



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

1. COMPLAINT NO. 557 OF 2020

Zion sector seventy eight
allottees association Faridabad

....COMPLAINANT

VERSUS

Zion Promoters & Developers Pvt Ltd

....RESPONDENT

CORAM:	Parneet Singh Sachdev	Chairman
	Nadim Akhtar	Member
	Dr. Geeta Rathee Singh	Member

Date of Hearing: 19.09.2024

Hearing: 18th

Present: - None for complainant
Mr. Neeraj Goel, Counsel for respondent through
VC.

ORDER (PARNEET S SACHDEV-CHAIRMAN)

1. Captioned complaint was filed on 17.06.2020 by the complainant seeking following relief:-

- (i) To handover the project in question from the respondent builder in the hands of complainant association for completion of the project by evoking the powers under Section 8 The Real Estate (Regulation and Development) Act, 2016;
- (ii) To direct the Department of Town & Country planning for issuing the occupational certificate qua the project in question.
- (iii) To registered the project under The Real Estate (Regulation and Development) Act after fulfilling the due requirements.
- (iv) Grant any other relief as this Hon'ble Authority deems fit in the peculiar facts and circumstances of the present complaint.

2. Factual matrix of the case is as follows:-

A. The grievance of the complainant is that it is a registered society with Registration Number 00869 under Haryana Registration and regulation of societies Act, 2012 (Haryana Act no. 1 of 2012) comprising of about 155 allottees of society build by respondent in sector-78 Faridabad (Haryana). The



respondent builder has completed the construction of the project in question about 95% and accordingly about 225 flats are allotted to the authorized allottees out of them about 170 allottees have occupied their flats and about 50 families have started residing in the project but because of non-transfer of beneficial interest in the favour of respondent, members of the complainant association are deprived of their right to have a clean transfer in their favour as well as to have a peaceful enjoyment of their property by residing in it.

B. This all starts from a way back when one M/s Triveni Infrastructure Development Co. Ltd. (hereinafter referred as Original Licensee) purchased a total land area about 37.34 Acres (approx.) at Sector- 78, Faridabad, Haryana for setting up of a Group Housing Colony in Village Faridpur & Fajupur Majra Nimka, district Faridabad, for which Original licensee applied for license from Town & Country Planning Department of Haryana Government (hereinafter referred as DTCP) and accordingly DTCP was pleased to grant it license after full-filling the required conditions in the form of license no. 37, 38, 39 of 2007 respectively and after obtaining the aforesaid license. Original licensee came into an agreement dated 19.12.2007 with respondent in respect of developing about



3,00,000 Sq. Ft in 2.463 acre (approx.) area of land from the total land of 37.34 acres (approx.) at Sector-78 Faridabad for construction of demarcated Zoning line mentioned and in accordance to the aforesaid agreement dated 19.12.2007 and in regards of safe guarding the interest of respondent. Original licensee executed one power of attorney dated 19.12.2007 in the favour of respondent.

C. Thereafter respondent started developing his respective area and built one multi-story residential complex known as "Stone Crop" & "Celeste Garden". Respondent started selling the flats in the aforesaid group housing society with its Buyers agreement and in the meantime Original licensee went through liquidation before Hon'ble Delhi High court in year 2012, wherein then director of Original licensee namely Mr. Madhur Mittal filed one affidavit in which he offered a total land area about 31,00,000 sq ft (20,00,000 sq. ft. PSI at Triveni Galaxy Sector 78 and 11,00,000 sq. ft. of FSI at Triveni Signature Sector-89) for auction out of his total licensed land. It is worth mentioning herein that the total licensed land area in Sector-78 of original licensee is about 28,46,000 sq ft. out of which only 20,00,000 sq ft was offered by the director of original licensee.



D. Respondent approached this Hon'ble Authority for directing DTCP for transfer of beneficial interest of the project in question in favour of respondent, in which Hon'ble Authority was pleased to issue direction to DTCP for the same vide order dated 16.12.2019. Accordingly respondent filed one application for change of beneficiary as per HRERA Panchkula order along with all the necessary documents. On receiving the aforesaid application DTCP still rejected to transfer the beneficial interest in favour of respondent because the original licensee company has not fulfilled the terms and condition of the license and for the reason of liquidation of the original licensee.

