

**BEFORE THE HARYANA REAL ESTATE  
APPELLATE TRIBUNAL**

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**APPEAL NO. 570 of 2022**

Date of Decision: 13.10.2022

M/s GLM Infratech Pvt. Ltd., Amazon- : The Defence  
County Sector-30, Panchkula-134118 (Haryana)

...Appellant-promoter

Versus

1. GLM Buyers Welfare Association R/o 882,  
Sector- 25, Panchkula-134118 (Haryana)

...Contested Respondent No.1

(Welfare Association of allottees)

2. Rajesh Sood, Plot No. 7C, Sector 2, Parwanoo.

3. Narinder Kumar Gupta, House No. 8656,  
Mohan Lal Street, Muktsar, Punjab- 152026.

4. Madhu Aggarwal, House No. 1549, Street No.  
2, Sham Singh Sandhu Marg, Adjoining  
Rahat Hotel Street, Kotkapura Road,  
Muktsar, Sri Muktsar Sahib, Punjab-  
152026.

5. Just Build Infratech Pvt. Ltd. SCO 15, F.F,  
Sector 10, Panchkula, Haryana-134109.

6. Tripta Sharma, House No. 184, Sector-6,  
Panchkula, Haryana 134109.

...Proforma Respondents (2 to 6)

**APPEAL NO. 678 of 2022**

M/s GLM Infratech Pvt. Ltd., Amazon- The Defence  
County Sector-30, Panchkula-134118 (Haryana)

...Appellant-promoter

Versus

1. GLM Buyers Welfare Association R/o 882,  
Sector-25, Panchkula-134118 (Haryana)

...Respondent-Association.

**CORAM:**

**Shri Inderjeet Mehta      Member (Judicial)**  
**Shri Anil Kumar Gupta    Member (Technical)**

**Argued by:**

Shri Surjeet Bhadu, Advocate,  
Ld. counsel for appellant-promoter.

Shri Shekhar Verma, Advocate,  
Ld. counsel for respondents-allottees.

**ORDER:****ANIL KUMAR GUPTA, MEMBER (TECHNICAL):**

The present appeals have been preferred under Section 44(2) of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as, 'the Act') by the appellant-promoter against the orders dated 10.11.2020, 18.05.2022 and 07.09.2022 passed by Ld. Haryana Real Estate Regulatory Authority, Panchkula (hereinafter referred

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as, Ld. Authority), in complaint No. 559 of 2018 titled as GLM Buyers Welfare Association Versus Global Land Masters Pvt. Ltd. erstwhile M/s Bhoomi Infrastructure Company. The appeal no.570 of 2022 was heard on 13.09.2022 and the judgment was kept reserved. While the order in this appeal was yet to be pronounced, another Appeal bearing No.678 of 2022, impugning the order dated 07.09.2022 was also filed by the appellant. Arguments in appeal No.678 of 2022 were heard on 20.09.2022 and judgment was kept reserved. By virtue of present order both these appeals being inter connected, between the same parties and relating to the same project are being disposed of.

Six complaints filed over a period of time were clubbed together and adjudicated upon by the common impugned orders. The impugned orders have been jointly passed by the ld. Authority in the following complaints: -

Sr. No.	Complaint No.	Complainant
1.	559 of 2018	GLM Buyers Welfare Association Vs. M/s GLM Infratech Pvt. Ltd.
2.	1373 of 2018	Rajesh Sood Vs. M/s GLM Infratech Pvt. Ltd.
3.	603 of 2019	Narinder Kumar Gupta Vs. M/s GLM Infratech Pvt. Ltd.
4.	613 of 2019	Madhu Aggarwal Vs. M/s GLM Infratech Pvt. Ltd.
5.	969 of 2020	Just Build Infratech Vs. M/s GLM Infratech Pvt. Ltd.

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6.	1176 of 2020	Tripta Sharma Vs. M/s GLM Infratech Pvt. Ltd.
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2. In Appeal no. 570 of 2022, the appellant has filed an application pleading therein that the appellant has inadvertently impleaded the Respondents No.2 to 6 in the Memo of Parties. However, no relief has been claimed against Respondents No2 to 6 and has prayed that the Respondents No.2 to 6 be treated as Proforma Respondents and fresh Memo of Parties may be taken on record.

3. Having considered the prayer made by learned counsel for the appellant, the application is allowed. The fresh 'Memo of Parties' has been taken on record.

4. The appellant-promoter M/s GLM Infratech Pvt.Ltd. is a company, which is developing a group housing project by the name of "Amazon-The Defence County" at Sector-30, Panchkula. The appellant was issued a license no. 30 of 2009 dated 03.07.2009 by the Department of Town and County Planning, Haryana. The appellant-promoter undertook the development of the four towers consisting of 456 units in the first phase and sold majority of the flats to different allottees and to its own partners.

