

BEFORE THE ADJUDICATING OFFICER
THE RAJASTHAN REAL ESTATE REGULATORY AUTHORITY,
JAIPUR

Complaint No. RAJ-RERA-C-2023-6456

Mr. Rakesh Shringi S/o Mr. Gajanand Shringi R/o Mala Road,
Saubhag Complex Kota Rajasthan-324002

.....Complainant No. 1

Mr. Kapil Shringi S/o Mr. Bhuvnesh Shringi R/o 252, near
Bhagat Singh Colony, Dadwara Arjunpura, Kota Rajasthan-
324002

.....Complainant No. 2

Versus

M/s Aakriti Landcon Pvt. Ltd. registered under Companies
Act, 2013 having registered office at MBS Nagar, Kota,
Rajasthan through its authorized representative.

.....Respondent No. 1

Mr. Lalit Kishore Chaturvedi, R/o B-89 Indra Vihar Kota,
Rajasthan- 324005

.....Respondent No. 2

Mr. Naresh Sharma, R/o Shreenath Estate, Station Road,
MBS Nagar, Kota (Rajasthan)

.....Respondent No. 3

Mr. Purshottam Dayal Dubey R/o Flat No. 602 Shrinath
Enclave Station, Kota, Rajasthan-324002

.....Respondent No. 4


(R. S. KULHARI)
Adjudicating Officer
Rajasthan Real Estate Regulatory Authority
Jaipur



Complaint No. RAJ-RERA-C-2023-6457

Mrs. Abha Sharma W/o Mr. Ajay Sharma R/o Flat No. A-101,
Kherli Phatak, Station Road, Kota, Rajasthan

.....Complainant

Versus

M/s Aakriti Landcon Pvt. Ltd. registered under Companies
Act, 2013 having registered office at MBS Nagar, Kota,
Rajasthan through its authorized representative.

.....Respondent No. 1

Mr. Lalit Kishore Chaturvedi, R/o B-89 Indra Vihar Kota,
Rajasthan- 324005

.....Respondent No. 2

Mr. Naresh Sharma, R/o Shreenath Estate, Station Road,
MBS Nagar, Kota (Rajasthan)

.....Respondent No. 3

Mr. Purshottam Dayal Dubey R/o Flat No. 602 Shrinath
Enclave Station, Kota, Rajasthan-324002

.....Respondent No. 4

Present

Hon'ble Shri R.S. Kulhari, Adjudicating officer

Mr. Mohit Khandelwal, Adv. present for Complainant.

Ms. Priyanshi Katta and Mr. Ankur Jain, Advocate present for
Respondent No.4.

Date: 10.07.2024



ORDER

The facts of the above two complaints are similar in nature and they belong to the same project therefore, these are being decided by this common order.

The present complaints have been filed under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as 'RERA Act') read with Rule 36 of the RERA Rules, 2017 for seeking compensation.

2. The complainants have booked their respective flats in the project of the respondent named as **"Shreenath OASIS"**. They have deposited the total sale considerations as agreed between the parties and sale deeds have been executed in their favour. The possession of the respective flats have already been handed over to the allottees. The relevant details are summarized as under:-

Sr. No.	Complaint No.	Flat No.	Amount	Agreement to sale	Sale deed registered
1.	2023-6456	A-405	32,55,000	05.07.2019	04.12.2019
2.	2023-6457	A-101	36,00,000	21.09.2017	26.02.2020

3. The grievances of complainants are that the respondents have offered several amenities to them





namely High speed elevators, Parking space, Community centre, Gymnasium, Fire fighting system, Water harvesting system, Security system, DG power back up for common areas and other various facilities but they have not provided even a single amenity to the complainants. As a result the complainants are facing inconvenience and mental harassment as also the financial loss because of the false assurances given by the respondents and their failure to provide the amenities as promised. Accordingly, the complainants have sought compensation to the tune of Rs. 15,00,000 on account of deficiency in service, negligence and harassment being caused by the respondent and Rs. 2 lacs as cost of litigation in each complaint.

4. The notices were issued to the respondents for appearance but they have chosen not to appear before this Tribunal despite service. Therefore, they were proceeded ex-parte vide order dated 06.12.2023. However, Ms. Priyanshi Katta, advocate appeared on behalf of respondent no. 4 and filed authority letter R-5 and sought time to file an application for participating in the proceedings. Thereafter, an affidavit in personal capacity of Purshottam Dayal Dubey alongwith copies of various documents have been filed but no formal application for setting aside

ex-parte order was submitted. However, in the interest of justice, vide order dated 08.05.2024 the affidavit alongwith documents were taken on record. Yet no separate reply had been filed on behalf of respondent no. 4 to counter and rebut the facts as alleged in the complaints. Rejoinder was also filed by the complainants in reply of the affidavit of respondent no. 4.



