

THE RAJASTHAN REAL ESTATE REGULATORY AUTHORITY,
JAIPUR

COMPLAINT NO. RAJ-RERA-C-2018-2193

Amit Kumar Lamba

...Complainant (Applicant)

Versus

Shekhar Home Developers

...~~Non~~-Complainant (Non-applicant)

Present

Shri Nihal Chand Goel, Hon'ble Chairman
Shri Rakesh Jain, Hon'ble Member

- (1) The applicant in person, along with Shri Harshal Tholia, Advocate.
- (2) None for the non-applicant.

Date of Order : 23rd April, 2019

ORDER

On perusal of the case file it is revealed that the present matter is a complaint under Section 31 of the Real Estate (Regulation and Development) Act, 2016 ('the Act', for short) filed in Form O prescribed under Rule 36 of the Rajasthan Real Estate (Regulation and Development) Rules, 2017 ('the Rules', for short) and is addressed to the Adjudicating Officer.



We are of the view that this matter can be heard only by the Adjudicating Officer and not by the Real Estate Regulatory Authority ('the Authority', for short), because the complaint is addressed to the Adjudicating Officer and is in Form O prescribed under Rule 36 of the Rules.

Shri Harshal Tholia, Advocate has objection to this interpretation of the Act and the Rules, and says that many orders have been passed by the Authority in the past where matters addressed to the Adjudicating Officer in Form O have been decided by the Authority.

Therefore, we would like to explain in some detail our understanding of the Act and the Rules insofar as the filing of complaints with the Authority or the Adjudicating Officer and the competency to dispose them of are concerned. Section 31 of the Act provides as under:

31. (1) Any aggrieved person may file a complaint with the Authority or the adjudicating officer, as the case may be, for any violation or contravention of the provisions of this Act or the rules and regulations made thereunder against any promoter allottee or real estate agent, as the case [sic] may be....

(2) The form, manner and fees for filing complaint under subsection (1) shall be such as may be prescribed.



This section only indicates as to who can file a complaint, for what and against whom. But it does not explain what kinds of complaint are to be filed with the Authority and what kinds of complaint are to be filed with the Adjudicating Officer.

To find out what complaints are to be filed with and disposed of by the Authority and what complaints are to be filed with and disposed of by the Adjudicating Officer, we have to refer to some other provisions of the

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Act and the Rules, namely, sections 71, 37 and 38(1) of the Act and rules 35(1) and 36(1) of the Rules, which are reproduced hereunder:-

Sections 71, 37 and 38(1) –

71. (1) For the purpose of adjudging compensation under sections 12, 14, 18 and section 19, the Authority shall appoint in consultation with the appropriate Government one or more judicial officer as deemed necessary, who is or has been a District Judge to be an adjudicating officer for holding an inquiry in the prescribed manner, after giving any person concerned a reasonable opportunity of being heard:

Provided that any person whose complaint in respect of matters covered under sections 12, 14, 18 and section 19 is pending before the Consumer Disputes Redressal Forum or the Consumer Disputes Redressal Commission or the National Consumer Redressal Commission, established under section 9 of the Consumer Protection Act, 1986, on or before the commencement of this Act, he may, with the permission of such Forum or Commission, as the case may be, withdraw the complaint pending before it and file an application before the adjudicating officer under this Act.



(2) The application for adjudging compensation under sub-section (1), shall be dealt with by the adjudicating officer as expeditiously as possible and dispose of the same within a period of sixty days from the date of receipt of the application:

Provided that where any such application could not be disposed of within the said period of sixty days, the adjudicating officer shall record his reasons in writing for not disposing of the application within that period.

(3) While holding an inquiry the adjudicating officer shall have power to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case to give evidence or to produce any document which in the opinion of the adjudicating officer, may be useful for or relevant to the subject matter of the inquiry and if, on such inquiry, he is satisfied that the person has failed to comply with the provisions of any of the

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sections specified in sub-section (1), he may direct to pay such compensation or interest, as the case may be, as he thinks fit in accordance with the provisions of any of those sections.

