



Complaint no 865/2019

HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

1. COMPLAINT NO. 865 OF 2019

Mamta Gupta ...COMPLAINANT(S)

VERSUS

M/s Samar Estate Pvt. Ltd.RESPONDENT(S)

2. COMPLAINT NO. 432 OF 2019

Seema Gupta ...COMPLAINANT(S)

VERSUS

M/s Samar Estate Pvt. Ltd.RESPONDENT(S)

3. COMPLAINT NO. 562 OF 2019

Pardeep Singh ...COMPLAINANT(S)

VERSUS

M/s Samar Estate Pvt. Ltd.RESPONDENT(S)

4. COMPLAINT NO. 807 OF 2019

Amrish Kumar Bansal & Mrs. Vandana Bansal ...COMPLAINANT(S)

VERSUS

M/s Samar Estate Pvt. Ltd.RESPONDENT(S)

5. COMPLAINT NO. 816 OF 2019

Ajay Narwal & Smt. Mani Narwal ...COMPLAINANT(S)

VERSUS

M/s Samar Estate Pvt. Ltd.RESPONDENT(S)

6. COMPLAINT NO. 891 OF 2019

Tarsem Kumar & Nohar Chand ...COMPLAINANT(S)

VERSUS

M/s Samar Estate Pvt. Ltd.RESPONDENT(S)

7. COMPLAINT NO. 892 OF 2019

Pawan Kumar & Ajay Kumar ...COMPLAINANT(S)

VERSUS

M/s Samar Estate Pvt. Ltd.RESPONDENT(S)

8. COMPLAINT NO. 938 OF 2019

Shayam Sunder Bagui & Suvdeep Bagui ...COMPLAINANT(S)

VERSUS

M/s Samar Estate Pvt. Ltd.RESPONDENT(S)



9. COMPLAINT NO. 985 OF 2019

Manish Jindal ...COMPLAINANT(S)

VERSUS

M/s Samar Estate Pvt. Ltd.RESPONDENT(S)

10. COMPLAINT NO. 1016 OF 2019

Anoop Kumar Garg ...COMPLAINANT(S)

VERSUS

M/s Samar Estate Pvt. Ltd.RESPONDENT(S)

11. COMPLAINT NO. 1018 OF 2019

Sanjay Singla ...COMPLAINANT(S)

VERSUS

M/s Samar Estate Pvt. Ltd.RESPONDENT(S)

12. COMPLAINT NO. 1019 OF 2019

Punam Mahajan ...COMPLAINANT(S)

VERSUS

M/s Samar Estate Pvt. Ltd.RESPONDENT(S)



13. COMPLAINT NO. 1030 OF 2019

Poonam Ram Pal ...COMPLAINANT(S)

VERSUS

M/s Samar Estate Pvt. Ltd.RESPONDENT(S)

14. COMPLAINT NO. 1047 OF 2019

Om Parkash & Mohit ...COMPLAINANT(S)

VERSUS

M/s Samar Estate Pvt. Ltd.RESPONDENT(S)

15. COMPLAINT NO. 1051 OF 2018

Major Pinto Pandit Retd & Dr. Sangeeta Pandit ...COMPLAINANT(S)

VERSUS

M/s Samar Estate Pvt. Ltd.RESPONDENT(S)

16. COMPLAINT NO. 1058 OF 2019

Mohanjit Singh ...COMPLAINANT(S)

VERSUS

M/s Samar Estate Pvt. Ltd.RESPONDENT(S)

17. COMPLAINT NO. 1093 OF 2019

Sunil Ghai ...COMPLAINANT(S)

VERSUS

M/s Samar Estate Pvt. Ltd.RESPONDENT(S)



18. COMPLAINT NO. 1099 OF 2019

Rajni Singla & Ashwani Singla ...COMPLAINANT(S)

VERSUS

M/s Samar Estate Pvt. Ltd.RESPONDENT(S)

19. COMPLAINT NO. 1102 OF 2019

Sachit Gupta & Vijesh Kumar Gupta ...COMPLAINANT(S)

VERSUS

M/s Samar Estate Pvt. Ltd.RESPONDENT(S)

20. COMPLAINT NO. 1119 OF 2019

Randeep Latawa ...COMPLAINANT(S)

VERSUS

M/s Samar Estate Pvt. Ltd.RESPONDENT(S)

21. COMPLAINT NO. 1251 OF 2019

Manju Sejpal ...COMPLAINANT(S)

VERSUS

M/s Samar Estate Pvt. Ltd.RESPONDENT(S)



22. COMPLAINT NO. 1328 OF 2019

Ess Vee Apartments Home Buyer Association

...COMPLAINANT(S)

VERSUS

M/s Samar Estate Pvt. Ltd.

