BEFORE THE HARYANA REAL ESTATE APPELLATE TRIBUNAL

Appeal No.158 of 2019
Date of Decision: 23.12.2019

Orris Infrastructure Private Limited through its authorised signatory Shri Naveen Sharma, Senior Manager (Legal), J-10/5, DLF Phase 2, Gurugram.

Appellant

Versus

1. Greenopolis Welfare Association, EA-49, Maya Enclave, Harinagar, New Delhi-110064.

Respondent/Complainant

2. M/s Three C Shelters Private Limited, C-23 Greater Kailash Enclave I, New Delhi-110048.

Respondent

CORAM:

Justice Darshan Singh (Retd.)	Chairman
Shri Inderjeet Mehta	Member (Judicial)
Shri Anil Kumar Gupta	Member (Technical)

Argued by: Shri Surjeet Bhadu, Advocate, ld. Counsel for the appellant.
Shri Shekhar Verma, Advocate, ld. Counsel for respondent no.1.
Shri Dhananjai Jain, Advocate with Shri Vishal Sharma, Advocate, ld. Counsel for respondent no.2.

ORDER:

JUSTICE DARSHAN SINGH (Retd.) CHAIRMAN:

The present appeal has been preferred under Section 44(2) of the Real Estate (Regulation and Development) Act, 2016 (hereinafter called 'the Act') against the order dated 23.01.2019 passed by learned Haryana Real

Estate Regulatory Authority, Gurugram (hereinafter called 'the Authority) whereby the complaint filed by respondent no.1, Greenopolis Welfare Association, was disposed of with the following directions:-

> "(a) M/s Orris Infrastructure Pvt. Ltd. shall disclose 35% of built up units allocated to them under the development agreement and 35% saleable area in the Greenopolis project within one month to the authority so that these are put in public domain.
>
> (b) The details of land and licence cost actually incurred by M/s Orris Infrastructure Pvt. Ltd. along with all supporting documents to be provided to the authority so that this could be put in public domain as per requirements of law.
>
> (c) The matter regarding completion of the project, execution modalities, payment schedule, availability of funds have already been deliberated by the authority in this order, accordingly, action is to be taken by the promoters.
>
> (d) Regarding audit and investigation by an independent agency, M/s Currie & Brown and M/s Quantum Project Infra have already done the audit and on the finding of the financial auditor, action plan for completion of the project has been drawn.

(e) As per affidavit submitted by the promoter Three C. Shelters Pvt. Ltd. following schedule for completion of the project has been given:

(i)	Phase I Tower No.15 to 31	31.07.2019
(ii)	Phase II Tower No.1 to 12	31.03.2020
(III)	Phase II Tower No.12A,14,22 to 29	31.12.2020

Accordingly, they are directed to complete the project in compliance with the above schedule.

(f) M/s Orris Infrastructure Pvt. Ltd. being the licensee shall get the license renewed as and when due within reasonable time and obtain other necessary statutory approvals for which statutory payment shall be made from the escrow amount.

(g) Escrow Account No.558011059169 of the project has already been opened with Kotak Mahindra Bank, NOIDA in which sale proceeds of assets dedicated by way of an affidavit dated 08.01.2019 and 23.01.2019 by Three C. Shelter Pvt. Ltd. for the project and also future collections from all sold and unsold inventories will be deposited by the promoters. The money from the said account can only be drawn for payment of construction purposes of the project and payment of EDC/IDC and other statutory dues. Money from the said account shall be drawn under the signature of both promoters or their authorised signatory

following the due procedure as prescribed in the Act, rules and regulations made thereunder and after obtaining permission from the Monitoring officer.

(h) Promoters are directed to cover the 'nalla' (chemical effluent drain) flowing through the Greenopolis project at the earliest preferably before the completion of Phase-II and certainly before the completion of the project after taking due approval from the competent authority.

(i) The promoters are also directed to submit detail of EDC/IDC collected from the allottees in case it has been charged separately from them.

(j) The parties shall be at liberty to approach the authority for any clarification."

