

SANDEEP VIHAR (AWHO) WELFARE AND MAINT SOCIETY, GHS 79, SECTOR 20, PKL

RE-ADJOURNED ANNUAL GENERAL MEETING HELD ON 12 NOV 2017

MINUTES OF THE PROCEEDINGS

Attendance

1. Re-adjourned Annual General Meeting was held on 12 Nov 2017, which was attended by 83 out of 465 eligible members (18% attendance against required Quorum of 15 %).

Agenda

2. (a) Welcome Address by President
- (b) Passing of Minutes of last meeting.
- (c) Presentation of Annual Report.
- (d) Consideration and approval of details of accounts.
- (e) Discussion on Agenda Points
- (f) Discussion on points received from members
- (f) Any other points permitted by President.

Address by President

3. The President, Col R S Rathee welcomed all members and thanked them for sparing their valuable time to attend the AGM. He pointed out that there were some very important issues on the Agenda which needed resolution. He also thanked everyone for the overwhelming mandate given to the management. He assured that they would live up to the commitments made by them.

4. He pointed out that though the Team has been in office for only about 10 weeks, considerable progress has been made on the vital issues which were pending when they assumed office. Some of the major actions were enumerated.

5. Amendment of Society Bye Laws. The Bye Laws should have been amended to bring in the General Body System when the Act was amended in 2015. At most they should have been amended earlier this year, while a Collegium was still in place and Quorum was not an issue. However, failing these, the Management had to get the Bye Laws amended through a Special Resolution. These have since been uploaded onto the site of the Haryana Government, as per prescribed procedure.

6. Updating Records on Haryana Govt Site. In 2015 Haryana Govt had mandated that all communications and details pertaining to Societies would be uploaded on a specially designated website. This is another aspect which had not been progressed. The Management has managed, through extensive liaison with the Registrar's office, to clear our backlog of postings and are now nearly up to date as far as our records go. However, one aspect which still needs uploading is the personal details of all members. These are not available with the Society. Till these are uploaded, members' name will not figure in the Registrars records.

7. A specially designed form is being communicated by Email to all addressees. Members were requested to fill and submit the form so that their details could be uploaded along with the forthcoming Annual Return

8. Sports complex. The contracts for Swimming and Tennis coaching have been terminated. The contract for Gymnasium will be terminated on 30 Nov. After that the Gymnasium will be run for residents under arrangements of the Society. As far as Swimming Pool is concerned, its operation under Society arrangements next year, will be subject to repairs of leakage in the pool, repair of tiles and filtration plant. The issue would be suitably addressed.

9. Renewal of Contracts. All contracts for Shops had been renewed with increased rentals, including those which had terminated as far back as May 2017.

10. Repair Procedure. There was considerable dissatisfaction with the repair procedure, especially with regard to the speed of execution and charges by repairmen. The procedure has been streamlined. The Management will ensure that complaints recorded in the Complaint Register are attended to on the same day. The rates for specified tasks have been approved and promulgated through an SOP which has been widely disseminated and is available on the Society website.

11. Property Management. In the absence of updated records of assets procured by the Society, a BOO was ordered with members from the previous and present managements to identify and take on charge all such property. However, members of the previous management expressed their inability to join in. The same has now been undertaken by the Management. All property is being located and will be taken on charge.

12. Fire Fighting System. Block wise assessment of problems in the Fire Fighting system has been diligently undertaken by Maj Luddu. The process of repairs is commencing. The smaller repairs will be executed under the existing financial sanction. For the major expenditures, on account of rectification of changes in design, which had been undertaken at various stages, the Management would revert to the House during the Budget GBM

13. Col S K Chauhan stated that there had been no changes in the original design except in three blocks where there was heavy seepage in the Fire Tanks. The President intimated that this aspect would be checked again.

14. Lifts. There has been considerable improvement in the servicing of Lifts due to stricter enforcement of contractual provision with the contractor. Within the constraints of our reduced spending on this aspect, there is not much more which can be done. Change of carpeting of Lifts and internal painting and installing of mirrors is being undertaken.

15. Security. Concerted efforts have been made to tighten security. There has been a considerable reduction in entry of outsiders. However, the constraints of a single entry point through which every vehicle has to enter hamper detailed scrutiny of every vehicle. A proposal to decongest the gate by installing Boom Barrier is under consideration.

16. Lt Col A C Sharma opined that the sentries at the Gates were not diligent in performing their duties. The President confirmed that this issue would be addressed.

17. Arboriculture. The President observed that intensive effort was going on in the Lawns. We have reached the planting stage of saplings for the winter season and are sure that we will have an ambience to be proud of by Jan. A small herbal garden is also being created in the space created by

clearing the junk around the Water Tank. Col Bali has also offered surplus saplings to members on first come first serve basis.