The construction of the project delayed abnormally much beyond the stipulated period of completion as mentioned in their respective agreements with the allottees and is now unable to further execute the work and complete the project and hand over the units to various allottees. Therefore, members of the respondent association of the allottees and other allottees filed number of complaints. Some of the allottees formed an association by the name of GLM Buyers Welfare Association and filed a complaint with HRERA, Panchkula bearing complaint no. 559 of 2018, wherein the following reliefs were sought:-

- “a. Direct the respondent to handover the actual physical possession of the respective units in a time bound manner and penalty be given to the members of the association on the delayed possession in accordance with law; and*
- b. Impose the penalty as prescribed under Section 61 of RERA on the Respondent for having contravened the provisions of Section 11; and*
- c. Impose the penalty as prescribed under Section 59 of RERA on the Respondent for having contravened the provisions of Section 11; and/or*
- d. Refund the entire payments made to the respondent (as detailed in Annexure C-3),*

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*alongwith 21% interest from the date of deposit of the amounts till the date of its refund;*

- e. Payment of Rs. 5,00,00,000/- as damages on account of mental agony, torture and harassment;*
- f. Payment of Rs. 5,00,00,000/- as compensation on account of deficiency in service on the part of respondent.*
- g. Refund of all legal cost incurred by the complainant association.*
- h. Initiate appropriate legal action against the respondent as provided under Section 69 of the Act for breaching the trust of the innocent persons and cheated them with the intention to gain and usurp money unlawfully.*

*Any other relief that the ld. Authority may deems fit in the interest of justice, facts and circumstances as mentioned above.”*

5. The main grievance of the appellant-promoter against order dated 18.05.2022 and 10.11.2020, is that the ld. Authority had issued various direction and also directed to handover the project under consideration to the Resident Welfare Association (RWA), who is the complainant in the complaint no. 559 of 2018, for completion of the same under Section 8 of the Act. The appellant has sought the relief in this appeal to set aside the

impugned orders and the appellant may be allowed to develop the project in its original capacity of a developer. The relevant part at para 9 of the impugned order dated 18.05.2022 is reproduced as follows: -

**“9 Authority observes and orders as follows:-**

- i) *Bottom line of the matter is that the promoter is not in a position to complete the project. Project is in limbo for the last 10 years. There are the massive liberties of the promoter towards bank, state government, suppliers and allottees, because a which it is highly unlikely that they will be able to generate resources from market or financial institution.*
- ii) *Association has collected some seed money mounting Rs.1.5 Cr contributed by the members to exhibit the seriousness of participation in the affairs of association and for incurring initial expenditure. Authority observes that there is no other way available to complete the project except by way of handing over the project to association of the allottees as provided for in section 8 of the RERA act. Authority, according hearby decides to handover the project to the association.*
- iii) *Association henceforth shall be treated as owner in possession of the project.*

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*They will focus their efforts towards completion of four ongoing towers and lying of infrastructure facilities.*

6. Aggrieved with the directions given in the impugned orders dated 10.11.2020, 18.05.2022 and 07.09.2022, the present appeals have been filed by the appellant-promoter.

7. We have heard Ld. counsel for both the parties and have carefully examined the record of the case.

8. It was contended that the project has been handed over to the respondent No.1 in violation of Section 8 of the Act. As per Section 8 of the Act, the ld. Authority can only exercise its jurisdiction upon lapse of the registration or on revocation of the registration under this Act. There is no other eventuality prescribed in law to give jurisdiction to the authority to oust the appellant from the project. The appellant had applied for grant of Registration under RERA on 31.07.2017, however, the registration has not yet been granted and the same is pending before the ld. Authority. Thus, neither the registration has lapsed nor it has been revoked in the present case. The association of allottees could have the first right of refusal for carrying out the



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remaining development works only in case where the registration is revoked under the Act (In the present case, there is no revocation of registration). Therefore, the project could not have been handover to the association of allottees.

It was further contended that under Section 8 of the Act, the Id. Authority was also required to consult the State Government before taking action thereunder. The Id. Authority has not consulted the Government and therefore, the impugned order is arbitrary and is not as per law.

Ld. counsel for the appellant has relied upon the case of ***Goel Spinning and Weaving Mills Vs. State of Haryana and others, 2006-28-PHT-393 (P&H)***.

9. It was further contended that Id. Authority imposed certain conditions on the association which were to be fulfilled before the final handing over of the project to the respondent association. However, these conditions were not fulfilled on the date of passing of the order. The same are as under:

- A. *As per the impugned order, the association should have a minimum 2/3<sup>rd</sup> strength of the allottees. As per the case of the respondent association 220 allottees had filed Affidavit. The Affidavit on the date of passing of the order dated 18.05.2022.*

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*2/3<sup>rd</sup> of the allottees would mean around 275 allottees.*

- B. *As per the impugned order, the association should have obtained affidavits from all allottees as per the format recommended by the ld. Authority to confirm making payment to the association. However, all the allottees have not file affidavits in the recommended formats and the affidavits are as such, improper.*
- C. *As per the impugned order, the association was asked to float a tender and show at least 25% of the tender amount in their account before the ld. Authority could consider handing over of the project to them. As per the impugned order, the tender has been quoted for an amount of Rs. 85.72 crores. The seed money amounting to Rs. 1.5 crores has only collected by the respondent association, therefore, the respondent association does not have 25% of the amount of tender amount as directed by the ld. Authority.*

10. It was further contended that the ld. Authority in its order dated 18.05.2022 has exceeded its jurisdiction in recording that *“it is hereby clarified that the project has been handed over to Association free from liabilities and encumbrances.”* Whereas, the matter before the ld. Authority pertains to only 4 towers and not the whole project, therefore, the ld.

