



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

### 1. COMPLAINT NO. 89 OF 2019

Piyush Heights Residents Tower J & K .....COMPLAINANT(S)

Welfare Association

VERSUS

Piyush Buildwell India Ltd. ....RESPONDENT(S)

**CORAM:** Rajan Gupta  
Anil Kumar Panwar  
Dilbag Singh Sihag

**Chairman**  
**Member**  
**Member**

**Date of Hearing:** 06.08.2019

**Hearing:** 5<sup>th</sup>

**Present:** - Ms. Vaishnavi R. Iyer & Srishti, Counsel for the complainant.

None for the respondent.

### ORDER (RAJAN GUPTA- CHAIRMAN)

1. In compliance of the orders dated 13.3.2019 of the Authority, today learned counsel for the complainant Ms.Vaishnavi Iyer filed an action taken

report on behalf of the Piyush Heights Residents Tower J&K Welfare Association(Welfare Association in brief). By way of written application, which has been taken on record and orally, learned counsel Ms.Vaishnavi Iyyer submitted as follows:-

- (i) Out of 144 apartments which are under construction in tower J&K 110 allottees have become members of the association. Out of the remaining 34 apartments, 21 are non- members and 13 are untraceable.
- (ii) Out of the 110 members 105 have paid the entire balance amount of money which was to be paid by them to the promoter of the project. The said amount of Rs.2,05,91,172 has been deposited in a separate Escrow account. The account shall be operated in accordance with the directions of this Authority by 3 persons and all payments shall be made through electronic mode of payments.
- (iii) It has been estimated by the association that the remaining expenditure to be incurred for completing all the apartments is likely to be Rs.5,45,54,108/-. Accordingly, there may be deficit of Rs.3,39,62,936/-. Learned counsel stated that an affidavit has been furnished by all the members that Rs.3,23,456/- will be contributed by each member for bridging the deficit.
- (iv) A tender documents for carrying out the construction work was prepared and the same was published in the newspapers for inviting



contractors to submit their bids for undertaking the construction work. Several bids have been received and the association has finalised the lowest bidder M/S Garg Enterprises. A draft of the contract to be signed by the association with the contractor was shown to the Authority to prove that the association is fully prepared to undertake the task.

- (v) Learned counsel requested that now the project should be handed over to the association. Further, 13 untraced apartments actually may not have been allotted to anyone. In case those apartments have not been allotted, authorisation may be given to the association to sell those un-allotted apartments by way of open auction. Further, it was requested that directions should be given to the town & Country Planning Department as well as to other Government officials to fully cooperate with the association to enable the Association to complete the project at the earliest.

2. The Authority after consideration observes that Piyush Heights Residents Tower J & K Welfare Association is comprised of 110 members out of 144 allottees. The remaining allottees may also decide to become member of the association. Piyush Heights Residents Tower J & K Welfare Association has opened a bank account; got themselves registered; and also formed a Governing body. Further, remaining dues have been paid by the members and assurance has been given to contribute additional money required for completing the project.



The Authority observes that association has done a good work and appears serious about getting the project completed.

3. As per Section 3 of the RERA Act the promoters of all ongoing projects have to get the project registered with the Authority within three months of coming into force of the Act. Clearly this is an ongoing project. The respondent company has failed to file an application for its registration, as such they have violated the mandate of Section 3 of the Act they made themselves liable for penal action under Section 59.

4. Section 7 of the Act provides for revocation of the registration. The Authority has been empowered to take cognizance for action under Section 7 suo-motu or on a complaint filed before it. Clause (a), (b) and (c) of Section 7(1) provides for the situations in which registration of the project can be cancelled.

Section 7 has been so worded as to say that it is applicable on the projects which have been registered with the Authority but the promoters have failed to fulfil the obligations cast upon them by the law or by the Authority while granting the registration certificate, thus the registration is liable to be cancelled. It does not expressly cover situation like the present case in which the promoters who have violated all the conditions of the license as well as of agreement made with the buyers and are also failing to get the project registered.