18. Cleanliness. There has been a significant improvement in the cleanliness of the Society. The internal cleanliness of Blocks is directly linked to the wet mopping, which is presently done biweekly. In order to ensure that this aspect is properly implemented, The Management is issuing a Block wise diary to the Safaiwala who will get it signed by the Block IC after completing his task.

19. Block ICs. The responsibilities of Block ICs have been formulated and assurance of all support from the Management has been provided. Block ICs are crucial in monitoring major issues in each block. He thanked Block ICs for their selfless efforts.

20. Use of Digital Media. As promised, use of digital media has been optimized in order to ensure that members are kept informed in detail on all issues. Immediate information is conveyed through Email, WhatsApp and bulk SMS, while a permanent record of all information is available on the website 'sandeepans.com'.

21 Review of Existing Financial Sanctions. There were certain projects for which funds had been sanctioned during the GBMs held on 23 Oct 2016 and 12 Feb 2017, which the Management wished to discontinue.

(a) Rs 26 Lakhs was sanctioned for CCTV Cameras of which Rs5.8 Lakhs has been expended. It is proposed to discontinue the project here.

(b) Rs 4 Lakhs for Installation of Split ACs in Community Centre. Installation of split ACs is not going to increase revenue generation, hence not being progressed.

(c) Rs 2 Lakhs for Ramp for CSD - Technically not feasible without major structural alterations, which will cost much more. In any case this should correctly be undertaken by Comd HQ when required.

(d) Rs 1 Lakh has been sanctioned for fixing of engraved marble slabs on guest / paid parking. A cheaper substitute of painting is being resorted to.

22. These measures will lead to a saving of at least 27 Lakhs.

23. Col S K Chauhan clarified that the sanction for Rs 26 Lakhs for CCTV Cameras pertained to FY 2016-17 and the remaining to FY 2017-18

24. Other Activities

(a) Revival of Music Plaza

(b) Clearing of Sewerage and Storm Water Drains

(c) Repair of covers of underground cables and sewers.

(d) Clearance of blockages in water pipelines

(e) Painting of Fire Hydrants and Electrical Junction Boxes

(f) Clearance of Peepal growth from vents

(g) Repair of VCB

- (h) Repair of walking paths in the Park
- (j) Repair of Pillar of E1 Block
- (k) Emergency repair of loose grit wash to prevent further deterioration.
- (l) Installation of curved mirror near Gate No 2 to prevent accidents.

Immediate Actions in Hand

- 25. (a) Opening of another entrance and installation of Boom Barrier at Gate No 1
- (b) Repair of seepage in Swimming Pool if it is to be used next year.
- (c) Installation of Curved Mirrors near E2 and E6 blind turnings.
- (d) Work to make the Fire Fighting System functional.
- (e) Replace the flooring of Lifts and spray paint where necessary.
- (f) Overhaul the Lifts in very bad state.

Vexing Issues which need resolution

Parking Discipline

26. On taking over the management had encouraged self-regulation in parking, hoping that discipline would prevail. However, it is seen that the number of vehicles being parked unauthorisedly is increasing. Further, some members are parking their vehicles extending all the way on to the road. This is not acceptable. Members should only park in their authorized or paid parking slot and also advise their guests about where to park when they visit. In case a member's car does not fit into his parking then he should get a paid parking. Starting from the 15th the management shall become proactive in identifying defaulters and clamping vehicles, as was the earlier practice. A fine of Rs300 will be levied on clamped vehicles.

27. Decision. This was approved by the House

Alterations to Flats

28. There is an increasing trend to undertake major alterations in Flats. Some of these indiscriminate works cause harassment to neighbors, as well as weaken the building structurally.

29. The Apartment Ownership Act and Society Bye Laws requires all owners to intimate details of any proposed alterations in writing to the Management and to commence work only after approval is given. HUDA Bye Laws require that any change to the originally approved design can be executed only after their approval. The Management, with the approval of the House, intends to enforce this provision immediately and will issue an SOP on the procedure including the timings of work, dumping of Debris, Pass procedure and obtaining final clearance after completion of work.

30. The President agreed that there might have been excesses carried out in the past. However, two wrongs did not make a right and the Management would not accept these as a precedent

31. Decision. The proposal was approved by the House

Blocking of Parking Space.

32. Another recent trend is of putting barriers /chains on parking spaces. This obstructs movement as well as prevents proper opening of cars in neighbouring slots. It is proposed that the House approve the request to all such owners to remove these barriers by 15 Dec, failing which this to be undertaken by the Society at their cost.