Authority exceeded to exercise its jurisdiction which is not legal and deserved to be set aside.

11. It was further contended that the respondent association has never, in any of the complaints pertaining to this matter, prayed for the incomplete part of the project to be handed over to the association of the allottees. Ld. Authority has granted a relief which was not even prayed for by the complainants. Thus, the order passed beyond pleadings is contrary to law and is violation of the principles of natural justice.

12. It was further contended that the impugned orders have been passed in clear violation of principles of natural justice as the ld. authority has not considered the written submission by the appellant that the association does not have adequate number of members and funds for the completion of the project. No show cause notice was issued to the appellant before handing over of the project etc.

13. It was further contended that the ld. Authority had expressly directed the association to fulfill the criteria for handing over of the project. However, the project has been handed over to the respondent association without fulfilling the criteria

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as laid down by the Id. Authority itself which amounts to reviewing of its own order. The power of a review is statutory power. It is settled law that unless the statute provides the authority with powers to review its own order, any exercise of review shall be without jurisdiction.

14. It was further contended that the tender amount of Rs. 99 Cr was worked out arbitrarily without visiting the site and without comparative analysis of the work done. The appellant requires an amount of Rs. 45 Cr. to complete the project. M/s Gawar Constructions has quoted a price twice of that is required to complete the project. In the absence of a survey, the accuracy of BOQs and the work described by the company could not have been relied upon by the Id. authority. In the order dated 18.05.2020, it was submitted by the president of the association/respondent no. 1, that the original quoted price was Rs. 99 Cr. which was negotiated to Rs. 64.84 Cr. In the same submission, the association also stated that an added expenditure of Rs. 20.43 Cr will have to be incurred for internal electric work, STP, Lifts and retaining wall of the basement. Further, it was submitted that allottees have agreed to incur the expense of sanitary work on

their own. This amount has been cleverly bifurcated into Rs. 64.84 Cr. and Rs. 20 Cr., the total of which comes to Rs. 84.84 Cr. This amount is still highly exorbitant. Through bifurcation, the association has fraudulently convinced the ld. Authority to allow them to take over the project. The total outstanding amount due from the allottees of part of the project in question is 45 Cr. It is unfair to the appellant that such an exorbitant cost of completion is being approved by the ld. Authority which is directly prejudicial to the interest of the appellant. The appellant is bona fide licensee and is willing to complete the pending works at a cost of Rs 45 crore on receipt of payment from the allottees.

15. It was further contended that the respondent association on 06.07.2021 stated that an amount of Rs. 2.6 Cr has been collected from the allottees. This amount was increased to Rs. 3.3 Cr. through an affidavit filed in this regard. However, in the impugned order dated 18.05.2022, it is mentioned that an amount of Rs. 1.5 Cr. stands collected as seed money. This inconsistency in the amounts shows that the association has acted fraudulently and has filed false affidavits and statements before the ld. Authority.

16. It was further contended that the representative of the Association has been making baseless estimates of the amount that is actually needed to complete the project. The respondent association on 19.08.2022, filed an affidavit stating that Shri Rajan Goyal, Engineers and consultants are prepared to complete the pending work in 66.98 Cr. Another affidavit was filed on behalf of the Association on 14.09.2021 that Estimate from M/s Er. Rakesh K Bajaj has been obtained as per which Rs. 62.5 Cr will be needed to complete the pending work. On 18.05.2022, without any site survey in this regard, a total estimated amount of Rs. 85.72 Cr has been derived by the Association along with M/s Gawar Constructions. This discrepancy in the statements of the Associations are a clear indicator of the fact that the association has done nothing but weaved a net of lies to convince the Id. Authority that the project should be handed over to them.

17. It was further contended that the joint proposal with RWA dated 08.10.2020, on a joint affidavit was submitted to the Ld authority vide application dated 09.10.2020. The said joint affidavit amounts to an agreement between the parties. The RERA Act, provides for fulfillment of terms of the

agreement between the parties and not in derogation of the same. Ld. Authority does not enjoy any jurisdiction to set aside and ignore an agreement between the parties. Once the allottees and the developer have agreed to develop the project jointly, the authority should not have rejected the same and handed over the project solely to the RWA.

18. It was further contended that the license to develop the project is granted under Section 3 of the 1975 Act. As per the said Section when the license is granted, the responsibility to construct the colony is on the appellant-promoter. The appellant is also owner as well as in-charge of the remaining part of the project (along with these four towers). The interest of the appellant is also equally important to be preserved as that of the allottees.

