

**BEFORE THE NATIONAL CONSUMER DISPUTES REDRESSAL
COMMISSION, NEW DELHI
CONSUMER COMPLAINT NO. 176 OF 2022**

IN THE MATTER OF:

VISTA HOMES OWNERS ASSOCIATION

...COMPLAINANT

Versus

VISTA HOMES & ANR

...OPPOSITE PARTIES

WRITTEN SUBMISSIONS ON BEHALF OF OPPOSITE PARTIES

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(Opposite parties)

Through

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The present written submissions are being filed on behalf of Vista Homes & Anr. (**“Opposite Parties”**) in the Complaint filed by the Vista Homes Owners Association (**“Complainant”**). This Hon’ble Commission, *vide* Order dated 05.03.2025, was pleased to direct Opposite Parties to file written submissions in the captioned Complaint and thus, the present written submissions.

MOST RESPECTFULLY SHOWETH

I. FACTUAL SUBMISSIONS

1. The Opposite Party No. 1 (**“OP 1”**) is a subsidiary of Modi Properties Private Limited and Opposite Party No. 2 (**“OP 2”**) is the Director of OP 1 which has, to date, completed the construction of more than 4,500 houses/flats and enjoys stellar reputation in the twin cities of Hyderabad and Secunderabad. For every project, the Opposite Parties use material sourced from reputed companies and have refrained from using sub-standard products.
2. The Opposite Parties are the builders of the residential project, “*Vista Homes*” in Hyderabad, consisting of 377 flats, which were duly completed and handed over to the respective purchasers between 2014-2019, who are the members of the Complainant Association.

At the outset, it is submitted that the present complaint is not maintainable and the reliefs sought for cannot be granted in light of the preliminary objections outlined hereinbelow which ought to be addressed before adjudicating the complaint on merits -

A. COMPLAINANTS HAVE NOT MOVED ANY APPLICATION SEEKING PERMISSION TO FILE THE COMPLAINT IN REPRESENTATIVE CAPACITY

3. That the present Complaint has been filed by the Complainant Association in a representative capacity, representing similar interests of other flat purchasers in the housing society constructed by Opposite Parties. However, the said Complaint has been filed *sans* mandatory application seeking permission under Section 35(1)(c) of the Consumer Protection Act, 2019 (“**New Act**”) as per which, one or more consumers having the same interest may file a complaint with the permission of the Commission. Relevant part of the section is referenced hereinunder:

“35. Manner in which complaint shall be made.—(1) A complaint, in relation to any goods sold or delivered or agreed to be sold or delivered or any service provided or agreed to be provided, may be filed with a District Commission by—

(c) one or more consumers, where there are numerous consumers having the same interest, with the permission of the District Commission, on behalf of, or for the benefit of, all consumers so interested;

4. Therefore, the *sine qua non* for invoking Section 35(1)(c) is that all consumers on whose behalf or for whose benefit the provision is invoked should have the *same interest*. Further, as per Order I Rule VIII of the Code of Civil Procedure 1908, notice of the institution of the suit to all persons interested, either by personal service or by public advertisement, should be effected by the Complainant pursuant to the permission of the Hon’ble Commission.

B. COMPLAINANT DOES NOT HAVE ANY LOCUS STANDI

5. 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 of managing the day-to-day affairs for the housing complex. This association is run by its elected members, and as per the bye-laws of the said association, an Extraordinary General Meeting (“**EGM**”) should have been called to take any decision on behalf of all the home buyers.
6. The office bearers do not have any authority to take any action without due consultation and authorization from their members. It is pertinent to mention here that the Complainant Association has neither approached 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.

7. 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 A (COLLY)**.

C. COMPLAINT IS BARRED BY LIMITATION

8. That the complainant has filed the complaint after six years of completion of the project for deficiency of service. This again proves their malicious intent that they are tagging issues of normal wear and tear and regular use as a deficiency on the part of the OP.
9. It is the case of the Complainant that the association was handedover to them by the Ops only on 01.10.2020 when the Complainant took charge, however no proof in support thereof has been filed, when in fact the members of the Complainant have been in possession of flats in Block A&I in 2014 with the last handover being in the year of 2019.

D. COMPLAINANT DOESNOT FALL UNDER THE AMBIT OF SECTION 2(7) OF THE CONSUMER PROTECTION ACT, 2019

10. The 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 a consumer complaint and not the Association, herein.
11. 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, *inter alia*: Booking form, Agreement of sale, Sale Deed Undertaking at the time of handing over possession, Possession Letter, No due certificate, Membership enrolment form for membership of the association. The true copy of the documents pertaining to handing over the flats is annexed hereto as **ANNEXURE B (COLLY)**.

