



Complaint No. 204 and 205 of 2018

HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

1. COMPLAINT NO. 204 OF 2018

Mrs. Sadhana Singh and Anr.

....COMPLAINANT(S)

VERSUS

M/s SRS Real Estate Ltd.

....RESPONDENT(S)

2. COMPLAINT NO. 205 OF 2018

Aruna Lakhina

....COMPLAINANT(S)

VERSUS

M/s SRS Real Estate Ltd

....RESPONDENT(S)

And/With

With summons dated 28.03.2019

To Director, Town and Country Planning Department, Haryana

CORAM: Rajan Gupta
Anil Kumar Panwar
Dilbag Singh Sihag

Chairman
Member
Member

Date of Hearing: 04.04.2019

Hearing: 9th

Present: - Mr. Rajan Kumar Hans, Counsel for complainant

Mr. Suraj Katyal, JE, O/o DTCP, Haryana

None for Respondent

ORDER (RAJAN GUPTA- CHAIRMAN)

1. These complaints were first heard by the authority on 20.08.2018 and today is the ninth date of hearing of these two complaints. Ample opportunities have been provided to the respondent to present his case and file his reply, but the respondent failed to submit his reply. Director, Town and Country planning was also directed to file his report with respect to the status of the project in question vide order dated 07.03.2019. Today, in compliance of those orders, DTCP has filed his reply which is taken on record. Now Authority is disposing of these matters on merits.

2. The facts of the Complaint No. 204/2018 are that Mrs. Sadhana Singh and Mr. Lakshay Pratap Singh had booked a flat measuring 546 Sq. ft. on 01.01.2012 in the project of the Respondent namely SRS Affordable Group Housing Project situated in village Allahapur, Sector-6, Palwal, Haryana. They were allotted Flat No. 503 on 5th floor of Block 6, Tower D. Till date



they have paid an amount of Rs. 15,16,646/-. As per the terms of the Allotment read with allotment letter dated 20.02.2013, the possession of the said unit was to be handed over to the complainants within three years plus the grace period of six months from the date of execution of the same. Accordingly, the deemed date of possession was 20.08.2016. However, no possession has been given of the said property till date.

3. In case of Complaint No. 205/2018, facts are that Mrs. Aruna Lakhina and Mr. Joginder Kumar Lakhina had booked a flat measuring 546 Sq. ft. on 26.12.2011 in the project of the Respondent namely SRS Affordable Group Housing Project situated at in village Allahapur, Sector-6, Palwal, Haryana. They were also allotted Flat No. 504 on 5th floor of Block 7, Tower A. Till date, they have paid an amount of Rs. 15,45,754/-. As per the terms of Buyer's agreement executed on 12.07.2014, the possession of the said unit was to be handed over to the complainants within three years plus grace period of six months from the date of execution of the same. Accordingly, deemed date of possession was 12.01.2018, but no possession has been given of the said property to the complainant till date.

4. A reply dated 03.04.2019 of the Director, Town and Country Planning Department has been received which is reproduced as follows:-

“The Haryana Real Estate Regulatory Authority, while hearing the afiresaid complaint on 07.03.2019, passed the following order:-



'On 25.09.2018, the DTCP was directed to file their reply regarding the status of project as it was apprised by the complainants that the project has been taken over by the Department, however, no reply has been filed by the Department till date. Hence, the Authority observed that the matter may be conveyed to the Principal Secretary, Haryana Government, Town and Country Planning Department along with a copy of all the previous orders passed by the Authority in both the complaints, so that he may direct DTCP to file reply in each complaint adjourned for 04.04.2019'.