19. It was further contended that there are multiple resident welfare associations formed by the allottees of this project. The other associations are not the party to the present proceedings. Therefore, the claim of the complainant association being the sole association is completely false.

20. It was further contended that being the license holder, the appellant-promoter is under various legal obligation under 1975 Act, some of

them are extendable/condonable and some may result into penalty as well as prosecution. The said obligations cannot be wiped out by the orders of the Id. Authority.

21. It was further contended that license in the present case will remain with the appellant only because the present proceedings relate to only four towers and the rest of the project is not in dispute nor there is proposal of transferring the same to RWA. In such a case, there is a legal impediment before the Id. Authority to bifurcate the license in present proceedings. Also, handing over of the completion of four towers will result into double GST liability, firstly, in hands of the appellant and secondly in hands of the complainant RWA. The income tax and the company law require filing of various statutory forms and documents as well as requires the accounts to be maintained as per law. The direct expenses by the complainant RWA owned by the appellant will upset the entire account making and may result into various complications under other laws.

22. With these contentions, it was prayed that the appellant-promoter is capable to complete the remaining project including four towers in question



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and prayed for allowing the appeals and setting aside the impugned orders dated 10.11.2020, 18.05.2022 and 07.09.2022 passed by the Id. Authority.

23. Per contra, Id. counsel for the respondent-association contended that the Section 8 of the Act provides that the Id. Authority may consult the appropriate government. The word 'may consult' have been used. Thus, the provision is not mandatory in nature. The word 'may' has been used and therefore it is to be decided by the Authority whether it requires to consult the State Government or not.

It was further contended that the project is registerable under the Act and the appellant-promoter has not got the project registered due to his own fault. The Section 8 does not bar the jurisdiction of the Authority when the promoter does not get its project registered.

24. It was further contended that it is recorded in the order dated 14.09.2021 passed by the Id authority that the respondent - association has filed the affidavit in which it has been stated that out of 372 allottees, 50 are untraceable and 9 have applied for refund. Out of 319 traceable allottees, 261 are member of association, meaning thereby the complainant - association has attained 2/3<sup>rd</sup> majority

of all the allottees of the project. In the said affidavit, it is also mentioned that 220 affidavits from the various allottees have been received in the office of the association and a sum of Rs. 3.3 Cr. has been collected as seed money from 165 members also. Twenty Five members have already paid full payment to the respondent-promoter.

25. It was further contended that the various orders passed by the ld. Authority are procedural in nature. The ld. Authority has not reviewed any of its previous order. The ld. Authority in an effort to complete the project is passing various orders which are necessary under the facts and circumstances of the case.

26. It was contended that the joint proposal dated 08.10.2022 between the appellant and the respondent association was not in the interest of the allottees and was without any legal assistance. The same has never been implemented by either of the parties and therefore is inconsequential. The respondent-association wants to get the work executed and completed it at their own level.

27. It was further contended as per the order dated 10.11.2020 at para (v) of the order, it is mentioned that Rs. 43 Cr as stated by the appellant

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is to be invested in the project for completion of four towers. A letter dated 14.10.2020 has been received from Punjab and Sind Bank, the lending institution, in which it has been stated that Rs. 102.14 Cr are recoverable by the bank from the respondent. Also, the appellant has to pay EDC charges to Town and Country Planning Department running into crores. In addition to these liabilities, in accordance with the award of the Hon'ble arbitrator, another amount of about Rs. 37.00 Cr is to be paid to Mr. Virender Gandhi. Accordingly, the liabilities of the project far exceed the total amount collectable from all the allottees. Further, Id. Authority vide order dated HRERA-PKL/ED/2019/2681 dated 03.10.2019 appointed M/s Baldev Kumar and Company, Chartered Accountant, Chandigarh to conduct forensic audit of the appellant-company since launching of their project namely "Amazon-the Defence county". The said auditor submitted its report on 14.12.2020. At page 33 of the said report of the auditor, it is mentioned that EDC (including interest and penal interest upto 29.12.2020) to the tune of Rs. 53.24 Cr. is pending to be paid by the appellant-company to the Director Town and Country Planning, Haryana. The (appellant) has availed the

term loan from Punjab and Sind Bank and the outstanding amount as per audited balance sheet is Rs. 80.09 Cr as on 31.03.2019 which is due for payment to bank. Also, as per the audited balance sheet as on 31.03.2019, there is a contingent liability of Rs. 30.64 Cr. of the company. An amount of Rs. 1.46 Cr. are payable by the appellant-company to the persons whose amount is received towards flat booking whereas, their flats have been cancelled. The appellant-company has booked 36 flats in tower A4 and has received an amount of Rs. 6.49 Cr. The construction of the said tower A4 has not yet started. As per the above said report, the sum total liability of the appellant-company is Rs. 171.92 Cr.

28. It was contended that the appellant-company is under huge liability to pay its outstanding dues and the allottees do not have any faith in the appellant-company and they are not willing to invest any more of their hard earned money with the appellant and wish to complete the project through the respondent-association only.

