HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

1. COMPLAINT NO. 46 OF 2022

Chandrabhan PD Mourya ....COMPLAINANT

VERSUS

Ferrous Infrastructure Pvt. Ltd. ....RESPONDENT

2. COMPLAINT NO. 58 OF 2022

Goutam Kumar Ghosh ....COMPLAINANT

VERSUS

Ferrous Infrastructure Pvt. Ltd. ....RESPONDENT

3. COMPLAINT NO. 62 OF 2022

Karamveer Singh ....COMPLAINANT

VERSUS

Ferrous Infrastructure Pvt. Ltd. ....RESPONDENT

4. COMPLAINT NO. 71 OF 2022

Nagendra Rana ....COMPLAINANT

VERSUS

Ferrous Infrastructure Pvt. Ltd. ....RESPONDENT

CORAM: **Rajan Gupta** **Chairman**
Dilbag Singh Sihag **Member**

Date of Hearing: **28.06.2022**

Hearing: **2nd (in all complaints)**

Present: - Mr. Abhay Jain , learned counsel for the complainants through VC (in all complaints)
Mr. Sourabh Goel , learned counsel for the respondents through VC (in all complaints)

ORDER (RAJAN GUPTA-CHAIRMAN)

1. Learned counsel for complainants stated during the hearing that decision already taken by Authority in bunch of cases with lead case Complaint No. 828 of 2021 titled as Sube Singh Yadav Versus M/s Ferrous Infrastructure Private Limited squarely covers the controversy involved in above mentioned complaints. Hence, these complaints may be disposed of in same terms.

2. Learned counsel for respondents requested that delay in handing over possession has not been caused by any omission on their part, instead it has been caused because State government agencies have failed to provide external services despite payment of entire amount of EDC. Accordingly, they pleaded that delay in completing the project was beyond their control and due to force majeure circumstances.

3. The Authority is satisfied that issues and controversies involved in present complaints are of similar nature as the bunch of cases with lead case Complaint No. 828 of 2021 titled as Sube Singh Yadav Versus M/s Ferrous Infrastructure Private Limited. Therefore, the captioned complaints deserves to be disposed of in terms of said order passed by Authority in Complaint no. 828 of 2021, which is reproduced below:

> "8. Authority has given thoughtful consideration to the written submissions made by complainants as well as the respondents. It has also given due consideration to the oral arguments submitted in which the issues raised in written submissions were re-emphasized. After considering all facts and circumstances, Authority observes and orders as follows:-
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> (i) Respondents have argued that a complaint No. 654 of 2021 has been filed by an Association of allottees for taking over of the project and for completion at their own level. For that reason, it has been argued that relief sought by allottees in captioned complaints cannot be granted.
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> This argument is not acceptable at all for the reasons that outcome of complaint No. 654 of 2021, filed by the Association of allottees, is uncertain. Secondly, the Association of allottees have been granted a right by Section 8 of the Act to take over the project in the event of promoter not being able to complete. Respondents are trying to deny the rights granted to the complainants by Section 18 of the Act, by citing their own failure to complete the project. They are trying to take a wrongful advantage of their own wrong doing. Authority cannot accept this argument.
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> (ii) A licence No. 202 of 2007 was granted to respondent-promoter for development of a group housing colony on land measuring 10.142 acres in Village Garhi Alawalpur, Tehsil Dharuhera, District Rewari and the licence was valid upto 30.07.2009.

(iii) As is evident from information contained in all the captioned complaints, Builder-Buyer Agreements (BBA) were executed between the year 2012 and 2014. It is also evident that most of external development charges had been paid by respondent-company to Town & Country Planning department between the years 2008 to 2010.

(iv) The BBA executed between complainants and respondents stipulated that booked property will be delivered in 36 months with a grace period of 180 days, accordingly, property was meant to be delivered within 42 months i.e. 3.5 years. Accordingly, deemed date of possession in different case works out to be falling in the years 2016 to 2017.

It can thus be inferred that though, surely, no effort has been made by State Government to provide external services for the colony, but at the same time promoters kept on accepting consideration amount from complainants thereby kept assuring the complainants that their completed apartments will be delivered by due date of offering possession. Respondents were fully aware that external services had not been laid nor are they likely to be laid in near future, but still they went ahead with the project and kept impliedly assuring the complainants that their apartments would be completed.

9. Authority would first deliberate upon contractual relationship between the promoter on one hand and the allottees on the other.

(i) It is observed that allottees are not aware of technicalities of providing external services by different agencies of the State Government. They only understand that the colony in which they had booked their apartment is being developed by a promoter who has lawfully received licence from State Government for development of the colony. It is reiterated that the fact of having obtained licence assures the allottees that their colony is being developed in a lawful manner and under proper authority of the State Government.

