

**BEFORE THE HARYANA REAL ESTATE APPELLATE
TRIBUNAL**

**Appeal No.500 & 504 of 2022
Date of Decision: 01.09.2022**

Appeal No.500 of 2022

M/s Indiabulls Commercial Credit Limited through its authorised representative Registered Office at: 5th Floor Building No.27, KG Marg, Connaught Place, New Delhi-110001.

Appellant

Versus

1. Haryana Real Estate Regulatory Authority Gurugram through its Secretary, New PWD Rest House Civil Lines, Gurugram, Haryana-122001.
2. Smt. Nidhi Singh, A-2104, IREO Victory Valley, Sector 67, Gurugram-122101, Haryana.
3. M/s IREO Victory Valley Private Limited through its authorised representative, 305, 3rd Floor, Kanchan House, Karampura Commercial Complex, New Delhi-110015.
4. M/s KSS Properties Private Limited through its authorized representative, 305, 3rd Floor, Kanchan House, Karampura Commercial Complex, New Delhi-110015.
5. M/s High Responsible Realtors Properties Private Limited through its authorised representative, C-4, 1st Floor, Malviya Nagar, New Delhi-110017.
6. M/s Indiabulls Housing Finance Limited through its authorised representative, 5th floor, Building No.27, KG Marg, Connaught Place, New Delhi-110001.
7. Sub-Registrar, Tehsil Badshahpur, Office of Sub-Registrar, Tehsil Badshahpur, Swarg Marg, Badshahpur, Sector-66, Gurugram-122101.

Respondents

Appeal No.500 & 504 of 2022

8. M/s Victory Valley Condominium Owners Welfare Association D3/002, IREO Victory Valley, Sector-67, Gurugram-122101, Haryana.

Performa Respondent

Appeal No.504 of 2022

M/s Evinos Builders Limited through its authorised representative, 5th Floor Building No.27, KG Marg, Connaught Place, New Delhi-110001.

Appellant

Versus

1. Haryana Real Estate Regulatory Authority Gurugram through its Secretary, New PWD Rest House Civil Lines, Gurugram, Haryana-122001.
2. Smt. Nidhi Singh, A-2104, IREO Victory Valley, Sector 67, Gurugram-122101, Haryana.
3. IREO Victory Valley Private Limited through its authorised representative, 305, 3rd Floor, Kanchan House, Karampura Commercial Complex, New Delhi-110015.
4. M/s KSS Properties Private Limited through its authorized representative, 305, 3rd Floor, Kanchan House, Karampura Commercial Complex, New Delhi-110015.
5. M/s High Responsible Realtors Properties Private Limited through its authorised representative, C-4, 1st Floor, Malviya Nagar, New Delhi-110017.
6. M/s Indiabulls Housing Finance Limited through its authorised representative, 5th floor, Building No.27, KG Marg, Connaught Place, New Delhi-110001.
7. Sub-Registrar, Tehsil Badshahpur, Office of Sub-Registrar, Tehsil Badshahpur, Swarg Marg, Badshahpur, Sector-66, Gurugram-122101.

Respondents

Appeal No.500 & 504 of 2022

8. M/s Victory Valley Condominium Owners Welfare Association D3/002, IREO Victory Valley, Sector-67, Gurugram-122101, Haryana.

Performa Respondent

CORAM:

Shri Inderjeet Mehta,
Shri Anil Kumar Gupta,

Member (Judicial)
Member (Technical)

Argued by:

Shri Randeep Singh Rai, Ld. Senior Advocate assisted by Shri Rajeev Anand, Advocate Id. Counsel for the appellant.

Ms. Kaushaldeep Kaur, Advocate, Id. Counsel for respondent no.1.

Shri Bhupinder Pratap Singh, Advocate, Id. Counsel for respondent no.2.

Shri Yashvir Singh Balhara, Advocate, Id. Counsel for respondents no.3,4 and 5.

None for respondent no.6.

None for respondent no.7.

Shri Aman Madan, Advocate, Id. Counsel for M/s Ireo Victory Valley Private Limited-Performa Respondent no.8 (impleaded vide order dated 23.08.2022).

ORDER:**INDERJEET MEHTA, MEMBER (JUDICIAL):**

This order shall dispose of both the appeals mentioned above having arisen out of order dated 07.06.2022 passed by the learned Haryana Real Estate Regulatory Authority, Gurugram (hereinafter called the 'Authority') in Complaint No.RERA-GRG-2785-2021. Since common question

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of law and facts is involved, so both these appeals have been taken together for disposal.

