

**BEFORE THE NATIONAL CONSUMER DISPUTES
REDRESSAL COMMISSION, NEW DELHI**

CONSUMER COMPLAINT NO.176 OF 2022

IN THE MATTER OF:

VISTA HOMES OWNERS ASSOCIATION

..... COMPLAINANTS

VERSUS

M/S VISTA HOMES & ANR

..... OPPOSITE PARTIES

**COUNTER AFFIDAVIT ON BEHALF OF THE OPPOSITE
PARTY NOS. 1 & 2**

MOST RESPECTFULLY SHOWETH:

I, D Pavan Kumar S/o D Anjaneyulu, aged about 32 years, R/o H. No. 5-39, Parvathapur, Uppal, Medipalli, Hyderabad-500098, Telangana, presently at Hyderabad, Telangana, do hereby solemnly affirm and state as under:-

1. That I am Customer Relationship Manager of the Opposite Party Nos.1 & 2, in the aforesaid complaint and as such, I am conversant with facts & circumstances of the matter and hence, I am



competent/authorized to swear the instant affidavit on behalf of Opposite Party Nos.1 & 2.

2. That I have read a copy of the aforesaid complaint and averments made therein and my reply to the same, is as under.

3. That before proceeding further, it is relevant to state that the Opposite Party No.1 i.e. Vista Homes is an Associate / Subsidiary of M/s Modi Properties Pvt. Ltd. and is performing as builder / constructor which successfully completed the construction of more than 4,500 houses/flats. It has enjoyed a very good reputation in the twin cities of Hyderabad and Secunderabad. In this day and age, Vista Homes is entrusted with various projects across the country. For every project, the opposite party uses material sourced from reputed market and refrained from using local products. If the Hon'ble Commission requires ~~productions~~ of bills, that can be done. The true copy of the brochure of Vista Homes along with



the list of its projects (completed & ongoing), is annexed herewith and being marked as **ANNEXURE R-1 (COLLY)**.

LOCUS STANDI

4. That at the outset, it is pertinent to mention here that the Complainant does not have any ***locus standi*** to file the present Consumer Complaint, since the association was formed solely for the purpose to manage the day-to-day affairs for housing complex. This association is run by its elected members and as per the bye-laws of the said association, Extraordinary General Meeting (EGM) should have been called to take any decision on behalf of all the home buyers. The Office bearers do not have any authority to take any action without due consultation and authorization from its members. It is pertinent to mention here that the Complainant Association has neither approached to the members to seek their consent for filing the



present Consumer Complaint nor they have conducted any EGM or AGM for the approval of its members as per the bye-laws of the association. Therefore, it is evident from the above-mentioned facts that instant Consumer Complaint is a result of malice and has been filed only to satisfy the malicious intentions of the current office bearers of the Association. Pertinently, the cause of action is neither genuine nor associated to the challenges of the flat purchaser. The true copy of bye-laws, registration certificate and details of current office bearers of the Opposite Party herein, are annexed herewith and being marked as **ANNEXURE R-2 (COLLY)**.

5. That it is pertinent to mention that the Memorandum of Association of the Complainant clearly put bars on the Complainant to raise any agitation for any such problem with regards to the flats and states. It clearly mentions that the Association (Complainant) shall not engage itself in



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any agitation activities to ventilate grievances with regards to the flats. Therefore, only individual flat owners can take proper action and take appropriate steps to file Consumer Complaint before this Hon'ble Commission. Hence, it is clear from the evidences on record that the Complainant Association has no **locus standi** to file the instant Consumer Complaint and the same is amenable to be dismissed. The true copy of the Memorandum of Association of the Complainant Association is annexed herewith and being marked as **ANNEXURE R-3.**

6. That it is pertinent to mention here that the Complainant, Vista Home Owners Association is a resident's welfare organization whose sole purpose is limited only to take care of the welfare of the residents who are the members of the association. The said association was formed to look after the day-to-day activities and requirements of its



residents, it does not acquire any extra power as such exceeding that of its residents or members.

LIMITATION

7. That the complainant has filed the complaint after six years of completion of the project for deficiency of service. This again, proof their malice that they are tagging issues of normal wear and tear and regular use, as deficiency on the part of OP. Therefore, the cause of action is beyond the ambits of limitation.
8. That the Complainant herein does not fall under the ambit of Section 2 (7) of the Consumer Protection Act, 2019 and therefore does not qualify to be a consumer as per the act. The said provision has been extracted below for ready reference:

Section 2:

(7) "consumer" means any person who— (i) buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred



payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment, when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose; or (ii) hires or avails of any service for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such service other than the person who hires or avails of the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person, but does not include a person who avails of such service for any commercial purpose.

