

**HARYANA REAL ESTATE REGULATORY AUTHORITY
PANCHKULA, HARYANA**

1. **Comp No. : RERA-PKL 1399/2018 (No of Hearing: 3rd)**
Randhir Singh Sathi **...Complainant**
Versus

Haryana Employees Welfare Organisation **...Respondent**

2. **Comp No. : RERA-PKL 04/2019 (No of Hearing: 3rd)**
B. R. Sheoran **...Complainant**

Versus

Haryana Employees Welfare Organisation & Anr. **...Respondents**

Date : 05.03.2019

CORAM :

Sh. Rajan Gupta
Sh. Anil Kumar Panwar
Sh. Dilbag Singh Sihag

**Chairman
Member
Member**

APPEARANCE :

Randhir Singh Sathi in Comp No.1399/2018
Robin Sathi in Comp No.04/2019
Ajay Kaushik

Complainant in Person
Counsel for Complainant
Counsel for Respondent

Order:

1. Both the captioned cases have been taken up together as the grievances involved therein are similar and against the same project of the respondent wherein the lead case is **Complaint No. 1399 of 2018** titled **Randhir Singh Sathi vs. Haryana Employees Welfare Organisation.**



2. This matter was first taken up for hearing on 29.01.2019 when the Authority after consideration of oral as well as written submissions made by both the parties had passed a detailed order wherein it has given its prima facie opinion that the complaint is not maintainable before this Authority. The relevant order dated 29.01.2019 passed by the Authority is reproduced herewith as follows:

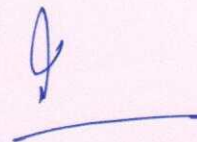
"1. The case of the complainant is that he applied for membership of the respondent society on 03.02.2006 and was issued membership no. 12413 of respondent society on 13.07.2007 against super deluxe flat no. GH No. 09, sector -12, Sonapat. He has paid Rs. 39,03,300/- till date. The complainant alleges that due to repeated increase in prices of the flat by the respondent society, he had to surrender his flat on 08.08.2016. The respondent demanded certain documents from the complainant, which he duly submitted to the respondent on 23.12.2016. The respondent accepted his surrender application vide letter dated 06.01.2017, and also intimated him that he will be given refund of Rs.38,63,400/- after deduction of Rs.39,900/- as 20% of the earnest money of Rs.1,99,500/-. Since the respondent failed to refund the amount deposited by the complainant, he sent a legal notice dated 15.11.2017 for refund of the amount deposited along with 18% interest p.a. The respondent replied to his legal notice vide letter dated 12.12.2017. The respondent in its reply admitted the deposit of Rs. 39,03,300/- by the complainant but stated that his refund of Rs. 38,63,400/- after deduction of 20% of amount of earnest money of

Rs.1,99,500/- will be given only after it is recouped by HEWO through resale of his membership of flat.

The complainant is aggrieved due to delay in refund and now has filed the present complaint before this Authority seeking refund of Rs.39,03,300/-along with interest @ 18 % interest p.a.

2. The respondent has denied all the allegations and raised several preliminary objections, as follows:

- i. The provisions of Real Estate (Regulation and Development) Act, 2016 are not applicable to the present matter because the project was completed before the coming into force of the RERA Act, hence the provisions of the RERA Act are not applicable to the respondent.
- ii. The respondent states that the complainant is estopped from his own conduct as he is guilty of repeated defaults in payment of installments despite several reminders dated 22.04.2015, 24.09.2015, 17.12.2015, 20.01.2016 and 27.07.2017. The complainant instead of depositing the dues, surrendered his membership and requested for refund. The respondent also states that the construction work of society has been completed on 27.03.2014 and flats have been allotted to the members who have made full payment, hence, the complaint is liable to be dismissed on this ground alone.
- iii. The respondent states that HEWO is a private welfare organisation of HUDA, Urban Estate and Town & Country Planning department employees, which was formed on 23.07.1990 and is registered under the Societies Registration Act,1860. HEWO follows the Rules and Regulations and Policies



of HUDA. HEWO allots flats to its members under Group Housing Scheme. HEWO floated its 1st, 2nd & 3rd Schemes in 1990,1998 (refloated in 2003) and 2005. The complainant had applied in HEWO Scheme -III on 03.02.2006. HEWO was allotted land by Esate Officer, HUDA, Sonapat vide letter dated 08.07.2008.

- iv. The respondent states that tentative cost was called from all members in eight instalments of Rs.4,51,900/- each vide letter dated 25.01.2011. Thereafter tentative cost of the flats was increased due to construction of basement, change of specifications, variation in super area of flats and difference of rate of steel and cement. Hence, an additional amount of Rs. 14,32,200/- was called for from the members vide letter dated 31.07.2013 which was payable in 3 additional instalments of Rs. 4,77,400/- each. Thus, the total construction cost was Rs.52,46,900/-.
- v. The respondent states that 24 flats have been constructed in this society. Out of 24 members, 12 members have surrendered their flats and 11 members are not paying their outstanding dues (only one member has paid full construction cost). Construction at site was completed in 2014 and even full construction cost has been paid to the contractor. HEWO has got constructed flats on these sites by taking loan of Rs. 9.80 crores from other schemes of HEWO. Due to financial hardship owing to default in payment of instalments by its members the Governing Body of HEWO in its meeting dated 06.05.2014 decided that "the outstanding dues may be demanded from the defaulter members. In case, any member



apply for surrender of his membership and ask for refund of the amount deposited, then his/her request may be accepted with the clear cut condition that only principal amount will be refunded after it is recouped by HEWO through re-sale of his/her membership of flat". Thereafter, flats were floated time and again vide memo dated 16.08.2013, 16.04.2014, 23.07.2014, 18.06.2015, 11.08.2016, 02.12.2016 and 28.07.2017 to recoup the amount of cancelled/balance flat, but no application has been received so far. The Governing Body of HEWO on 24.12.2018 has decided to float these surplus/surrendered amongst the all Central/State Govt. Employees and their Board and Corporations and public notice for the same will be given shortly to recoup the amount through resale of flat. The amount will be repaid to the complainant only after generation of funds by sale of his flat and membership.