When a promoter fails to register the project despite clearly being aware that he should do so, such projects must be treated at par with the projects



of which the registration is cancelled by the Authority. Not taking this view will create an anomalous situation and would adversely jeopardise the interest of the allottees of the project of which the promoters are deliberately refusing to finish the project. Not taking such a view would also amount to saying that the protection of Section 8 is not available to the Allottees of an unregistered project. In the considered view of this Authority an unregistered project shall be considered at par with the project of which the registration has been cancelled.

5. Having said so, now the protection of Section 8 must be granted to the allottees of the present project of the respondent. The association having fulfilled all the tasks assigned to it by the Authority has a right to take over the project for completing it themselves.

In furtherance of the aforesaid conclusion, the Authority directs all concerned to take actions as follows:

- (i) The Piyush Heights Residents Tower J & K Welfare Association shall prepare a detailed inventory of all the materials lying at the site of the project with the help of a three members committee.

When the list is prepared, a notice shall be sent to the respondent company for deputing their representative if they so desire. A request shall also be made to the DTP for deputing its representative to be present at the time of preparing the list. The list so prepared shall be kept in the record and its copy shall be sent to



the respondents as well as to DTP. A copy of the said list shall also be submitted before this Authority on the next date of hearing.

- (ii) A committee consisting of the DTP, a representative of Deputy Commissioner (who shall be in Class-I officer in the district) and two representatives of the Piyush Heights Residents Tower J & K Welfare Association (including President of Association) shall be constituted which shall issue an advertisement in the leading newspaper for sale of the unallotted apartments on as and where basis. The sale shall be made only by way of open auction after making wide publicity by way of advertisements in the newspapers.
- (iii) A copy of this order shall be sent to the Director, Town and Country Planning Department who shall after consultation with the government file objections, if any, to the aforesaid course of action of handing over the project to the Piyush Heights Residents Tower J & K Welfare Association. The Director will submit his reply before the next date of hearing failing which it will be assumed that the department and the government has no objection to the proposed course of action.
- (iv) A copy of this order shall be sent to the respondents to file their objections, if any, to the aforesaid course of action to be adopted for completion of the project.

- (v) The Authority hereby orders that if any amount towards EDC, license fee or any other levies/charges remains to be recovered from the respondent company, the same may be recovered by way of invoking the bank guarantee or by any other lawful means but the departments shall not obstruct the functioning of Piyush Heights Residents Tower J & K Welfare Association. The Association will not be liable to discharge liabilities of the promoter towards the State Government Departments.
- (vi) The Director should issue necessary instructions to the DTP for associating with the association and for assisting and guiding them in every possible way so that the construction work is completed in accordance with approved plans and association does not face any difficulty in obtaining the Occupation Certificate later on.
- (vii) The Piyush Heights Residents Tower J & K Welfare Association may file applications with the concerned departments for providing infrastructural facilities like water, electricity, sewage connection, storm water drainage, access roads. If any difficulty is faced by them, they may approach this Authority for guidance.
- (viii) The respondents are hereby restrained from creating any third- party rights in the project in any manner.

(ix) Deputy Commissioner, Palwal is requested to provide law and order support to the RWA.

6. After uploading of this order on the website of Authority, the Law Associate concerned shall issue an advertisement in the newspaper on behalf of this Authority informing all concerned about these orders and to draw their attention towards uploading of the order and the availability of same on the website of the Authority for information.

7. Adjourned to 17.09.2019.



RAJAN GUPTA  
[CHAIRMAN]

ANIL KUMAR PANWAR  
[MEMBER]

DILBAG SINGH SHAG  
[MEMBER]





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**Chairman**  
**Member**  
**Member**

**Date of Hearing:** 06.08.2019

**ORDER (RAJAN GUPTA- CHAIRMAN)**

Order dated 06.08.2019 has been perused. There is an apparent clerical mistake in the said order at page no. 8. The word "Palwal" mentioned in the point no. 5(ix) at page no. 8 may be read as "Faridabad".



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**RAJAN GUPTA**  
[CHAIRMAN]



.....  
**ANIL KUMAR PANWAR**  
[MEMBER]



.....  
**DILBAG SINGH SIHAG**  
[MEMBER]