Explanation— For the purposes of this clause, — (a) the expression "commercial purpose" does not include use by a person of goods bought and used by him exclusively for the purpose of earning his livelihood, by means of self-employment; (b) the expressions "buys any goods" and "hires or avails any services"



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includes offline or online transactions through electronic means or by teleshopping or direct selling or multi-level marketing;

Therefore, a bare reading of the above-mentioned provision, it is evident that the Complainant has neither bought the flats nor has availed any service from the opposite parties. Thus, Complainant has no **locus standi** to file the instant Consumer Complaint. In case there is any deficiency which directly affects the flat owners then they individually can file consumer complaint and not the Association, herein.

9. That it is also pertinent to mention here that after completion of the project, all the flats were sold to respective purchasers upon verification of all the documents as well as the amenities which were promised to be provided at the time of booking.

Therefore, at the time of sale, the following documents were executed between the home buyers and the opposite party:

- a. *Booking form*



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- b. *Agreement of sale*
- c. *Sale Deed*
- d. *Undertaking at the time of handing over possession*
- e. *Possession Letter*
- f. *No due certificate*
- g. *Membership enrollment form for membership of the association.*

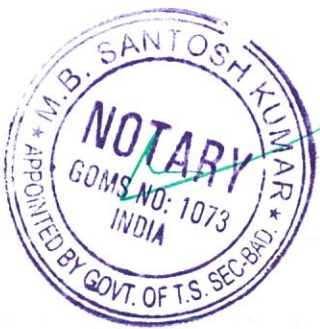
Therefore, it is evident from the above-mentioned facts that at the time of delivering possession, all the facilities and amenities were provided to all home buyers and that was duly accepted by them without any prejudice. It is pertinent to mention here that the said flats were handed over to all the purchasers in the year 2019. The true copy of the documents pertaining to handing over the flats, is annexed hereto as **ANNEXURE R-4 (COLLY)**

10. That it is relevant to mention here that all the facilities and amenities which have been claimed by the Complainant, have already been provided at the time of handing over the possession of flats to respective flat buyers. It is submitted that the entire



project was completed in phases. The opposite parties had applied for the occupancy certificate and GHMC had conducted multiple inspections. The registered architect duly inspected, verified condition of every flat and approved the condition of flats and facilities provided along with flats. After the said verification only GHMC had issued occupancy certificate for all the flats. Possession of each flat was handed over to respective flat owner with all facilities like water, electricity supply, common amenities like lift etc. at the time of possession. Therefore, there exists no such question of not providing the facilities with the flats as claimed by the Complainant. The details of completion of all flats in each Block and date of Occupancy certificate obtained from GHMC are mentioned in the chart below:

<i>Block</i>	<i>Date Completion of</i>	<i>Application for occupancy certificate</i>	<i>Occupancy certificate receipt date</i>
<i>A</i>	<i>November 2014</i>	<i>10.11.2014</i>	<i>31.01.2015</i>



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I	November 2014	10.11.2014	31.01.2015
B	August 2015	28.08.2015	27.10.2015
H	September 2015	28.08.2015	27.10.2015
C	December 2015	10.12.2015	21.08.2017
G	December 2017	05.12.2017	16.01.2018
Amenities Block	June 2018	04.06.2018	02.08.2019
D	September 2018	22.09.2018	18.12.2018
E	October 2020	03.10.2020	05.10.2020
F	May 2020	19.05.2020	08.06.2020

The true copy of Occupancy Certificates are annexed hereto as **ANNEXURE R-5 (COLLY)**

11. That Building permit for construction of flats were obtained in 2012 by way of Permit No. 17811/ HO/ EZ/Cir-1/2012 dated 11.12.2012 initially for 407 flats and later on no. of flats were reduced to 377 flats. It is pertinent to mention that all amenities and facilities were also developed with the flats. The summary of those amenities are mentioned below:

- Clubhouse with banquet hall, business centre gym, crèche, yoga, room, recreation room, swimming pool, lawns etc.
- Rainwater harvesting structures



- c) *Water supply through bore wells and municipal water*
- d) *Electric power supply through transformer and panel boards in each building.*
- e) *Power backup through generator for lifts, common areas and upto 1KVA for each flat.*
- f) *Parking in basement floor,*
- g) *Driveway and landscape garden as well as children totlot on ground floor*
- h) *Sewage treatment through septic tank*
- i) *Gates, compound wall, security kiosk, lighting, CC cameras etc.*
- j) *Peripheral road*

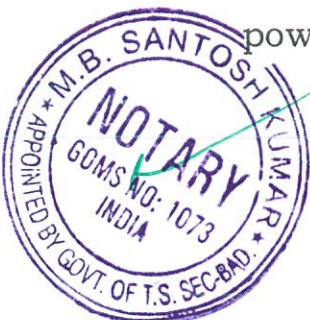
Therefore, it is prima facie clear that all the necessary amenities have been provided by the opposite parties to the flat purchaser.