....RESPONDENT(S)

23. COMPLAINT NO. 2176 OF 2019

Dr Jaspinder Pal Kaur

...COMPLAINANT(S)

VERSUS

M/S Samar Estate Pvt Ltd.

....RESPONDENT(S)

24. COMPLAINT NO. 1395 OF 2019

Arvind Kumar Sharma

...COMPLAINANT(S)

VERSUS

M/S Samar Estate Pvt Ltd.

....RESPONDENT(S)

25. COMPLAINT NO. 995 OF 2018

Prem Pal Singh & Avtansh Singh

...COMPLAINANT(S)

VERSUS

M/s Samar Estate Pvt. Ltd.

....RESPONDENT(S)

26. COMPLAINT NO. 635 OF 2018

Maa Vaishnu Stock & Securities Ltd.

...COMPLAINANT(S)

VERSUS



Vinod BagaiRESPONDENT(S)

27. COMPLAINT NO. 636 OF 2018

Maa Vaishnu Stock & Securities Ltd. ...COMPLAINANT(S)

VERSUS

Vinod BagaiRESPONDENT(S)

28. COMPLAINT NO. 637 OF 2018

Maa Vaishnu Stock & Securities Ltd. ...COMPLAINANT(S)

VERSUS

Vinod BagaiRESPONDENT(S)

29. COMPLAINT NO. 638 OF 2018

Pankaj Kumar Bansal ...COMPLAINANT(S)

VERSUS

Vinod BagaiRESPONDENT(S)

30. COMPLAINT NO. 639 OF 2018

Pankaj Kumar Bansal ...COMPLAINANT(S)

VERSUS

Vinod BagaiRESPONDENT(S)



Mr. Pawan Kumar, Proxy Counsel for Respondent
Mr. Vinod Baghai, Director of the Respondent Company

ORDER (RAJAN GUPTA-CHAIRMAN)

1. All the captioned 34 complaints have been taken up together for disposal because they pertain to same project of the respondents and the facts in all the cases are similar. The captioned complaints were received individually by the Authority from time to time. Hearings of some of the complaints have also been done separately in smaller bunches, however, later on, they were all bunched together because the nature of the grievances and likely relief in all the matters was similar.

2. A bunch of three complaint Nos. 865/19, 829/19 and 840/19 were taken up together on 30.04.2019. A comprehensive view about the project as well as the problems being faced by the complainants were analysed by the Authority in the said order dated 30.04.2019. The order passed in the said bunch of cases is relevant for the entire bunch of 34 complaints. To make this order comprehensive, the said order dated 30.04.2019 is reproduced hereunder: -

“The case of the complainant is that he had booked a 3BHK residential apartment measuring 1600 Sq.ft. for a consideration of Rs.36.32 lakhs in the project named Ess Vee Apartments, Sector-20, Panchkula. He paid booking amount of Rs.2 lakhs in May,2006. There-after between May 2006 and July 2010 the complainant kept making payments to the respondent as per demands raised by them.

Accordingly, by July 2010 an amount of Rs.36.55 lakhs was paid by the complainant which is more than 100% of the basic sale price.

Flat buyer agreement (FBA) between the parties was executed on 10.6.2007. As per clause 32 of FBA, the apartment was to be completed within 24 months from the date of commencement of construction, but neither construction has been completed nor any possession has been offered even after lapse of over 13 years from the date of booking. The complainant further states that she had received a letter dated 09.03.2019 from the respondent whereby the complainant had called a meeting of all the allottees of the respondent company in accordance with the directions of HRERA, Panchkula. The complainant alleges that in the meeting, the Managing Director of the respondent company Shri Vinod Bagai clearly expressed his inability for his own reasons to deliver flats to the allottees.

Complainant further alleged that for the delay caused in payment of some instalments the respondent has charged delay penalty @18% interest compounded annually whereas the respondent themselves have paid the delay penalty @ Rs.7 per Sq. Ft. The delay penalty was paid by the respondents vide cheques dated 06.05.2013 and 27.02.2015 for a total amount of Rs.4,84,000/. No delay penalty has been paid there-after.

2. Complainant further states that since the project has neither been completed nor is likely to be completed because of mismanagement and severe defaults on the part of the respondent, her money should be refunded along with interest. The complainant also demands compensation for the mental torture and harassment suffered at the hands of the respondent who has already caused delay of more than 13 years and still completion of apartments is no- where in sight.