The copy of the aforesaid order was never received in this office and after receipt of message from the office of this Hon'ble Authority, the copy of complaint has been procured by hand through special messenger and status of relevant project/licence is given as under:-

1. That as per the annexure P-18 of complaint, both the complainants had booked flat with company M/s SRS Real Estate Pvt. Ltd. in their Group Housing Colony being developed on area measuring 6.4437 acres situated at sector-6, Palwal under licence no. 117 of 2012.
2. That Department has granted licence no. 117 of 2012 dated 23.11.2012 for development of low cost affordable housing colony in sector-6, Palwal in favour of M/s SRS Real Estate Ltd., as per the provisions of Haryana Development and Regulation of Urban Areas Act, 1975, its Rules 1976 and as per low cost housing policy dated 20.08.2009.
3. That the building plans of this colony were approved on 07.05.2013. As per approved plan developer has to construct for main residential tower namely A, B, C and D, 1 EWS tower, 1 Nursery School and Shops.
4. That as per terms and conditions of licence, developer was required to complete this project within three years. The licence was valid upto 22.11.2015. the validity of licence can be extended upto 1 year subject to payment of penalty

equivalent of 5% of EDC. The developer failed to complete the project within validity of the licence, hence, liable to pay the penalty of Rs. 146.42 lacs as on 16.10.2015 i.e. equivalent of 5% of EDC. This liability was demanded from the developer vide memo dated 27.11.2015 and subsequently on 18.03.2016, 13.10.2016 and 11.11.2016. the licensee have not deposited the said amount and also not complied with the term and conditions of the licence.

5. That after following due procedure and granting opportunity of hearing, licence no. 117 of 2012 was cancelled vide order dated 21.08.2018. While cancelling the licence the following action has been ordered to be taken in this case:-

i. A public notice may be issued in the newspapers informing the general public about the cancellation of licence and that the Administration of the colony has been taken over by the Director of Town and Country Planning Haryana.

ii. Senior Town Planner, Faridabad has been directed to take over the administration of this colony on behalf of Department and put up a 'Board' at site indicating that Administration of this colony has been taken over by the Department of Town and Country Planning, Haryana.

iii. Senior Town Planner, Faridabad has also been directed to maintain the details of accounts of the allottees. The Allottees have been advised to deposit the balance instalments with Senior Town Planner, Faridabad, who has been directed to maintain the account of each and every flat holder.

iv. The licensee has been directed under Section-10A of the Act, 1975 to deposit all outstanding dues on account of EDC and also give information of sold and unsold properties within a period of 15 days, so that unsold properties can be disposed of to recover the Government dues.

v. A committee has been constituted under the chairmanship of Administrator, HSVP,

Faridabad, STP, Faridabad, will be Member Secretary and DTP, Palwal, XEN, HSVP, Palwal, will be the Member of the Committee which will take over the colony for carrying out further necessary action.

vi. Decision has been made to debar the present Directors of all the companies of SRS Real Estate Ltd. from grant of any further licence in this State of Haryana.

6. That the association of allottees of this project i.e. SRS City Palwal AGH Buyers Association through its president Sh. Suresh Chander Mor had filed an CWP no. 31248 of 2018 in the Hon'ble High Court. The main grievance of the petitioner society is that licence no. 117 of 2012 has been cancelled by the DTCP vide order dated 21.08.2018, the official respondents may be directed to take time bound action for handing over the possession of the respective units booked by each of the allottees.

7. That in the abovesaid matter as per the orders of Hon'ble High Court Department has filed status report of this project bearing licence no. 117 of 2012 by the way of affidavit in the Hon'ble Punjab and Haryana High Court on 20.03.2019, copy of the same is enclosed herewith as annexure-1."

5. The affidavit dated 20.03.2019 filed by the Town and Country Planning Department in the Hon'ble Punjab and Haryana High Court vide CWP No.31248 has been annexed with the reply by the DTCP, relevant portions of the same are reproduced as follows:-

“ Para 1-

Para 2- That in the abovesaid petition, the petitioner has averred that since licence granted to respondent no. 3 for setting up of an Affordable Group Housing colony over an area measuring 6.4437 acres falling in sector-6, Palwal has been cancelled by the Director, Town and Country

Planning, Haryana, Chandigarh vide order dated 21.08.2018 (Annexure P-7), the official respondents be directed to take time bound action and give clear terms regarding possession of the purchased units.