5. Learned counsel for the complainant submitted that despite clear demonstrations in the brochure and promise made by the respondents, no amenities and common facilities have been provided. In absence thereof, the complainants are being deprived of all such facilities. Therefore, they are entitled to get adequate compensation from respondents for violation of Sections 12 and 18 of the RERA Act.
6. The learned counsel further canvassed that the allegations made by the complainants have not been rebutted by the respondents in any form and are supported by the documents. Only an affidavit of Mr. Purshottam Dayal Dubey has been filed in his personal capacity stating that he is not liable for any act of the company but defence so taken is not tenable. The directors including Purshottam Dayal Dubey were looking after the day-to-day affairs of the company. The sale deed was executed in favour of the



complainants by Mr. Lalit Kishore Chaturvedi (respondent No. 2) and the deponent director Mr. Purshottam Dayal Dubey. All the directors have connived to defraud the complainants and all other allottees to deprive them from common facilities. They have received the whole sale consideration and have not provided the facilities. Therefore, the principle of lifting of corporate veil is applicable in the circumstances of this case. Further, Section 69 of the RERA Act also provides for punishment to the directors of the company. Therefore, all the respondents are liable for the fault committed by promoter.

7. Learned counsel appearing for respondent no. 4 has not uttered any word with regard to the amenities/facilities being provided or not provided to the complainants or about any reason for not providing the same. However, the learned advocate emphasized broadly on the aspect that the respondent no. 4 is not liable in personal capacity or as a director of the company because it is only the company who is liable for any act or omission. The other directors namely respondent nos. 2 and 3 have deceived the respondent no. 4 and even the flats allotted to the family members of the respondent no. 4 were fraudulently sold to other persons. Thus, virtually respondent no. 4 Purshottam

Dayal Dubey has been made to suffer the financial losses. The learned counsel has referred the following judgment to contend that the directors can be held liable in personal capacity only when the doctrine of lifting the corporate veil can be invoked which is not applicable in the present case.

- (i) Balwant Rai Saluja & Anr. V/s AIR India Limited And Ors. 2014 SCC OnLine SC 638.
- (ii) Mukesh Hans & Anr. V/s Smt Uma Bhasin & Ors. 2010 SCC OnLine Del 2776
- (iii) Manharlal Hirjibhai Virdiya V/s Assistant Commissioner of Commercial Tax R/Special Civil Application no. 12733 of 2021 decided on 08.10.2021 Hon'ble Gujarat High Court.

8. Having heard the learned counsels for the parties and considering the material available on record it is evident that complainants have been allotted the respective flats on agreed sale consideration. The complete sale consideration had been deposited by them and thereafter sale deeds have been executed and the possession of the respective flats have also been handed over to them. The dispute is with regard to providing the promised amenities including club house, common utility area, lawn etc. The respondents have agreed in agreement for sale to provide club house, lifts, Genset, cameras etc. as mentioned in



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schedule 6 of the said agreement. Such facilities were also mentioned in the brochure issued by the respondent. The colour photographs submitted by the complainants in respective files go to show that there is plenty of garbage and no facility whatsoever like lawn, club house etc. is there. Thus, it is more than clear that the respondents had agreed to provide various amenities in the project but those have not been provided by them.



9. The respondents have not rebutted the pleadings made by the complainants and even they did not appear and dared to say some words in their defence about their deficiency in service. Surprisingly, respondent no. 4 has filed an affidavit in his personal capacity and even in that affidavit he has not uttered a single word about such amenities as to whether those were provided by the promoter. The affidavit speaks largely on the dispute between the directors of the company and alleged conspiracy or the fraud committed by Lalit Kishore Chaturvedi and Naresh Sharma, the other directors. Suffice it to say that, this tribunal has nothing to do with the inter se dispute between the directors of the company, nor it is within the domain of this Tribunal to ponder over such controversy. The jurisdiction of this Tribunal falls for deciding the dispute between allottee and the promoter particularly

for awarding the compensation in view of Section 71 and 72 of the RERA Act and not beyond that.