(ii) Allottees kept making payments on implied assurance of the respondent that a properly and lawful constructed apartments in the colony along with all facilities and amenities will be delivered to them within time period stipulated in the agreement. It is reiterated that the act of accepting full consideration amount from the complainants itself is an assurance to the allottees that their apartment will be delivered within agreed time frame.

(iii) At no stage during the period when consideration amount was demanded and received by respondent-company were the complainants made aware of the major risk factor that external services in the colony cannot be provided within foreseeable time period; or that completion of the project will get badly delayed on account of default by State Government agencies in laying external services. Nothing has been placed on record to show that any communication to this effect was made by respondent-company with allottees of project. By demanding and accepting full consideration amount, allottees were impliedly given to understand that everything is fine and respondent-promoter is on course to discharge his obligation of completing the colony and their apartments and delivering them within stipulated time frame.

(iv) The question that arises here is whether at this belated stage respondent can refuse to discharge their legal obligations or deny their contractual obligations towards allottees on account of default on the part of State Government agencies ?

The answer of this Authority is 'No'. The promoter has agreed to discharge his obligation towards allottees and same should have been discharged, especially when allottees have fully discharged their obligations. It is to be noted that licence for the colony was received in the year 2007. The agreements with the allottees were made in the years 2012-2014. At the time of agreements, process of land acquisition for laying external services had not commenced. Laying of external services in foreseeable future was not certain. Despite that,

respondents kept on selling the apartments. Agreements with allottees should have been made when respondents were reasonably assured that they will be able to complete the colony within time frames being agreed. The promoter was fully aware that no effort has been made by State Government agencies for acquisition of land and for issuing or awarding tenders for execution of external services, but still they continued to collect consideration amount from allottees.

(v) Licence of the colony was granted in the year 2007 which was initially valid till 2009. Respondents got it renewed from time to time. They kept depositing external development charges. However, they actually started selling apartments from the year 2012 onwards. At that stage, they were fully aware that Town and Country Planning department is in total default in performance of its responsibilities. Respondent should not have commenced sale of the apartments when there was no sign of laying external services. Despite that, they sold apartments to the allottees. Now, promoters cannot be allowed to take shelter behind the plea of force majeure circumstances to defend themselves in respect of their legal obligations towards allottees. The plea of force majeure circumstances therefore, cannot be accepted. It does not apply at all. Respondents were fully aware of ground situation at the time of effecting sales. In fact, they along with Town and Country Planning department have let down ordinary citizens who may have invested their life time savings to get a house for their family. The allottees have been left high and dry both by promoters as well as by Town and Country Planning department. Accordingly, lawful obligations of promoters towards allottees will remain enforceable. Accordingly, allottees are entitled to delay interest in accordance with Rule 15 of the RERA Rules, 2017 and provisions of Section 18 of the RERA Act, 2016 for the entire period of delay from the deemed date of possession upto the date when actual possession is delivered.

(vi) Authority would look at the situation from another angle. Most of the licences issued by Town and Country Planning department are in such areas where external services do not exist and it may take indeterminate period of time to lay those services. This fact is known to everyone. Most of the builders understand that they have to develop their projects with or without such external services. Non-providing of external services do not cause hindrance in completing the project and laying all internal services. In fact, it is an implied understanding between the department and the promoter that till the time such external services are laid, they have to provide these services internally. Majority of the projects in the State have been and are being developed with such understanding.
Accordingly, the argument being put forth by the respondent is nothing but an excuse to avoid its liability towards the complainants. Therefore, mere argument that they have not been able to complete the project because of non- development of external services cannot be accepted. Nothing stopped the respondents from completing the project and offering possession to the allottees without linking internal services with external systems. External services will be laid and completed by the State Government agencies in due course of time. Agreeably, though the Town and Country Planning department cannot be absolved of its responsibility of laying external services, but this cannot be considered as a force majeure circumstance to allow the promoter not to complete their part of the project and apply for grant of Occupation Certificate.

10. Authority now will deal with the question of non-development of external services by State Government departments.

(i) The system of developing urban areas in Haryana is that a master plan is declared under Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963 under which usage land in the notified area is defined. No construction without obtaining change

of land use and without obtaining licence from Town & Country Planning department can take place in such controlled area/ master plan area.

(ii) Private colonisers thereafter are encouraged to develop plotted or group housing colonies within the areas notified in the master plan. The master plan contains broad layout of the sectors including sector roads, system of providing electricity, water supply, drainage system, sewage disposal system, etc.