REPLY TO THE ALLEGATIONS MADE

- 12.** That so far as the averment / allegation made by complainant regarding permit of the OP, it is submitted that the same is baseless and does not merit consideration, as the due permission was obtained by the OP from competent authority in the year 2012, which, subsequently was revised in the



year 2020, as some flats were amalgamated in the E block to make larger flats within the footprint of the previous permit. The true copy of the building permit order, building permit plans (A3 size color) and plan of basement floor full size (color), are annexed herewith, and being marked as **ANNEXURE R-6 (COLLY)**. It is submitted that the occupancy certificates were obtained for the aforesaid purpose, in parts. The true copy of all occupancy certificates along with a list containing dates of their obtention, are annexed herewith, and being marked as **ANNEXURE R-7 (COLLY)**. Apart from these, various other certificates / permission / approvals were obtained by Opposite Party before commencement and during construction work, which relates to water connection, electric power supply & fire safety equipment. The true copy of the permit pertaining to water connection, electric power supply and provisional & Final Fire NOCs,



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are annexed herewith and being marked as
ANNEXURE R-8 (COLLY).

13. That so far as the averment / allegation made by complainant regarding standard / quality of flats constructed by the OP is concerned, it is submitted that the same is baseless and does not merit consideration, as the building was constructed by the OP herein strictly in accordance with the norms of NBC. It is submitted that the quality of construction done by the OP is as per standards and the same can be verified from the Report / Certificate of Chartered Engineer which reflects that quality of construction is good and all the facilities/amenities have been provided. The Report / Certificate of the Chartered Engineer is based on the comparison of brochure of the OP herein with the amenities and facilities provided by the OP and the same were found to be in order. Further, the quality of construction can also be viewed from the photographs submitted by Chartered Engineer. The



true copy of the Certificate of the Chartered Engineer along with photographs submitted by the Chartered Engineer, are annexed herewith & being marked as **ANNEXURE R-9 (COLLY)**

14. That further, it is submitted that it has been learnt by the OP herein that the quality of construction done by the OP is better than the quality of any other construction / complex in the radius of 2 to 5 kms. It can be further substantiated as it is submitted that more than 500 people have reviewed the project of the OP herein, on the Google Maps and the project has obtained rating of 4.1 out of 5. In addition, several happy customers have referred their friends & relatives to buy flats at Vista Homes. The true copy of snapshot of Google Maps rating, illustrative 2 pages of customers rating on the Google Maps and the copies of references made by the customers of Vista Homes, are annexed herewith and being marked as **ANNEXURE R-10 (COLLY)**.



15. That so far as the averment / allegation made by complainant regarding the issues of mental stress & health hazards to owners of flat is concerned, it is submitted that the same is baseless and does not merit consideration, as the customers who initially booked / purchased one flat in the project of the OP, has gone for booking / purchasing of another flat / additional flat in the same project of the OP, after happily and satisfactorily spending time of more than 6 years and during the said period of 6 years, they did not face any problem or obstacle with regards to the quality of construction causing any mental stress & health hazards issues. In this regard, it is to state that the Customer of C105 has purchased F105 after a gap of 6 years and Customer of E207 has purchased G307 after a gap of 20 months. Thus, it is the complainant association who wants to settle its own greed in the garb of frivolous allegation naming the owners of the flats. The true copy of the AOS and booking form of



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F207 and G307 and Copy of AOS and booking form of C105 and F105, are annexed herewith and being marked as **ANNEXURE R-11 (COLLY)**

16. That so far as the averment / allegation made by complainant regarding response to the complaints is concerned, it is submitted that the same is baseless and does not merit consideration, as the OP herein has a proper redressal mechanism for redressal of consumer complaints. Customers have signed an undertaking stating that complaints will be made through the website of Modi Properties (www.modiproperties.com). According to said undertaking, each complaint is uploaded on the Builders database for addressing the complaint. The engineers at site are required to send an action taken report on each complaint. The action taken on the report is sent to an independent (Quality Check) QC team of the Builder for verification and written report. The complaint is closed only after certification is rendered by the QC team. It is



