



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 1219 of 2019

HRERA, Panchkula

....COMPLAINANT(S)

VERSUS

TIDCO

....RESPONDENT(S)

CORAM: Rajan Gupta
Anil Kumar Panwar
Dilbag Singh Sihag

Chairman
Member
Member

Date of Hearing: 01.10.2019

Hearing: 3rd

Present: - Azad Kataria, Representative on behalf of BSF Welfare Society.

ORDER (Rajan Gupta- Chairman)

1. A Suo-motu complaint No.1219 was lodged against the respondent developer M/s Triveni Infrastructure Development Co. (TIDCO) for having not registered their ongoing project in Sector-89, Faridabad. It is mandated by

Section 3 of the Real Estate (Regulation & Development) Act, 2016 that the promoters of all ongoing projects should file an application for registration within a period of 3 months of coming into force of the RERA Act. Admittedly, the said project of the respondent has been launched, partly sold and partly developed, even though construction work has stopped for some time. Therefore, it comes within the ambit of Section 3 of the Act.

2. For the last couple of months, the Authority was in the process of settling cross complaint nos. 826 of 2018 and 1402 of 2018 between M/s Maximal Infrastructure Pvt. Ltd. and M/s Ferrous Infrastructure Pvt. Ltd. which has direct bearing upon the respondent developer M/s TIDCO. Briefly stated, M/s Maximal Infrastructure Pvt. Ltd. was granted a license for development of a Group Housing over land measuring an area of 48.038 acres in 2007. Instead of developing the project themselves, the licensee executed an agreement with five developer companies to whom the licensee sold out the entire project. This agreement for division of project into five parts and its sale to five different developers was in contravention of the prevalent law of the land and rules and instructions of the Town & Country Planning Department. Sale of the licensed land in five parts has not been recognised by the State Government in town & Country Planning Department even now. M/s TIDCO, the respondent developer in this order is one of the five developers.



3. Complex disputes erupted between the licensee company on one hand and the developer companies on the other. The respondent in this case M/s Triveni Infrastructure Development Co. (TIDCO) had acquired rights to develop a housing colony over land area measuring 10.335 acres with FAR equivalent 14.80 acres. This company has partly developed the project but for reasons not brought on record they went into financial difficulties. As per the information available with the Authority, liquidation proceedings are going on against the company M/s TIDCO before Hon'ble Delhi High Court. Official Liquidator has been appointed in the matter.

4. A Local Commissioner appointed by the Authority to visit the entire project site and submit its report, could not visit the site of M/s TIDCO because its access was stated to have been barred by orders of Hon'ble Delhi High Court.

5. The Authority had issued a notice to the Official Liquidator to show cause as to why they should not be asked to file an application for the registration of project. Shri Amish Tandon was present on behalf of the Official Liquidator during the hearing held on 24.07.2019. It was stated by the representatives of the Official Liquidator that they cannot file application for registration of the project because they cannot be called promoters of the project. The Official Liquidator is taking actions in accordance with orders of



the High Court only for liquidation of the company. They have nothing to do with the completion of the project.

6. During hearing of the matter today some representatives of a 'BSF Welfare Housing Society' appeared before the Authority. This Association is of about 250 allottees who are former BSF Jawans. Shri Azad Kataria, representative of the association argued that members of their Association have invested their life's savings in the project. They are awaiting delivery of their apartments for last more than 7-8 years. Now they are in very desperate condition, and the Authority must help them. Moreover, their apartments are possible to be completed by handing it over to them. Accordingly, a way out should be found to handover requisite number of apartments/towers to them as they are willing to complete them at their own level.

7. The Authority while hearing complaint case No.826 and 1402, both of 2018, had passed several detailed orders. While the details of the orders passed from time to time may be accessed from the website of the Authority, the operative part of the orders dated 2.9.2019 is reproduced below:

"While adjourning the matter for hearing arguments of M/s Maximal Infrastructure Pvt Ltd, the Authority would reiterate its line of thought that a solution to this complex problem can be found only by adopting the following step-wise approach:

- (a) That Town and Country Planning Department should realise its own responsibility for getting the projects completed because it is by virtue of the

license granted by them that the projects have come into existence. Further the conditions of license, the provisions of the Haryana Urban Development Act and the Rules framed there-under obliges the department to take all steps necessary for monitoring the progress of projects and getting it completed. The Town and Country Planning Department has to adopt a proactive approach in such matters. This approach is necessary for protecting the interests of thousands of allottees who have invested their hard-earned money on the basis of the licence granted by the State Government. The department shall be well advised to visit the sites of the project again and decide whether the development works are being carried out in accordance with law. The Local Commissioner of the Authority has pointed out several defects and violations. Those also should be appropriately taken into account.