(iii) It is the responsibility of the Town & Country Planning department to provide external services. They have to arrange land, prepare plans, award contracts and get works of such external services executed through an appropriate executing agency.

The policy of the State Government is that the cost of development of such external services is proportionately loaded upon entire urbanisable area of the sector/master plan. For meeting proportionate cost, estimated external development charges are levied by Town & Country Planning on private colonisers. The external development charges payable by colonisers are notified from time to time and are conveyed to them before grant of licence. All licencee colonisers are obliged to pay stipulated external development charges.

(iv) Licence of present colony under discussion was granted in 2007 and was initially valid upto 2009. Thereafter, it was renewed from time to time. When the licence was granted only for two years, Town & Country Planning department would have anticipated that external services of the colony would be completed within this period. Anyhow, external development charges @ Rs. 1.04 crores per acre were paid by respondent-promoter between the year 2008-2010. It was therefore a legitimate expectation that after payment of external development charges, requisite services would be laid within a reasonable period of time. Delay of a year or two, may also be acceptable.

(v) Further, arrangement within the State Government is that, while the external development

charges are collected by Town & Country Planning department but they do not have their own independent engineering wing to execute those works. All over the State, works of external services is executed by Haryana Shaheri Vikas Paradhikaran (HSVP), formerly known as Haryana Urban Development Authority (HUDA). It is to be noted that HSVP is only an engineering/executing wing which carries out requisite development works on the directions of Town & Country Planning department, as per licences granted by them, or as per master plan notified by them. While HSVP is the executing arm of Town & Country Planning department, the HSVP cannot be held responsible for not creating external services. The responsibility for creating external services shall remain that of the licencing departments and the department which has been collecting external development charges from the promoters and assuring laying of those services.

(vi) Respondent-promoters have placed on record information dated 22.1.2014 obtained under Right to Information Act, in which Town & Country Planning department has plainly refused to own any responsibility in respect of laying external services. They have put entire responsibility on HUDA for providing external services. They have made no mention whether they had directed HUDA to create external services, or whether they had deposited the amounts collected towards external development charges with HUDA. Information on the similar lines has been conveyed on subsequent occasions as well. Meaning thereby, the licencing authority, which collects all the EDC charges and is responsible for coordinated urban development is refusing to own any responsibility for laying those services without stating what efforts have been made by them to get the services laid. It is a serious situation.

(vii) An application of respondent-promoter for registration of their project is under process in the project section of the Authority. Information regarding providing external services in the vicinity of their colony in question was demanded from the

department by this Authority. Town & Country Planning department, vide their letter dated 4.4.2022 have reported as follows:-

1. "The External development Charges are the charges which are used for the development of External development works such as water supply, sewerage, drains, provisions of treatment and disposal of sewage, roads, electrical works, etc. by a authority and the rates of EDC in respect of Urban Estate, Dharuhera are fixed by HUDA (Now HSVP).
2. Further, HSVP is the authority which uses collected EDC for the development of various sectors in the state. The department has collect total EDC amounting to Rs. 26033.30 lacs till 23.02.2022 in Dharuhera, out of which EDC amounting to Rs. 104.55 crore upto 31.03.2021 has been utilized by HSVP for development.
4. This department does not have any timeframe w.r.t. the development of External Development works, as the development works are carried on by HSVP. As desired the construction of development works are carried out by HSVP in Sector-19, Dharuhera. In the regards this department is not any liable for the development of External Development works and the status of development works to be carried out may be sought from HSVP. In view of the aforesaid submission it is submitted that the matter for the development of External Development works does not pertains to this department.
5. Moreover, it is also pertinent to mention here that as per the provisions of LARR Act-2013, the acquisition for the public purposes is difficult and since then no acquisition of land for public purpose is happening. However, the deliberation is being made by the government to derive a method for acquiring land for public purpose."

(viii) It is surprising that Town & Country Planning department is issuing licences and asking for payment of external development charges. They have been collecting external development charges;

and imposing penalty/interest for delayed payment of external development charges; but at the same time completely denying their responsibility for executing those external development works. In fact, they are expressing their helplessness that it is very difficult for them to develop external services because no acquisition of land for public purpose is happening.

(ix) A question that arises here is that if Town and Country Planning department is so helpless in acquiring the land and are expressing their complete inability to develop external services; and is also expressing that it is some other department i.e. HSVP, which has to fulfil those obligations, then why are they notifying master plans; why are they issuing licences; and why are they collecting external development charges from licensees? Department should issue licence only for that area where external services have been planned to be laid in the foreseeable future.