3. The respondent does not dispute the payment of money paid by the complainant. He states that the delay in completion of the project is not intentional. The project has been delayed because of non-payment of the due amounts by large number of allottees. The respondent has paid all enhanced EDC and IDC due to the State Government and he have full intention of completing the project and handing over possession of completed apartments to the allottees. He however, seeks time up to 30th of September,2019 for completing the project and handing over the possession.

4. The Authority has gone through the written as well as oral submissions of both the parties. It has also gone through the information submitted by the respondent company at the time of seeking registration of their project with this Authority. It observes and orders as follows: -

(i) Admittedly, the complainant had booked the apartment in the year 2006 and has paid entire consideration amount to the respondent by July 2010. Flat-buyer agreement was executed in June 2007. Clause 32 of the agreement stipulates that possession will be offered within 24 months from the date of commencement of construction. Since the date of commencement of construction cannot be precisely determined, reasonable interpretation of given circumstances would dictate that the apartment should have been completed within 2-3 years of receipt of substantial amount of money from the complainants. If the apartment was not to be completed within a reasonable period of receipt of substantial money, there was no justification for raising demands and taking money from the complainants. More than 30% payment had been received by May 2008 and more than 60% payment had been received by June 2009. Accordingly, it is reasonable to assume that the apartment should have been completed by 2011. For having not completed the project and not handing over possession to the complainant, the respondents have committed breach of the agreement made between the parties.

(ii) Now it is middle of year 2019. If 2011 is taken as the year by which the possession should have been offered, more than 8 years delay has already been caused. Even now the apartments are not complete and, as the facts narrated below would reveal, it is not likely to be completed in near future. The allottees cannot be made to wait endlessly. Accordingly, they deserve to be granted the desired relief of refund of the money paid by them along with interest provided in Rule 15 of HRERA Rules.

(iii) The respondents have got their project registered with this Authority vide Registration No. HRERA-PKL-PKL-54-2018, dated 05.10.2018. In their application for registration, it has been declared by the respondents that Phase-I of the project i.e. towers I,O,P,Q,R and tower U will be completed by December 2018, Phase-II of the project i.e. towers E,F,G,H,J,K,S,T and tower U,W,X will be completed by March 2019 and the remaining towers by December 2019. For completing the project by the due dates, the respondent had to mobilise sufficient financial resources, manpower and machinery well in time.

(vi) A large number of complaints have been received against this project of the respondents by the Authority. In complaint case No.635 of 2018 Maa Vaishno Stocks & Security Ltd. versus Vinod Bagai, a direction was given to the promoter to organise a meeting of all the allottees of the project. Two senior officers Shri Arvind Mehtani, Chief Town Planner and Shri K.L.Kapoor, Budget & Finance Officer of the Authority were deputed to oversee the proceedings of the meeting of the respondent with the allottees. The meeting was held on



09.03.2019 at 11.00 AM. It has been reported by the officers of the Authority who oversaw the meeting that there was no construction material at the site and no labour undertaking construction works. Relevant portion of the report is reproduced below:

It is also informed that the project is registered with HRERA, Panchkula vide registration No. HRERA-PKL-PKL-54-2018 dated 5.10.2018 and the promoter had made a commitment to complete Phase-1 (i.e. Towers I,O,P,Q,R and Tower U(EWS) by December'2018 , Phase-2 comprising of Towers E,F,G,H,J,K,S,T and Tower V,W,X (EWS) by March'2019 and the remaining phase by December, 2019.

It is also informed that as per the directions of the Authority the promoter has uploaded the information relating to the statement of accounts of each allottee containing therein the total sale consideration, the amount received and the balance amount to be received, but the allottees were not satisfied with their balance due since the promoter had not uploaded the delayed possession compensation of their booked apartments. As per the information computed from the record about 107 allottees have paid more than 80% of the sale consideration and were in plus balance as informed by Mr. Bagai (sale consideration + DPC) and about 60 allottees have paid between 80-50%. It is also informed that the promoter had not prepared any detailed agenda for the meeting especially with regard to the recommencement of the construction activity.

The promoter kept insisting that he will be able to undertake construction if the allottees pay their instalments, whereas the allottees kept insisting for the possession of their flats and the payment relating to Delayed possession compensation of their booked apartments. They were also agitated that the agreements executed by the promoter are not being honoured and he was not paying the delayed compensation to all the allottees as per the terms and conditions of the Agreement. The promoter informed that he was ready for any forensic Audit. The allottees were also agitated that the promoter has also not paid compensation to the allottees where the Authority had directed the promoter to do so.

