

SANDEEP VIHAR (AWHO) WELFARE AND MAINTENANCE SOCIETY,
GHS 79, SECTOR 20, PANCHKULA

RE-ADJOURNED SPECIAL GENERAL MEETING HELD ON 02 SEP 2018

MINUTES OF THE PROCEEDINGS

Attendance

1. Re-adjourned Special Annual General Meeting was held on 02 Sep 2018, which was attended by 105 out of 543 eligible members (19 % attendance against required Quorum of 15 %).

Agenda

2. To consider the proposals discussed with the teams from AWHO during meeting on 25 Aug 2018 regarding our NCDRC case, and take a decision thereon.

Proceedings

3. The president informed that the Special GBM was a sequel to the meeting held on 23 Aug 2018, where the quorum was incomplete, but, the management was authorized to continue interacting with AWHO for better terms for a possible mutual settlement.

4. He reminded that, the Society had lodged a case with AWHO in June 2015 seeking compensation for certain issues. After a number of dates, the case was listed for arguments on 06 Sep 2018. Therefore, the Special GBM had to take a call on whether to proceed further with the case, or, to ask the court to pend arguments till next date while a mutual discussion took place.

5. He likened the knowledge of the case amongst the members of the case to the proverbial story of the blind men, who encountered different parts of an elephant and decided what it was based on their limited experience, with very few having thorough knowledge of the issues involved.

6. He thereafter highlighted certain basic facts :-

- (a) Court cases are very rarely won in totality.
- (b) It is not necessary that the court will address every issue in detail - it can pass a broad brush judgement.
- (c) We are not before a calculating court. If detailed calculations are to be done, it can get marked elsewhere, e.g. arbitrator etc.
- (d) Any party which wins or loses will go to the Supreme Court.



(e) We may win substantially, but, still have to go before the Supreme Court for execution.

(f) Importantly - for every one lakh rupees which is awarded, individual members will get only Rs 179.00 on average.

7. He thereafter explained the issues involved in the case.

Handing Over of MI Room Building to the Society.

8. According to the Technical Brochure, a MI Room was to be constructed at the site of the present AWHO office. However, without our consent, AWHO obtained approval of HUDA for construction of the building of another design to be used as its office.

9. AWHO has not been able to justify this change in the case, except to say that, it was decided not to build a MI Room because the Command Hospital is located close by. This is an issue on which AWHO is at its weakest.

10. However, according to AWHO, the cost of this building as included in the case documents was Rs 81.00 lakhs.

11. The breakdown of the cost of the building was:-

| | | |
|-------------------------------------------------|---|--------------|
| Land Cost of 4795 sq ft | : | Rs 13,38,572 |
| 2 nd LEC 2010 and 2011 | : | Rs 4,21,565 |
| Building cost | : | Rs 40,69,856 |
| Other costs (Architects, HUDA overheads etc) | : | Rs 22,71,492 |
| Total | : | Rs 81,01,485 |

12. The above amount had been transferred into the Society Project Account in Feb 2016. He observed that, the transfer was done in Feb 2016, after the case had been lodged with NCDRC, raised suspicions about the intent of AWHO. This also implied that, AWHO had used the building free of cost for over a decade.

13. On the question of the future use of the building, he stated that, this was a point for the future and would be decided once the building was physically available. However, there was a revenue generation capacity of at least Rs 50,000 to Rs 60,000 per month once it comes to us. He pointed out that, the converse of this was that, the Society would lose around Rs 7.00 lakhs of potential revenue for every year of delay in the court case.



Issues Related to 2nd LEC.

14. There were three components to this as under :-

(a) Refund of interest on principle amount held with AWHO for six months after credit by HUDA till refund to owners. An amount of Rs 2.96 lakhs was returned by HUDA to AWHO in Feb 2012 and in turn, refunded by them to owners in Aug 2012. We have demanded payment of interest for this duration @ 4% per annum.

(b) Later, HUDA had returned the interest for the period the money was with them. Out of a total amount of Rs 68.86 lakhs, they deducted TDS of Rs 6.90 lakhs and refunded Rs 61.97 lakhs. Our claims are two fold :-

(i) The amount of Rs 61.97 lakhs actually returned by HUDA be refunded with interest at 10% per annum amounting to Rs 77.00 lakhs till April 2015.

(ii) To claim TDS amount of Rs 6.80 lakhs from IT authorities, if admissible, and refund the same.

15. In a later development, AWHO offered to refund an amount of Rs 77.00 lakhs directly to owners in April 2016, and requested for details of members bank accounts for making transfer. However, for reasons known to everyone, this did not happen and the offer was taken off the table.

