

**BEFORE THE HARYANA REAL ESTATE REGULATORY
AUTHORITY, GURUGRAM**

Complaint no. :	6279 of 2019
First date of hearing:	13.12.2018
Date of decision :	27.02.2023

M/s Orris Infrastructures Pvt. Ltd. Regd. Office: J-10/5, DLF Phase-II, MG Road, Gurugram	Complainant
Versus	
HARERA, Gurugram Regd. Office: New PWD Rest House, Civil Lines, Gurugram.	Respondent

CORAM:	
Shri Ashok Sangwan	Member
Shri Sanjeev Kumar Arora	Member

Appearance:	
Shri J.K. Dang & Shri Ishan Dang (Advocate)	Complainant

ORDER

1. This order is being passed in compliance of the orders dated 12.12.2022 passed by the Hon'ble Punjab and Haryana High Court in CWP No. 28257 of 2022 titled as M/s Orris Infrastructure Pvt Ltd versus State of Haryana and others in which the following directions were issued:

"Without in any way opining on the merits of the claim of the petitioner, the present petition is disposed of with a direction to the respondent No. 2 to take a decision on the application dated 11.2.2020 (Annexure P-2) expeditiously preferably within a period of two months."

2. Brief facts of the present case are that a suo moto notice was sent by the authority on 10th of December 2019 to M/s Orris Infrastructure Private

Limited calling upon the aforesaid company to show cause as to why penalty should not be imposed it under provisions of Real Estate Regulation and Development Act on account of its failure to get the commercial project measuring 9.5 acres located in Sector 82-A, Gurugram registered. It was highlighted in the aforesaid notice that the project of the company was an “ongoing project” as defined under Rule 2(o) of the Haryana Real Estate (Regulation and Development) Rules, 2017. Through the said notice M/s Orris Infrastructure Private Limited was called for personal hearing and to show cause as to why penalty should not be imposed upon the company.

3. M/s Orris Infrastructure Private Limited appeared and submitted reply to the show cause notice on 30th of December 2019. In the said reply, the company pointed out that there was no demand for built up commercial properties both in the retail as well as office sector in the area as well as in its vicinity where the project was located, and no useful purpose would be served for the company by undertaking the development of the commercial project. The company stated that under the aforesaid compelling circumstances a well thought and duly deliberated decision had been taken by them to desist from developing the commercial project for the time being and the commercial project mentioned above had been abandoned by the company. It was submitted that no lapse of any nature had been committed by the company and it was financially precariously poised and was diligently trying to complete other projects. It was requested in the aforesaid reply by M/s Orris Infrastructure Private Limited that further proceedings in the matter deserve to be dropped especially since no sale in the project had been made by the company since the year 2015. It had been reiterated in the concluding part of the reply that the project had been abandoned by the complainant and would not be implemented. Therefore, M/s Orris

Infrastructure Private Limited requested that it ought not to be insisted that the project be registered especially when it would not see the light of the day.

4. After considering the response of the Company and hearing the representative of the company, the authority held vide order dated 20.01.2020 that the project of M/s Orris Infrastructure Private Limited was an ongoing project and as per provisions of the Real Estate (Regulation and Development) Act, 2016, an application for registration of the project should have been made within a period of 30 days from the date of commencement of the act. It was held that no such application had been submitted by the aforesaid company. It was further held that the promoter was non-compliant and was trying to mislead the authority by giving deceptive information and concealing the facts. Accordingly, vide order dated 20th of January 2020, the authority imposed a penalty of Rs. 30.48 crores on the promoter (M/s Orris Infrastructure Private Limited).
5. Aggrieved by the said order, an application dated 10th of February 2020 was filed on 11th of February 2020 by applicant i.e., M/s Orris Infrastructure Private Limited under Section 39 of The Real Estate (Regulation and Development) Act, 2016 for rectification of mistake in the order dated 20th of January 2020. It was mentioned in the application that the applicant had conceptualized a commercial project under the name and style of "Orris Business Square" located in Sector 82-A, Gurugram in terms of license bearing number 185/2008 dated 29th of October 2008 having project area measuring 9.5 acres. The project was a commercial project and was intended to be sold to investors who would further rent the properties. It was also stated that certain units forming part of the project had been sold during the period 2012 - 13 to some allottees. It was further mentioned in the aforesaid

application by the applicant that the project had not been completely sold. The applicant submitted that no sale had been made by the applicant since the year 2015 and the project had been scrapped even prior to coming into operation of Real Estate (Regulation and Development) Act, 2016. The allotments made prior to that were refunded or adjusted in other projects of Orris. Hence, no one was aggrieved. The assertions contained in the reply earlier filed by the applicant were reiterated. It was stated that the commercial project had been abandoned by the company. Paragraph number 7 of the application reads as under: –

“7. That it appears from the order dated 20. 01. 2020 that the Honourable Authority proceeded against the applicant under the impression that the applicant while filing the reply took a stand that project was not scrapped but was ongoing. The specific stand of the notice it in reply to show cause notice that the project had been scrapped and the allottees of the units have been shifted to other viable project of the applicant to protect their interests, somehow could not get consideration of the honourable authority and was not considered due to oversight. The oversight of this fact from the knowledge of honourable authority led to passing of order in the rectification and imposition of penalties.”

6. It was further stated that there was an error apparent from record and the same deserved to be rectified.
7. The said application dated 10 February 2020, filed by the applicant had not been decided by the Authority and consequently, Civil Writ Petition no. 28257 of 2022 was filed by M/s Orris Infrastructure Private Limited in the Hon'ble High Court of Punjab and Haryana at Chandigarh against State of Haryana and Real Estate Regulatory Authority. Vide order dated 12th of December 2022, the honourable High Court directed the authority to take a decision on the application dated 11th of February 2020 expeditiously and preferably within a period of 2 months.