- vi. The respondent states that the complainant had failed to deposit his instalments due to which his flat was not allotted to him. The respondent had sent many reminders to the complainant dated 22.04.2015, 24.09.2015, 17.12.2015, 20.01.2016 and 27.07.2017 for deposit of balance / pending amount including land cost but instead of depositing the demanded amount, the complainant surrendered his membership and asked for refund. The respondent also states that the construction work of society has been completed on 27.03.2014 and flats have been allotted to the members who have made the full payment.
- vii. The respondent further states that the complainant has himself requested for refund and also moved an application for surrender



of the membership on the ground that the HEWO was not clear whether flats allotted by HEWO in 2 different urban estates falls in multiple allotment to HUDA employees or not and therefore, to avoid any complication in the matter opted to surrender the flat at site No. GH-09, Sector 12, Sonipat.

viii. The respondent states that it has accepted the surrender of membership of the complainant with the condition that out of the deposited amount of Rs. 39,03,300/- an amount of Rs. 39,900/- would be deducted out of the earnest money of Rs. 1,99,500/- and thus an amount of Rs.38,63,400/- would be refunded only after it is recouped by HEWO through resale of his membership of flat.

3. The facts and circumstances submitted by both the parties have been examined. Prima-facie the Authority will not have jurisdiction to entertain this complaint. Even though a housing society is categorised as a promoter for the purpose of registration of the projects floated by such societies with the Authority but the facts and circumstances narrated by the respondent in this case makes it clear that firstly the complainant himself is at fault in fulfilling his obligation towards the society and secondly the society has already completed the project and is facing multiple problems including the problem of withdrawal from the membership by several members and also facing litigation with regard to multiple allotment of flats. In the facts and circumstances of this case this is purely a dispute between a society and its members with regard to becoming a member and withdrawing from the membership.

4. A society is a body managed by the members themselves. They elect their Governing body and Executive Bodies and take all decisions in the interest of all the members. If a particular Governing/Executive



Body does not perform its functions diligently, the majority members are free to elect a new Governing Body or any individual members may approach the Registrar of Cooperative Societies for appointing an Administrator.

5. The principle dispute between the complainant and the respondent society is that the complainant has withdrawn from the membership and now wants refund of the money paid by him. The cited reason for withdrawal is that the society has increased the cost of the flat. On the other hand the stand of the society is that the prices had to be increased because of changed designs and specifications etc. The specifications and design could be changed only by a Governing Body of which the complainant was also a member. No private person was taking any benefit by change of such specifications. The society is correct that the refund will be given to the complainant only when his membership is sold in the open market. Other than that there is no option available to refund the money.

It is once again reiterated that the nature of the dispute between the parties in this case is totally private and is not covered by any provision of the RERA. Merely because a society is also required to be registered if it floats a project, that does not make the society equivalent to a developer who sells flats to the allottees for consideration including his margin of profit.

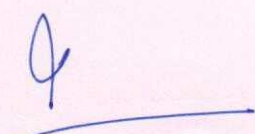
6. At this stage, the Authority discloses its mind that prima-facie for the reason stated above it does not have jurisdiction to entertain this complaint. However, one more opportunity was asked for by the complainant to prove that this Authority has jurisdiction to deal with



such matters. On the request of the complaint the matter is adjourned to 26.2.2019.”

The matter was taken up on 26.02.2019 when an adjournment was sought by respondent on account of non-availability of arguing counsel. Today the matter was heard and decided after going through oral as well as written pleadings of both the parties.

3. Today, Counsel for complainant has not come up with any new and plausible argument or document to fortify his case and has failed to prove as to how the present complaint is maintainable before this Authority.
4. The respondent has today reiterated that he had completed the construction in 2014 but since the members of the society are defaulting in their payments and surrendering their membership, he is at present facing a financial crisis. Therefore, he would be in a position to refund the amount deposited by the complainant after deduction of earnest money only after it is recouped by HEWO through resale of his membership of flat.
5. The Authority has already discussed in detail in its order dated 29.01.2019 that the nature of the dispute between the parties in this case is private in nature and between society and its members thus, is not covered by any provision of the RERA. The complainant is himself



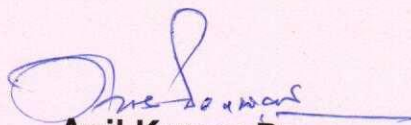
a member of the respondent society and who participated and consented to the decisions of the society which were taken by the Governing body in its general assembly meetings. Thus, merely because a society is also required to be registered if it floats a project, will not make the society equivalent to a developer who sells flats to the allottees for consideration including his margin of profit.

Therefore, the Authority for the reasons stated above, holds that the present complaint is not maintainable before this Authority as the matter pertains to a dispute between society and its members which is a civil dispute and the redressal of the same, the appropriate forum would either be Civil Court or Registrar of Society.

Disposed of accordingly. The file be consigned to the record room and the orders be uploaded on the website of the Authority.



Dilbag Singh Sihag
Member



Anil Kumar Panwar
Member



Rajan Gupta
Chairman