- (b) Since the main licensee companies have disposed of all the lands of the project to five developer companies and they retain no further interest in it, either such an action on the part of the licensee company should have been stopped and prohibited well within time by the Town & Country Planning Department in the year 2008 itself, or now they have to appreciate the ground level realities and decide to bifurcate the license in favour of the five developer companies in the interest of thousands of allottees. Without this bifurcation of license nothing can move further.
- (c) Bifurcation of the license in favour of five developer companies would logically lead to separate determination of the liabilities of each of the developer companies towards the State Government. The liabilities on account of overdue license fee, EDC, IDC, penal interest and other charges will have to be and should be separately determined in respect of each of the developer companies by the department. Since principal responsibility for not acting in contravention of the conditions of license was that of the licensee company. Town and Country Planning Department should credit the EDC/IDC and other duties received from the license in favour of four developers only, namely M/s Ferrous Infrastructure; M/s ORS; M/s Heritage Cottage and

M/s Pal Infrastructure. No credit deserves to be given to M/s TIDCO because that company is in liquidation before the NCLT. The amounts of EDC/IDC due from TIDCO may be claimed from the Resolution Professional and the Official Liquidator as the case may be.

- (d) The amounts already received by the department from the licensee should also be appropriately credited into the accounts of each of the developer companies. Alternatively, the amount which the developer company proves to have paid to the department or to the licensee should be credited into their account. After crediting such amounts, remaining liabilities should be determined separately in respect of each developer company for division of the license.
- (e) Each of the developer companies thereafter should be asked to submit their plans for development of the colonies after duly recognising the development work already carried out. The revised plans then should be approved by the department in accordance with law and policy.
- (f) After completing the above process, five applications for registration of project with RERA will be examined and the projects will be registered with appropriate conditions and stipulations with an overall objective of protecting the interests of the current and future Allottees.”

Regarding disputes between various developer companies in respect of any amount receivable/payable, they may continue to prosecute their cases before the appropriate courts of law. This order will essentially be aimed at completing the project and protecting the interest of thousands of Allottees. This order shall be without prejudice to the claims and counter claims of the opposite parties towards each other to be prosecuted before appropriate court of law.”

8. Keeping in view afore-mentioned facts and circumstances, the Authority orders as follows: -

- (i) Since M/s TIDCO is facing liquidation proceedings before the Hon'ble Delhi High Court, the project at this stage cannot be

registered with this Authority, therefore, the captioned complaint No.1219 of 2019 is hereby discharged.

- (ii) In the context, however, provisions of Section 8, Section 79 and Section 89 of the Act are reproduced below :-

“Section 8. 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.

Section 79. Bar of Jurisdiction :- No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Authority or the adjudicating officer or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

Section 89. Act to have overriding effect: - The provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force.”

- (iii) This Authority has held the view that the projects of which registration is cancelled and the project which do not get registered despite being registerable as on-going projects under Section-3 of the RERA Act should be treated on similar footings. The Authority further observes that RERA Act has been enacted for regulation of the real estates as well as for protection of the interest of the allottees. This Authority while disposing of a bunch

of complaints in lead complaint case No. 381-384 of 2018 and 444-45 of 2018 had laid down the law that the rights of the Allottees shall be considered superior to the rights of all other financial or operational creditors. Relevant paras containing the logic for this conclusion given in the said judgement in complaint No. **Chetan Sharma vs ABW Infrastructure Ltd.** are reproduced below:

“13. We are of the considered view that the right granted to an allottee by the amendment ordinance of 2018 is a value-able right and that right can be pressed before the appropriate forum/authority for satisfaction of their claims against the promoters/debtors.

However, we are of the further view that the rights guaranteed by the RERA Act, 2016 for protection of allottees are very wide in nature and must be interpreted accordingly. As already stated in the arguments listed in Para 10 above that the allottees of a project, after having paid the EDC and substantial amount of money to the developer should be treated as deemed owners of the proportionate piece of the land and assets of the project, and their rights cannot be alienated by way of an agreement made between the promoter and the lending financial institution. Rights of the allottees must be treated superior to the rights of the lending financial institutions. The financial institutions, in so far as the assets of the related real estate project are concerned, are free to satisfy the claims from the remainders of the assets of the project after satisfaction of the claim of the allottees, and in addition they are free to set their claim satisfied from other assets of the promoters. They can press their claim even against the sureties and guarantees offered by the promoters.