Para 3-

Para 4-

Para 5- That it is also pointed out that the licensee/developer was required to complete the project within a period of three years, which is extendable by one year subject to the payment of penalty equivalent to 5% of the external development charges. The licence was valid upto 22.11.2015 and during this period licensee got the building plans approved, but failed to complete the project within validity of licence, hence, liable to pay the penalty of Rs. 146.42 lakhs as on 16.10.2015 i.e. equivalent to 5% of EDC, which was demanded from them vide memo no. 23318 dated 27.11.2015 and subsequent reminders dated 18.03.2016, 13.10.2016 and 11.11.2016. the licensee has not deposited the above said amount and also not complied with the other terms and conditions of the licence despite show cause notices issued to them and grant of opportunity of personal hearing. Accordingly, Licence No. 117 of 2012 was cancelled vide order dated 21.08.2018 (Annexure P-7). The order dated 21.08.2018 was also posted on the website of the Department. It is further stated that while cancelling the licence, following actions have also been ordered to be taken in this case:-

- i.
- ii.
- iii.
- iv.
- v.
- vi.

Para 6- The following actions have been taken:-

- i. Senior Town Planner, Faridabad has issued a public notice in Dainik Jagran newspaper on 08.09.2018 and has got the Board installed at



the site of licensed colony. In the public notice and on the board, the general public has been informed about the cancellation of licence and that the administration of licence colony has been taken over by the Directorate of Town and Country Planning, Haryana. Also, the general public has been advised not to indulge in any sale/purchase transaction with the licensee. The copy of public notice dated 08.09.2018 and photographs of the board installed at the site are annexed as annexure R-1 and R-2 respectively.

ii. That respondent no. 3 i.e. licensee has provided the detail of amount received from the customers, expenditure incurred on the internal development works, construction works, administrative expenditure, payment made to the department and land cost. As per the details provided by respondent no. 3, they have received an amount of Rs. 69,66,38,311/- from the customers and have made an expenditure of Rs. 79,93,19,623/-. Respondent no. 3 is also mentioned that he has yet to recovered Rs. 28,12,02,709/- from the flat buyers. The detail provided by respondent no. 3 is also enclosed as annexure R-3. As far as the respective amount deposited by the allottees is concerned, till date they have not given any document in this regard in the office of STP, Faridabad inspite of publication of notice in the newspaper. Now, the individual letters requiring submission of necessary proofs as regard to amount deposited by them, are being issued to the allottees as per the list provided by respondent no. 3 i.e. licensee. After the receipt of information from the allottees, the committee will do the final verification.

iii. That the site has been got inspected by District Town Planner, Palwal and reported that the status of construction of all the towers in the project is as under:-

Block No	Stories	Status of construction at site

Block-A	Stilt +7	<ul style="list-style-type: none"> • Structure completed • Flooring, plaster, electrical and sanitary work completed.
Block-B	Stilt +6/7	<ul style="list-style-type: none"> • Structure completed • Flooring, plaster work complete • Entire electrical work pending and sanitary work pending partly
Block-C	Stilt +6	<ul style="list-style-type: none"> • Structure completed • Flooring and plaster work completed. • Entire electrical work pending • Sanitary work pending partly • Outer plaster pending partly



Block-D	Stilt +6	<ul style="list-style-type: none"> • Structure completed • Entire electrical work pending • Flooring not done and outer plaster work pending partly
EWS Block	Ground +7	<ul style="list-style-type: none"> • Structure raised upto ground floor but no brick walls constructed
Commercial Block	Ground +1	<ul style="list-style-type: none"> • Structure completed • Plaster, shutter, flooring completed • Sanitary work partly pending
Nursery School Site		<ul style="list-style-type: none"> • Site is vacant

Further, the approved layout plan showing the status of construction duly supported by photographs of buildings at site is enclosed as annexure R-4.