33. Decision. It was agreed that all members who had placed obstructions at their parking slots should remove the same, failing which the Management was authorized to carry out the task at the defaulting member's expense.

Passing of Minutes of the Last Meeting Held on 12 Feb 2017

34. The President stated that the Minutes had already been circulated through Email and placed on Society Website and Society Notice Board.

35. The Minutes were proposed to be passed by Col B S Chaudhary and seconded by Brig Sarjit Singh.

Presentation of Accounts, Auditors Report and Internal Audit Report.

36. The President stated that the Account State, Auditors Report and Internal Audit Report had been disseminated through digital formats and placed on Society Notice Board. The Balance Sheet was also available with all present.

37. The Accounts, Audit Report and Internal Audit Report were proposed to be passed by Lt Col J S Jeryal and seconded by Brig Sarjit Singh.

Discussion on Agenda Points

Payment of 3rd Land Enhancement.

38. The President opined that this issue had become a ticking time bomb with interest liability increasing at 15% pa. Concerted efforts had been made, including through personal meetings with AWHO at Delhi and intervention of HQ Western Command to convince AWHO to organize payment. Since these efforts had not succeeded, modalities to pay up our dues by 30 Dec 2017 had been worked out.

39. Summarising the background of the issue, he stated that the 3rd Land Enhancement was required to be paid by 13 Feb 2016, failing which, interest at 15% per annum continues to be levied. AWHO had declined to get involved with collection of this payment.

40. The then Collegium, at the behest of the Management, had decided to pend payment and instead await outcome of the political endeavours of the Joint Action Committee. It was to be noted that, we are not a party to any legal case against the payment. Consequently, payment has still not been made and the individual liability now stands increased by 30 % of the original amount and continues mounting.

41. The current Management again endeavoured to make AWHO assume responsibility for collection of the payment, through personal meeting with Offg MD, as well as through intervention of HQ Western Command, but the same has not been agreed to by them.

42. In the financial interests of the members, the Management proposes to organize collection of the amount currently due from individual members and deposit the same with HUDA. Details of the dues, as on 31 Dec 2017 have been provided by AWHO and disseminated to all.

43. The proposed modalities were:-
- (a) All members to deposit their dues in a specially designated account by 10 Dec 2017.
 - (b) Part payment was not acceptable.
 - (c) Members not making payment at this time would be responsible to settle their own dues with HUDA.
 - (d) Members who did not pay the 3rd Land Enhancement would not be eligible to get NOC for transfer/registration of Flats
 - (e) Such members would be deemed to be in default of Society dues and would not be entitled to vote or other privileges of membership.
 - (f) Such members would not be permitted to rent out their Flats.
 - (g) These provisions would also apply to the 12 members who had not paid the 2nd Land Enhancement and because of whom we were placed in the present predicament.

Discussion

44. Lt Col Kulwant Singh stated that the Society had made a representation to HUDA under the signatures of Lt Col J S Jeryal and enquired whether this aspect had been kept in mind while discussing the payment issue with AWHO. He further opined that payment to HUDA should be made as per these calculations and not in full.

45. Brig D K Mohan clarified the following issues:-

- (a) Our representation to HUDA was made in March 2016 and had been rejected by them in writing as long back as April 2016.
- (b) During the last three GBMs members had been assured by the erstwhile management that the issue of reduction of dues was being actively pursued by the Joint Action Committee and that the outcome of their efforts should be awaited. In actual fact, there was no progress on their actions and till date no case had been filed. Even if it were to be filed, we would not be a party to it. Further, the appeals filed by the other Societies had reached conclusion, without any reduction in the amounts claimed by HUDA.
- (c) In case only part payment is made, our interest liability will continue to increase. So in the event that our contention is not acceptable, we would end up paying even more.

46. Lt Col Kulwant Singh observed that in the case of 2nd Land Enhancement, a refund had been made by HUDA after persistent efforts. Brig D K Mohan pointed out that in that case the amount had first been paid in full and the fight for the refund took place later, which fructified in refund with interest.

47. Brig SMS Rathaur, Col B S Chaudhary and Col N S Malhan felt very vehemently that the erstwhile Management and Collegium had no authority to take decisions on issues which affected members financially. These decisions had been taken without keeping the members informed. As a result not only had the interest element increased by nearly 30%, but the refund of interest on 2nd Land Enhancement had been held in abeyance by AWHO.

