RERA.



3. Continuing his arguments, learned counsel stated that the complaint had become a member of the respondent's society on the basis of a brochure issued by them. Detailed specifications of the apartments were also given in the brochure. Based on the assurances made therein the complainant became members of the respondent's society and their allottees. He averred that this Authority has jurisdiction to entertain these complaints and decide them on their merits.

4. The respondent's society was represented by its President Shri R.S.Thakur, and an official who maintains record of the society. They reiterated their arguments put forward earlier as captured in the order dated 12.10.2021. That some residents of Himachal Pradesh got together and decided to construct apartments at Panchkula for the facility of their members on no profit no loss basis. Further, the complainants became members of the society voluntarily by depositing of an amount of Rs.100/- .At no stage any Builder-buyer agreement was executed. There was no commitment in regard to the sales consideration of the apartment. All costs were to be borne proportionately by all the members and in accordance with decisions be taken by the Managing Committee/ General Body of the society. Further, theirs is a welfare society for its members which has constructed and delivered apartments to its members. Nobody has gained any profit out of this venture. The society has no resources to serve claims of the complainant. For these reasons they again sought dismissal of these complaints as not maintainable and not covered by provision of the RERA Act.



5. Authority has gone through rival contentions. The Authority had captured gist of the dispute in its previous orders as reproduced above. The circulars issued by RERA Maharashtra and RERA Goa have been perused. The circular issued by Maha Rera on 4th December,2017 reads “where the developer has agreed to share revenue generated from the real estate project with the land owner, the latter will also be considered as a promoter under the RERA”.

The circular of February,2018 issued by Goa RERA reads “the land owners or investors who, by virtue of an arrangement with the developer, are entitled to a share of revenue generated from sale of apartments or a share of the total area developed for sale which are marketed and sold by them, would be covered within the scope of ‘promoters’ under RERA. It has been further clarified that such land owners would be jointly liable for the functions and responsibilities specified under the Act in the same manner as the promote.

6. The Authority observes that the facts of the present case are entirely different from the facts and circumstances in which the aforesaid circulars had been issued by RERAs of Maharashtra and Goa. There was no arrangement of revenue sharing by the welfare society with any third person. There was no builder-buyer agreement executed between the parties. There is no precise determination of rights and liabilities of the members of the society vis-à-vis the society itself. All decisions had to be taken by the Governing body/Managing Committee of the society. By virtue of being a member of the society it shall be

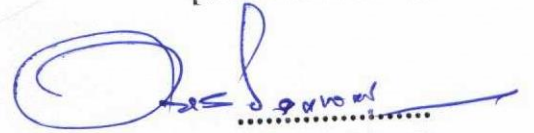
deemed that all decisions pertaining to the project have been taken by the complainants themselves. There is no body outside the complainants against whom the complaints could direct their grievances. Since the complainants themselves were owners of the society, if they were aggrieved by any action of the society they could approach general body of the society or the Registrar of the Society, for redressal of those grievances.

7. For the aforesaid reasons, the Authority is of the considered view that there has been no BBA and no promoter-allottee relationship established. Since there were no promoter-allottee relationship in this case, the matter does not fall within the purview of RERA.

8. For the aforesaid reasons these complaints are dismissed as being not maintainable under the provision of the RERA Act. Order be uploaded on the website of the Authority and file be consigned to record room.



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RAJAN GUPTA  
[CHAIRMAN]



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ANIL KUMAR PANWAR  
[MEMBER]



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DILBAG SINGH SIHAG  
[MEMBER]