29. With these contentions, it was prayed that both the appeals may be dismissed being without any merits.

30. We have duly considered the aforesaid contentions of the parties.

31. Section 8 of the Act is reproduced as under: -

***“Obligation of Authority consequent upon lapse of or on revocation of registration: -***

*Upon lapse of the registration or on revocation of the registration under this Act, the Authority, may consult the appropriate Government to take such action as it may deem fit including the carrying out of the remaining development works by competent authority or by the association of allottees or in any other manner, as may be determined by the Authority:*

*Provided that no direction, decision or order of the Authority under this section shall take effect until the expiry of the period of appeal provided under the provisions of this Act:*

*Provided further that in case of revocation of registration of a project under this Act, the association of allottees shall have the first right of refusal for carrying out of the remaining development works.”*

32. The perusal of the provisions of Section 8 of the Act, reveals that on lapse or revocation of the registration under this Act, the Authority, ‘may consult’ the appropriate Government to take such action as it may deem fit. The word ‘may consult’ has been used indicating a discretionary element vested

with the authority and not the mandatory. Thus, it is not mandatory that the ld. Authority has to consult the State Government and only then it can get the development work completed from the association of allottees or in any other manner. Thus, we find no merit in the contention of the appellant that the Ld. Authority was essentially required to consult the State Government before handing over of the project to the Respondent – Association.

Further, it is an established fact that the appellant could not get the project registered under Section 3 of the Act because of its own reasons as the appellant was unable to pay the required fees and further get the work executed and project completed. The contention of the appellant that under second proviso of Section 8 of the Act the Ld. Authority had no jurisdiction to oust the appellant unless the registration has been revoked is answered in the manner that the intend of the legislation is that upon revocation of registration, the allottees have the first right of refusal for carrying out the remaining development work. In a case, where the promoter does not get his project registered then this right of the allottees to carry out the balance work does not get extinguished. The first right of refusal of the

allottees is there on the revocation of registration. It is not the case that there is provision in the Act that the allottees or the association of allottees have no right to be handed over the project to complete the abandoned project being not got registered by the promoter. The respondent - association has every right to complete the project which the appellant has left it incomplete and has not got the project registered because of its own reasons.

Therefore, in the present facts and circumstances of the case, the authority being relied upon by the appellant, **Goel Spinning and Weaving Mills Vs. State of Haryana and others case supra** is not applicable.

On account of the aforesaid reasons, we find that there is no violation of section 8 of the Act by the Ld Authority in handing over the project to the respondent-association to execute the work and complete the project at their own level.

33. It is essential to discuss the financial liabilities of the Appellant company before we proceed further to discuss the various pleas raised in this appeal by the appellant.

Ld. Authority vide order dated HRERA-PKL/ED/2019/2681 dated 03.10.2019 appointed M/s

Baldev Kumar and Company, Chartered Accountant, Chandigarh to conduct forensic audit of the appellant-company since launching of their project namely "Amazon-the Defence county". The said auditor submitted its report on 14.12.2020, which has been supplied during the course of the arguments by the counsel of the respondent - association. At page 33 & 34 of the said report of the auditor, the major identified outstanding liabilities of the appellant - companies have been enumerated which are reproduced and under:

***"MAJOR IDENTIFIED OUTSTANDING LIABILITIES OF THE COMPANIES AS ON DATE***

*The following major liabilities of the company as on date have been observed from the books of accounts & other documents obtained during our Audit:*

***•EDC/IDW:***

*As per the letter dated 16.10.2020 received from Director of Town and Country Planning, Haryana, the status of outstanding dues towards EDC (including interest & penal interest up to 29.02.2020) is Rs.53.24 Cr.*

*The authority has given 2 options for payment of the said dues under one time settlement scheme "Samadhan se Vikash".*

*1.) Option 1 (Upfront Payment): Rs. 37.28 Cr.*

*2.) Option 2 (Deferred Payments): Rs. 42.60 Cr.*

***• BANK LIABILITY:***

*The developer company has availed a terms loan from Punjab and Sind Bank against*



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*mortgage of the Project Land of 16.08.2012 acres. The account has already turned NPA due to non - repayment of Installments/ Interest. The outstanding amount as per Audited Balance Sheet as on 31.03.2019 which is due for payment to Bank is Rs. 80.09 Cr. (Interest for the period 01.04.2019 to till date has not been included in this)*

**• ARBITRATION AWARD:**

*As per the Audited Balance Sheet as on 31.03.2019, there is Contingent Liability of Rs. 30.364 Cr. of the company.*

*As per the details provided by the company amount of Rs. 29.49Cr. pertains of Arbitration Award against the company in favour of Ex-partner Mr. Virender Gandhi (Award of Rs. 20.30 Cr. & the balance amt. is interest.*

**• CANCELLED FLATS:**

*As already explained above, an amount of Rs. 1.46 Cr. has been identified as liable to be paid to persons whose amount is received towards flat booking, whereas their flats have been canceled.*