The promoter informed the allottees that he will be able to deliver phase-1 of the project by September ,2019 and Phase-2 by March,2020 if the instalments are paid by the allottees in time and will invest 25 crores from his own sources. The allottees also raised the issue as to why the promoter has undertaken the construction of all the flats/apartments and exhausted all the amount collected whereas only

half the apartments were booked/sold. The allottees also wanted to know the fate of those who have paid almost the entire due amount.

The allottees also raised the issue that the promoter has diverted the amount collected from the flat buyers to other projects. They also raised the issue of interest on delayed payment. The allottees also disputed the due amount of Rs. 166.32 crores from the allottees and raised the issue of 10% fictitious booking.

It is also informed that there was no construction material at site and no labour undertaking construction.

(v) From the afore-mentioned facts, it is concluded that construction work of the project has not been recommenced. The respondent is pleading financial difficulties on account of non-payment by the allottees as the reason for not starting construction works. The allottees have lost confidence in the respondent on account of severe delay caused in completing the project. Large number of allottees have paid entire consideration amount but still their apartments are not complete. Learned counsel for the respondent argued that the respondent has invested much more money than the money collected from the allottees. Now on account of severe delay in completion of the project huge amount of compensation has become payable to the allottees. The allottees desire that they will make payment only after they are given credit on account of delay compensation which has become payable to them. Further, they have no confidence in the capacity and intention of the promoter to complete the project. The project surely is facing huge cash flow constraint.

(vi) The aforesaid facts lead to an unmistakeable conclusion that the respondents are not in a position to complete the project. They are making non-serious assurances to the Authority as well as to the allottees. During last one year i.e. after getting their project registered with the Authority, no construction work at all has taken-place.

Since the project has already been delayed by more than 8-9 years, now the existing as well as future buyers have lost confidence in the respondent/promoter. It is well understandable that the existing allottees will not like to sink more money in the project without credible action being demonstrated on the ground by the respondent. Contrary to assurances the respondent has not laid even a single brick in last one year. The respondents had declared before this Authority that possession of six towers would be handed over in December 2018 and another eight towers by March 2019. Contrary to their declarations nothing at all has been done even after lapse of one



year. Now, the respondents are demanding more time, which appears only a ploy to gain more time.

(vii) The Authority observes that for all practical purposes this is a failed project. The Authority cannot force the complainant to wait endlessly.

(viii) This Authority has been created by the Legislature to regulate the real estate sector. For regulation of the real estate all the promoters of the new as well as on-going projects are obliged to register their projects with the Authority. The Authority is supposed to monitor the progress of the projects with an aim to protect the interest of the allottees and also to remove difficulties faced by the promoters of the project.

In the process of regulation of the real estate sector and of individuals projects, the Authority also resolve grievances of the individuals against the projects and the project promoters.

Under Section 34(f) of the RERA Act, the Authority is obliged **“to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder”**.

According to the Cambridge Dictionary the meaning of the word regulation is “to control something especially by making it work in a particular way”. The ordinary meaning of the expression “regulate” would mean that the Authority is empowered to monitor its progress, issue appropriate instructions from time to time so as to steer the project in the desired direction with a principle objective to allow the growth and development of this vital sector of economy and to protect the interest of prospective existing and future allottees of the project.

(ix) The entire record relating to the project of the respondents has been examined. It is observed that this is a huge project comprised of twenty-four towers with 925 apartments out of which 464 apartments has already been allotted and 461 apartments remains to be allotted to the future allottees. As per the information given in the application for registration, the total cost of the project 342.56 Cr against which 208.13 Cr has already been invested. However, Rs. 94.26 Cr has been collected from the allottees. Accordingly, promoters appear to have invested more money than has been collected from the allottees.

As observed earlier also, the allottees have lost confidence in this project. Out of 464 allottees 54 allottees are before this Authority as complainants.

It is relevant to mention that when this Authority initially started functioning in March,2018, approximately 25 complaints were



received against the project, out of which 8 complaints were settled outside the court on the basis of the assurances given by the respondents that certain amount of compensation will be paid by them to the complainant allottees and the project would be completed by December 2018 failing which the money paid by the complainants shall be refunded.

(x) Now execution complaints have been filed against the respondents for execution of the out of the court settlement between the parties. The complainant states that neither full payment has been made to them as assured by the respondents nor any construction work has been undertaken for handing over possession to them by December 2018. Since, no construction work whatsoever has been done in last one year, there is no hope that the respondents will at all be in a position to complete the project.