2. As per averments in the complaint, the Greenopolis is a residential group housing project being developed by the appellant-Orris Infrastructure Limited and respondent no.2 – M/s Three C Shelters Pvt. Ltd., jointly on a land falling in the revenue estate of Village Hayatpur Badha, Sector-89, Gurugram, under the license issued by the department of Town and Country Planning, Haryana. At the time of launching the project and as per the terms and conditions of the Apartment Buyer's Agreement, the appellant and the respondent no.2 had undertaken and

promised to deliver the possession of the apartment within 36 months from the date of the allotment. That despite receipt of nearly 90% of the sale consideration, the appellant and the respondent no.2 had failed to deliver possession of the apartment on the date provided in the agreement of the respective buyers. The members of the respondent no.1 Society were shocked to know certain facts which were never narrated to them and other buyers of the project. That the reference of the Development Agreement was given in Clause A of the Apartment Buyer's Agreement but there was no disclosure of the terms and conditions agreed between the appellant and the respondent no.2. That the total built up area was divided vertically and horizontally. 65% of the built-up area/unit and 65% of saleable facilities in the project and parking was allocated to the respondent no.2. 35% of the built-up area/units and 35% of saleable facilities in the project was allocated to the appellant. It was conveyed to the buyers that an area around 37.09 acres in the project comprising of 1862 apartments in 29 towers will be handed over in three phases as under: -

(i) Ist Phase Tower No.15,16,17,18, 19,20,21

(ii) 2nd Phase Tower No.1,2,3,4,5,6,7,8,9,10,11,12

(iii) 3rd Phase Tower No.12A,14,22,23,24,25, 26,27, 28,29

3. It was further pleaded that the Change of Project Size was without any approval of the buyers. The total plot area of the project was 47.218 acres. Later on, 10 acres were released by respondent no.2 in favour of the appellant reducing the project land to be 37.218 acres without any concurrence of the allottees or without any intimation to them. That the appellant had also not deposited the External Development Charges (EDC) collected by it from the buyers of its units. That the Greenopolis Project is not registered with the Authority inspite of payment of more than 90% of the consideration amount by the buyers/allottees. Respondent no.1 filed the complaint with aforesaid pleas seeking various directions to the promoters.

4. The appellant/respondent no.1 contested the complaint on the grounds inter alia that the relief claimed by the complainant does not fall within the realm of the jurisdiction of the learned Authority; that the complainant is seeking the relief of refund of amount along with interest and compensation which would be liable for adjudication by the Adjudicating Officer and not by the Authority; that the project is not even registered with the Authority, so the complainant cannot get its claim adjudicated under the

provisions of the Act. It was further pleaded that the complainant cannot invoke the jurisdiction of even the Adjudicating Officer in view of the arbitration clause in the Apartment Buyer's Agreement. It was further pleaded that the respondent no.1 had earlier filed the complaint before Hon'ble National Consumer Disputes Redressal Commission, New Delhi bearing No.2116 of 2016 for the same relief as claimed in the present complaint and reply to the said complaint has already been filed.

5. It was further pleaded that it was in the positive notice and knowledge of all the allottees that the respondent no.2 had undertaken to complete the construction of the project in terms of the Development Agreement dated 02.11.2011. It was further pleaded that the appellant was only the land-owner and license holder for the project land whereas it was respondent no.2 which is the developer of the project and solely responsible for carrying out the construction work in the project. So, the complaint is not maintainable against the appellant. If there is any delay in the construction or deficiency in service, then it is solely attributable to the respondent no.2 and the appellant cannot be held liable for any delay or any compensation payable for such delay. All other pleas raised in the complaint filed by the respondent no.1 were controverted.

6. Respondent no.2 also contested the complaint on the grounds inter alia that the complainant Society had filed two consumer complaints bearing No.2126 of 2016 and 188 of 2018 before the Hon'ble National Consumer Disputes Redressal Commission, New Delhi. Hence, the present complaint is not maintainable in view of the provisions of Section 71 of the Act. It was further pleaded that the respondent no.2 had performed its obligations in accordance with the terms of the agreement and there is no deficiency of service. That the points raised in the complaint are in contravention of the terms and conditions of the agreement executed between the complainant individually and the same cannot be adjudicated as a common cause.

7. It was also pleaded that the relief sought in the complaint is pre-mature. It was further pleaded that the license and approval of building plans and other approvals for the project have been obtained by the appellant and the project is being developed by the respondent no.2 in terms of the Development Agreement dated 02.11.2011. The construction of the project was started on receipt of environmental clearance dated 04.09.2013 and the consent to establish the project dated 27.11.2013. It was further pleaded that the construction of Tower No.1,2,7,8,17,18,19 and 20 are 90% complete and almost ready for possession

and structure of other Towers No. 3 to 5, 9 to 16 and 21 to 29 are also complete. The Mechanical, Electrical, Plumbing (MEP) and finishing works are due to be undertaken.