48. Decision. It was decided that :-

- (a) In view of the AWHO refusing to get involved in collection of the 3rd Land Enhancement, the same be organized by the Management. The proposals made by the President were approved.
- (b) The Society should pursue the case for reduction of the amount with HUDA.
- (c) AWHO be requested to launch recovery proceedings against the 12 members who have not paid the 2nd Land Enhancement, and in due course against those who do not pay the 3rd Land Enhancement.

Recovery of Interest of 2nd Land Enhancement from AWHO in favour of Owners

49. The President stated that refund of interest on 2nd Land Enhancement by AWHO has been a contentious issue for long. In the case before NCDRC, the Society has submitted that this amount should be refunded in favour of the Society for merging in Corpus Fund and not to the owners

50. In April 2016, AWHO offered to refund the entire amount of approx Rs 77 Lakhs directly to owners through direct transfer and asked individual owners for their account details. This was not conveyed to members. Instead, the Society, through a decision of the Collegium, decided to still insist on payment in its favour and further reinforced this issue in the ongoing case. After this , AWHO decided to freeze payment and await outcome of the case.

51. So as of now, the issue of refund of interest on 2nd Land Enhancement and the major issue of return of MI Room building to us by AWHO are linked to the outcome of the case before the NCDRC

52. The Management had co-opted Brig D K Mohan in determining the various options available to the Society to find an impasse to these vexing issues. The Management was not advocating any course of action, but was placing the issue before the House for deliberation.

He requested Brig DK Mohan to brief the House on the status of the case

Presentation on case before NCDRC

53. Brig D K Mohan reminded everyone that a Brief on the case before the NCDRC had been Emailed to all members and had also been issued to all participants. (Details can be read on sandeepans.com)

54. In our case before the NCDRC, the following issues were raised:-

- (a) Refund of Corpus amount
- (b) Interest on refund of Land Enhancement inordinately delayed by AWHO.
- (c) Refund of interest released by AWHO and still retained by AWHO.
- (d) Delay in giving possession.
- (e) Rebate benefit for timely completion of project.
- (f) MI Room
- (g) Poor Quality of construction.
- (h) Payment of Parking Slots.

55. He proceeded to enumerate each issue in detail.

Refund of Corpus Amount

56. Our Case. AWHO had collected Rs 20,000 from each owner at the time of handing over towards a Corpus Fund for the Society. This totaled Rs1,11,20,000/-. AWHO returned this amount in stages between Oct 2009 and Mar 2014. A total amount of Rs 1,18,24,417 has been returned by them. We are entitled to interest at 10% pa till 01/5/2015 (date of filing the case) and thus should get an amount of Rs 54,56,822.

57. AWHO Rejoinder. Out of the collected amount ,Rs 5,00,000 was utilised for opening the bank account of the society and another Rs 3,56,722 was expended on electricity, security and maintenance etc. during the interim period. These have not been considered by the Society while working out their receipts. When these amounts are added to Rs 1,18,24,417, it will emerge that a total of Rs 1,26,81,139 has been refunded. Further the Society has claimed interest @10% pa by Compounding whereas, AWHO has received only 3.5 % pa interest. Hence the amount has been paid in full with simple interest @ 3.5 % pa.

58. Comments. Here the issue which needs to be determined is whether interest at 3.5% pa or 10% pa will be accepted by the Court and also whether compounding will be acceptable.

Interest on Refund of Land Enhancement Inordinately delayed and Interest Released by HUDA and still retained by AWHO.

59. Our Case.

(a) HUDA had refunded an amount of Rs 2,96,06,720 to AWHO for refund of 2nd Land Enhancement to owners in Feb 2012. The refund was made to owners in August 2012. Thus AWHO should pay interest @ 4% pa amounting to Rs 5,92,134 **to the Society** for the period funds were held by them.

(b) Interest @ 15% pay for 566 days on the above refund was refunded by HUDA in Oct 2012, totalling Rs68,86,604. Out of this, Rs 6,88,660 was retained as TDS. Thus Rs 61,97,944 has actually been received by them. This has been retained by AWHO.

(c) AWHO should refund the following amounts **to the Society for merging into Corpus Fund:-**

(i) Interest on delayed refund to owners — Rs 5,92,134

(b) Interest refunded by HUDA including TDS and interest thereon at 10 % pa- Rs 77,97,523

60. AWHO Rejoinder.

(a) On 22/02/2012 a refund of Rs 2,96,06,720 on account of 2nd land enhancement was made by HUDA. On 31/10/2012, an amount of Rs 61,97,944 as interest was refunded by HUDA after deduction Rs 6,88,660 as TDS.

(b) The principal amount of Rs 2,96,56,720 was refunded to allottees

(c) The interest payment to HUDA was made by AWHO and dues collected later from allottees. This was done to avoid default in payment and extra liability to allottees. Therefore the allottees have no claim over the interest element. Further, 12 allottees have still not paid this amount and it remains a liability of AWHO.