(xi) After going through the assurances made by the respondents before the Authority at the time of seeking registration of their project, the Authority is duty bound to issue a notice to respondents for cancellation of their registration and for initiation of the proceedings under Section 8 of the RERA Act for exploring the possibility of getting the project completed in any other manner or by the Association of Allottees.

(xii) The Authority at this juncture also realises that mere order of refund of money paid by the complainants to the respondents will not be an effective remedy because the respondents does not have financial resources to refund the money. The Authority also realises that order of refund in one case will become a precedent for all other cases and similar order of refund will have to be made in respect of all the complainants. This will surely have cascading effect and entire group of allottees may demand refund of their money and such orders of refund are unlikely to be executed keeping in view the financial position of the respondents.

5. In the light of foregoing discussions, an appropriate solution will have to be found. The appropriate solution appears to be that first of all the allottees of the project may be asked by way of a public notice to form an association for taking over of the project. Simultaneously, consultations will have to be undertaken with the State Government for exploring the possibility of taking over the project. The Authority is of the view that this project should be taken over by one of the State government agencies for completion at the risk and cost of the respondents.

Even though during the course of hearings of this complaint No.865 of 2019, the Authority had disclosed its mind that the money paid by the complainants shall be refunded along with

interest, however, on examination of all the facts relating to the projects it finds that ordering refund of the money to one complainant may jeopardise the entire project as well as the interest of the entire class of allottees. The Authority therefore, decides to explore the alternative remedy of either handing over the project to a State Government agency or to the association of allottees.

The registry is directed to club all the matters including complaints as well as execution proceedings relating to the project of the respondents and list them together for hearing. After the hearing, the authority proposes to issue a public notice that all the complainants as well as non-complainants allottees may submit their willingness to be a part of the association. If they are not able to form an association, consultation will be held with the State Government for taking over the project for completion at its own level at the risk and cost of the respondents.

6. Keeping in view the facts and circumstances of the case, to protect the interest of the complainant and non-complainant allottees, the Authority deems it appropriate to order that the respondent company will not dispose of its any moveable or immovable assets. Similarly, directors of the company are debarred from alienating any of their personal property till further orders. All the moveable and immovable assets of the respondents shall be used for meeting financial requirements of the project or other claims of the allottees.

The complainant may present this order before any appropriate Authority dealing with sale, transfer, disposal of the assets of the respondent company and its directors and seek the implementation of these orders.

3. After a couple of further listing of the matters, another order dated 17.09.2019 was passed by the Authority in a bunch of 40 complaints which included 7 execution complaints. Separate order has been passed by the Authority in the seven execution complaints. Two complaints bearing No.1395/2019 and 1537/2019 titled as "Arvind Kumar Sharma versus Samar Estate Pvt ltd", "Raj Rani versus Samar Estate Pvt ltd" respectively have been received by the Authority upon transfer from the Adjudicating Officer.



4. The Authority had been trying to resolve the matter as is evident from the order dated 17.09.2019, as reproduced below: -

1. "The Director of the Company Shri Vinod Bagai along with counsel Shri Tarun Gupta are present today. Shri Vinod Bagai stated that he is in the process of arranging Rs.25 crores for investing on the project for handing over possession to the complainants and other Allottees. Further, he is in negotiations with some investors who are ready to invest up to Rs.35 crores in the project.

He stated that while the process of signing of agreements for sale of unsold inventory was in progress, the orders dated 30.4.2019 passed by the Authority were uploaded on its website in which serious aspersions were cast upon the respondent. Due to these orders, negotiations with the potential investors have halted. In support of his oral submissions, Sh. Vinod Baghai produced seven draft agreements for sale of the un-allotted apartments. He stated that these seven agreements are of Rs.6 crores, out of which cheques of Rs.1.5 crores have already been received but the same have not been encashed on account of aforesaid orders dated 30.4.2019 passed by this Authority.

The respondent requested for recall of order dated 30.4.2019 to facilitate sale of unsold inventory for generating funds for completion of the project.