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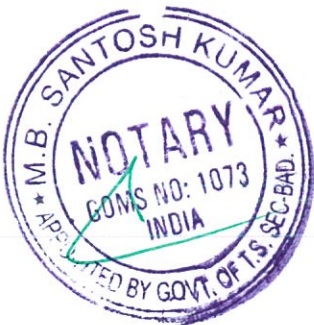
submitted that the due procedure and process has been followed by the builder in dealing with the complaints. In this regard the OP herein is supported by undertaking letters of the customers, screenshots of complaint page website, few complaints along with ATR by Engineer & QC report, which clearly reflects the response made and action taken at the end of the builder. The true copy of undertaking letters of three customers through website, screenshot of builder's website, few complaints along with ATR by Engineer & QC report and snapshot of builder's complaints' database, are annexed herewith and being marked as **ANNEXURE R-12 (COLLY)**.

REPLY TO ISSUES OF WATER AND DRAINAGE

17. That so far as the averment / allegation made by complainant regarding drainage & sewerage system and septic tanks is concerned, it is submitted that same is baseless and does not merit consideration, as possession for 1st set of flats in A & I blocks were



handed over to customers in July 2014, and since then, the customers are living therein without any major complaint. Further, as per the procedure, the application for OC must be signed by the architect and structural engineer certifying that all work has been properly completed. It is submitted that inspections by municipal officials were held on at least 8 occasions for verification of the construction and the amenities which were provided at the time of issue of occupancy certificate. Further, there has been no observation by municipal officials about improper sewage system. Also, the building permit basement plan clearly shows the location of sewage treatment plant in the basement and the sewage was treated by way of appropriately designed septic tank. As per the norms of NBC, the septic tank required 280KLD against which the septic tank of 400KLD was provided by the builder. It is to also state that at the request of the Association, the output of septic tank was tested and found to be



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competent with PCB norms. In this regard, the OP is supported by the permit obtained under GO No.86, revised permit obtained under GO No.168, OCs issued thereunder, application for OC showing certification by architect and structural engineer, and sewage water test certificate, true copies whereof, are annexed herewith and being marked as

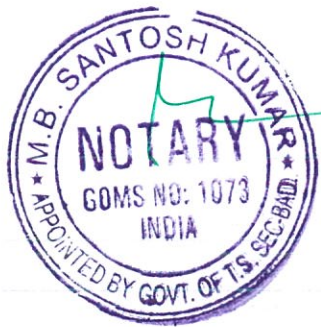
ANNEXURE R-13 (COLLY)

18. That so far as the averment / allegation made by complainant regarding placement of septic tanks is concerned, it is submitted that same is baseless and does not merit consideration, as it is a norm to provide STP in the basement. The discharge from the STP/ septic tank has been appropriately connected to a 30ft. Nala passing along the south side of the site. Further, the MEP consultant was appointed to review provision of sewage lines, septic tank, connection of septic tank to Nala, fire downcomer, fire alarm, fire sprinkler system, water supply through sumps & pumps and OHTs etc. The



OP in this regard is supported by the Google earth image showing Nala on the south side of the site, MEP consultant report, plan showing provision of rainwater harvesting structures and drainage lines along driveway, schematic plan showing details of water supply, plans for sumps and septic tank etc., true copies whereof, are annexed herewith and being marked as **ANNEXURE R-14 (COLLY)**.

19. That so far as the averment / allegation made by complainant regarding water spray extinguishing system is concerned, it is to state that provisional NOC from fire department was obtained at the time of building permit in 2012. As per provisional NOC, downcomer in clubhouse, 25KL OHT on clubhouse, 25KL fire static tank and sprinklers in parking area were provided. Further, the entire fire-fighting system was inspected and tested by the fire department and final NOC issued in 2016. Further, it is not possible to provide water supply to the flats and drain out the sewage water from the flats,



without connecting the pumps or water sump, for a period of over 8 years.