(d) Even otherwise ,this claim is time barred being more than 3 years old.

61. Further Developments

(a) In April 2016, AWHO offered to make payment of Rs 77,58,715 directly to owners and not to the Society. They asked the Society to publicise this information and advise members to forward their bank details for direct transfer of the dues. This was not done. Instead, it was reiterated that the dues be refunded to the Society only.

(b) In June 2017, with members still unaware of the AWHO offer, a Supplementary Affidavit was lodged in the ongoing case reiterating the stand that the refund is to be made to the Society.

(c) After this, AWHO has decided to freeze the payment pending outcome of the case.

62. Comments. There are two distinct aspects to the refund of interest on 2nd Land Enhancement. One pertains to the interest on the delay in refunding the Principal amount by AWHO. And the other pertains to the denial of refund of interest paid by HUDA for the delay on its part.

(a) As far as the interest on the Principal amount is concerned, AWHO claims that the time taken by them was legitimate since the amount due to each individual, their current addresses etc had to be ascertained before cheques could be sent.

(b) As far as the payment of interest refunded by HUDA to owners is concerned, in April 2016, AWHO offered to make payment of Rs 77,58,715 directly to owners and not to the Society. This included our entire demand. They asked the Society to publicise this information and advise members to forward their bank details for direct transfer of the dues. This was not done by the then Management. The payment is now held in abeyance pending the outcome of the case. It is to be noted that the AWHO offer has nowhere been submitted before the NCDRC by either party. Thus if there is an adverse decision in the case, there is no liability for AWHO to refund the amount.

Delay in Giving Possession.

63. Our Case.

(a) As per Technical Brochure, Flats should have been handed over in Nov 2005, but were actually handed over in Jun 2008. Due to the delay, the cost has increased by 60% over original cost. We have asked for compensation for owners for the increased cost of project by more than Rs 2 crores with 15% interest.

(b) We have based our claim on the judgement given by NCDRC in the case of *Col Ajmer Singh vs AWHO* in respect of delayed allotment in Sector 27, Panchkula Project.

64. AWHO Rejoinder. Reasons for the delay have been given out in detail explaining the circumstances which were beyond their control. Hence they have referred to a *force majeure* type of situation. They have also reiterated that payment schedules were constantly revised with the stages of construction.

65. Comments.

(a) Our case is based on the case of Col Ajmer Singh vs AWHO where relief was accorded for delay in the period of handing over. In applying the case to ourselves , the following facts need to be kept in mind :-

(i) The delay in their case was 5 years while it was only 2.5 years in ours.

(ii) The court accepted that many circumstances were beyond control of AWHO and gave relief only for a period of 18 months. In our case the delay being much lesser, the benefit of doubt may go to AWHO.

(iii) Most importantly the case was filed by an individual and was not in the nature of a Class Action.

(b) It is more important to refer to the 19 May 2017 judgement of NCDRC in the case of *Maj Sandeep Vinayak and 51 Others vs AWHO*, all of 27 Sector Panchkula Project, who sought relief quoting Col Ajmer Singh's case. The specific relief sought was more or less identical to ours:-

- (aa) Refund the amount charged for car parking
- (ab) 20 %Rebate for timely completion of project be given
- (ac) Pay Rs 2 crores plus 15% interest for delay in handing over.

(c) In its judgement the Court said

“Section 24 (A) of the Consumer Protection Act, 1986 provides for two years limitation for filing of a consumer complaint from the date on which the cause of action occurs. It is obvious that the complainants who had taken possession as early as in the year 2013, 2014 or during first five months of year 2015, their complaints are barred by limitation. It appears that the complainants filed a joint complaint under Section 12 (1) (c) with **mala fide** intention to avoid limitation clause in respect of the complainants who have failed to file the complaint within the period of limitation. In view of the above, we do not find any reason to accord permission under Section 12 (1) (c) of the Act.

The application under Section 12 (1)(c) of the Act is **accordingly rejected.**”

(d) The similarity of our case to this case, including our claims is strikingly similar. AWHO has reinforced this position in its submission.

MI Room.

66. Our Case. As per Technical Brochure, MI Room should have been constructed. This has been appropriated as AWHO Office by paying Rs 5,68,948 to HUDA for obtaining necessary sanction. The land and office located where MI Room should have been constructed should be handed over to the Society and Rs 5,68,948, paid as penalty should be reimbursed with 15% interest.