E. THE OP's, HAVE NOT BEEN GRANTED FAIR OPPORTUNITY TO CONTEST THE COMPLAINT AND THE CONDUCT OF THE COMPLAINANTS DISENTITLES THEM FROM CLAIMING ANY RELEIFS

12. That the OP by Speed Post received the Complaint, however, upon perusal of the Complaint, it was discovered that the Complaint, as originally filed, had been drafted under the provisions of the Consumer Protection Act, 1986 ("Old Act"), which stands repealed and replaced by the Act. The Complaint, as received, had no annexures. Therefore, the complete set of the original Complaint was never served on the Opposite Parties.
13. Upon inspection of court record on 25 April 2023, it was discovered that the Complainant had materially altered the Complaint without moving any application and/or advance service on the Opposite Parties. It is pertinent to note that without serving a copy of the amended complaint to the Opposite Parties, the Complainant Association continued attending the matter. In spite of the above, the right of the Opposite Parties to file reply/ written statement has been closed vide Order dated 31.07.2023.
14. On 13.12.2023, the complainant filed their evidence by way of affidavit ("Evidence Affidavit"), along with 65 new documents ("Additional Documents") which were not part of the documents filed along with the Complaint. Such documents were neither supported by any application seeking leave of this Hon'ble Commissioner, nor has any statement been deposed in the Evidence Affidavit with respect to their relevance.
15. That the Opposite Parties herein, on 22.05.2024 has filed an application seeking dismissal of the complaint on various grounds. Thereafter, the Ops also filed another application seeking to cross examine the Complainants. The Complainants, without filing their counter both the applications, to avoid adjudication of the preliminary issue, have been insisting for final hearing of the main complaint.

In so far as the claims made by the Complainants are concerned, without prejudice to the submissions made hereinabove, the Ops submit as under –

16. **Substandard Construction:** The construction was carried out as per NBC Norms. The quality of construction 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 C (COLLY)**. Be that as it may, the fact that the residents have been living in the Building since July 2014 and raised the complaint only in 2022 without any proof shows that the entire allegation is frivolous.

17. The Occupancy Certificates for the entire project were granted by the concerned authorities after due verification of the condition of the flats and completion of all the proposed specifications and facilities. The true copy of the Occupancy Certificates are annexed hereto as **ANNEXURE D (COLLY)**.
18. It is relevant to point out that, the prices of the Vista Homes had increased to double the price from 2014 to 2022. 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 E (COLLY)**. Furthermore, customers who initially booked / purchased one flat in the project of the OP, have 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. The true copy of the AOS and booking form of F207 and G307 and Copy of AOS and booking form of C105 and F105, are annexed herewith and being marked as **ANNEXURE F (COLLY)**.
19. **Drainage, Sewerage and Septic Tanks:** Possession for 1st set of flats in A & I blocks were handed over to home buyers in July 2014, and since then, the customers are living therein without any major complaint. Further, there has been no observation by municipal officials about an improper sewage system. Also, the building permit basement plan clearly shows the location of the sewage treatment plant in the basement, and the sewage was treated by way of the appropriately designed septic tank.
20. As per the norms of National Building Code Norms ("**NBC Norms**"), 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 competent with Pollution Control Board Norms ("**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 G (COLLY)**.

21. The discharge from the STP/ septic tank has been appropriately connected to a 30ft. Nala is passing along the south side of the site. Further, the MEP consultant was appointed to review the 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.
22. 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 H (COLLY)**.
23. The drainage and sewerage are thus constructed as per the plan in the basement and well connected for a drain-out to the nala.
24. Fire Safety: Various other certificates/permissions/approvals were obtained by the Opposite Party before commencement and during construction work, which relate 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, are annexed herewith and being marked as **ANNEXURE I (COLLY)**. 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.
25. **Municipal Water:** As on date, water supply is provided for all the Flats. The Complainant is misleading the Hon'ble Commission by placing reliance on the memo no. HMWSSB/Rev.Dn. XIV/2023-24/ 227 dated 06/02/2024, which is an internal memo of the water works department, illegally procured by the Complainant and was never issued to the Ops by the concerned department. It is submitted 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. However, subsequently, on account of additional construction, while water was supplied and continues to be supplied, the permit was not rectified, which is merely a procedural lapse.