- 20.** That so far as the water connection is concerned, it is to state that at the time of application for water supply, 164 flats were completed and OC therefore, were obtained and accordingly only 164 flats were mentioned in the permit which are corelated with OCs received for block Nos. A, I, B & H consisting of exactly 164 flats. However, that was only a technical requirement by the water board at the time of application for water supply, wherein the no. of flats completed were mentioned as there is no provision to mention the no. of flats yet to be completed in the application. Further, the capacity of connection is based on the diameter of the pipe supplying water to the group housing complex. In the flats / building in question, the water supply is from a 150 mm diameter pipe, which is sufficient for 377 flats. The actual consumption can be higher or lower than the 82KLD sanctioned. Minimum charges must be paid



for 82KLD irrespective of consumption. In case consumption is more than 82KLD, charges have to be paid on the consumed water. It may be noted that there is no mention of no. of units/flats in the sanction for water and sewage connection and only the diameter of water supply and minimum demand (in KLD) are mentioned therein. The Association/ Developer has the option to revise the minimum demand with the same infrastructure by entering into a revised agreement with the water board for nominal charges. Also, the comparison of the water connection typically given for developer projects in a 5 km radius, is given for reference along with the order for water supply. It can be seen that the water supply for a similar size project is in line with Vista Homes. A list of water connections for other projects in that area along with details of water connection size & contracted minimum demand therefore, and true copies of sanction of water & sewage connection of the project in question, are annexed



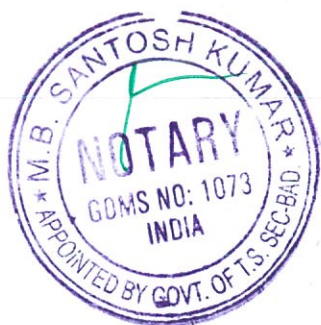
herewith and being marked as **ANNEXURE R-15**
(COLLY).

REPLY TO ISSUES OF ELECTIONS

21. That so far as the averments made regarding non conducting of elections is concerned, it is submitted that because of the consequences and impositions primarily arisen out due to bifurcation of State, the project got delayed. It would have been unfair to conduct elections without representation of all blocks, as clause 10 (a) of the bye-laws state that there should be at-least one Executive Committee member representing each of the block. Thus, the elections were called for as soon as all the blocks were completed and the newly elected body came into force.

REPLY TO ISSUES OF BOOK OF ACCOUNTS

22. That so far as the averment / allegation made regarding providing of account books is concerned, it is submitted that the same is a false allegation as



the Builder has handed over all the documents including books of accounts and other originals to the Association in August, 2021 and also obtained an acknowledgment from them. The books of accounts have been appropriately audited and certified from creation of Association till 31st March, 2020. All the Tax returns were filed regularly. Also, the books of accounts, audit reports, tax returns etc. were periodically uploaded on the website of the Builder. Further, an email was sent to the Association in December 2020 requesting them to collect the books of accounts and other documents lying at the site. It is relevant to state that all such documents, being available on the website, were password protected and to date, not a single customer has requested for password, which is VHOA. The true copy of the email sent to Association in December 2020, acknowledgment of receipt of documents in August 2021, audited accounts and tax returns, and the snapshot of



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website showing documents of VHOA, annexed herewith and being marked as **ANNEXURE R 16 (COLLY)**

23. That so far as averment / allegation made regarding corpus and maintenance fund and uses thereof is concerned, it is submitted at the outset that the OP has collected a corpus funds of Rs.47.50 lakhs and not Rs. 65 lakhs, which can be ascertained from the certificate obtained from a chartered accountant summarizing the finances of the association upto 31.03.2020, true copy of which, is annexed herewith and being marked as **ANNEXURE R-17.**

24. That so far as the prior approval for usage of the fund is concerned, it is submitted that from day one, all amounts related to corpus fund and monthly maintenance charges of association were directly deposited in the account of the Association and expenditure were being made from there only. The total revenues including other maintenance



charges was Rs.175.22 lakhs and the total deficit arisen due to difference between receipts & expenditure was about Rs.31.51 lakhs, which was utilized from the corpus fund collected. The primary reason for the deficit was that maintenance charges were not increased periodically since 2017, as several attempts to convince the flat owners to enhance maintenance charges failed. Revenue & Expenditure and also the Bank balance are perfectly tallying. It is submitted that expenditure is also limited to the day-to-day maintenance of the complex. Not only that, some customers who paid in excess to the Builder at the time of settlement of account, had requested the Builder to transfer such excess amount or part thereof to the Association towards corpus fund and/or monthly maintenance charges. Considering their accounts, the accounts were thoroughly tallied by both the parties and the final amount of Rs. 6.37 lakhs, was also transferred to the Association in January, 2022. The true copy



of letter dated 25.01.2022 and Check correspondence related to settlement of accounts, are annexed herewith and being marked as **ANNEXURE R-18 (COLLY)**

It is submitted that there is no ambiguity or misappropriation in any funds of the Association and the CA certificate clearly shows the source of revenue / funds and the details of expenditure incurred for the relevant years. It is further not out of place to mention that the aforesaid Association that is run by its founding members and incidentally, some of them are partners of the Vista Homes. However, they are the office bearers of the Association in their individual capacity and any claim of improperly used corpus fund must be made on the individuals and not on Vista Homes.