2. Feeling aggrieved by the order dated 07.06.2022 handed down by the learned Authority, vide which the appellants- M/s Indiabulls Commercial Credit Limited and M/s Evinos Builders Limited were directed to maintain status quo with respect to the units mentioned in para nos.2 and 3 of the impugned order and further directed not to facilitate any sales in the project, either directly or indirectly in any way, shape or form, until further orders of the Authority, they have chosen to prefer the aforesaid appeals.

3. Respondent no.2 – Smt. Nidhi Singh had preferred a complaint No.2785 of 2021 against the respondent no.3 M/s Ireo Victory Valley Private Limited/promoter and other respondents claiming several reliefs and the said complaint was finally disposed of vide order dated 04.03.2022 handed down by the learned Authority by issuing several directions under Section 37 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter called 'the Act'), as mentioned in para no.92 of the said order. For the disposal of the present appeals, the direction given in sub-para (v) of para no.92 of the said order is relevant and the same is as follows:-

“V) The authority ordered an enquiry under section 35(1) to be instituted in the affairs of the

respondents' promoters with regard to the issues as mentioned in para 28,63,75 and 76 of this order and also other issues referred to enquiry officer specifically in paras where determination about various reliefs has been discussed. The M/s MKPS & Associates, Chartered Accountants, 804, 8th floor, Arunachal Building, 19 Barakhamba Road, New Delhi-110001, an empanelled firm to carry out the said inquiry/audit/fact finding in the affairs of the promoter. The firm entrusted this task shall also audit the accounts of the project whether some diversions of funds have taken place or not. The authority further directs the inquiry officer/auditing firm/fact finding team to submit its fact-finding report to the authority within two months. The remuneration shall be payable to enquiry officer/auditing firm/fact finding team as fixed by the authority for conducting this inquiry. Furthermore, the report as submitted by the inquiry officer/auditing firm/fact finding team be examined by the planning branch of this authority and if violations are noticed, the matter be placed before the authority for initiating further action as per provisions of law. The copy of the said report may also be sent to the complainant and respondent no.11 with a liberty to them to join as party in the penal proceedings against the promoters. The promoter shall discharge its liability within 3 months of receiving the report and acceptance by the authority.”

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4. In accordance with the said direction, M/s MKPS and Associates Company carried out the Forensic Audit of respondent no.3 Company/Promoter and submitted its report dated 30.05.2022 and on the basis of the same, the learned Authority initiated the action which ultimately led to the handing down of the impugned order dated 07.06.2022.

5. The relevant observations of the impugned order are as follows:

“5. In view of the above said findings of the auditor M/s MKPS & Associates Chartered accountants and the fact that the project is still unregistered despite specific orders to that effect passed by the Authority including but not limited to the final judgment dated 04.03.2022, you the addressee No.1 herein is hereby directed not to register any conveyance/sale deed in respect of the 43 units (36 units + 7 Units) as mentioned in above tables until further orders of the Authority.

6. The addressee Nos.2 to 6 herein are hereby directed to maintain status quo with respect to the said units and further directed not to facilitate any sales in the project, either directly or indirectly in any way, shape or form, until further orders of the Authority.

7. These directions are being issued by the authority in exercising of its power given under section 37 of the Real Estate (Regulation and Development) Act, 2016. Which are binding on all

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concerned, any act of non-compliance shall be view adversely and the authority shall be constrained to take appropriate action as per law.

*Sd/-
Executive (admin & Estt.)
Haryana Real Estate Regulatory
Authority, Gurugram”*

6. We have heard learned counsel for the parties and have meticulously examined the record of the case.

7. Opening his side of arguments, learned counsel for the appellants, while drawing the attention of this Tribunal towards the impugned order, has submitted that in fact the said order has been passed/signed by Shri Ranbir Singh, Executive (Admin & Estt.), an official of the Authority and there is absolutely nothing on the file to suggest remotely that the learned Authority had delegated its powers to the said official to pass the order or had authorised him to pass the same. Thus, the impugned order is apparently illegal and without jurisdiction, and cannot be sustained in the eyes of law. Further, he has submitted that regarding 43 units, as mentioned in para nos.2 and 3 of the impugned order, agreements to sell were executed prior to 20.07.2021, when the learned Authority had restrained the promoter for further sales in the project w.e.f. 20.07.2021. He has further submitted that the sales of these units have already taken place prior to 20.07.2021 and the registration of the