26. Further, for water supply, the capacity of connection is based on the diameter of the pipe supplying water to the group housing complex. In Vista Homes 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 which is sanctioned. Minimum charges have to be paid for 82KLD irrespective of consumption. In case consumption is more than 82KLD charges have to be paid on the consumed water. 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 and such additional works are beyond the scope of work of the OP.
27. **Election:** As per Clause 10(1) of the Bye-Laws of the Complainant Society, the election of the office bearers of the Society had to be undertaken only on where is atleast one executive committee member representing each block. It is thus, only after completion and handover of the construction when the said clause be complied with that the OP handed over the Society to the residents and elections were conducted.
28. **Books of Accounts, Corpus Fund and Maintenance Fund:** All 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.
29. The books of accounts have been appropriately audited and certified from the creation of the Association till 31.03.2020. 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 a password, which is “VHOA”. The true copy of the email sent to the Association in December 2020, acknowledgment of receipt of documents in August 2021, audited accounts and tax returns, and the snapshot of website showing documents of VHOA, annexed herewith and being marked as **ANNEXURE J (COLLY)**.
30. 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 corpus funds of INR 47.55 Lakh and not INR 65 Lakh, which can be ascertained from the certificate obtained from a Chartered Accountant (“CA”) summarizing the instances of the association upto 31.03.2020, true copy of which, is annexed herewith and being marked as **ANNEXURE K**.

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 are marked as **ANNEXURE L (COLLY)**.
32. **Proportionate Costs:** The Complainant is claiming Rs. 96,77,000/- towards proportionate cost is baseless, vague, unfounded and devoid of any evidentiary proof.
33. **Other Structural Issues:** At the outset it is submitted that all the claims are false. Even assuming there is any merit, the claim are belated. Each time the OP's were intimated of any difficulties being faced by the residents, they were promptly addressed and it is only after full and final satisfaction of the residents and the concerned authorities that the Occupancy Certificates were issued. Be that as it may, in response to the specific issues raised it is submitted as under –

SL. No.	COMPLAINT	RESPONSE
1.	Insufficient storage capacity for manjeera and insufficient pumping capacity.	Appropriate sumps have been provided. Infact one sump of 50,000 ltrs remain unused even today.
2.	Water leakage problem from outer walls and from top floors. Improper drainage in the cellar causes water stagnation and unhygienic conditions.	There is no leakage of water from the terrace. The Op has provided sub-surface drainage under the cellar with a network of pipes and to mud sumps with cutter type dewatering pumps has been appropriately provided.
3.	Outer bounding walls have many cracks ready to collapse.	Allegation is untrue and devoid of proof.
4.	Water harvesting pits constructed but filled it with waste material it's not functioning even unable to recharge bore wells.	Rainwater harvesting 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 Association ought to employee qualified persons to undertake the maintenance works.
5.	Deficiency of power back up not able to receive 1KV and insufficient transformer capacity due to which frequently current is tripping.	Power backup has been provided in form of two generators.
6.	Sewerage treatment plant not constructed and discharging drainage water into Nala without treating.	Water is being treated by way of septic tank.
7.	Not maintained security cameras and now it's not functioning.	Fully functional security cameras were provided at the time of completion of construction. The Complainant has not been maintaining them.
8.	Improper maintenance of Gym and clubhouse.	Fully furnished and functional clubhouse was handed over to the Complainant and no objections were raised at the time of handover. Any concerns which have arisen thereafter have to be handled by the Complainant.
9.	Not maintaining borewell motors and fixing insufficient motors	Borewells and water supply infrastructure were maintained by the Opposite Party since 2012 until 2020. This complaint has been raised for the first time, which shows that the allegation is an afterthought.
10.	The structure formed cracks and seepages in columns, beams & slabs, its lost strength.	The allegation is false and devoid of any documentary proof.
11.	In many flat poor plastering using poor quality material thereby causes leakages and water seepages from the outer.	The allegation is false and devoid of any documentary proof.
12.	In many flats grouting work has not been done, causing all walls dampness.	The allegation is false and devoid of any documentary proof.
13.	Improper laying of walkway and approach road many utilization.	The allegation is false and devoid of any documentary proof.

34. It is submitted that the OP 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 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 M (COLLY)**.
35. **Damages:** The Complainant has sought damages on basis of a time-barred claim which is not maintainable under law. Further, none of the allegations made against the Ops stand established, in fact the difficulties faced by the Complainant are on account of their failure to maintain and manage the Society.
36. Be that as it may, without admitting any of the allegations made by the Complainant, the Opposite Party, keeping in mind the welfare of the residents of the Society is willing to provide all the assistance required by the Complainant in addressing the difficulties faced by them, at their cost.

II. PRAYER

37. In light of the aforementioned submissions, it is humbly prayed that this Hon'ble Commission be pleased to:
- a. Dismiss the Complaint on the ground of lack of prior permission under Section 35(1)(c) of the Consumer Protection Act, 2019, must be sought and obtained prior to the adjudication of the present Complaint, as it is a necessary procedural requirement ensuring that the Opposite Parties.
 - b. Dismissal of all the reliefs sought by the Complainant.
 - c. Direct the Complainant to compensate for damages incurred to the Goodwill of the Opposite Parties due to the complaint.