REPLY TO MISCELLANEOUS ISSUES

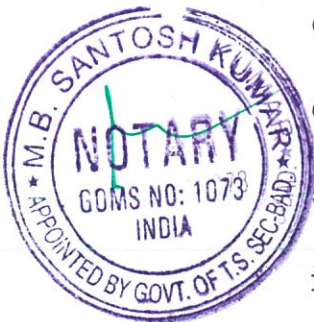
- 25.** That it is apparent from the aforesaid that atrocity has been caused by opposite parties herein leading the owners to a stressed life. If the said allegation of



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the association were true, then the prices of the Vista Homes would not have dramatically increased. It is submitted that the 1st 10 Flats were sold for an average price of Rs.2,167/- per Sq. Ft. and the last 10 Flats were sold for an average price of Rs. 4,933/- per Sq. Ft. A true copy of details pertaining to Sale of 1st and last 10 flats, are annexed herewith and being marked as **ANNEXURE P 19 (COLLY)**

- 26.** That so far as the allegations made in ground Z are concerned, it is submitted that appropriate sumps have been provided, rather, one sump of 50,000 liters, remain un-used even today. Also, there is no leakage of water from the terrace. The sub-surface drainage under the cellar with a network of pipes and to mud the sumps with cutter type dewatering pumps has been appropriately provided. Also, the outer bounding wall, structure itself (including the columns, beams & slabs), has no crack and / or seepages and same are in good condition. Further, it is relevant to state that the rainwater harvesting



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structures need to be cleaned and relayed every year or two. The Association has not taken up the repairs and maintenance since it took over. The true copy of sub surface drainage plan is annexed herewith and being marked as **ANNEXURE R 20.**

- 27.** That further it is submitted that the infrastructure for the power supply is typically double the capacity. The power supply has been provided as per the norms of the electricity board. Also, power backup has been provided to appropriately design 2 generators. The same can be ascertained from the MEP Report. Furthermore, there is an electric power connection of 5KVA for one flat, by way of one metered connection and the power consumption and charges levied are based on actual usage. Also, the borewells and water supply infrastructure were maintained by the Builder and founding members of the Association for 8 years and no complaint was received from the residents during the said period. The water is being treated by way of septic tank.

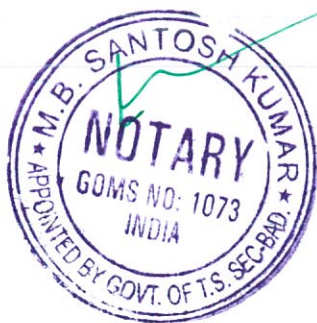


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Further, the fully functional security cameras were provided and it is the Association who was required to maintain them. Also, the fully furnished and functional clubhouse was handed over to the Association and it is the Association, who was required to maintain the same. However, the Association has no expertise or MEP engineers to help them maintain water supply, power supply other amenities in the complex. The Association must show proof of employing services of experts in the field. The true copy of Photographs of security cameras and clubhouses are annexed herewith and being marked as **ANNEXURE R 21 (COLLY)**.

28. That it is submitted that value of the claim is far lesser than Rs.2 Cr, as has been claimed by the complainant in the complaint. It is submitted that claim value is much less than the claimed amount.

29. That so far as the prayer (1) to prayer (10) made by the complainant in the complaint, are concerned,



the same are baseless and liable to be rejected, as the Vista Homes, the OP herein, is not responsible for settling any of such prayer / demand of the complainant. However, keeping in view the welfare of the Resident, such prayers, can be pacified in the following manner:

- (1) *The septic tank can be easily cleaned and pumps repaired/replaced. The quote for cleaning the sludge from the septic tank is Rs. 6 lakhs (200KL x Rs. 6,000/- per KL are charges of tanker for removing sludge). Quote for replacing 4 pumps, 2.5 HP cutter type sewage pumps Rs. 1,35,348/-. The Installation of 4 cutter pumps with fittings and labour charges – Rs. 50,000/-. The septic tank is permitted in cellar and therefore there is no necessity of shifting it.*
- (2) *The quote for parts required for repairing the fire downcomer and sprinkler system is about Rs. 60,000/-. The quote for labour charges for repairing the fire downcomer and sprinkler system is about Rs. 40,000/- The entire system will be fully functional for about a Rs. 1 lakh.*
- (3) *The adequate water supply through a 150mm diameter water pipeline has been made. The*