**• RECEIPT OF AMOUNT FROM CUSTOMERS AGAINST NON-CONSTRUCTION TOWERS:**

*It has been observed from the records as already explained above that the company has booked 36 flats in Tower A4, 6 Flats in Tower A+ & 1 Flat in Tower A++ & has received an amount of Rs. 6.49 Cr. Construction for the said towers have not yet started. Accordingly, this amount is a liability of the company.*

**THE SUM TOTAL OF LIABILITIES AS EXPLAINED ABOVE IS RS.171.92 CR.**

34. As per the case of the appellant, it can execute and complete the work against due payment from the allottees who are to make a balance payment of Rs 45 Cr (approx.) to the appellant on account of flats allotted to them. The appellant has not provided any evidence to prove whether this amount is due from the allottees or not or what amount is receivable at what stage of construction. The appellant has also not provided any evidence of the balance quantities of work left and basis of his estimating the balance work to be of Rs. 45 cr. It is quite clear from the above forensic audit report of the auditor, that the outstanding liabilities of the appellant are Rs 171.92 Cr. which include statutory payment of EDC towards the Govt. The allottees have suffered a lot due to the non-completion of the project for a long time. They have no faith in the Appellant-promoter that it will ever be able to complete the project and handover the allotted unit to them and are unwilling to invest any other amount with the appellant. It is very well established that the appellant does not have enough resources to complete the project and huge liabilities including the payment statutory dues to the Govt. against EDC etc are pending against the appellant.

35. As per the appellant there are 456 flats in four towers of the project in question, out of which 370 are sold, 34 are unsold, 52 are allotted to its six ex-partners. Thus total number of allottees in the four towers is 370 + (6 Ex -partners) totaling 376 allottees. In the other tower A-4 where construction work is yet to start there are 114 flats out of which 36 are sold to various allottees and, therefore, the total members of allottees would become 412. The 2/3<sup>rd</sup> of this figure of 412 comes out of 270 allottees. Also as per the appellant on the date of passing of the order dated 18.05.2022, only 220 allottees had filed the affidavits. This means that the order of the Authority that the association should have a minimum of 2/3<sup>rd</sup> strength of allottees has not been complied. Further contention is that the ld. authority vide order dated 24.07.2019 also directed the respondent association to file personal affidavit of 2/3<sup>rd</sup> allottees that they are ready to take over the project for its completion and also to contribute further funds. The same has not been complied with so far. Also, vide the impugned order, the respondent - association was asked to show at least 25% of the tender amount in their account. As per the impugned order the tender has been quoted for an amount of

85.72 Cr and the seed money amounting to rupees 1.5 Cr has only been collected by the respondent association.

At para 9 (ii) of the impugned order dated 18.05.2022, it is recorded that an Association of allottees has been formed which has membership of 230 allottees out of total allottees numbering 342. This constitute 2/3<sup>rd</sup> strength of the allottee which could be identified by the association. All of these allottees who are members of the association have submitted their affidavits for becoming part of the association and for cooperating with each other in accordance with the decisions to be taken by the general body of the association from time to time. We are of the opinion that only 342 allottees number are identified by the association. In fact, details of the allotment made to various allottees are available with the appellant and, if, the appellant is aware of more allottees he should come forward before the respondent-association and produce the documents of such allottees to the respondent-association. Further as per the Act it is the duty of the appellant to form an association of the allottees. It is also incumbent upon the appellant to pursue the remaining allottees to join the association. The

respondent – association has been able to get the affidavits of 230 allottees out of identifiable 342 allottees which is a good number at this initial stage. The condition imposed by the ld. Authority to the respondent - association to have a strength of 2/3<sup>rd</sup> allottees is a general condition to assess the willingness of maximum number of allottees to execute the work through the respondent-association and contribute their share of funds. The substantial number of allottees have shown willingness to contribute the funds. At the initial stage there can be some difference in collection of funds and number of allottees in the association. These deviations will not affect the ultimate finding of the authority to execute the balance work by the association of the allottees. However, the association should get the maximum strength of allottees as is possible as without the contribution of funds from the allottees it will not be possible for the respondent – association to complete the work. In view of the above, no relief can be granted to the appellant on these grounds.

36. It is the contention of the appellant that the Ld. Authority in its order dated 18.05.2022 has exceeded its jurisdiction in recording that “it is

*hereby clarified that the project has been handed over to the association free from liabilities and encumbrances.”* Whereas, the matter before the Ld Authority pertains to only four towers and not the whole Project.

In para 8 (i) of the order dated 07.09.2022 it is again mentioned that *“Authority observes that in exercise of the powers vested upon it by section 8 of the Act, full project stands handover to complainant- association. Respondent has no option but to hand over the entire project. In fact, it stands already handed over regardless of the actions of respondents. Handing over of project by respondent to the complainant is non-obligatory formality. This court of Law has handed over, full project to the complainant association, therefore, they shall be deemed to have taken over the entire project.”*

However, subsequently in para 8 (iv) of the order dated 07.09.2022, it is clarified by the Ld Authority that *“while ordering complainant association to take over entire project, authority would clarify that remaining part of the site, leaving four towers aside, cannot be put to sale or to any consumptive use i.e, they cannot construct additional buildings. The vacant portions of the project site can be used only for*

*facilitating construction of four towers or for laying such permanent or temporary infrastructure facilities as are already part of the approved plans/service plan estimates*". Through this clarification, it has been made clear by the Ld authority that except for the four towers remaining part of the site cannot be put to sale or to any consumptive use by the respondent-association. The vacant portions of the project can be used only for facilitating construction of four towers or for laying such permanent or temporary infrastructure facilities as are already part of the approved plans/ service plans estimates. We find nothing wrong in this order as the main consideration is construction of the four towers and use of the vacant land of the project for facilitating construction of the four towers in question. We therefore are not interfering with the impugned orders in anyway on this account.