37. The Authority may, for the purpose of discharging its functions under the provisions of this Act or rules or regulations made thereunder, issue such directions from time to time, to the promoters or allottees or real estate agents, as the case may be, as it may consider necessary and such directions shall be binding on all concerned.

38. (1) The Authority shall have powers to impose penalty or interest, in regard to any contravention of obligations cast upon the promoters, the allottees and the real estate agents, under this Act or the rules and the regulations made thereunder.

Rules 35(1) and 36(1) –

35. Manner of filing a complaint with the Authority and the manner of holding an inquiry by the Authority.- (1) Any aggrieved person may file a complaint with the Authority for any violation under the Act or the rules and regulations made thereunder, save as those provided to be adjudicated by the adjudicating officer, in Form-N, in triplicate until the application procedure is made web based, which shall be accompanied by a fee of rupees one thousand in the form of a demand draft or bankers cheque drawn on a nationalised bank in favor of Authority and payable at the branch of that bank at the station where the seat of the said Authority is situated or through online payment, as the case may be.

36. Manner of filing a complaint with the adjudicating officer and the manner of holding an inquiry by the adjudicating officer.- (1) Any aggrieved person may file a complaint with the adjudicating officer for interest and compensation under section 12, 14, 18 and 19 in Form-O, in triplicate until the application procedure is made web based, which shall be accompanied by a fee of rupees one thousand in the form of a demand draft or bankers cheque drawn on a nationalized bank in favor of Authority and payable at the branch of that bank at the station where the seat of the said Authority is situated or through online payment, as the case may be.



Based on a conjoint reading of these provisions, our understanding of the Act is very clear that it has established two parallel forums viz. the Authority and the Adjudicating Officer. Appeals against the orders of both these forums lie to the Real Estate Appellate Tribunal.

Accordingly, as per Section 71 of the Act, the Adjudicating Officer has been vested with the powers of hearing matters of compensation under Sections 12, 14, 18 and 19 of the Act. And, except in the matters of compensation so assigned to the Adjudicating Officer under Section 71 of the Act, powers of hearing are vested with the Authority in all other matters. Neither the Authority nor the Adjudicating Officer can encroach upon the jurisdiction of the other. This mutually exclusive jurisdiction of the Authority and the Adjudicating Officer is formalized in the form of Rule 35 and Rule 36 of the Rules, which prescribe two different forms for the two forums, Form-N under Rule 35(1) for filing complaints with the Authority for any violation 'save as those provided to be adjudicated by the adjudicating officer', and Form-O under Rule 36(1) for filing complaints with the Adjudicating Officer for compensation under Section 12, 14, 18 and 19 of the Act. Thus, as per this framework of distribution of powers between the Authority and the Adjudicating Officer, vis-à-vis the Adjudicating Officer, the Authority has all the powers, excepting the



powers given to the Adjudicating Officer in relation to matters of compensation under sections 12, 14, 18 and 19 of the Act.

We, therefore, now proceed to examine each of these sections to see exactly what powers are to be exercised by the Adjudicating Officer and what powers are to be exercised by the Authority insofar as the said sections 12, 14, 18 and 19 are concerned.

Section 12 -

12. Where any person makes an advance or a deposit on the basis of the information contained in the notice advertisement or prospectus, or on the basis of any model apartment, plot or building, as the case may be, and sustains any loss or damage by reason of any incorrect, false statement included therein, he shall be compensated by the promoter in the manner as provided under this Act:

Provided that if the person affected by such incorrect, false statement contained in the notice, advertisement or prospectus, or the model apartment, plot or building, as the case may be, intends to withdraw from the proposed project, he shall be returned his entire investment along with interest at such rate as may be prescribed and the compensation in the manner provided under this Act.