14. The aforesaid conclusion that the rights of the allottees should be treated superior to those of other financial creditors are also supported by the principles of natural justice and the express provisions of RERA Act, 2016. In support of these arguments it is observed as follows:-

(i) The financial institutions are expert agencies which carry out due diligence about the promoter as well as his project before taking decision to lend

money. They have expert manpower and machinery to adjudge the viability of the project and creditworthiness of the promoters. They have capability to understand risk factors involved. Accordingly, at the stage of lending, either they are fully aware of the facts that full or a portion of the project has been allotted to the allottees, thus creating third party rights or they are fully aware that the allotments will be made by the promoters in future, thereby creating third party interests in the assets hypothecated or kept with them as security. It is to be presumed that lenders have factored-in these facts at the time of lending.

Lending institutions are also supposed to monitor progress of the project in order to ensure that money lent by them is safe and is invested properly in the project. If the money lent by them is diverted or siphoned away, they must also share burden for the same for the purpose of protecting the rights of ordinary citizens. If the lenders fail to monitor the Project closely and if their loan is not repaid in time, they themselves also must share the blame. The allottee, however, must not suffer on behalf of the promoter or the financial institution.

(ii) On the other hand, an allottee typically is a middle-class person who harbours the dream of owning a house for his family. Savings of two or three generations usually have to be mobilized to own a house. He invests money on the basis of assurances held out to him by the promoters and the State Government agencies. He cannot access or understand the account of the project nor does he have any power to monitor progress of the project on day-to-day basis.

The principles of natural justice, therefore, dictate that the rights of the allottees should be treated superior and higher to those of the financial institutions.

- (iv) It is noted that provisions of RERA Act has been given precedence over any other law of the land. Further, Section 8 of the Act confers valuable rights upon the Allottees to take over the project and complete it through their association in the event of the promoter not being able to complete the project. In view of this Authority this right is valuable, in-alienable, and sacrosanct.

Further, Section 89 states that the provisions of the Act shall have over-riding effect over anything inconsistent therewith contained in any other law in force. For this reason, also, the 'BSF Welfare Society' has a right to take over that portion of the project which belongs to them for completing at their level. It is to be understood that after making substantial payments, the property in the project should be deemed to have passed on the allottees to that extent. Viewed from this angle also, the said portion of the project in which BSF Welfare Society has purchased the apartments should be considered their property which cannot be alienated by the official liquidator to the prejudice of the BSF Welfare Society.

- (v) At this stage a distinction is drawn between satisfaction of the claims of the financial and operational creditors of a company on one hand and rights of the Allottees of a housing project on the other. The claims of the financial and operational creditors can be satisfied from any assets of the company facing liquidation proceedings which includes assets other than the assets of the housing project in question. The Allottees on the other hand has their claim only against the assets of the project because they are essentially interested in getting their dream houses, which is one of the fundamental needs of a human being. Getting a house and getting a debt re-paid are two very different kinds of claims which must be given different treatment. Recovery of debt may not be a fundamental right whereas getting a house by innocent people like the BSF Welfare Society, is certainly a fundamental right which must be protected by the law and must be enforced by all law enforcement agencies including this Authority.

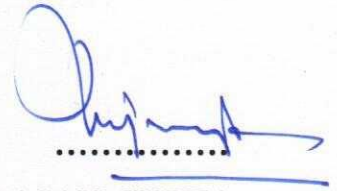
9. In view of the above understanding of law, this Authority is of the considered view that towers with about 250 apartments in which the members of the BSF Welfare Association have been allotted apartments should be handed over to the Association for completion at their own level in furtherance of the rights granted by Section 8 of the RERA Act. Detailed process for taking over of the towers and their completion at the level of Association will be supervised by this Authority in accordance with similar process undertaken in complaint case No 89 of 2019 titled as **PIYUSH HEIGHTS RESIDENTS TOWER J AND K WELFARE ASSOCIATE vs PIYUSH BUILDWELL INDIA LIMITED** and Complaint No. 14 of 2019 titled as **SAHIBA vs ANIL JINDAL**. In these two cases the project have already been handed over to the association of Allottees.

10. In view of the fact that the Developer M/s TIDCO is facing liquidation proceedings, the BSF Welfare Association may place this order before the Hon'ble Delhi High Court and the official liquidator and make a request for handing over adequate portion of the project to the BSF Welfare Association. Further action in the matter will be taken by all concerned, including this Authority in accordance with the orders of the Hon'ble Delhi High Court.

11. In case Hon'ble High Court approves the approach suggested by this Authority, a separate application shall be filed by the BSF Welfare Society in the form of a complaint for handing over relevant portions of the project to them. Thereafter, the Authority will guide the Association through the process

for taking over adequate portion of the project and completing it at their own level.

12. This Suo-motu complaint is disposed of in above terms.



RAJAN GUPTA
[CHAIRMAN]



ANIL KUMAR PANWAR
[MEMBER]



DILBAG SINGH SIHAG
[MEMBER]