37. The appellant was unable to complete the project and after a long wait for possession of their dream house a complaint before the Ld Authority was filed by the Respondent – association in the year 2018 for actual physical possession along with delayed possession charges, also refund of the amount paid along with interest and compensation.

Repeated assurances were given by Appellant before the Ld. Authority that it will arrange funds for completing the project, but none of the insurances materialized. In the meantime, during the pendency of the complaint, some of the allottees formed an association and proposed the completion of the project by sharing the contribution of funds amongst themselves. The appellant also filed its objections and submissions from time to time on number of such hearing which ultimately led to handing over the project to the respondent - association after the satisfaction of the Ld Authority that the respondent-association will be able to complete the project. This has happened after affording due hearing to all necessary parties in the best possible manner under the fact and circumstances of the case in most natural way. We do not find any merit in the contention of the appellant that there was no prayer in the complaint filed by the respondent association for handing over the project to respondent - association for completing its construction as there was no other way to complete the project and handing over the possession of the unit as prayed in the complaint.



38. It is also contended that the quoted rates of Rs 99 Cr in the tender floated by the respondent association are on higher side and negotiated rate of 64.84 does not reflect the actual cost.

The association has floated the tenders in a transparent manner. The rates have been negotiated.

The association is proceeding in a transparent manner under the supervision of the Ld. Authority.

The appellant has not supplied any evidence with regards to the bill of quantities of the pending work and the prevalent market rate to support its contention that the quoted rates/negotiated rates

obtained by the respondent are on higher side. The only averment is that the appellant can complete at a

much lower amount of Rs 45 Cr. The basis of arriving at the amount of Rs. 45 Cr. as the estimated cost is

also not supplied by the appellant. It is well established that the appellant does not have the

resources to execute the work and complete it and has huge liabilities including payment of statutory

dues to the Govt. It is felt that the appellant is just levelling allegation to stall the construction of the

project being undertaken by the respondent-association. Under these circumstances, the

allegation of higher rates etc. cannot sustain and no

order contrary to the findings and order of the authority can be passed without sufficient evidence.

39. The license to execute the work of the project in question has been issued in the name of the appellant by the department of Town and Country Planning. The respondent – association has been handed over the project and there is no liability on account of said license on the them as per the impugned order. The order of the ld. authority with respect to liability of the license to rest with the appellant is correct. The GST and income tax has to be paid by the respective parties as per the law. The appellant has not shown any provisions of law according to which there can be double taxation. The consequence of license / GST / income tax or any other tax etc has to be borne by parties as per law and as per order of the ld authority. At present there is no alternative other than to get the pending work of the project completed from the respondent – association. It is felt that the Appellant is raising such contentions of double taxation under some apprehension and using the same as a tool to stall the construction of the project being undertaken by the respondent – association under the orders of the Ld authority.

40. It is the contention of the Appellant that joint representation dated 08.10.2020 executed by the appellant and the respondent association on affidavit is in agreement and the ld. authority does not have jurisdiction to set aside an agreement between the parties. The respondent- association on the advice of their counsel has realized that the said joint representation is not in its favour and therefore does not want to go as per the said joint representation. The said joint representation was executed by some of the members of respondent-association without the legal assistance. The said representation has never been acted upon in reality on ground by either of the parties and as such has remained on papers only. If the respondent association does not want to proceed with the said joint representation nobody can force them to do so.

41. In appeal no. 678 of 2022, it is contended by the ld counsel of the appellant that the order of sealing of the project was passed by the Director Town and Country Planning Haryana while exercising power under provisions of act of 1975. ld authority does not have jurisdiction to exercise appellate jurisdiction over the order of the Director of the Town and Country Planning, Haryana to order

*“that association is in full possession of the entire project and usage of gates is necessary for carrying out construction activity. Nothing prohibits the association from breaking the locks of the main gate”.*

To adjudicate this controversy, para 7 and para 8 (vii) of the order dated 07.09.2022 are reproduced as under:-

“7. Authority observes that a copy of letter dated 09.08.2022 written by District Town Planner (E), Panchkula to Senior Sown Planner, Panchkula is received, the operative part of which is reproduced below: -

*“on the above matter, it is submitted that Directorate had intimated this office that notice under Rule 18(1) and Rule 18(2) of Haryana Development and Regulation of Urban Areas Rules, 1976 have already been issued to the developer on account of non-submission of outstanding EDC, non-compliance of Rules, 24, 26, 27 & 28 of the Haryana Development and Regulation of Urban Areas Rules, 1976, non-approval of service plan estimates, non - renewal of license, non-approval of service plan estimates, non-submission of CA certificate, status regarding construction of community site and EWS flats etc. Further, building plan approval and unauthorized construction of building an observation of PAG (Audit) Haryana that the Licensee has not got the blocks have been raised without any approval*

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of the department. Accordingly, the Directorate vide memo dated 14.07.2020 has directed this office to seal the premises of the project.