conveyance-deeds would only confirm the factum of the same. Lastly, it has been submitted that the appellants were neither arrayed as a party in Complaint No.2785 of 2021 titled as 'Smt. Nidhi Singh vs. Ireo Victory Valley Pvt. Ltd. & Others' nor any opportunity of being heard was provided to them by the learned Authority prior to handing down the impugned order. Thus, the impugned order suffers from material legal infirmities and deserves to be set aside. Reliance has been placed on an order dated 12.04.2021 handed down by this Tribunal in **Appeal No.330 of 2020** titled as '**Emaar MGF Land Ltd. vs. Puneet Tripathi**' and judgment dated 02.05.2022 handed down by the Hon'ble Real Estate Appellate Tribunal, Punjab in **Appeal No.50 of 2022** titled as '**Aeropolis Infrastructure Private Limited and another vs. Real Estate Regulatory Authority, Punjab**'.

8. Countering this vehemently, learned counsel for respondent no.1 has submitted that in fact the impugned order dated 07.06.2022 was passed by the Authority, after due application of the mind on an application dated 30.05.2022, preferred by the respondent no.2, requesting for direction to stay the sale of any kind of unsold units, pointed out by the auditor in his report dated 30.05.2022. Further, she has submitted that merely on account of the fact that an official of the Authority has signed on its behalf, the impugned order

does not lose its legal sanctity. Thus, the impugned order is perfectly legal and valid and no fault can be found with the same.

9. Learned counsel for respondent no.2 has submitted that respondent no.3 – promoter in collusion with licensees respondent No.4 - M/s KSS Properties Private Limited, respondent No.5 - M/s High Responsible Realtors Properties Private Limited and its financier respondent No.6 - M/s Indiabulls Housing Finance Limited, has entered into various agreements to sell, to sell the disputed units as well as the other units to the appellants to further the illegal cause of respondent No.3/promoter. Further, he has submitted that since the respondent No.3/promoter has not got the project registered, so to avoid further complication, the learned Authority has rightly handed down the impugned order directing the appellants to maintain status quo with respect to the units mentioned in para nos.2 and 3 of the impugned order.

10. After thoroughly going through the pleadings, documents and the relevant material available on the record, we are of the opinion that the arguments advanced by learned counsel for the appellants are devoid of merits for the reasons as stated hereinafter:-

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i) Though the impugned order has been signed by one Ranbir Singh, Executive (Admin & Estt.), an official of the Authority, but merely on this count the validity and legality of the impugned order cannot be doubted. A perusal of this order reveals that this order has been sent from Haryana Real Estate Regulatory Authority, Gurugram to respondent no.7 Sub-Registrar Tehsil Badshahpur, Gurugram; respondent no.3 - IREO Victory Valley Private Limited/Promoter as well as to respondent no. 4 - M/s KSS Properties Private Limited and respondent no.5 M/s High Responsible Realtors Properties Private Limited, who were granted license to develop the colony, respondent no.6 M/s Indiabulls Housing Finance Limited as well as to both the appellants. In accordance with the directions given in sub-para (v) of para no.92 of the order dated 04.03.2022 handed down by the learned Authority in Complaint N.2785 of 2021 titled as 'Smt. Nidhi Singh vs. Ireo Victory Valley Pvt. Ltd. & Others', M/s MKPS & Associates Company carried out the Forensic Audit of respondent no.3 Company/Promoter and submitted its report dated 30.05.2022 before the Authority. As is explicit from the perusal of the original record, which has been placed by the learned Authority, the audit report dated 30.05.2022 was submitted before Shri Vijay Kumar Goyal, learned Member of the Authority and on 31.05.2022, the said learned Member

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made a specific note that the respondent no.2 had filed another application dated 30.05.2022 requesting for issuance of interim direction to restrict sale of any kind with respect to the unsold units pointed out by the auditor. It was further mentioned that the office may link up and to make reference for the same to concerned Registrar/Sub-Registrar on urgent basis. The office was directed to initiate necessary action on observations especially on violations pointed out in the audit report. The said note of the learned Member was also signed by the learned Chairman of the Authority on the same date i.e. 31.05.2022. Thereafter, a draft copy of letter was prepared and was submitted for approval. Thus, the impugned order was issued by the authority after due application of the mind, on an application dated 30.05.2022 preferred by respondent no.2 for issuance of direction to restrict the sale of any kind with respect to the unsold units. Though, in handing down the impugned order some procedural irregularity may have appeared but the law is well settled that every procedural irregularity does not ipso facto lead to a conclusion that illegality has crept into the impugned order.