2. Large number of complainants and their counsels present in the court in one voice stated that pleas of the respondent should not be accepted. The respondent has been repeatedly not fulfilling the promises held out to the complainants as well as to this Authority. Despite registration of the project in 2018 and making assurance of handing over the possession to one group of allottees by December 2018 and to other group by March 2019, not even a single brick has been laid in the project for last two years. The respondent is making false promises without any intention of fulfilling them. His credibility in the market is fully eroded and he will not be able to generate funds for investment in the project. Accordingly, all the complainants prayed for refund of the money along-with interest. Learned counsels for the complainants also stated that once order for refund is issued by this Authority, they will approach NCLT for initiating proceedings under Insolvency and Bankruptcy Code against the promoters for recovery of their dues.

3. The Authority after due consideration of arguments put forth by both parties observe that detailed facts about the project as



well as about insincerity of the promoters of the project had been captured in its order dated 30.4.2019. The Authority had also observed that none of the assurance made before the Authority have been fulfilled by the promoters. It was duty and responsibility of the promoter to put on sale their unsold inventory and generate funds for investment in the project. The actions they are proposing to take now, should have been taken during last two years after registration of the project. The promoters for the reasons unknown have been sleeping over the matter. The respondents are unable to explain why they did not take steps for arranging funds which they are now promising to do before the Authority. Not only the Allottees but even this Authority has lost faith in the promoters. As such this Authority will be inclined to issue orders for refund of the money paid by the complainants to the promoters of the project. Those orders of the refund there-after could be executed in an appropriate manner as per law.

4. The Authority had put a question to the allottees whether they are willing to form an association to take over the project in accordance with Section 8 of the RERA Act. The allottees as well as their counsels expressed their inability to do so. The allottees of the project did not exhibit initiative for taking over the project.

A letter had also been written to the Director, Town & Country Planning Department to express their views for taking over of the project in accordance with amended Section 8 of the Act of 1975. The operative part of the reply sent by the department is as follows:

“Since, the applicant company has not submitted the bank guarantee of Rs. 98.65 lacs on account of IDW conveyed vide this office memo dated 04.06.2019 (CP/2014). Hence the request of the applicant for approval of service plan estimates and renewal of license cannot be processed due to non-deposition of bank guarantee and the same will be examined after deposition of Bank Guarantee on account of IDW. Therefore, the Department cannot take any action to take over the Project at this stage.”

In simple words, the State Government also has not shown any inclination to take over the project for its completion. They have concerned themselves only with recovery of their dues. Faced with this situation, the Authority is left with following two options:

(i) To ask the State Government to take over the project in accordance with the amended provisions of Section 8 of the Act of 1975. The State Government is duty bound to do so. As regards recovery of a small amount of Rs.98.65 lacs, the same can be recovered from the unsold inventory of the project or from the other assets of the respondent. Non deposition of this amount should not



deter the department from taking action under the amended provisions of the Act of 1976. The department should take a considered decision in consultation with their State Government and express their clear views in the matter before the Authority.

(ii) The other option is to afford one more opportunity to the respondents to produce before the Authority the prospective investor who is ready to invest Rs.25/35 crores in the project. A copy of the draft agreement and the plan of action for payment of Rs.25 crores should also be placed before the Authority. If credible evidence is submitted to the Authority that Rs.25 crores will be arranged, the Authority may consider allowing the deposit of the money in the Escrow Account of the project and its investment on the project under its own supervision. Depending upon credibility of the promoter and the prospective investor the Authority may allow the sale of the earmarked portion of the unsold inventory in the project.

The Authority will first explore the feasibility of option no (ii) above. Accordingly, the respondents shall submit their plan of action.

5. Out of 40 complainants, 12 complainants have sought possession of the apartments but in view of the facts and circumstances of the case the relief of possession may not be possible to be granted.

6. It is reiterated that if no credible evidence is brought before the Authority as per option (ii) in para 4 above, it will be left with no other option but to allow refund and then let the decretal amounts be recovered by way of appropriate proceedings before the appropriate forum/court of law.

7. The Authority once again orders that till the pendency of the matters the promoters shall remain prohibited from selling full or any part or any apartment in the project to any third party without approval of this Authority. "

5. It is relevant to observe that respondent had got his project registered with the Authority vide Registration No. HRERA-PKL-PKL-54-2018 dated 05.10.2018. At Para 14(a) of the registration certificate, the respondents had disclosed that the first phase of the project which was earlier scheduled to be completed in December, 2009 will now be completed by



December, 2019. The second phase of the project was scheduled to be completed in August, 2014 shall be completed by March, 2019, and the third phase of the project which was scheduled to be completed in December, 2015 will be completed by December, 2019.