66. AWHO Rejoinder.

- (a) Command Hospital is in close proximity to Sandeep Vihar. The present building was constructed after modification sanction from HUDA.
- (b) Concurrence of allottees to the modification was obtained.
- (c) No cost on account of this has been incurred by owners. Cost of land, construction and land enhancement has been paid by AWHO. Details of the same have been appended with the Court Case
- (d) The costing works out to approx 81 Lakhs and has been made available.

67. Comments.

- (a) AWHO seems to be on weak ground here.
- (b) The claim that this was done with the approval of the allottees is based on the Minutes of the Meeting of MD,AWHO with the Management in 2009 wherein the protest of the Management against the AWHO action has been recorded. No concurrence has been noted. In any case, concurrence at this stage would have been ex post facto and hence not applicable.

Poor Quality of Construction.

68. Our Case. Internal roads / dwelling units, grit wash etc. are of very poor quality. Photographs have been appended in support of the claims. Rs 50 Lakhs be granted on account of deficient services and unfair trade practices.

69. AWHO Rejoinder. All repairs were carried out during the 18 month defect liability period. Our complaints pertain to period after that. AWHO thus has no liability.

Parking Slots.

70. Our Case. AWHO had no right to sell parking slots under stilts or in the open since there is an order in a Maharashtra case stipulating that builders cannot sell parking separately. Parking charges / cost be reimbursed to the Society.

71. AWHO Rejoinder. As per HUDA Bye Laws allottees of Group Housing Societies are to be provided with covered parking and certain percentage of open parking. The issue of parking was mentioned in the Allotment Letters and accepted by allottees. Further the case quoted by us as authority is applicable to Maharashtra and not Haryana.

72. Comments. In the Maharashtra case referred to by us, the private builder sold off space under stilts and parking for commercial purposes and made a profit. This has not been the case with AWHO. If it had not charged for parking, the project cost would have increased, thereby increasing our individual payment, without benefit of assigned parking.

Fresh Submissions by AWHO in its Rejoinder.

Maintainability of the Case

72. AWHO Case

(a) A Society has no locus standi to raise complaint. This should have been done individually. Individual is a consumer and not a Society. **Even if it is assumed that there is a majority in a meeting, the decision to go in for litigation cannot be forced upon individual owners who do not agree with the Resolution, since action of complainant will individually affect members.**

(b) The maintainability of a common complaint has been referred to a large bench in another case. The decision should be awaited.

(c) Sandeep Vihar case be dismissed being non-maintainable

73. Our Response

(a) A complaint can be filed by the Society as all people have one common dispute and intentions.

(b) Supreme Court judgement of *Chandigarh Housing Board vs Avtar Singh and Others* has been quoted as authority

74. AWHO Counter Reply. In the case of *Ambrish Kr Shukla vs Ferrous Infrastructure Ltd*, it has been ruled by NCF that a complaint under Sec 12 (i) of the Consumer Protection Act can be initiated only by one or more consumers as defined in the Consumer Protection Act. **Therefore, a Group of Coop Societies, Firms, Associations or others Societies cannot file such a complaint unless the Society itself is a consumer as defined in the aforesaid provision.**

Complaint Barred by Limitation

75. AWHO Case . Flats were handed over in 2008 and complainant's application now is time barred. Vide reference of case decided by NCDRC in case of *Jyoti Ispat vs New India Assurance Company*, such complaints are to be dismissed. Therefore, Sandeep Vihar case be dismissed being time barred.

76. Our Response. Complaint not barred by limitations since ongoing correspondence is there.

Comments.

77. The points raised by AWHO have to be read in light of the judgement of NCDRC in the case of *Maj Sandeep Vinayak and 51Others vs AWHO* where the case has been rejected on both these issues. It is understood that the case is now before the Supreme Court based on which the issue of maintainability of the case as a Class Action and time limitation will be decided.

Deliberation

78. Brig D K Mohan highlighted that the two issues of vital interest to the Society were the refund of interest on 2nd Land Enhancement and the MI Room. The strength of the other issues in our case was open to interpretation by the Court.

79. The case will come up for final argument on 19 Feb2018, after which we may hope for judgement by mid-2018. In case AWHO loses the case, then they will surely go before the Supreme Court. How long it will take there is anyone's guess. In case we lose the case, would we have the stamina to go before the Supreme Court?

80. During the meeting with AWHO in Sep 2017, the possibility of exploring a settlement acceptable to both was touched upon. AWHO has recently reverted back asking us to offer a proposal.

81. The Management has examined the issues and feels that the refund of Interest and MI Room are a must. However, the problem for AWHO is that they are carrying an amount of Rs 81 Lakhs as cost of MI Room on their books and cannot write it off.

