



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 2650 OF 2019

Sunshine County Resident Welfare AssociationCOMPLAINANT

Versus

M/s Ansal Properties and Infrastructure Ltd. RESPONDENT

**CORAM: Rajan Gupta
Dilbag Singh Sihag**

**Chairman
Member**

Date of Hearing: 07.12.2021

Hearing: 14th

Present through video call: - Mr. Venkat Rao, Learned counsel for the complainant

Sh. Rajiv K. Bhatia, proxy counsel for respondent's counsel for the respondent

ORDER (RAJAN GUPTA-CHAIRMAN)

1. This matter was last heard on 09.02.2021 when arguments of both parties were recorded. The matter was adjourned for 04.05.2021 on the request of both the parties, as settlement talks were going on between them. On 10.08.2021, learned counsel for complainant had apprised the Authority that parties could not arrive at any settlement, therefore, he sought time to argue the matter on merits. After consideration of the matter Authority had directed both parties to file their written submissions along with relevant documents in support of their claims. Accordingly, complainant association had filed their written submission on 30.09.2021 in the court.

2. Today, Sh. Rajiv K. Bhatia, learned proxy counsel for respondent appeared and sought adjournment on the ground that settlement talks are still going on between the parties. Learned counsel for complainant opposed the request and prayed for hearing the matter on merit.

For proper adjudication of the matter, Authority had granted one last opportunity to the respondent to file their written submissions within a period of one week failing which the matter will be decided on basis of facts available in file. The respondents have chosen not to file their written submissions. Accordingly, the matter is being disposed of on the basis of available record.



3. Learned counsel for complainant in his written submissions has stated that complainant association is a registered association duly constituted by allottees of the project in question namely, "Sunshine County". A gist of grievances of the complainant was recorded vide order dated 14.10.2020, the relevant portion of which is reproduced below:

1. "Present complaint involves three major grievances as follows: -

(i) Complainant-association alleges that the promoter has failed to maintain the colony. Precise allegation is that lifts are in poor condition, STP is situated at the entrance of colony and the foul smell emanating from it causes inconvenience to the residents, roads are in dilapidated condition, plaster of the walls is coming off.

(ii) Despite several requests, promoter has failed to handover the complete charge of maintenance of colony to Resident Welfare Association.

(iii) Promoter has not refunded the amount collected in lieu of maintenance and service charge in shape of security deposit to Resident Welfare Association along with interest."

4. Further, grouse of the allottees is that the colony now should be handed over to RWA after carrying out requisite repair and maintenance work along with already deposited amounts of ₹ 3,45,42,956/- collected as IFMS and Replacement Fund, and of ₹ 3,28,97,000/- taken on account of Maintenance charges along with interest. Complainants also referred to report submitted by local commissioners appointed by this Authority vide order dated 24.11.2020, wherein the deficiencies pointed out by the complainant association were accepted and recorded.



5. On the other hand, respondent's case is that the project had received Occupation Certificate in respect of 12 towers on 31.01.2011 and remaining towers on 31.08.2012. The colony is properly maintained and allegations by complainant regarding non-maintenance of colony are denied ...lifts and roads are in proper condition and there is no infrastructural problem in the colony. Further, maintenance of the colony was taken over by RWA on 1st November 2020 and now, same is being maintained by RWA.

6. Upon perusal of documents placed on file by both parties and careful consideration of oral arguments put forth by learned counsels, Authority observes that present matter has been heard fourteen times. On each date findings of the Authority were duly recorded and orders thereof have been uploaded on the website of the Authority. The five important orders are dated 21.08.2020; 14.10.2020; 24.11.2020; 23.12.2020; 09.02.2021. All these five orders shall be read as a part of this final order. A gist of all the orders and the final directions of the Authority in this matter are as follows:

- I. The disputes between the parties pertain to maintenance of the colony in question. Precise allegation is that lifts are in poor condition, STP is situated at entrance of colony and the foul smell



emanating from it causes inconvenience to the residents, roads are in dilapidated condition, plaster of the walls is coming off.

- II. The promoter has failed to handover complete charge of maintenance of colony to Resident Welfare Association. Promoters have not refunded the amount of ₹ 3,45,42,956/- collected as IFMS and Replacement Fund and an amount of ₹ 3,28,97,000/- on account of Maintenance charges to RWA along with interest.
- III. This Authority in Para 4, 6 of the order dated 24.11.2020 and Para 4- 5 of the order dated 23.12.2020 had observed as follows:

Order dated 24.11.2020

4. "Further fact remains that various facilities of the project are in shambles. The main reason for this is that the State Government despite having received the entire EDC from the promoters and allottees have failed to install requisite services like water supply system, storm water drainage system, sewage system etc. For having not provided these facilities the sewerage of the project is flowing in the open land which is making living for the allottees extremely difficult.