E. After a prolong delay in completion of project because of liquidation proceedings, complainant association stepped in and contacted the respondent builder, wherein both decided to open an escrow account in the month of May 2017 for completion of the project in question, in which both the association and builder contributed the fund. It is worth mentioning herein that inspite of paying rent, EMI's etc members of the complainant association has contributed their hard earn money in the escrow account with a vision to complete the said project which has been kept on lingering for more than 10 years, the members of the association contributed in the fund by having a greater



picture in their mind of a home with their children and due to this all delay in completion, the members of the association has faced great hardship leading to mental harassment as even after a wait of a decade they are still helpless because of complications in the procedure of government agencies.

F. As RERA Act is a beneficial legislation which has been enforced in order to work in favour of allottees who are being cheated at large by the developers and the same grievance has been suffered by the members of the complainant association as they have invested their hard earn money to have a roof over their head. In the present scenario it would be better if the completion of the project is being transferred from respondent in the hands of the complainant association by evoking the provision of section 8 of The Real Estate (Regulation and Development) Act, 2016. Hence the present Complaint.

3. As per office record, a notice dated 18.06.2020 was issued to respondent to file reply. Same got delivered successfully on 08.07.2020. Respondent had filed its reply on 18.09.2020.
4. Meanwhile detailed orders were passed in captioned complaint which are reproduced below for reference.
5. First hearing, order dated 05.08.2020:-



1. Learned counsel for the respondent has informed the Authority via email dated 04.08.2020 to adjourn the matter as he is unable to attend the hearing and the same has been granted with a direction to file his reply and supply its copy to complainant at least a week before the next date of hearing.

2. The Authority had made certain observations in the meeting held on 16.12.2019 vide agenda item no. 78.14 as reproduced below:-

3. The Authority has considered this matter in detailed and it observes that the colony started getting developed in the year 2008 and the sale of apartments also commenced in the same year. Between the year 2008 to 2019 they never received any observation or objection from the Town and Country Planning Department. As per terms and conditions of the license of the colony, department is required to supervise development of the colony every year. The department never objected to the development or to the sale of the colony by the present developer M/s Zion Promoters and Developers Pvt. Ltd.

4. This Authority vide Agenda Item No. 51.7 (iii) in the case of M/s Dwarkadhis Projects Pvt. Ltd. had made the following observations: -

4. (vi) "A piece of raw land becomes a project after grant of a license and approval of building plans by the State Government. Granting of license and approval of plans pre-supposes that the builders has paid all the dues and also complied with all prescribed terms and conditions as per law/ rules/ guidelines framed by the State Government from time to time. Accordingly, after receipt of license and approval of plans the developer become fully entitled and authorized to launch the project and seek booking from prospective allottees.

The allottees pay their hard money for the developers licensed colony with duly approved plans. The licensed and approved plans were thus attained the status of an assurances of the State Government. This assurance given by the Town and Country Planning Department a sovereign assurance to the public. A sovereign assurance granted to the allottees cannot be amended,

altered or re-structured in any manner with retrospective effect or without appropriate Authority of law of the legislature grant of license and approval of plans becomes a commitment of the State Government to the allottees that they will get the apartment in terms of the agreement as per the approved plans. It also implies guarantee of the safety of their investment.

(vii) Now, after creation of 3rd party interests, the license and the development plan become irrevocable. It is possible that the developers become defaulters in payment of EDC, license fee etc. to the State Government but to enforce the payment of such over-dues, the State Government is entitled to adopt any lawful means to recover the said over-dues but it cannot implicitly or explicitly imply that the license of the sanctioned project would be withdrawn/withheld/altered.

In other words, the State Government is entitled to recover its over-dues by attaching any property of the developers or by filing civil suit or by attaching unsold or undeveloped portion of the project third party rights are not created but the project in respect of which third party rights have been created goes out of the powers of the State Government except for the purpose of granting occupation certificates at the relevant stage or for ensuring that development has been done in accordance with the approved plans, etc. The State Government cannot withhold renewal of license of a project in respect of which third party rights have been created.

5. The Authority observes that now third-party rights stand created in the colony which have to be protected under the RERA Act, 2016. RERA has been created by the Legislature to ensure that the housing projects are completed and rights of the allottees are protected. In this case, the right of the allottees for obtaining occupation certificate and to get conveyance of the apartments executed cannot be granted unless the promoters gets this approval as developer of the colony. In the instant case, applicant-promoter has neither applied for occupation certificate nor has he applied for transfer of beneficial interest in his favour.