This section is different from other sections 14, 18 and 19 in many ways. Firstly, it covers the pre-agreement stage of a booking, while the other three sections find application mostly at the post-agreement stage. Secondly, section 12 talks only (or mainly) of the liability of the promoter to compensation in cases where any incorrect or false statement is made by the promoter in the information that is provided by him by way of a

notice, advertisement or prospectus or by way of a model apartment, plot or building and some loss or damage is caused to the complainant because of such statement. Thus, in cases where the complainant has taken possession or intends to take possession of the apartment, plot or building booked by him, the only relief provided in section 12, for the complainant, is that of compensation. Proviso to section 12 is an exception to the main provision of compensation so as to cover the situations where the complainant is entitled to the relief of compensation on account of an incorrect or false statement on the part of the promoter, but the complainant has not taken the possession and is no more willing to take possession of the apartment, plot or building booked by him. In such cases, in addition to the compensation due to the complainant because of such incorrect or false statement, the complainant will also be allowed the refund of his investment along with interest thereon. Thus, section 12 talks of only compensation (in cases where the complainant has already taken possession or is willing to take possession) and compensation coupled with refund and interest (in cases where the complainant is entitled to compensation due to incorrect or false statement, but has not taken and is not willing to take possession).



This being so, all matters falling under section 12 are required to be heard by the Adjudicating Officer and the Authority has no role in these

matters. It is perhaps only because of the provision of interest made in Proviso to section 12 that it has been provided in section 71(3) that the Adjudicating Officer 'may direct to pay such compensation or interest, as the case any [sic] be, as he thinks fit in accordance with the provisions of any of those sections [section 12, 14, 18 and section 19]'. The complaint to the Adjudicating Officer will only or mainly be for adjudging compensation, though, the Adjudicating Officer has the discretion of allowing refund along with interest, in addition to compensation, under Proviso to section 12. In section 12, compensation is the main relief; and refund with interest is added to compensation to cover such cases where the complainant has not taken and is not willing to take possession of the apartment, plot or building booked-by him. In other words, an 'incorrect, false statement' on the part of the promoter at the stage of booking is the *raison d'être* for action under section 12; and no relief can be provided to the complainant under the section or Proviso to section 12 if there is no such incorrect or false statement and no loss or damage is caused to the complainant because of such statement. No refund along with interest can be ordered under Proviso to section 12, unless the complainant is first held eligible for compensation under section 12. Compensation is, thus, integral to any relief under section 12 or Proviso thereto, whereas, as we explain herein below, compensation is mostly an additionality under sections 14, 18 and 19, which may or may not be claimed or allowed and



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still the complainant may claim or be allowed other relief under those sections.

Section 14 –

14. (1) The proposed project shall be developed and completed by the promoter in accordance with the sanctioned plans, layout plans and specifications as approved by the competent authorities.

(2) Notwithstanding anything contained in any law, contract or agreement, after the sanctioned plans, layout plans and specifications and the nature of the fixtures, fittings, amenities and common areas, of the apartment, plot or building, as the case may be, as approved by the competent authority, are disclosed or furnished to the person who agree to take one or more of the said apartment, plot or building, as the case may be, the promoter shall not make—

(i) any additions and alterations in the sanctioned plans, layout plans and specifications and the nature of fixtures, fittings and amenities described therein in respect of the apartment, plot or building, as the case may be, which are agreed to be taken, without the previous consent of that person: Provided that the promoter may make such minor additions or alterations as may be required by the allottee, or such minor changes or alterations as may be necessary due to architectural and structural reasons duly recommended and verified by an authorised Architect or Engineer after proper declaration and intimation to the allottee.



Explanation.—For the purpose of this clause, "minor additions or alterations" excludes structural change including an addition to the area or change in height, or the removal of part of a building, or any change to the structure, such as the construction or removal or cutting into of any wall or a part of a wall, partition, column, beam, joist, floor including a mezzanine floor or other support, or a change to or closing of any required means of access ingress or egress or a change to the fixtures or equipment, etc.

(ii) any other alterations or additions in the sanctioned plans, layout plans and specifications of the buildings or the common areas within the project without the previous written consent of at

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least two-thirds of the allottees, other than the promoter, who have agreed to take apartments in such building.

Explanation.—For the purpose of this clause, the allottees, irrespective of the number of apartments or plots, as the case may be, booked by him or booked in the name of his family, or in the case of other persons such as companies or firms or any association of individuals, etc., by whatever name called, booked in its name or booked in the name of its associated entities or related enterprises, shall be considered as one allottee only.