6. The Authority is of the considered view that till such time as the colony remains under the charge of the developer, the developer has to maintain properly and for which he is entitled to recover maintenance charges from the allottees. He could not have been allowed the facilities to deteriorate to an extent that the colony becomes uninhabitable. If any extra cost was to be incurred for strengthening the infrastructure etc; that cost could have been borne either out of IFMS or by asking the allottees to pay additional money.

Now the allottees are entitled to take possession of their colony but before that the developer should repair all the facilities make them functional. The respondent is directed to prepare an action plan for carrying out all the repair works to be completed within a period of 3 months. He should discuss the plan of action with the Association of Allottees.

It was briefly mentioned that an amount of Rs.3,45,42,956/- has been collected by the respondent towards IFMS and Replacement Fund. Respondent shall state precisely the amount collected in this regard. That amount shall be handed over to the association. Respondent should take action accordingly and report compliance to the Authority on the next date of hearing. Further, respondent should hold a meeting with the governing body of the association and discuss further modalities for handing over the project to Association finally."

Order dated 23.12.2020:

4. "After hearing both the parties, Authority is of the considered view that various facilities of the project are in shambles and allottees are entitled to take possession of their colony in good condition. So, respondent/developer should repair all the infrastructure & other facilities and make them functional to the satisfaction of all allottees. Authority further observed that certain directions were passed by the Authority on the last date of hearing but respondent fails to comply with the same. Therefore, he is burdened with an exemplary cost of ₹25000/- payable to the Authority for non-compliance of the said order.

As far as issues of handing over IFMS amount and maintenance charges to the Association is concerned, Authority directs the complainant-association to go through the following steps and submit documentary evidence that they are now a registered Association and can take over the project in interest of the allottees.

I.

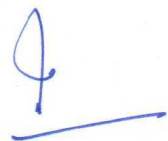
I. All the members shall form an association at the earliest and get themselves registered as per the Statute.

II. when an association is so formed, they may open a bank account to be operated by at least three joint signatories to be nominated by the association. Association shall then engage a technical team preferably comprised of an Engineer, an Architect and a Chartered Accountant to prepare detailed status regarding deficiencies in Infrastructure services, repair works of all towers of the project and tentative estimate for repairing of all the deficiencies.

III. All members will pay their respective charges of maintenance as well as IFMS to the association. Further, members of Association will submit affidavits accordingly.

IV. As per their assessment, total amount of IFMS collected by the respondent/promoter till date and whether any money given to Association by promoter/ respondent.

5. Complainant- Association shall take further action on these directions and submit their report to the Authority on the next date of hearing. Thereafter, Authority will issue necessary direction with regard to collection of maintenance charges. Further, respondent is directed to submit precise statement and relevant documents attested by the concerned bank for amount of ₹3,45,42,956/- collected towards IFMS and Replacement Fund by promoter atleast fifteen days before next date of hearing failing which penal action under Section 63 of the RERA Act 2016 may be initiated against the promoter/respondent for non-compliance of the order. He is also directed to submit repair plans in the registry of the Authority at least fifteen days before the next date of hearing and supply its advance copy to the complainants-association as well."



7. The Authority has perused the documents placed on record as well as various orders passed in the past, some of which have been reproduced above.

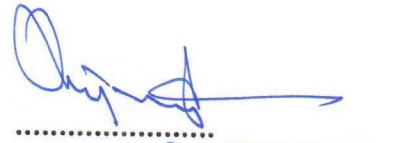
8. It can be summarized that on one occasion, the Authority had expressed its views that the respondents should maintain the project properly and then handover the same to the allottees. Another time it has been noted that Residents Welfare Association (RWA) of the project has already taken over the project for maintenance. The fact of EDC works having not been done by the State Government Agency despite lapse of 10 years period has also been recorded. The principle grievance of complainant at this stage is handing over of IFMS/replacement funds amounting to Rs.3,45,42,956/- and maintenance charges amounting to Rs. 3,28,97,000/- to the association to enable them to maintain the project at their own level.

9. The Authority observes that there are some contradictions in the observations made by the Authority on various dates. It takes note of the fact that the project was completed more than 10 years ago and the occupation certificate of the same had also been obtained at that time. Obviously, the infrastructure would get worn out during this period. Maintenance charges, IFMS/Replacement funds have been collected to repair such worn out facilities. If the aforesaid funds are placed at the disposal of RAW, they may carry out the requisite repairing and maintenance works at their own level.

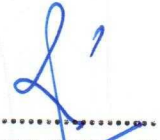
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10. Keeping in view above observations, the Authority is of the tentative view that now this matter deserves to be disposed of by giving directions to respondents company to handover the IFMS/Replacement funds and the money collected on account of maintenance of the project to RAW. Thereafter, RWA will become fully incharge of the project and they may deal with maintenance issues as they deem appropriate. Both parties will be hard before finalizing this order on these lines.

11. Adjourn to **31.03.2022**.



RAJAN GUPTA
[CHAIRMAN]



DILBAG SINGH SIHAG
[MEMBER]