

**BEFORE THE
REAL ESTATE REGULATORY AUTHORITY, PUNJAB,
SAS NAGAR (MOHALI)**

Complaint No.RERA/Pb/C-54/74
Date of Decision: 26.07.2018

Suraj Parkash Baweja

...Complainant

Versus


IRWO, New Delhi

...Respondents

ORDER

The complaint was filed by 72 members of the Residents Welfare Association of Rail Vihar IRWO, VIP Road, Zirakpur, Distt. SAS Nagar, Punjab on 18.11.2017, alleging arbitrary and unjustified steep escalation in the cost of flats offered to the members, who applied for allotment of flats in Rail Vihar Group Housing Scheme, originally launched on 1.10.2008 at Zirakpur and re-launched and re-opened from 15.7.2010 to 30.09.2010.

The brief facts of the scheme are that the Indian Railways Welfare Organization was registered under the Society Registration Act, 1860 on 25.09.1989, with the object of promoting Social Welfare Schemes, such as help to Railway Personnel, their spouses and personnel of undertakings under the Ministry of Railway in procuring a house for residence. The prime activity of IRWO is procurement of land throughout the country and execution of housing projects at those sites, to cater to the housing needs of the members on "No Profit No Loss" basis. Its Headquarter is located in the Railway Offices Complex, Shivaji Bridge (Behind Shankar Market), New Delhi. The society launched a Group Housing Scheme on 01.10.2008, at Zirakpur, but due to high cost of the apartments, the scheme got a very poor response. Accordingly, as per the brochure of the Society, "on request from various members


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for reduction of prices of D.U.s, the scheme has been restructured and the cost of different units has come down considerably". The scheme was reopened from 15.7.2010 to 30.9.2010. The revised scheme envisaged construction of 3 types of Dwelling Units (DUs) i.e. Type II, III & IV. Type II DUs were G+2 storey construction while Type III & IV were multi-storeyed (G+5/G+7 with lift). The tentative cost of DUs were as follows:-

Type	Approximately Super Area	Approximate Cost in Lakhs
Z/II	780 sq. ft.	15.59
Z/III	1150 sq. ft.	26.08
Z/IV	1413.84 sq. ft.	32.36

The basic contention of the complainants is that they applied for allotment of DUs, only because the brochure of the scheme stated considerable reduction in the cost of the apartments, from the cost quoted at the time of its original launch in the year 2008.

Phase II of the scheme was subsequently launched from 15.7.2011 to 17.10.2011 but the prices quoted for the scheme were considerably enhanced from the prices of flats of Phase-I. The respondent, from time to time, revised and unilaterally enhanced the prices of the DUs, as per details given in the tables below:-

PHASE-I						
Sr. No.	Type of Unit	Estimated Cost as per Brochure 2009 (in lakhs)	Revised Cost Dec.2012 (in Lakhs)	Revised cost May 2014 (in lakhs)	Percentage increase over the Original Price	Additional Cost Oct 2016 (in Lakhs)
1.	II	15.59	19.64	20.95	34.38%	0.77
2.	III	26.18	32.95	36.37	38.92%	1.17
3.	IV	32.36	40.43	44.62	37.88%	1.42

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PHASE-II				
Sr. No.	Type of Unit	Estimated Cost as per Brochure 2011 (in lakhs)	Revised Cost May 2014 (in Lakhs)	Additional Cost Oct 2016 (in Lakhss)
1.	II	20.00	21.73	0.77
2.	III	34.00	37.97	1.17
3.	IV	42.00	46.56	1.14

A perusal of the above reveals that price in respect of DUs in Phase-I have been enhanced sharply while there was only marginal increase in respect of DUs in Phase-II. Out of total 72 Complainants, 33 Complainants belong to Phase-I and 39 Complainants to Phase-II. The respondents were offered allotment of their DUs in June, 2015 followed by handing over the possession in September, 2015. The complainants are in continuous possession/occupation of their respective apartments since 2015. Subsequent to handing over of possession, another demand for additional cost towards the cost of subsidy for the EWS component of the scheme was made in October, 2016. Aggrieved by the continuous demand for enhanced payments, the complainants filed **CWP No. 6878 OF 2017** titled "**Suraj Parkash Baweja and others Vs. State of Punjab and others**" with Hon'ble Punjab and Haryana High Court at Chandigarh. The CWP was disposed off on 03.04.2017 with the directions to Director, Town and Country Planning to exercise powers under The Punjab Apartment and Property Regulation Act, 1995 and decide the same by passing order. The office of the Regional Deputy Director, Urban Local Bodies, Patiala on 7.11.2017 held that the project comes under the provisions of the Real Estate (Regulation & Development) Act, 2016 and were advised to file a complaint with this Authority. Accordingly, the complainants filed complaint with the authority on 18.11.2017. The reliefs sought by the complainants are as follows:-

- i. Compensation as applicable from September, 2015 for Phase-I and January, 2016 for Phase-II onwards, upto the date of the grant of the

Occupation Certificate and further compensation for malicious and illegal misrepresentations regarding the sale price of the flat/apartment.