(3) In case any structural defect or any other defect in workmanship, quality or provision of services or any other obligations of the promoter as per the agreement for sale relating to such development is brought to the notice of the promoter within a period of five years by the allottee from the date of handing over possession, it shall be the duty of the promoter to rectify such defects without further charge, within thirty days, and in the event of promoter's failure to rectify such defects within such time, the aggrieved allottees shall be entitled to receive appropriate compensation in the manner as provided under this Act.

Sub-sections (1) and (2) of section 14 talk of the obligation of the promoter to adhere to sanctioned plans and project specifications, but do not disclose the remedy if the promoter does not adhere thereto. We have to, therefore, refer to section 34 which enumerates the functions of the Authority and under clause (f) thereof, one of the functions of the Authority is 'to ensure compliance of the obligations cast upon the promoters...'. That being so, under sections 37 and 38(1), the Authority has the powers to remedy such failure on the part of the promoter. Thus, for matters under sub-sections (1) and (2) of section 14, the power lies



entirely with the Authority; and there is no question of compensation involved in these sub-sections.

Sub-section (3) of section 14 talks of defect liability obligations of the promoter and provides for compensation as the sole remedy to the allottees for the failure of the promoter. This sub-section is very different from sub-sections (1) and (2) as sub-section (3) alone provides for compensation. So, powers under sub-section (3) of section 14 lie with the Adjudicating Officer.

Section 18 –

18. (1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building,—

(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or

(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,

he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.

(2) The promoter shall compensate the allottees in case of any loss caused to him due to defective title of the land, on which the project is being developed or has been developed, in the manner as provided under this Act, and the claim for compensation



under this sub-section shall not be barred by limitation provided under any law for the time being in force.

(3) If the promoter fails to discharge any other obligations imposed on him under this Act or the rules or regulations made thereunder or in accordance with the terms and conditions of the agreement for sale, he shall be liable to pay such compensation to the allottees, in the manner as provided under this Act.

Sub-section (1) of section 18 talks of the obligation of the promoter to complete a project by the dates specified in the agreement for sale and in accordance with the terms of the agreement for sale. Unlike section 12, where the cause of action arises from an incorrect or false statement on the part of the promoter, in section 18, the cause of action arises from failure of the promoter in completing the project in the agreed time frame or as per the other mutually agreed terms.



The main relief under section 18(1) is of interest, which may be allowed in both the cases, i.e., whether or not the complainant has taken or is willing to take possession. If the complainant has taken or is willing to take possession, he may ask for interest and only interest; and, if he has not taken and is not willing to take possession, in addition to refund along with interest, he may also ask for compensation. So, under section 18(1), the main relief is of interest or refund along with interest; and where the complainant has not taken and is not willing to take possession, he may also seek compensation as an additional relief. That being so, if the complainant is seeking only refund along with interest (in case he has not

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taken and is not willing to take possession) or he is claiming only interest (in case he has taken or is willing to take possession), the complainant has to file his complaint with the Authority. If, however, the complainant is also seeking remedy of compensation, in addition to refund along with interest, he will have to file two separate applications, one with the Authority for claiming refund along with interest and the other with the Adjudicating Officer for claiming compensation. And, in such cases, it will be more in the fitness of things if claim for compensation is filed with the Adjudicating Officer after the Authority has decided the complaint filed with it and held the promoter liable to pay interest or refund the amount received by him along with interest under the provisions of section 18(1).



In section 12, compensation is the mandatory and main relief. So, if a complaint does not disclose the making of an incorrect or false statement ~~is~~ ^{is} and is not found fit for the award of compensation, it is not fit even for the purpose of Proviso to section 12 for award of refund along with interest and compensation. Unlike section 12, in section 18(1), compensation is not the mandatory relief. A case may be fit for award of refund along with interest, but may not be fit enough for award of compensation. Similarly, a complainant may be satisfied with and may only ask for refund along with interest and may not ask for compensation;

but in section 12, the complainant has to necessarily allege an incorrect or false statement (and loss or damage caused because of such statement) and ask for compensation, and if he fits into Proviso to section 12, he can, in addition, also ask for refund along with interest. Thus, section 18(1) is very different from section 12 in terms of relief of compensation and respective roles of the Authority and the Adjudicating Officer.