In compliance to the aforesaid direction of the Directorate, project was got sealed by this office on dated 17.09.2020.

As per orders of Haryana Real Estate Regulatory Authority Panchkula dated 04.08.2022, the project is to be handed over to association, whereas, the project has already been sealed as per the direction of Directorate and this office is unable to make compliance of HREERA orders.

Therefore, a copy of HREERA orders is forwarded for appropriate orders of DTCP, Haryana in the matter so as to enable this office to proceed, accordingly.”

Para 8 “(vii) In the prayer clause of the application, association has requested to permit them to break seals of both gates for starting construction activity. Authority reiterates that association is in full possession of the entire project, and usage of gates is necessary for carrying out construction activity. Nothing prohibits the association from breaking of locks of the main gate. However, all such activities must be supervised by a committee of members of the association.”

From the perusal of the letter dated 09.08.2022, it is revealed that the project was sealed by the office of DTP(E) on 17.09.2020 on the orders of Director, Town and Country Planning, Haryana on account of

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the default of the appellant on account of “non-approval of service plan estimates, non - renewal of license, non-submission of CA certificate, status regarding construction of community site and EWS flats etc. Further, building plan approval and unauthorized construction of building”. The violations are very serious in nature. However, there is no fault of the allottees in the violations committed by the appellant. However, the sufferers are the allottees who have invested their hard earned savings to get a dream home. The endeavor of the department of Town and Country planning and that of the authority is to complete the work so that the allottees can get their home. The Department of town and country planning is also a fault that four towers of twenty storey have been constructed by the appellant and department has not done anything to get the various compliances done from the Appellant. It cannot be presumed that four towers have been erected by the appellant without the approval of the building plans. It has been rightly recorded by the Ld authority that as per the copy of the letter dated 25.08.2022 issued by the Director Town and country planning department that the letter does not show that the building plans are not approved. It only

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states that the building plans of the colony have not been issued. Authority interpreted that while the promoter had submitted the building plans, but because of certain dispute between the promoter and department they have not been issued. On a specific question to the appellant as under what provisions of the Act the project has been sealed by the office of DTP, no such provision could be pointed out by him. It is felt that the appellant is seeking advantage of his misdoing and stalling the construction of the project through the respondent allottees. The department of town and country planning is required to help the allottees by providing all necessary approvals to complete the project at their own level and through their own investment and get all the fees and other payments due from the Appellant through the process of law. In our opinion there is no sealing of the project by the office of DTCP qua the respondent - association. The office of DTCP is free to take any action for violations committed by the appellant and for recovery of fees and other dues from him as per law.

42. It was further contended in para 8 (iii) of Appeal No. 678 of 2022 that the committee of members of the associations have been given the

rights to break open the lock and prepare inventory of all material stored and secure that material at a safe place, at risk and cost of the appellant. The appellant pleaded that an officer of the authority may be asked to associate with the committee of members of association in preparing the inventory of his material lying at the site of work. However, the Appellant showed inability to bear the cost for providing the officer by the authority.

In the facts and circumstances of the case, the authority may consider to provide an officer who may associate with the members of the association for preparing the inventory of the material of the appellant lying at the project site.

43. The appellant is raising various contentions on account of procedural issues of law and on the issues which the respondent association is facing as teething problems. The sum and substance of the matter is that the Appellant company has failed to complete the project. As per the forensic audit report dated 14.12.2020 of the chartered accountant a sum total of financial liability to the tune of 171.92 Cr is pending against the appellant. This liability includes a statutory payment of 53.24 Cr on account of EDC and bank liability of



80.09 Cr. These liabilities far exceed the total receivable from the various allottees. The allottees do not have any faith in the appellant that the appellant will ever be able to give them the possession of their units. They do not want to further associate with the appellant and to invest their funds for completing the project. The respondent - association wants to complete the project of their own by pooling their share of pending payments. A large number of allottees have already become member of the respondent association and have actually contributed some part of their money and also have given the affidavit to contribute their share for completing the project. The Id authority is passing various orders to remove the hurdles and expedite the work. Under these circumstances we cannot ask the allottees to pay their balance payment to the appellant for completion of the project.

44. No other issue was raised before us.

45. As a consequence to the aforesaid discussion, we do not find any merit in both the appeals and same are dismissed with aforesaid detailed observations.

46. No order to costs.

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

48. File be consigned to the record.

Announced:  
October 13, 2022

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

Anil Kumar Gupta  
Member (Technical)

*Rajni thakur*

Judgment, Haryana Real Estate Appellate Tribunal