82. Therefore, the issues before us are:-

(a) Should we simply await the outcome of the Court Case and what happens subsequently ;OR

(b) Should we accept a solution which gives us refund of the money and the MI Room now, both of these being our non-negotiables.

83. The Management is not making any recommendations.

84. Lt Col Kulwant Singh opined that the management had already concluded that we were going to lose the case. Brig D K Mohan replied that no such impression had been conveyed. At the time the case was initiated, there was a requirement to do so, because AWHO was not prepared to refund the interest from HUDA . In view of the willingness of AWHO to refund the interest and the judgements in other similar cases, now available, review of our options was very much in order. It was up to every member to draw his own conclusion about where our interests lie.

85. Col H O Khandelwal opined that the case should be studied in detail by a Board of Officers. Brig D K Mohan replied that every page of the case had been analysed and all the members of the Management had studied and discussed the case. In any event, full details of the case had been conveyed to all members of the society for the first time. The issue before the House at the present time was only to authorize the Management to proceed further in trying to find a mutual solution with AWHO. Any decision would ultimately be approved by the House.

Decision.

86. It was unanimously decided to authorize the Management to explore the possibility of a solution with AWHO which did not affect our core issues of Refund of interest and MI Room.

Discontinuation of Rs 500 for Asset Recoup Fund

87. A monthly contribution of Rs 500 towards the Asset Recoup Fund was introduced with effect from 1 April 2017. This was intended for future Capital expenditures. However, a provision exists in the Apartment Act and Society Bye Laws for one time collection of funds from members, whenever, such a situation arises.

88. It is proposed to discontinue this contribution with effect from 1 Oct 2017.

89. Decision. The proposal was unanimously approved .

Fitting of Large Overhead Water Tanks

90. 14 Members have fitted overhead water tanks in excess of the authorized capacity of 1000 liters. All such members have been requested to replace these tanks with those of authorized capacity by 31 Dec 2017.

91. Replacement of existing tanks with larger tanks has the following implications:-

- (a) It increases the water bill. Incidentally, HUDA has announced an imminent fourfold increase in water charges shortly.
- (b) In times of scarcity it deprives those with smaller tanks of their due share.
- (c) Its places extra weight on the structures for which they are not designed.
- (d) It amounts to modification of the approved design of the Flat and is contrary to Apartment Ownership Act, HUDA Rules and Society Bye Laws
- (e) It encourages other law abiding members to change over to the bigger tanks.
- (f) AND most important, in case of the smaller buildings, it reduces the pressure to the adjacent buildings on the same pipe line. To some extent, the pressure problem of E1 block stems from the fact that E2 with 16 Flats has 8 larger capacity water tanks.

92. Additionally, some members have installed extra tanks within their Flats and even on balconies. Apart from the issue of additional usage of water, these tanks place a pressure for which the structure is not designed. A survey is currently in progress to identify all such case.

93. Therefore, in the spirit of community living which we all have to get used to, defaulting members have been requested to replace their larger tanks. Those with tanks inside the Flats are also being requested to remove them. In case of non-compliance, it is recommended that an additional charge of Rs 1,000 per month for every additional 500 liters of storage capacity be imposed as penal measure..

94. It is proposed to implicitly ban the fitting of any such tanks in future

95. Decision. The proposal was unanimously approved.

Installation of RFID Tag System at the Main Gate

96. Presently, entry into the Society is primarily through Gate No1. The continuous flow of traffic precludes the detailed checking of all vehicles entering the Society. Further, the inward flow of traffic is not smooth due to halting of every vehicle.

97. It is proposed to open another entry point at the No I Gate which would be fitted with a Electronic Boom Barrier (as at HQ Western Command) and permit entry to all vehicles fitted with RFID Tags.

98. This provision will provide the following advantages:-

- (a) All Tag fitted vehicles will not be delayed at the entrance.
- (b) Congestion at the single gate will reduce, permitting outside vehicles to be checked properly.
- (c) Computerized record of all vehicles entering the Society will be maintained.
- (d) Identification of extra vehicles will be facilitated.
- (e) Tags of vehicles of Tenants who leave the Society will be automatically cancelled.
- (f) After successful implementation at Gate No1, option of similar installation at Gate No2 could be considered, which would enhance security to desired levels.

99. Financial implication.

(a) To Society

(i)	Cost of Boom Barrier including Computer	-Rs 1.25 lakhs.
(ii)	Cost of Civil Works including fitting of Gate	- Rs 0.75 lakhs
(iii)	Miscellaneous expenditures	- Rs 0.25 lakhs
	Total	- Rs 2.25 lakhs

(ii) To Vehicle Owners. Cost of RFID – Rs 50

100. Availability of Funds. In view of discontinuation of sanctioned expenditure of Rs 20 Lakhs on CCTV Cameras, requisite funds are available.