v. That the committee constituted under the Chairmanship of Administrator, HSVP, Faridabad hold meeting on 03.10.18. The committee visited the site of the project in question and it was decided to start the procedure of evaluation of project. Another meeting of the committee was held on 14.03.2019 and the committee decided that quotations from approved valuers may be invited for the evaluation for amount required for the completion of the project in all respect. Thereafter the committee will examine the evaluation report and will suggest the



father line of action to complete the project in a time bound manner. However, it is submitted that it is a time consuming process, but the efforts will be made to initiate the development works after completion of the other procedural formalities i.e. preparation of estimated cost of project likely to be incurred in completing the project, arrangement of funds required for completing the project and nomination of competent Government/ Semi Government/Private developing agency.

In view of above facts and circumstances, it is humbly submitted that the petitioner association may kindly be directed to submit the respective proofs of amounts deposited by every allottee in the office of STP, Faridabad, so that the same could be verified from the record submitted by respondent no. 3 i.e. licensee and afterwards only, some time frame could be given to complete the project in question.

Para 7-

6. This Authority had made certain observations while disposing of complaint No. 44 of 2018, titled as "Rameshwar Versus Aerens Gold Souk Projects Pvt. Ltd. and Anr". Some of the important observations in the judgement of the said complaint are reproduced as follows:-

" Para 7- Learned Director Shri Makrand Pandurang, IAS, who was present personally today stated that Rule 19 of the Haryana Development and Regulation of Urban Areas Rule, 1976 as reproduced above was enacted in mid-seventies in the circumstances when only plotted colonies used to be developed in the State. In those days, there was virtually no concept of multi-storeys high rise apartment complexes or housing societies anywhere in the State. He stated that the expression "development works" used in sub-clause 3(f) of Rule 19 refers only to the basic infrastructure works in a plotted colony and not to the construction of apartments etc. Accordingly,

the development works, as envisaged in the Rule 19, pertain only to the development of infrastructure facilities in a plotted colony. Learned Director stated that the State Government and the Directorate cannot undertake construction of housing complexes or commercial complexes on behalf of the developers after cancellation of their licence. He further stated that it is not possible for the State Government to undertake such tasks of construction of such large buildings. Government does not have requisite wherewithal for the same. Such tasks require huge investments, mobilization of resources, mobilization of manpower and machinery which is neither available with the State Government nor is possible for the State Government to mobilize on behalf of the developers/allottees. He further stated that the State Government is in the process of amending this Rule so as to align it with modern day realities.

Para 8- After consideration of the facts of the matter, reply of the Department and statements made by learned Director, the Authority orders as follows: -

(i)

(ii) Another important question arises in this case is what would be the fate of a project after its licence is cancelled and the project is taken over by the Department of Town and Country Planning?

.....The Town and country Planning Department, Haryana has written a detailed letter dated 28.09.2018 to this Authority in which it has been repeatedly stated that the committee of the officers constituted for execution of the project shall get the revised building plan and service plans estimates prepared. This along with rest of the wording of the report and orders of the Town and Country Planning Department can be safely interpreted to say that the Department understood that after taking over of the project further development works including construction of apartments shall be undertaken by



the Committee of officers constituted for this purpose. In our view, the wording of the law/rules and the orders passed by the Department cannot be interpreted in any other way.

The statement of the Learned Director, however, is otherwise. The difficulties expressed by the Learned Director are understandable, but that leaves the project nowhere. It is then not clear what is the purpose of taking over. There appears to be a lack of understanding in the Department on this subject. The order of taking over of the colony nowhere specifies that it is being taken over only for carrying out of infrastructure development works.

The Town and Country Planning Department in their letter dated 28.09.2018 have estimated that Rs. 191 crores may be required for the completion of the project. Such a huge amount is not required for the infrastructure facilities only, otherwise also, it makes no sense to take over a multi-storeyed apartment complex for laying infrastructure facilities only.