Corpus Fund.

16. At the time of handing over of the project, AWHO had collected Rs 20,000.00 from each member for the Corpus Fund, amounting to Rs 1.11 crores. They had also collected six months maintenance charges of Rs 2,400.00 per member for the period from Jul 2008 to Dec 2008.

17. As far as Corpus Fund was concerned, various payments have been made by cheques. These are all factual and verifiable. However, there are differences in the lists of both parties. AWHO claims that it has paid Rs 5.00 lakhs for opening a Society account as well as, spent Rs 3.60 lakhs on security and maintenance of the society. If these are accepted, there is no liability of Corpus Fund. In any case, an amount of Rs 1.18 crores has already been received by us till April 2014 against collection of Rs 1.11 crores.

18. The claim here is for interest at 10% per annum duly compounded.



Parking Slots on Payment to Members.

19. We have stated that, as per Maharashtra High Court judgement, builders may not sell the parkings. This has obviously been done to restrict profit making by builders.

20. AWHO has replied that, it has allotted the slots to owners in accordance with HUDA building laws and Apartments Act. It has also mentioned the fact that, the parking slots have not been sold for profit. They were part of the allotments duly accepted by members. Further, in case these had not been individually paid for and had been kept as central areas, the cost of individual flats would have increased.

20 % Rebate on Land Cost.

21. In order to encourage construction in the 1990s, HUDA had offered a rebate of 20% on land cost to those who completed construction within 3 years of being given possession of the plot.

22. In our case the possession was handed over in Sep 2000. The project was opened for subscription in 2003 and later for Spot Scheme in 2004. There was no way in which the construction could have commenced, leave alone completed till the planning and subscription to the project was completed.

Poor Quality of Construction.

23. We have attached a number of photographs of poor workmanship and material. AWHO contends that the period of maintenance liability was 18 months as per the Technical Brochure, which expired in 2009. Hence, any repairs after that are under society arrangements.

Delay in Handing Over.

24. The project was slated for completion in Nov 2005, but letters for taking over were issued in April 2008. Thus, a delay of nearly two and a half years had taken place. AWHO has placed on record several reasons for the delay.

25. However, we had sought relief in terms of the award made in the case of Lt Col Ajmer Singh vs AWHO, where the delay had been of about five years.

26. He thereafter, requested Brig D K Mohan to explain the proposals emerging from discussions with AWHO.



Proposals for Mutual Settlement.

27. Brig D K Mohan stated that, the contentious issue was about MI Room. On the other issues of Corpus Fund and 2nd LEC it had already been agreed to reconcile the payments and refund the balance with interest updated.
28. On the MI Room, AWHO had offered three options:-
- (a) Letting out of the complex for commercial use and revenue sharing with the Society. This has been rejected outright.
 - (b) Handing over of the building on long lease at the rate of Rs 25,000 per month.
 - (c) Transfer of the building to the Society at book cost instead of the market cost, as had been proposed earlier. After negotiation, the team stated that, the bottom line figure that AWHO would go to was 50% of Book Cost, which too, would require approval of the Board of Governors.
29. They requested for a proposal from the Society for placing before the Board of Governors.

Discussions.

30. Lt Col J S Jeryal opined that, the cost of land and the building might already have been factored into the central areas while finalizing the cost of the flats.
31. Col Paramjit Ahluwalia stated that, the claims of AWHO regarding project costing should be taken with a pinch of salt. He based this on his previous experience as project director of another project.
32. Col S K Chauhan opined that, the crucial issue was regarding the MI Room and that, the rate of interest on the 2nd LEC/Corpus Fund should not be a point to hold up the negotiations.
33. Brig D K Mohan reminded that, the delay in obtaining possession of the building was resulting in loss of potential revenue of Rs 6.00 lakhs which needed to be considered while taking any decision.



The Resolution.

34. The President thereafter placed the following proposal before the House :-

(a) Option 1. Further negotiations for mutual settlement be discontinued and the ongoing NCDRC case be taken to its culmination.

(b) Option 2. Negotiations with AWHO to continue. In this event, the Court be requested for another date for hearing while negotiations could be undertaken, without jeopardy to the future of the case in the event of failure to arrive at a mutual settlement.

35. The House unanimously agreed with Option 2.

36. The President reiterated that, strenuous efforts would be made to find a solution acceptable to both sides which did not dilute our core requirements. In case of an acceptable proposal, the same would again be placed before the House for final approval. In case the efforts did not fructify, the case would be proceed with full resolve.

Date : 14 Sep 2018



Rohit Mittal
(Lt Col Rohit Mittal)
Gen Secy