- ii. Return of the total amount deposited with the Respondent Promoter alongwith interest and compensation prescribed under Real Estate (Regulation and Development) Act, 2016 as the action of the respondents have failed in its obligations towards the Applicant/Allottee.
- iii. In the alternative, refund all amounts of escalation made unilaterally and for adequate compensation to the complainant allottees and the penal clauses be invoked against the erring officials.

In response to the complaint, the respondent submitted their written statement on 03.02.2018 and listed out various reasons for enhancement of price quoted initially and also clarified various additional issues, in respect of mandatory approvals alleged to not have been obtained and issues in regard to less ground coverage/quality of material issued in construction in material used. The complainants, after due consideration of reply, filed objections/rejoinder on 23.02.2018, a copy of which was handed to the respondent. On 15.3.2018 the respondent filed rebuttal cum written arguments copy of which was duly given to the complainants. Once again the complainants submitted written submissions on 2.4.2018. The matter was thoroughly argued and some additional information was sought by the authority on 19.06.2018 which was duly submitted by the respondent on 28.06.2018.

All the documents submitted by both the sides have been thoroughly examined. Based on the documents submitted and the detailed arguments from both sides the following conclusion can be drawn:-

- i. A case for relief is made out in favour of complainants who had booked their flats solely on the basis of the claim made by the respondent in the brochure at the time of reopening of the scheme on 15.07.2010, whereby it was specifically mentioned that "on the request from various members

for reduction of prices of DUs the scheme has been restructured and the cost of different units has come down considerably". They were lured by the reduced prices and responded to the scheme being opened for non railways employees in view of poor response to the earlier scheme launched in 2008. However, the respondent, despite being a welfare organization, repeatedly enhanced the cost of flats unilaterally in respect of Phase-I. The same was done without prior consent of the members and resulted in an escalation of 34-38% over the original price. The respondent has taken the plea that they provide houses, as a social welfare measure, on no profit no loss basis and hence had to pass on the increase in the cost of land as well as construction on account of certain un-foreseen circumstances. However, they failed to justify and explain the reasons for the quantum of increase in respect of 112 DUs falling in Phase-I as its construction was initiated on 7.6.2010. Hence, the steep enhancement in the cost of these flats is totally unjustified.

- ii. The complainants raised some points in regards to quality of construction, non-receipt of mandatory permissions/approvals, less ground coverage and installation of second lift in the multi-storeyed towers. The respondent could fully explain the same and minor variations, if any, do not have a material effect on the cost of the flats, contrary to the claim made by the complainants that cost increased on account of avoidable expenditure on additional lift etc as well as less ground coverage.
- iii. The complainants did not raise any objection to the additional payments asked for by the respondent in Dec, 2012 as well as May, 2014. Without contesting the same, they made the payments and took possession of their flats in 2015. They all have been continuously staying in their respective flats and enjoying their property. Principal of "Estoppel" shall apply in this case in respect of all payments made by the complainants before taking possession as they are in continuous

possession of the same and enjoying their property for almost last 3 years.

Accordingly, the following is ordered


- A. No relief of refund/interest/compensation is made out to the extent of amount paid on or before taking possession of the DUs in year 2015.
- B. Since, the cost of flats of phase-I was unilaterally enhanced twice and Phase-II once before offering the possession, another demand for additional cost made in October, 2016, as follows, after handing over possession of flats in September, 2015, is totally unjustified:-

Sr. No.	Type of Unit	Additional Cost Oct 2016 (in Lakhs)
1.	II	0.77
2.	III	1.17
3.	IV	1.42

Hence, the complainants, who were allotted DUs both in Phase-I and Phase-II shall not be liable for payment of additional cost, as demanded in October, 2016, if not paid already. In case the same has already been paid, no refund shall be made out in favour of such complainants.

The complaint is accordingly disposed off. File be consigned to record room and copy of order be provided, free of cost, to both the complainant and the respondent.

SAS Nagar (Mohali)
Dated: 26.07.2018


(SANJIV GUPTA)
Member
RERA, Punjab
26/07/18