ii) Undisputedly, as mentioned in para no.27 of the impugned order dated 04.03.2022 in Complaint No.2785 of 2021 titled as 'Smt. Nidhi Singh vs. Ireo Victory Valley Pvt. Ltd. & Others' the learned Authority had restrained the

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respondent no.3/promoter for further sales in the project w.e.f. 20.07.2021. Admittedly, agreements to sell regarding the units, as mentioned in para nos.2 and 3 of the impugned order, were executed prior to 20.07.2021. The submission of learned counsel for the appellants that the execution of the conveyance-deed with regard to the said units would only confirm the agreements to sell entered into prior to 20.07.2021, cannot be attached any credence because the learned Authority, as referred above, had categorically restrained the respondent no.3/promoter for further sales w.e.f. 20.07.2021. Furthermore, as is also explicit from the perusal of the said order dated 04.03.2022 several obligations have been cast on respondent no.3/promoter to ensure the welfare of the allottees in the said project and those directions given by the Authority in the said order dated 04.03.2022 so far have not been complied with by respondent no.3/promoter. In the said order dated 04.03.2022, the learned Authority has specifically observed that the respondent promoters are in violation of Section 3 of the Act of 2016, which is punishable under Section 59(1) of the Act of 2016 and accordingly the Authority imposed a penalty of Rs.25 lacs on the promoters' company.

iii) The order dated 12.04.2021 passed by this Tribunal in '**Emaar MGF Land Ltd. vs. Puneet Tripathi**' case (Supra)

is not applicable to the facts of the case in hand and is distinguishable because as per the facts of the said case, Registrar-cum-Administrative Officer of the learned Authority had handed down the impugned order dated 05.09.2019, which was later on ratified by the Members and the Chairman of the Authority. Contrary to it, in the case in hand, as referred above, the impugned order has been passed by the learned Authority after due application of the mind.

Similarly, the judgment dated 02.05.2022 passed by the Hon'ble Real Estate Appellate Tribunal, Punjab in **'Aeropolis Infrastructure Private Limited and another vs. Real Estate Regulatory Authority, Punjab'** case (Supra), is also distinguishable as the notice had been issued by the Manager (Admn.) purportedly on behalf of Chairperson, Real Estate Regulatory Authority, Punjab and was followed up, by another communication dated 23.12.2019. As has been observed in para no. 29 of the said judgment, no document had been brought to the notice of the Hon'ble Real Estate Appellate Tribunal, Punjab, which would suggest that the learned Authority had itself gone into the issue to record its satisfaction. As has also been referred above, the learned Authority in the instant case has gone into the issue by way of applying its mind and authorising its functionary in this regard.

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iv) Admittedly, the present appellants were neither arrayed as party in Complaint No.2785 of 2021 filed by respondent no.2 Smt. Nidhi Singh, nor any opportunity of being heard was provided by the learned Authority before passing the restraint order against them by way of impugned order. Non-joining of the appellants as a party in Complaint No.2785 of 2021, was beyond the control of respondent no.2 in the said complaint as the respondent no.2 could not have visualized that the respondent no.3/promoter was in the process of transfer of the units of the project to the appellants nor any relief was claimed against the appellants. However, the fact remains that when respondent no.2 – complainant moved the application dated 30.05.2022 before the learned Authority seeking restriction of the sale of any kind with respect to the disputed and unsold units pointed out by the auditor, it was incumbent upon the Authority at least to issue notice to the appellants before passing any restraint order against them. The said lapse on the part of the learned Authority can be rectified if the appellants, if they so desire, knock the door of the learned Authority for vacation of the restraint order by taking all the pleas available to them as per law.

11. As a consequence to the aforesaid discussion, we are of the considered opinion that there is no illegality and

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irregularity in the impugned order handed down by the learned Authority and both the present appeals containing no merit deserve dismissal and are accordingly dismissed. However, the appellants are at liberty to approach the learned Authority by taking all the pleas available to them for vacation of the restraint order passed against them in the impugned order.

12. Copy of this order be sent to the parties/Ld. counsel for the parties and Ld. Haryana Real Estate Regulatory Authority, Gurugram.

13. This original order be attached with appeal no.500 of 2022 and its certified copy be attached with appeal no.504 of 2022.

14. Files be consigned to the record.

Announced:
September 01, 2022

Inderjeet Mehta
Member (Judicial)
Haryana Real Estate Appellate Tribunal,
Chandigarh

Anil Kumar Gupta
Member (Technical)