



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

1. Complaint No. RERA-PKL-898 of 2018 (3<sup>rd</sup> Hearing).

Naresh Kumar Bansal

...Complainant.

Versus

Divya Jyoti Society & Idyllic Group.

...Respondent.

2. Complaint No. RERA-PKL-1017 of 2018 (2<sup>nd</sup> Hearing).

Manish Jain.

...Complainant.

Versus

Divya Jyoti Society & Idyllic Group.

...Respondent.

**Date of Hearing:** 30.01.2019

**Coram:-**

Shri Rajan Gupta, Chairman.  
Shri Anil Kumar Panwar, Member  
Shri Dilbag Singh Sihag, Member.

**Appearance:-**

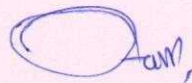
Shri Naresh Kumar Bansal, Complainant in person.  
Shri A.K. Jain, authorized person on behalf of Complainant  
in Case No. 1017 of 2018.  
Shri Navneet Jindal, Advocate for respondent No. 1.  
Ms. Jasmine, Advocate for respondent No. 2.

**ORDER:-**

The above captioned complaints are being disposed of by this common order for the reason that the grievances agitated by the complainants in both the cases are similar and directed against the same respondents.

2. Shorn of unnecessary details, the brief facts, as culled out from record, are that the complainants became members of a society named "Divya Jyoti" registered under Haryana Registration and Regulations Societies Act, 2012. The society had issued them membership certificates in the year 2013. M/s Idyllic Resorts Pvt. Ltd. i.e. Respondent No. 2, after obtaining license from the Town and Country Planning Department, was developing a plotted colony known as "ECO City" in Sector-12, Panchkula Extension-II. The Society had purchased 59 plots from Respondent No. 2 to construct flats for its members. The complainants were allotted flats by Society. Complainants Naresh Kumar and Manish Jain had already paid Rs.13,00,000/- ( as per the receipts attached in the complaint) Rs.24,00,00/- respectively to the society. They have filed the present complains for refund of their paid amount on the grounds that (i) the society has not completed the construction work within the agreed time of three years from the start of construction; (ii) the society had arbitrarily revised the cost of flats of complainants' flats from Rs.25,00,000/- to Rs. 33,56,980/-. The complainants have also prayed for awarding them interest on the paid amount @ 18% per annum.

Respondent No. 1, the Society has not disputed the memberships of the complainants. It has also admitted that the complainants had paid Rs.13,00,000/- and Rs.24,00,000/- respectively. However, it has resisted the complaints on the grounds namely (i) that the society is not amenable to the jurisdiction of this Authority because it is not covered by the definition of promoter as defined under



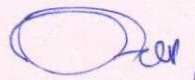
the Real Estate (Regulations and Development) Act, 2016 for short the Act; (ii) that the complainants being members and bound by all the decisions of the Society have no locus standi to file the present complaints; (iii) that the complainants have been defaulters in regular payment of instalments and are, therefore, responsible for delay in the construction of the flats; (iv) that the society is already in the process of offering flats to its 36 members who have paid all their dues on time; (v) and that the increase in price has occurred due to increase in the area of flats which was effected with the consents of members after having necessary approval by its governing body.

3. Respondent No. 2, the licensee-owner of the project land, has pleaded in his reply that he had sold 59 plots to the respondent society and has not played any role whatsoever in the construction of the flats for the members of the society. So, he has no liability towards the complainants.
4. Learned counsels for the parties have been heard and record has been perused.
5. The foremost question requiring determination is regarding the maintainability of the present complaints. RERA Act was enacted for regulations and promotion of real estate sector and also for establishing adjudicating mechanism for resolving the disputes between promoter and the allottees of the real estate project. The expression "promoter" is defined in Section 2(zk) of the RERA Act. It is evident from the said definition that a Primary Cooperative Housing Society, which constructs flats or building for its members, is covered



by the definition of promoter. Similarly, expression "allottees" is defined in Section 2(d) of the RERA Act and the person to whom an apartment has been allotted by the promoter is covered by the said definition. So, the respondent Society by virtue of the fact that it has undertaken the work for construction of apartment for its members, is a promoter and the complainants by virtue of the fact that they had been allotted flats as members of Society, have to be considered as allottees. That being the situation, the complainants for redressal of their grievances can file complaints under the provisions of RERA Act and this Authority has a duty to adjudicate the same. So, the Authority rejects the society's contention on the point that the present complaints are not maintainable.

6. Now coming to the merits of the complainants' claims of refund of amount which they had paid to the society. The respondent society is a body which is managed by its members. The members of the society participate in the elections of its Governing Body. The complainants are members of the society and it is nowhere their case that the governing body of the society was elected in an illegal manner or that they were debarred from participating in the elections of the said body. The decisions in the society are taken by the governing body and the decisions so taken are binding on all the members of the society. So, whatever money has been collected by the society as also the acts performed by the society shall be deemed as the collections made and acts performed by the members. Viewed from this prospective, the complainants are bound by the construction work and expenses thereon by the society. Once the society has infused the funds




in the construction of flats, none of its members will have a legitimate right to seek its refund.

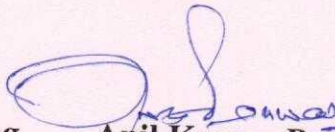
7. The society in this case has pleaded that it is already in the process of handing over possession to 36 of its members who have already paid the due amounts. The complainants instead of paying the amounts for taking possession of the flats have filed the present complains to avoid such payments on the ground that the society is demanding extra cost from them. The society had constructed the flats as per the plans approved by the Town and Country Planning Department. The area of flats allotted to the complainants have been increased in accordance with sanctioned plans. There is a presumption that the plans were submitted to the Town and Country Planning Department by the governing body of the society after consultation with the members. So, none of the member can avoid payment of increased cost on the ground that area of his flat had increased from its original size.

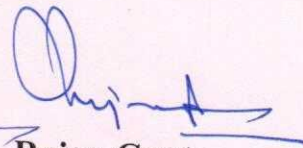
If the society was not performing its functions diligently or the governing body was acting against the wishes of the members of the society, the majority members were free to elect a new governing body by holding a fresh elections and in case the members of the existing governing body were creating some hurdles in their rights for impeachment of such body and holding re-election, the majority members or even individual member of the society had a right to approach the Registrar of Societies for the appointment of an Administrator for performing functions of society. For the reasons best known to the complainants,

they raise no voice and remained mute spectators during the period when the society was constructing the flats. Now, when the building has been constructed and the society has started offering the possession to its members, the complainants have chosen to challenge the cost escalation occurring due to increase in the size of flats and are demanding refund of their amounts. Such conduct on the part of the complainants is legally not permissible and the Authority is of the considered opinion that they have no right to seek the refund of the paid amount.

8. For the reasons recorded above, the Authority finds no merit in the present complaints and the same are **dismissed**. Files be consigned to the record room.

  
**Dilbag Singh Sihag**  
Member

  
**Anil Kumar Panwar**  
Member

  
**Rajan Gupta**  
Chairman