6. The matter gets further complicated by the fact that the licensee



company M/s TIDCO is under liquidation. They are unlikely to fulfil their obligations towards payment of EDC or fees for renewal of license etc., nor are they likely to co-operate with the applicant- promoter for transfer of beneficial interests. In these circumstances, the Authority directs as follows: -

i) The applicant-promoter shall immediately file an application in the Town and Country Planning Department for transfer of beneficial interest in their favour as well as for grant of occupation certificate in respect of the completed apartments. Fate of the application shall be informed to the Authority on the next date;

ii) The applicant-promoter is prohibited from selling any more apartments in the colony without getting the project registered with this Authority as well as without obtaining transfer of beneficial interest from the Town and Country Planning Department.

iii) The Authority considers it appropriate to direct the Town and Country Planning Department to consider the application of the applicant-promoter for transfer of beneficial interest in their favour even without the consent of the landowners/licensee company because the licensee company is in liquidation and they are unlikely to co-operate with the applicant-promoter. This must be done to protect the interest of 248 allottees of the project who have purchased the apartments on the basis of license granted by the developer. It is now the responsibility of the State Machinery as well as of this Authority to protect the interests of innocent peoples who have acted on the strength of implied assurances of the State Government.

5. The matter regarding request of the complainant for handing over possession to the complainant-association will be discussed by the Authority in presence of promoter on next date of hearing.

6. Second hearing, order dated 22.09.2020

1. While dealing this matter in project section, the Authority in its meeting held on 21.09.2020 had given certain directions to the respondent-builder as follows: -



(i) *The promoter of the project M/s Zion promoter and developers Pvt Ltd shall immediately file an application before the official liquidator for deleting the project land from the liquidation proceedings. Simultaneously, they should submit a request before the Hon'ble High Court of Delhi with a prayer for directing the official liquidator for deleting the land in question from the proceedings.*

(ii) *The Town & Country Planning Department should grant in-principal approval to the transfer of beneficial rights in favour of the promoter subject to exclusion of the project land from the liquidation proceedings.*

(iii) *The applicant-promoter is directed to pursue the aforesaid directions of the Authority and report its outcome on the next date of hearing.*

4. *The promoter is directed to submit the aforesaid information on the next date of hearing. Copy of the same be also supplied to the complainant.*

5. *Case is adjourned to 19.11.2020.*

7. Thereafter, complainant's counsel apprised the Authority that an application in compliance of order dated 5.08.2020 has been filed before Hon'ble High Court of Delhi and its listing dates were duly informed. Said fact is apparent from the orders passed by this Authority on 3rd hearing onwards. Then on Seventeenth hearing, order dated 09.05.2024 was passed which is reproduced below for reference:-

*Relevant part of last order dated 08.02.2024 is reproduced below:
"2.Ld. Counsel for complainant stated that matter pertaining to segregation of project in question from the entire land is still pending before Hon'ble High Court of Delhi. Ld. Counsel for respondent apprised the Authority that case is pending for hearing*



on 27.02.2024. Parties are directed to place on record orders of Hon'ble High Court of Delhi for better adjudication of case in hand."

2. Perusal of file reveals that neither party has complied with the last orders of the Authority. Today none appeared on behalf of complainant.

3. When the case was called, no one appeared on behalf of the respondent. Later, Adv. Neeraj Goel, counsel for the respondent, appeared and requested to mark his presence on behalf of the respondent, seeking an adjournment due to some personal difficulty. His request was accepted. His request is accepted.

4. Case is adjourned to 12.09.2024 with directions given to both the parties to comply with the directions issued by the Authority on the last date of hearing.

8. Today, it is 18th hearing of this case whereby ld. counsel for respondent apprised that now, matter before Hon'ble High Court of Delhi is listed for 04.10.2024. As a matter of record, no document has been filed by any of parties pertaining to litigation going on before Hon'ble High Court of Delhi despite directions issued by Authority. It is pertinent to mention here that time period of around 4 years has passed since passing of order dated 05.08.2020 but complainant has not been able to get the project land segregated from the liquidation proceedings. No documents proving otherwise is placed on record by complainant. This complaint is going on from year 2020 waiting for said segregation.




Simply granting adjournments on basis of litigation pending before Hon'ble High Court of Delhi is of no use/purpose to complainant. Furthermore, no hope/hint has been drawn by any party as to how much time will be consumed in said litigation. In these circumstances, no relief can be awarded to complainant. Therefore, present complaint is **disposed of with liberty to complainant to file it afresh** as soon as project land gets segregated from liquidation proceedings enabling this Authority to pass any relief/adjudicate the issues raised by complainant-association.

9. Case is **disposed of**. File be consigned to record room after uploading of order on website of Authority.


.....
DR .GEETA RATHEE SINGH
[MEMBER]


.....
NADIM AKHTAR
[MEMBER]


.....
PARNEET SINGH SACHDEV
[CHAIRMAN]