6. During the hearing today, large number of allottees were present. Some of the allottees were accompanied by their counsels. The arguing counsel for the respondents, however, was not present when the matter was called for hearing, therefore, it was adjourned for an hour and a message was sent to the Director of the respondent's company to be personally present, otherwise, the matter will be decided ex parte. Thereafter, the Director of the respondent's company Shri Vinod Bagai appeared before the Authority.

7. During the course of hearing, Shri Baghai, Director of the respondent's company reiterated his assertions made on the previous date of hearing i.e. on 17.09.2019 that he is in the process of arranging Rs. 25 crores for investing in the project. Shri Baghai demanded another one-month time to be able to arrange funds for investment in the project.

8. All the complainants as well as their counsels spoke in unison that they have no faith in the respondent. He is making false claims and making wrong statements before this Authority for the last more than 1 ½ years. He has not even fulfilled the assurances made while settling some of the cases out of the court. The complainants in those matters have filed execution petitions



also before this Authority. The complainants requested to the Authority for refund of money paid to the respondents along with interest as admissible. They also demanded attachment of the properties of the respondents and estopping them from selling any part of the project to the prejudice of the complainants and other allottees.

9. The Authority has gone through the proceedings of the matter over the course of last one year. It has gone through all the facts and documents placed before it. It has also gone through the documents submitted by the respondents while getting the project registered before this Authority. Keeping in view the facts and circumstances of the matter, it observes and orders as follows: -

- i) The project of the respondents was registered in this Authority vide registration certificate dated 05.10.2018. The entire project is comprised of 24 towers with 925 apartments, out of which 464 apartments have been allotted/sold. The respondents had assured the Authority, while getting the project registered, that Phase-I of the project will be completed by December, 2018 and Phase-II by March, 2019. The fact however is that for the last more than one year not even a brick has been laid in the project. No efforts whatsoever have been made by the respondents for completing the project and handing over the apartments to the complainants.



No investment at all has been made in the project. The promoter does not appear to be having any Plan of Action for doing so. Accordingly, it is concluded that the respondent has severally defaulted in fulfilling its obligations. Respondent has been making only false assurances without arranging funds for investment. Respondents have thus violated even the conditions of registration. Accordingly, a Show Cause Notice deserves to be issued to the respondents for cancellation of the registration granted to the project.

Law Associate shall send a copy of this order to the Project Section with the direction of the Authority to issue a Show Cause Notice to the respondents for cancellation of the registration certificate.

- ii) The respondent has severely mis-managed the project. If assurances made by him at Sr. No. (ix) of Para-4 of the order dated 30.04.2019 are taken into account, against the projected cost of Rs. 340 crores, the respondent claims to have already invested Rs. 208 crores against which about 94 crores only could be collected from the allottees. The respondents appear to have commenced construction of much larger number of apartments than booked/sold whereas they should have constructed the



project in phases in tandem with the sale of apartments. The respondent has also clearly has mis-managed his finances. Apparently, the respondent also raised loans from banks and financial institutions, the non-repayments of which may have resulted into a piling up of huge interest liability.

The Real Estate (Regulation and Development) Act 2016 provides for payment of interest @ prescribes in case, the apartments are not delivered in time. Apparently, with delay of 4 to 10 years, interest liability of the respondents towards allottees will also be huge.

It is a well-known fact that the property market is down at present and sale of apartments projects like this is not likely to easy. Furthermore, the allottees who have lost faith in the promoter and have been waiting for possession of their apartments from the last more than 4-10 years are unlikely to pay more money to the promoter.

In these circumstances, the promoter is unlikely be able to arrange funds for completion of the apartments of complainants as well as rest of the project. As noted by the Authority earlier also, this has become a stuck project which the promoter is unlikely to be able to complete.

- (iii) In accordance with the provisions of Section-8 of the RERA Act, efforts have been made to constitute associations of the allottees so that they may take over the project and complete it at their level at least to the extent of the towers in which their apartments are located. The allottees have repeatedly expressed their inability to join together and to constitute an association for this purpose. Accordingly, the option of handing over the project to the association of the project is not available.
- (iv) As per the conditions of the license, in case a promoter defaults in completion of the project, the Town and Country Planning Department of the State Government can take over the said project for completion. A letter had been written to the Town and Country Planning Department in this regard, to which they have submitted their reply dated 11.09.2019, the operative part of which is as under: -

“Since, the applicant company has not submitted the bank guarantee of Rs. 98.65 lacs on account of IDW conveyed vide this office memo dated 04.06.2019 (CP/2014). Hence the request of the applicant for approval of service plan estimates and renewal of license cannot be processed due to non-deposition of bank guarantee and the same will be examined after deposition of Bank Guarantee on account of IDW. Therefore, the Department cannot take any action to take over the Project at this stage.”