Association can revise the minimum contracted demand with the water works department for a nominal fee. Assuming but not admitting that the water supply connection needs to be enhanced, the worst-case cost of enhancement of pro-rata basis is Rs.60.39 lakhs (original cost of about Rs. 47 lakhs x 377 flats / 164 flats, less Rs. 47 lakhs paid).

- (4) As per para 1 above.
- (5) There are no structural defects that need repair. Also, the outer bounding wall, structure itself (including the columns, beams & slabs), has no crack and / or seepages and the same are in good condition.
- (6) There is no missing or misappropriated or improperly used funds. The total corpus fund used for the legitimate expenditure of the Association is Rs. 31.15 lakhs and the claim of 47 lakhs has no basis.
- (7) The claim to refund proportionate amount in terms of clause 36 is very vague and cannot be acted upon. There is no detail of how the figure of Rs. 96.77 lakhs were arrived. Assuming but not admitting that the Association is seeking refund of corpus fund is absolutely untenable. There are no grounds for claiming refund of corpus fund.



(8) The Association has failed to establish any basis for claiming compensation for punitive damages. An adhoc claim of compensation of Rs. 1 lakh to each flat owner is baseless. In the year 2013 several partners decided to retire from the partnership due to a delay of more than 5 years in starting the project. These retiring partners and their family members were given an opportunity to purchase 77 flats at a discounted rate before the start of the project. A sale deed was executed in their favour for undivided share in land along with an agreement of construction for construction of the flats thereon. These retiring partners (referred to as investors) in turn sold 74 or the 77 flats to intending purchasers. These investors have given letters to the Developer stating that they are satisfied with the quality of construction. Therefore, a claim of the Association of Rs. 1 lakh per flat of these 77 flats is untenable. In 2020, 18 Nos. of flats that remained unsold were sold to associated companies/ persons of the Developer. None of these have enrolled as members of Association. Therefore, a claim by Association on their behalf is untenable. The Association has neither called an AGM or EGM for authorization to file this complaint, let alone

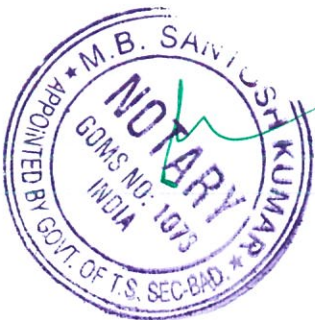


collect compensation of Rs. 1 lakh on behalf of the members of the Association. Members of the Association are unwilling to express their unhappiness with the present complaint made by the Association as they are being threatened with dire consequences by the office bearers of the Association. Many members have privately conceded that this complaint is against their interest as adverse orders will severely affect the market value of their flats. Compensation of Rs. 1 lakh is miniscule compared to the loss and property value that may result due to this complaint.

(9) No comments. For the wisdom of this Hon'ble Commission.

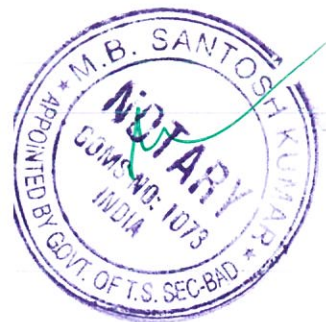
(10) The total compensation claimed by the Association in its prayer can be quantified as:

- (i) Repair of drainage system – 7,50,000/-
- (ii) Repair of fire pipes – Rs. 1,00,000/-
- (iii) Enhancement of water connection – Rs. 67,00,000/-
- (iv) Improper utilized corpus fund is – Rs. 31,15,000/-
- (v) Cost of filing complaint – Rs. 2,00,000/-
- (vi) Repair of rainwater harvesting pits – Rs. 1,47,500/-
- (vii) Total Rs. 1,10,12,500/-



(viii) *The cost of repairs of drainage system + fire pipes + rainwater harvesting pits has been negotiated by Builder through its contractors. Builder takes guarantee of the work being completed within the specified cost, provided payment is made by the Association to these contractors (50% advance and 50% after completion of work).*

It is relevant to state here that the aforesaid clarification / response made to the prayers, are based and replied upon the contentions aforesaid made by the opponent herein and the same is also without prejudice the rights and contentions of the OP herein (Vista Homes). The contentions made aforesaid by the opponent herein, are not being repeated here at for the sake of brevity and to avoid repetitiveness. It is submitted that the formal quotations, as and when required / desired by this Hon'ble Commission, will be submitted / filed by the opponent herein.