(iii) From the above, it is quite obvious that the Town and Country Planning Department is not clear about its own policy on the subject. Once a colony is taken over, it means it is taken over with all its assets and liabilities for the purpose of completing it through lawful means available. It is for this reason that, even after taking over the colony in the year 2016, nothing whatsoever has been done on the ground and only some formal meetings of the officials have been held. From the statements made by the Learned Director, it appears that they may not be able to do anything about it even in future.

(iv) It appears that the Town and Country Planning Department is concerning itself only with recovery of license fee and EDC dues, without having any regard for protecting the interest of the allottees or for completion of the project. The views conveyed by the Ld. Director, the provisions of the Rules and the action taken by the Department over last two to three years as

demonstrated through the letter dated 28.09.2018 run in complete contradictions with each other. After taking over the colony the Department is not clear whether it is supposed to complete it in a comprehensive way or this process of taking over is only meant to assist them in recovery of the EDC etc. After taking over the colony, it must be completed by any means so as to protect interest of the allottees or it should not be taken over at all. The Department shall be well advised to revisit this subject in a comprehensive way and frame suitable alternate policy.

(v) It has been repeatedly observed by this Authority in a large number of cases including the **Complaint No. 383 of 2018 Gurbaksh Singh and Anr. Versus ABW Infrastructure Pvt. Ltd.** that it is the Act of granting of license which transforms an ordinary piece of land into a Real Estate Development Project. The conditions of the license includes monitoring the progress of the project by Town and Country Planning Department. If a colony fails to develop properly, equal liability and responsibility must fall upon the Department also along with liability and responsibility of the developers. In the stressed projects like in the instant case, Town and Country Planning Department cannot have a narrow vision and objective of effecting recovery of the deficit of license fee or the EDC dues only. In all such cases, a comprehensive and workable plan of action ought to be prepared with a view to protect the interest of the allottees and the third parties and in overall interest of development of the real estate sector. The allottees invest their hard-earned money in a real estate project on the assurance of the State Government announced to the public at large by way of grant of a license. Licensing a project is a public commitment made by the State Government that it will protect the interests of the public and allottees. The act of granting a license has to be understood in this sense, otherwise the license will lose all its meaning and in the situations like the current case



at hand it will become synonymous with giving a handle to the promoters to entangle innocent unsuspecting public.

(vi) The policies and views of the Town and Country Planning Department need drastic revision in respect of such stuck projects. The Department must own and accept joint responsibility along with the developers if a project fails as in this case. Acceptance of joint responsibility will automatically mean that vision of the Department shall extend to finding a solution in the overall interests of all the stakeholders rather than having a narrow vision of effecting recovery of the fees and EDC dues only. Secondly, whenever such a situation arises, a policy framework must be evolved to find a solution with the primary objective of protecting the interests of the allottees and other third parties. The objective of recovery of the license fee and EDC etc. should be a secondary objective. Such dues can be recovered from the collateral assets or any other assets of the developers after the allottees and the third party have been protected and after the colony is fully developed. The right of recovery of license fee and EDC cannot have the primacy over the rights of the allottees and the third party. This Authority is of the view that such a policy will help create confidence of the investors in the State Government and it would be in the larger interest of the State, society and the economy.

(vii) It has been witnessed repeatedly by this Authority that licenses of numerous projects are not renewed because the developers fail to pay EDC dues. In some of the cases, for the want of renewal of the license, the projects could not be registered with the Authority and as a result the possession of the developed plots or apartments have also not been handed over to the allottees despite colony being fully developed. Apparently, the Town and Country Planning Department considers that it has a relationship only with the licensee/developer and not with the allottees. The