8. In compliance of the above orders, hearing was provided to the applicant. The applicant sought adjournments on 06.02.2023, 13.02.2023, 20.02.2023 and finally, the matter was heard on 27th of February 2023.
9. The counsel for the applicant reiterated the facts of the application and highlighted the following facts: -
- (i) The proceedings for imposition of penalty had been suo moto commenced by the honourable authority.
 - (ii) There was no complaint made by any allottee of the commercial project against the applicant.
 - (iii) The applicant has submitted in the elaborate reply that the commercial project was not found to be viable and feasible by the applicant and the same had been abandoned. It was emphasised that it had been specifically mentioned in the reply filed by the applicant that no sale in the project had been made after the year 2015.
 - (iv) Application for migration had been submitted by M/s Orris Infrastructure Private Limited with Directorate of Town & Country Planning, Haryana, Chandigarh for grant of permission to implement a "Plotted Commercial Project" in lieu of the originally conceptualised "Built up Commercial Project".
 - (v) The competent authority i.e. Director Town and Country Planning, Haryana had permitted the migration and had issued a fresh license bearing number 82 of 2021 dated 18th of October 2021 for development of a "Commercial Plotted Colony" over the land in question.

- (vi) M/s Orris Infrastructure Private Limited had got the duly sanctioned "Commercial Plotted Colony" registered with the authority bearing registration number 85 of 2021 under the name and style of "Orris Gateway".
- (vii) The project had been scrapped before commencement of Real Estate (Regulation and Development) Act and therefore there was no requirement for registration of the project.
- (viii) Penalty was an ultimate civil sanction and was very harsh after taking into account the conduct of the applicant and state of affairs prevailing at the relevant time.
- (ix) The financial position of the company was not healthy and the limited funds available with the company were intended to be utilised for the development of the project and not for depositing the exorbitant penalty casually imposed by the authority.
- (x) No basis for calculation of the amount of 30.48 crores had been furnished in the order dated 20th of January 2020.
- (xi) The extremely important circumstance of submission of application by M/s Orris Infrastructure Private Limited to Directorate of Town & Country Planning, Haryana, Chandigarh on 16th of December 2019 was not taken into consideration by the authority.
- (xii) There was no other means available with the applicant to convince the authority that it had abandoned the project and it had not made any sale pursuant to 2015. It was further submitted that the stand of the company stood substantiated by complete absence of any incriminating material which could directly or impliedly establish that any sale had

been concealed by the applicant or that it had indicated any other intent to continue with the implementation of the originally sanctioned project.

(xiii) It was also emphasised that the definition of Section 3 of Real Estate (Regulation and Development) Act made it evident that the same did not compel registration of a real estate project but imposed restriction that no promoter would advertise or sell any plot or apartment without proceeding to register the project with the authority. The intent of legislature in codifying and bringing into operation the aforesaid statutory provision was/is to ensure that no promoter proceeds to directly or impliedly proceeds to advertise, market, book, sell or offer for sale, or invite persons to purchase in any manner any plot, apartment or building in any real estate project or part of it without getting the real estate projects registered with the Real Estate Regulatory Authority.

(xiv) It was submitted on behalf of the applicant that after taking into consideration the aforesaid intent of legislature, the imposition of any penalty was not warranted.

(xv) It was submitted by the counsel for the applicant that in another project of the applicant during contemporaneous period, ad hoc registration had been granted by the authority.

10. We have examined the show cause notice, reply filed all and the documents produced as well as the impugned order dated 20th of January 2020 passed by the authority and the subsequent application submitted by M/s Orris Infrastructure Private Limited under Section 39 of The Real Estate (Regulation and Development) Act, 2016.

11. Before proceeding with the matter, it is important to recall the provisions of section 39 of the Real Estate (Regulation and Development) Act, 2016 which reads as under:

“The Authority may, at any time within a period of two years from the date of the order made under this Act, with a view to rectifying any mistake apparent from the record, amend any order passed by it, and shall make such amendment, if the mistake is brought to its notice by the parties:

Provided that no such amendment shall be made in respect of any order against which an appeal has been preferred under this Act;

Provided further that the Authority shall not, while rectifying any mistake apparent from record, amend substantive part of its order passed under the provisions of this Act”

12. A perusal of the application shows that the applicant has nowhere pointed out any specific mistake apparent from the record which needs to be rectified. In fact, through the present application, the applicant is virtually seeking a review of the order passed on 20.1.2020 which, if accepted, shall substantially amend the order already passed. The functioning of this authority is regulated by provisions of The Real Estate (Regulation and Development) Act, 2016 and Rules framed thereunder. The authority is conscious of the fact that in accordance with provisions of Section 39 of The Real Estate (Regulation and Development) Act, 2016 while rectifying any mistake this authority is not empowered amend the substantive part of the order. The applicant has failed to show any provision under the RERA Act, 2016 which empower this Authority to review its own order. In view of the above, even if there was merit in the contentions of the applicant, this Authority have no power to review its earlier order. In fact, the right course open to the applicant was to approach the appellate authority for seeking any relief in the matter and which the applicant chose not to do. Therefore,

the present application is dismissed with the above observations and the application filed by the applicant under Section 39 of The Real Estate (Regulation and Development) Act, 2016 stands disposed of. File be consigned.


(Sanjeev Kumar Arora)
Member


(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 27.02.2023

HARERA
GURUGRAM