(x) It is a serious situation. Aforesaid letter dated 4.04.2022 represents complete lack of coordination between Town and Country Planning department and HSVP. This situation must be corrected in the interest of orderly growth and development of real estate sector which constitute 10% economy of Haryana.

(xi) Town and Country Planning department and its officials well understand that hefty external development charges (EDC) are initially paid by developers to the department, but developer recovers it from allottees proportionately later on. Thus, EDC is actually paid by allottees of the houses. It accordingly, casts a responsibility on the State to discharge its obligation of creating those services in respect of which allottees have made payments. It is to be understood that money taken from public for a specific purpose is deemed to be held in trust. Public entrusts its money to State officials for discharging their responsibility. Not discharging those obligations clearly amounts to breach of trust. It is a wrongful omission on part of the department for which it must be held liable. Omission on part of

department is causing injury to public, allottees and promoters. Department must hold itself responsible for such acts of negligence and omission.

11. As observed above, however, relationship of the respondent-promoters with allottees of a project has to be kept separate from the relationship of respondent promoter with the State Government. While in the former case respondent-promoter will be fully answerable and liable towards allottees for the reasons already stated, but at the same time, Town and Country Planning department also cannot shirk from its direct responsibility towards promoters, and indirect responsibility towards home buyer allottees. The letter dated 04.04.2022 as quoted above leads to an unmistakable conclusion that in case Town & country Planning department is refusing to discharge their responsibility in creating external services, they will be equally liable towards promoter as well as towards allottees if any damage is suffered by them on account of non- performance of their obligations.

The Authority at this stage would reiterate its view conveyed repeatedly that the act of granting licences is a solemn and sovereign assurance of the State Government to the general public that the colony for which licence has been issued would be laid as per approved plan and within the time frame provided. The question to be answered is how can a colony be developed properly, if development of external services has not even been planned ?

The Authority will send a copy of this order to Additional Chief Secretary, to Government of Haryana, Town & Country Planning Department, for appropriate corrective action not only in respect of this project, but also in respect of whole of the State where similar problems are being faced. Authority would strongly recommend to the department to review their policies of preparing master plans and granting licences. The concept of external development charges itself needs a thorough review in the over all public interest, as

well as in the interest of harmonious growth and development of economy of the State.

12. In view of forgoing discussions, Authority would dispose of the present bunch of complaints with the order that possession of booked apartments shall be delivered by respondent-promoter to the allottees whenever they complete the project and obtain occupation certificate from authorities concerned. However, since inordinate delay has already been caused, respondent-promoters are ordered to pay upfront interest to all the allottees as per provisions of Section 18 of the RERA Act, 2016 and Rule 15 of RERA Rules, 2017. The upfront interest is being calculated from the due date of offering possession upto the date of passing this order i.e. 07.04.2022. Allottees would be further entitled to monthly interest for each month of further delay caused.
The respondent shall pay the above stated upfront interest and monthly interest to the complainants within the period of 90 days as provided in Rule 16 of the RERA Rules, 2017."

4. In furtherance of above orders, Authority would dispose of these complaints with the order that possession of booked apartments shall be delivered by respondent-promoter to the allottees whenever they complete the project and obtain occupation certificate from authorities concerned. However, since inordinate delay has already been caused, respondent-promoters are ordered to pay upfront interest to all the allottees as per provisions of Section 18 of the RERA Act, 2016 and Rule 15 of RERA Rules, 2017. The upfront interest @ 9.7% is being calculated from the due date of offering possession upto the date of passing this order i.e. 28.06.2022. Allottees would be further entitled to monthly interest for each month of

further delay caused. Upfront interest and monthly interest payable to each complainant is shown in the table below:-

Sr. No.	COMPLAINT NO.	AMOUNT PAID BY THE COMPLAINANT AFTER DEDUCTION OF EDC AND IDC (In Rs.)	DEEMED DATE OF POSSESSION	UPFRONT DELAY INTEREST CALCULATED BY AUTHORITY TILL 28.06.2022 (In Rs.)	FURTHER MONTHLY INTEREST (In Rs.)
1.	46 of 2022	17,27,955/-	02.11.2016	9,48,269/-	13,776/-
2.	58 of 2022	21,33,191/-	07.07.2016	12,37,549/-	17,007/-
3.	62 of 2022	17,09,693/-	17.07.2016	9,87,317/-	13,631/-
4.	71 of 2022	19,66,090/-	18.05.2015	13,57,965/-	15,675/-

5. **Disposed of**. Files be consigned to record room after uploading of this order on the website.

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RAJAN GUPTA
[CHAIRMAN]

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DILBAG SINGH SIHAG
[MEMBER]