In simple words, the department is only concerned with recovery of Rs.98.65 laes on account of internal development works and they would not bother themselves to the problems of the allottees. For all practical purposes, the department has flatly denied the responsibility for completion of the project.

- (v) It is but natural that the promoter of the project would have incurred multiples liabilities during the last 10 years including liability of repayment of loans along with interest to the financial institutions; liability towards the operational creditors; and liabilities towards State Government agencies. Most importantly, they have liabilities towards the allottees comprised of principal money received and interest liability incurred on account of delay caused in completing the project.

It is evident that the promoter does not have any liquidity to discharge any of the obligations besides funds needed for completion of the project.

For these reasons also, it is for unlikely that the respondent-promoter would be able to complete the project.

- (vi) In the above circumstances, provisions of Section 18 of the RERA Act, provides for grant of relief of refund of the money paid by the allottees along with interest @ prescribed. The



Authority accordingly orders that the respondents shall refund the money paid by the complainants along with interest @ prescribed in Rule-15 of the HRERA Rules, 2017. All the complainants shall file their claims before the respondents and the respondents shall be liable to pay the amount as calculated in accordance with this order.

- (vii) This Authority realises the fact that since respondents have not been able to arrange the money for completion even first phase of the project, now, they may not be able to arrange money for giving refund to the allottees. Accordingly, the Authority orders that allottees may use the provisions of any law of the land for enforcing their rights for getting the money refunded including considering class action against the respondents by invoking provisions of Insolvency and Bankruptcy Code, 2016 (IBC, 2016).

So that the respondents do not alienate their properties to the prejudice of the complainants and other similarly placed allottees, the Authority considers it just and fair to prohibit the respondents from alienating any of their properties including the properties of the project without permission of this Authority.



This Authority can grant the permission to sell the properties of the project, if justified, with a stipulation that proceeds of the sale shall be put into an escrow account which shall be devoted first for refunding money to the complainants and rest for investment in the project.

- (viii) While disposing of a bunch of cases in lead case No.383/2018 titled Gurbaksh Singh versus ABW Infrastructure Pvt Ltd., the Authority had inter alia ordered as follows: -

“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.

(iii) It is relevant to quote here the provisions of Section 79 and Section 89 of the Real Estate (Regulation & Development) Act, 2016.

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 over-riding effect- *The provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force."*

It is observed that Section 89 explicitly mandates that provisions of RERA Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force. Further, Section 18 guarantees that in the event of a project not being completed he shall have a right to seek refund of his money along with interest without prejudice to any other remedy available. Similarly Sub Section 3 and Sub Section 4 of Section 19 assure the allottee that he will be given refund of the money deposited by him in the event of default in completion of the project by the promoters.

This Authority is, therefore, of the considered opinion that since these rights of the allottees have been held superior to any other law for the time being in force, the rights of the allottee, therefore, shall be treated superior to that of the rights of other creditors including the financial institutions.

(i) The allottees of the project in question shall be treated as deemed owners of the project. The promoters of the project and the lending financial institutions cannot alienate the ownership rights of the allottees at their own



level without their consent. Therefore, the claim of the allottees against the assets of the project shall be treated superior to any other right of any other person or entity including the financial institutions and/or other creditors.

(ii) If claims of the allottees are not satisfied fully from the assets of the project in question, they shall be treated creditors of the promoters at par with other creditors for satisfaction of their claims from the assets of the promoters other than the assets of the project in question.

(iii) ***

(iv) ***

(v) The complainants and other similarly placed allottees may present these orders before any authority dealing with liquidation of assets of the Project, or the respondents and seek satisfaction of their claims on priority. It is, however made clear that the claims of the allottees shall be restricted to the refund of the money paid by them to the respondents along with interest as provided for in rule 15 of the HRERA Rules, 2017.

The Authority consider it just and fair to grant the similar rights to the complainants of this project as well.



Complaint nos. 865,432,562,807,816,891,892,938,985,1016,1018,1019,1030,1047,1058,1537
1093,1099,1102,1119,1251,1328,1395,2176/2019,995,1051,635,636,637,638,639, 640/2018

10. **Disposed of** in above terms. Files be consigned to the record room
after uploading the order on the website of the Authority.



.....
RAJAN GUPTA
[CHAIRMAN]



.....
ANIL KUMAR PANWAR
[MEMBER]



.....
DILBAG SINGH SIHAG
[MEMBER]