101. Proposal. Sanction for expending Rs 2.25 Lakhs be accorded

102. Decision . The proposal was unanimously approved.

Discussion on Points from Members

Effectiveness of CCTV System.(Brig Sarjit Singh – E3/203 and Col N P S Mann – D4/604)

103. An amount of Rs 26 lakhs was sanctioned for installation of CCTV Cameras. This project has been discontinued after expending approx. Rs 7 lakhs. The following clarifications are requested:-

- (a) What was the basis for this project?
- (b) If it could be completed in an amount of Rs 7 Lakhs, then why was an amount of Rs 26 lakhs got sanctioned? Apart from indicating lack of due diligence in preparing the project, it has also resulted in delaying alternate projects which could have been implemented with the balance funds.

- (c) A surveillance system is effective only if it is continually monitored. Was any planning done towards this end?
- (d) Has a single security related incident or theft been resolved through this system?
- (e) Why is a charge being made to review the footage of the CCTV Cameras, since it is owners' money which has gone into the system?
- (f) How much money has been recovered through these viewing charges?

Discussion.

104. Brig Sarjit Singh stated that there was no letter from Police requiring such extensive camera coverage. This was probably the largest expenditure incurred by the Society and was obviously infructuous. He appreciated the decision of the present Management to discontinue the viewing charges. He opined that this case should serve as an example of how poorly planned projects can lead to waste.

Action on Internal Audit Report FY 2015-16(Brig Sarjit Singh E3/203)

105. Para 28 of Internal Audit Board 2015-16 reads as follows:-

“Relaying of electrical wiring

(a) The project started in the year 2013 on voluntary basis. A sum of Rs 4,90,800/- was collected and expended also. Block wise details are given in the accounts file maintained separately.

As on today, a total sum of Rs 11,400 is to be collected from 12 Flats. Since the job was not done in respect of Thrifty Blocks, a sum of Rs 1,000/- each was collected from two owners.

(b) The point has been discussed at least 14 times in Management Committee Meeting and closed. Also the same point has been discussed in the Collegium also at least on two occasions and closed.

The board recommends the following:-

- (i) Money taken from Thrifty owners be returned as per laid down procedure by the Society.
- (ii) Management Committee should recover the amount outstanding as on date and disposal instructions be obtained from the Collegium in the following meeting.
- (iii) Since the point has been cropping up again and again, in spite of the fact that it was closed at least 4 times in MC Meeting and 2 times in Collegium meeting, the point needs to be put up in the forthcoming meeting of the Collegium and based on the decision taken by the Collegium, further course of action be taken. If need be, let there be ballot voting and not by raising of hands.

106. The following clarifications are requested:-

(a) Why was this project kept out of the official accounts of the Society and no official records maintained?

(b) If it was a voluntary project, then why was candidature of some candidates rejected by the Management prior to last election on account of non-payment of the amount?

(c) Why was the item not listed for discussion in subsequent GBMs, as recommended by the board?

(d) Has the payment made by Thrifty owners been returned?

(e) Has the amount due from remaining members been recovered?

107. In another similar case, an amount of Rs 68,000 has been collected from owners for installation of TPNs. Accounting for the same has been done privately. The issue has not been placed before the Internal Audit Board for scrutiny.

108. The fact that there are so many loose ends, yet so many attempts have been made to close the issue, indicates that there may be more to it than meets the eye. It is therefore recommended that:-

(a) Both these issues, including the accounts be investigated de novo by a Board to be detailed by the House. Vote on this issue be through Ballot and not raising of hands.

(b) The House resolve that in future no projects would be undertaken under the aegis of the Society by keeping them out of official accounting.

109. Discussion. Brig Sarjit Singh explained the genesis of the problem in detail and highlighted how the accountability for the entire exercise rested upon Col S K Chauhan. He wondered why the point had not been listed for discussion before earlier GBMs as required by the Internal Audit Boards. What was the sanctity of Internal Audit Boards if their observations were to be simply filed? Col S K Chauhan was requested to clarify the status, but it emerged that he had left the venue immediately prior to the point being taken up.

110. Decision. The House decided that a complete re-examination of the accounts and the execution of both projects be carried out and placed before the House during the next GBM. Col N P S Mann was requested to undertake the task.

Concluding Remarks

111. The President thanked all members for taking time out to attend the important meeting during which vital issues had been resolved.

Sd/xx

15 Nov 2017

(Lt Col Rohit Mittal)
General Secretary