Sub-sections (2) and (3) of section 18 talk of the obligation of the promoter to compensate the allottees for defective title of the land and of the obligation to compensate the allottees for any failure on the part of promoter to discharge any other obligation under the Act. Thus, sub-sections (2) and (3) of section 18 provide for compensation, and compensation alone; and the power to determine matters under these two sub-sections lies solely with the Adjudicating Officer.

Section 19 –

19. (1) The allottee shall be entitled to obtain the information relating to sanctioned plans, layout plans along with the specifications, approved by the competent authority and such other information as provided in this Act or the rules and regulations made thereunder or the agreement for sale signed with the promoter.

(2) The allottee shall be entitled to know stage-wise time schedule of completion of the project, including the provisions for water, sanitation, electricity and other amenities and services as agreed to between the promoter and the allottee in accordance with the terms and conditions of the agreement for sale.



(3) The allottee shall be entitled to claim the possession of apartment, plot or building, as the case may be, and the association of allottees shall be entitled to claim the possession of the common areas, as per the declaration given by the promoter under sub-clause (C) of clause (e) of sub-section (2) of section 4.

(4) The allottee shall be entitled to claim the refund of amount paid along with interest at such rate as may be prescribed and compensation in the manner as provided under this Act, from the promoter, if the promoter fails to comply or is unable to give possession of the apartment, plot or building, as the case may be, in accordance with the terms of agreement for sale or due to discontinuance of his business as a developer on account of suspension or revocation of his registration under the provisions of this Act or the rules or regulations made thereunder.

(5) The allottee shall be entitled to have the necessary documents and plans, including that of common areas, after handing over the physical possession of the apartment or plot or building as the case may be, by the promoter.

(6) Every allottee, who has entered into an agreement for sale to take an apartment, plot or building as the case may be, under section 13, shall be responsible to make necessary payments in the manner and within the time as specified in the said agreement for sale and shall pay at the proper time and place, the share of the registration charges, municipal taxes, water and electricity charges, maintenance charges, ground rent, and other charges, if any.

(7) The allottee shall be liable to pay interest, at such rate as may be prescribed, for any delay in payment towards any amount or charges to be paid under sub-section (6).

(8) The obligations of the allottee under sub-section (6) and the liability towards interest under sub-section (7) may be reduced when mutually agreed to between the promoter and such allottee.

(9) Every allottee of the apartment, plot or building as the case may be, shall participate towards the formation of an association or society or cooperative society of the allottees, or a federation of the same.



(10) Every allottee shall take physical possession of the apartment, plot or building as the case may be, within a period of two months of the occupancy certificate issued for the said apartment, plot or building, as the case may be.

(11) Every allottee shall participate towards registration of the conveyance deed of the apartment, plot or building, as the case may be, as provided under sub-section (1) of section 17 of this Act.

This section provides for rights and duties of the allottees. Sub-section (1) to sub-section (5) provide for entitlements of the allottees, while sub-section (6) to sub-section (11) provide for obligations of the allottees.

Entitlements of allottees enumerated in sub-section (1) to sub-section (5) of section 19 are nothing but a mirror image of the obligations of promoter enumerated in various sections of the Act. Thus, said sub-section (1) to sub-section (5) merely put together at one place the obligations of the promoter in the form of entitlements of the allottees.

These entitlements are not actionable under the Act, because the powers of the Authority and of the Adjudicating Officer are limited to enforcing the obligations of the promoter or the allottees, and not the entitlements of the allottees or the promoter. That being so, if an allottee wishes to claim any of the entitlements enumerated in sub-section (1) to sub-section (5) of section 19, he will have to claim relief under the relevant section of the Act that provides for corresponding obligation of the promoter.