30. That from the aforesaid, it is submitted that the opponent herein has acted fairly and has followed the due procedure / process in handing over the flats with all the amenities and facilities thereof, and has further complied with all the requirements, in managing the project / building, on its part. It is submitted that after handing over the flats, it is the duty of the Complainant to take care of the building and to maintain it adequately. However, the Association has failed to take the requisite action. It is stated that the office bearers of the Association, as well as flat owners were advised several times to engage the service of the qualified consultant(s). However, the complainant paid no heed to advice and failed to take care. After a delay of almost 2 years since handing over the flats, the opposite parties cannot be held liable for the same. It is submitted that the opposite parties cannot be held liable for an infinite period, only for the reason that they have constructed the flats once upon a time.



31. That it is submitted that, following the certificate that has been obtained from the C.A, referring to the detailed report and the certificate which is enlisting Particulars for the (Period 2014-15 to 2019-20), the heads for the Utilized Corpus Funds for expenses duly adds up to Rs 31,51,555/- and is evident to clear any such ambiguity which the Complainant Association is under about the remaining Corpus Funds adding up to Rs. 16,03,445/-. The Certificate and the detailed report of Income and Expenses in relation to Corpus Funds dated 02/01/2023 obtained from C.A. are annexed herewith and being marked as **ANNEXURE R 22 (COLLY)**.

PRAYER

32. In view of preliminary submissions and objections and the reply on merits averred to hereinabove, it is respectfully prayed that the aforesaid complaint filed by the Complainant, may kindly be dismissed with exemplary costs.



33. That the facts stated in the above affidavit are true to my knowledge. No part of the same is false and nothing material has been concealed therefrom.




DEPONENT

VERIFICATION:

I, the abovenamed deponent does hereby verify that the facts stated in the above affidavit are true to my knowledge. No part of the same is false and nothing material has been concealed there from.

Verified at Hyderabad, Telangana on this the ____ day of September, 2023.




DEPONENT



ATTESTED

M.B. SANTOSH KUMAR
B.A., L.L.
ADVOCATE & NOTARY PUBLIC
APPOINTED BY GOVT OF T.S
West Marredpally, Sec'bad
Cell: 8639030850
BOMS NO 1073

**BEFORE THE NATIONAL CONSUMER DISPUTES
REDRESSAL COMMISSION, NEW DELHI**

CONSUMER COMPLAINT NO.176 OF 2022

IN THE MATTER OF:

VISTA HOMES OWNERS ASSOCIATION

..... COMPLAINANTS

VERSUS

M/S VISTA HOMES & ANR

..... OPPOSITE PARTIES

AFFIDAVIT

I, D Pavan Kumar S/o D Anjaneyulu, aged about 32 years,
R/o H. No. 5-39, Parvathapur, Uppal, Medipalli, Hyderabad-
500098, Telangana, presently at Hyderabad, Telangana, do
hereby solemnly affirm and state as under:-

1. That I am Customer Relationship Manager of the
Opposite Party Nos.1 & 2, in the aforesaid complaint
and as such, I am conversant with facts &
circumstances of the matter and hence, I am competent
/ authorized to swear the accompanying counter
affidavit on behalf of Opposite Party Nos.1 & 2.
2. That I have read a copy of the accompanying Counter
Affidavit and having understood the contents thereof in



vernacular, I say that the facts stated therein are true to my personal knowledge derived from the records and submissions made are based on legal advice received and believe to be correct therein.

3. That the annexures marked to instant reply, are true copies of their respective originals.
4. That the facts stated in the above affidavit are true to my knowledge. No part of the same is false and nothing material has been concealed there from.




DEPONENT

VERIFICATION:

I, the abovenamed deponent does hereby verify that the facts stated in the above affidavit are true to my knowledge. No part of the same is false and nothing material has been concealed there from.

Verified at Hyderabad, Telangana on this the ____ day of December, 2023.




DEPONENT



ATTESTED

M.B. SANTOSH KUMAR
B.A., L.L.B.
ADVOCATE & NOTARY PUBLIC
APPOINTED BY GOVT OF T.S
West Marredpally, Sec'bad
Cell: 8639030850
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