10. As such, the averments and documents submitted by the complainants remained totally un rebutted so there is no reason to disbelieve them. On the basis of the averments and the documents it is proved that the respondents have not provided the amenities as agreed by them in brochure and the agreement for sale thereby, they have violated the provisions of Section 12 and 18 of the RERA Act entitling the complainants to get the adequate compensation.

11. The argument that Purshottam Dayal Dubey is not liable as director or in his personal capacity, does not hold much water. It is true that in normal course, the directors of the company are not liable in personal capacity as the public or private limited company is a separate legal entity. But directors can be held liable after invoking the doctrine of "lifting the corporate veil" and such invocation depends on the peculiar facts and circumstances of each case. I respectfully agree with the proposition laid down by the Hon'ble Supreme Court in the above referred case in which the Hon'ble Apex court has laid down the principles on the basis of which the doctrine of "piercing the corporate veil" can be invoked. It has been held in Para 71 and 74 of the judgment of Balwant Rai Saluja and Anr. V/s Air India



Limited and Ors. (supra) that the corporate veil can be pierced if there is some impropriety which must be linked to avoid liability and there must be control of company by the wrong doer. Further, such principle should be applied in the restrictive manner. The Hon'ble Gujarat High Court has also propounded on the similar lines that the corporate veil is not to be lifted lightly which may be invoked on the basis of strong factual finding.



12. In the instant case, as stated above the respondents have not provided the basic amenities required for common use by the allottees despite there being clear promise and valid legal contract. Thus, their intention was to deceive the complainants from the very beginning. The directors have not come up with the defence that they have not agreed for such facilities nor they have shown that these facilities were provided or there were any compelling reasons for not providing the same or with any road map to provide the same on the spot in near future. Thus, it is apparent case of impropriety coupled with avoidance of the liability. Secondly, all the three respondents were actively involved in the day-to-day affairs of the respondent promoter company which is fortified by the fact that the sale deeds were executed in favour of the complainants by respondent nos. 2 and 4.



13. Thus, they have not only enjoyed the fruits of the subject project but have also had an active role. Therefore, they are jointly and severally liable to make good to the complainants for inconvenience and loss caused to them because of deficiency in service caused by the promoter. Accordingly, this is the fit case where the doctrine of piercing corporate veil can be invoked. Otherwise it would be detrimental to the allottees and every promoter or the company may deceive the allottees under the garb of the corporate veil and the directors may enjoy the benefits of the hard earned money of the allottees without their being any responsibility in the personal capacity.

14. Thirdly, Section 69 of the RERA Act provides that every person in charge of or responsible for conduct of business of company shall be liable for acts and omissions committed by the company. The proviso to Section 69(1) does not come to the rescue of the respondents because he has not pleaded that the omissions was done without his knowledge or he has exercised all due diligence to fulfill the promise. So the promoter and all the respondent directors are liable for the violation committed by them with regard to providing the common facilities.

15. Adverting to the assessment of compensation, the complainants have demanded compensation in lump

sum but in my opinion the compensation can be awarded on the basis of the inconvenience and financial loss caused to the allottees. In the case at hand, the complainants are deprived of using the club house in which various facilities have been narrated. They are also deprived of facility of park and some other ancillary amenities which are being faced by them on day to day basis until the same are provided by the respondents.



16. Considering the facts of the matter in its entirety I deem appropriate to allow Rs. 1000 per month to each of the allottees from the date of possession till the facilities of club house and lawn as agreed are provided by the respondent. Apart from this, the complainants have suffered the mental agony because of deficiency in service on the part of the respondent so they are entitled to compensation on this count. The complainants have incurred the legal expenses for filing this complaint so they are also entitled for adequate cost of litigation.

17. In view of the above, the complaints are allowed in the following manner:-

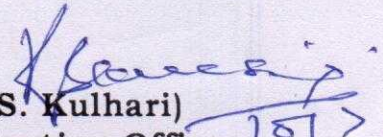
- (i) The respondents shall pay Rs. 1,000/- per month to each of the allottees from the date of possession till the facilities of club house and



lawn as agreed are provided by the respondents to the complainants.

- (ii) The respondents shall also pay Rs. 30,000/- towards factum of mental agony and Rs. 20,000/- towards cost of litigation to each of the allottees.
- (iii) The compliance be made within 45 days from today failing which the complainants shall be free to file execution applications.
- (iv) The order be uploaded on the website of RERA and also sent the parties. File be consigned to records.

Date - 10.07.2024


(R.S. Kulhari)
Adjudicating Officer 10/7/24
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