Sub-section (6) to sub-section (11) provide for the obligations of the allottees, and compensation is not one of the obligations of the allottees. Therefore, the authority alone can take action against the allottees, if they fail to discharge any of their obligations under sub-section (6) to sub-section (11) of section 19.

To sum up the section-wise observations made by us hereinabove, complaints for relief under sections 12, 14 (3), 18 (2) and 18 (3) are to be filed with and disposed of by the Adjudicating Officer alone, in the manner prescribed in rule 36 of the Rules. Complaints for relief under sections 14 (1), 14 (2) and 19 (6) to 19 (11) are to be filed with and disposed of by the Authority alone, in the manner prescribed in rule 35 of the Rules. As regards complaints under section 18 (1), the complaint is to be filed with and disposed of by the Authority if the relief sought therein is of refund, interest, penalty or any other directions; the complaint is to be filed with and disposed of by the Adjudicating Officer if the relief sought therein is of compensation alone; and where a complainant is seeking relief of refund along with interest as also of compensation, he is required to file two separate complaints, one, and preferably first, with the Authority for the relief of refund, interest, penalty or any other directions and the other, and preferably second, with the Adjudicating Officer for the relief of compensation, in the manner prescribed in rules



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35 (1) and 36 (1), respectively. Insofar as section 19 is concerned, neither the Authority nor the Adjudicating Officer has any powers to entertain or dispose of a complaint under sub-section (1) to sub-section (5), except, may be, to advise the complainant that he may file his complaint under the provisions of the Act that provide for corresponding obligation of the promoter. And, complaints under sub-section (6) to sub-section (11) against the allottees can be filed with the Authority alone.

Accordingly, we hold and direct that if a person is seeking relief of refund, interest thereon, penalty or any other directions, he is required to file a complaint in Form N, under Rule 35(1), addressed to the Authority. If a person is seeking relief of compensation, he is required to file a complaint (or application) in Form O, under Rule 36 (1), addressed to the Adjudicating Officer; and, under section 12 of the Act, the Adjudicating Officer has the discretion of ordering refund along with interest, in addition to compensation. If a person is seeking relief of compensation as well as other relief, he may accordingly file two separate complaints - one in Form N addressed to the Authority and the other in Form O addressed to the Adjudicating Officer, while ensuring that the relief sought in these two complaints is clearly different; and the relief sought in one complaint is disclosed in the other. And, in such cases of section 18 (1), complaint in form O may be filed with the Adjudicating Officer



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after the Authority has decided the complaint in Form N and held the promoter liable to pay interest or refund the amount received by him along with interest.

Further, if a person has already filed a complaint in Form N or in Form O or in both the Forms, with the Authority and/or the Adjudicating Officer, in which he has sought a comprehensive relief, partly in power of the Authority and partly in power of the Adjudicating Officer to grant, and the same is/are pending, he may, with the leave of the Authority and/or the Adjudicating Officer, as the case may be, choose to withdraw such complaint(s) and file a fresh complaint with the appropriate forum seeking appropriate relief or, if so felt necessary, file two separate complaints with the two forums, with different relief sought in each, in the manner indicated hereinbefore. Same relief can not be sought both in Form N and in Form O; and the complaint in Form O for the relief of compensation under section 18 (1) may not be filed with the Adjudicating Officer before the complaint is filed in Form N with and decided by the Authority holding the promoter liable to pay interest or refund, along with interest, the amount received by him.



This reflects our well-considered understanding of the relevant provisions of the Act and the Rules. And, if, in some matter in the past, the designated Authority, the predecessor of this Authority, has taken a

different view, we are not inclined to go with that and perpetuate the error.

In view of the above observations and directions, the present complaint in Form O is transferred to the Adjudicating Officer. It shall be removed from the cause list of the Authority and included in the separate list of cases pending adjudication by the Adjudicating Officer, who, we hope, will soon be in position and will issue fresh notices to the parties. The complainant will, of course, have the liberty to withdraw the present complaint, with the leave of the Adjudicating Officer, and proceed to file fresh complaint(s) as directed hereinbefore.




(Rakesh Jain)
Member


(Nihal Chand Goel)
Chairman