Department has to review its understanding of the subject. The Haryana Development and Regulation of Urban Areas Act, 1975 and the Rules thereunder have been framed for regulating urban development in the State. The basic objective of the law and the rules is to allow regulated growth of housing sector for providing houses to the people. The Town and Country Planning Department appears to have forgotten about the eventual beneficiaries of the law and have confined their role to being a Collector of taxes/ charges/ dues from the developers/licensees. The correct position of the law on the subject, however, is that developers/licensees and the Town and Country Planning Department have joint and several responsibilities towards the allottees. The Department cannot escape their responsibility towards the allottees in this case as well as in all other similarly stuck projects. The Department is duty bound to find a solution. If they decide to take over a colony, then they must develop it in a comprehensive way, including development of the houses and the apartments. In case they are not in a position to develop buildings, as stated by the learned Director, then they must not take over the colony. Rather the Department should find alternate ways, including handing over the colony for the development to the Association of the allottees as envisaged under Section 8 of the Real Estate Regulatory Authority (RERA) Act, 2016 or find some way to substitute a developer with another developer under the supervision of a neutral committee of Department officials and the allottees.

(viii) The Department of Town and Country Planning is well advised to revisit their law and Rules on the subject and for helping completion of this as well as several other similarly placed projects in which the license has not been renewed due to default in payment of EDC dues etc. and the allottees are waiting for their houses despite having paid their entire life time savings.



In the instant case, Town and Country Planning Department is directed to take a comprehensive view for protecting the interests of the allottees.

(ix)

7. The facts and circumstances of this case are quite similar to the facts and circumstances of the complaint No. 44 of 2018, as such the observations and directions issued therein as reproduced in Para- 6 above, shall be fully applicable in this case as well.

It is further observed from the information contained in the Annexure attached with the affidavit filed before the Hon'ble High Court, that there are 673 allottees of plots and apartments in the project of the respondents. As per the status report filed by the department in the affidavit, it has been stated that the structure of project is complete and finishing works are partly complete. Further, in terms of averments made in the affidavit, the department has to take steps to get the project completed expeditiously so that 673 allottees are able to get possession of their apartments. However, as per averments made by Learned Director, Town and Country Planning Department in complaint No. 44 of 2018, the Town and Country Planning Department has no wherewithal to undertake construction work of the apartments to complete the project. Accordingly, this Authority directs the Director, Town and Country Planning Department to take a considered view in the matter and prepare a plan of action for completion of the project either themselves or by any other appropriate means. If the Department is capable of



handling the construction work themselves, the same should be done within reasonable time, otherwise an association of allottees should be formed and the work should be got completed through them. Principle objective of the Department should be to get the project completed and possession handed over to the allottees. After creation of 3rd party interests, primary objective of the department should be to protect the interest of the home buyers rather than restricting their views only towards recovering the outstanding dues. The outstanding dues can be recovered from other assets of the promoter/developer. Recovery of the dues should not come in the way of completing the project. The Department needs to refocus priorities in such situations accordingly.


Since contradictory stands have been taken by the department, they are also advised to revisit their policy frame work in this regard with the primary objective of protecting the interest of the allottees. A suitable policy framework with refocused priorities shall also be in the overall interest of development of real estate sector which constitute over 12% of the economy of the country, probably more in the State of Haryana.

8. In so far as present complainants are concerned, the Authority orders refund of the money paid by them to the respondent company along with interest at the rate prescribed in Rule-15 of the RERA Rules. The said amount shall be paid by the respondents within a period of 90 days of uploading the orders on the website of this Authority. A suo-motu complaint




be also filed for monitoring the actions taken by the Director, Town and Country Planning Department in furtherance of these orders and in furtherance of the affidavit filed before the Hon'ble Punjab and Haryana High Court. This matter shall be listed for hearing after 45 days. A copy of this order along with the notice should be sent to the Director, Town and Country Planning Department for submitting their latest report by 03.06.2019.

9. These complaints are disposed of accordingly. However, suo-motu complaint No. 1017 of 2019 will be listed for hearing on 11.06.2019 for monitoring the follow up action taken by the Town and Country Planning Department.



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RAJAN GUPTA
[CHAIRMAN]



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ANIL KUMAR PANWAR
[MEMBER]



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DILBAG SINGH SIHAG
[MEMBER]