8. It was further pleaded that as per Clause 5.1 read with clause 5.2 of the Apartment Buyer's Agreement, the time period for completion of the construction is to be calculated from the grant of the environmental clearance dated 04.09.2013 and the consent to establish the project which was received in November, 2013. The project was to be completed within 42 months thereafter. The slowdown in the construction, if any, is primarily because of wilful default in payments by the allottees. It was further pleaded that as on date the unrealised payment due from the flat buyers is around 117.59 crores. It was further pleaded that the provisions of the Act have penal consequences, which cannot be implemented retrospectively. In the application for registration of the project, the respondent has given the time limit up to 31.12.2020 and the project will be completed within that time limit. Finally, it was pleaded that as the relief of possession, interest and compensation for alleged delay in delivery of possession and refund has been sought, the said complaint is to be adjudicated upon by the Adjudicating Officer under Section 71 of the Act.

9. With these pleas the appellant and respondent no.2 pleaded for dismissal of the complaint.

10. After hearing all the parties, appreciating the documents on record, the reports of the expert and extensive exercise, the learned Authority disposed of the complaint filed by the respondent no.1 by issuing the directions as reproduced in the upper part of the judgment.

11. Aggrieved with the aforesaid order dated 23.01.2019, the present appeal has been preferred by the appellant-Orris Infrastructure Limited.

12. Respondent no.1/Greenopolis Welfare Association has also filed the cross objections wherein it has been pleaded that the Development Agreement dated 02.11.2011 and the Supplemental and Relinquishment Agreement dated 13.09.2017 are illegal. The area of the project has been illegally reduced to 37.218 acres from the original project area measuring 47.218 acres. The land chunk of 10 acres constitutes crucial part of the entire licensed land as the entire project is linked to the master plan road. It was further pleaded that the license was renewed subject to payment of External Development Charges (EDC) and Infrastructure Development Charges (IDC) but the said condition has not been complied with. It is further pleaded

that the entire agreement in the form of Development Agreement dated 02.11.2011 is violative of the policy dated 18.02.2015 framed by the department of Town and Country Planning, Haryana. It was further pleaded that the learned Authority was required to take action under Section 15 of the Act against the appellant and the respondent no.2 for executing the Development Agreement dated 02.11.2011and the Supplemental and Relinquishment Agreement dated 13.09.2017. It is further pleaded that the learned Authority should not have held respondent no.2 as a promoter of the project. The Authority only had jurisdiction to regulate the real estate project in terms of statutory approvals granted by the competent authority under the provisions of Haryana Development and Regulation of Urban Areas Act, 1975 (hereinafter called '1975 Act'). It is further pleaded that the direction to the respondent no.2 to complete the project will vindicate and legitimize the Development Agreement and the Supplementary Agreement. Therefore, the Authority ought not have given these directions.

13. With these pleas, the respondent no.1/cross-objector has pleaded for grant of all the reliefs as mentioned in the complaint.

14. We have heard Shri Surjeet Bhadu, Advocate, learned counsel for the appellant, Shri Shekhar Verma,

Advocate, learned counsel for respondent no.1; Shri Dhananjai Jain, Advocate with Shri Vishal Sharma, Advocate, learned counsel for respondent no.2 and have carefully gone through the record of the case. Shri Shekhar Verma, learned counsel for respondent no.1 has also filed the brief written arguments.

15. Initiating the arguments Shri Surjeet Bhadu, Advocate, learned counsel for the appellant contended that after the receipt of the license, the appellant entered into the Development Agreement dated 02.11.2011 with respondent no.2 for the construction of the project. The 'development rights' have been defined in the Development Agreement dated 02.11.2011, as per which the entire responsibility for development of the project was of respondent no.2. The appellant was to get 35% of the built-up area and 35% of saleable facilities in the project and parking, whereas respondent no.2 was to get 65% of the built-up area and 65% of saleable facilities in the project and parking as per Clause 3.1 of the Development Agreement. He further contended that as per Clause 4.1.4 of the Development Agreement, respondent no.2 had agreed to bear the cost and responsibility and obligations for applying to obtain all necessary approvals from the government agencies. The parties have also agreed for a specified framework for

completion of the project. It was also agreed that the respondent no.2 will obtain the necessary Occupation Certificate before handing over the possession of the units.

16. He further contended that as per the Development Agreement, appellant was not given any responsibility for the completion of the project. It was the sole responsibility of respondent no.2, the developer. He further contended that it was also made clear in the Buyer's Agreement in Clause-A that project was being completed by respondent no.2. The said agreements were duly signed by the concerned allottee, the appellant and the developer. He contended that the allottees had the knowledge from the very beginning that respondent no.2 was developing the project.

17. He further contended that the learned Authority had attached 10 acres of land of the appellant vide interim order dated 12.07.2018 which was later on confirmed vide impugned order dated 23.01.2019. He contended that the amount of Rs.582.43 crores was taken to be the estimated cost and Rs.227.0 crores was taken to be the total receivable by learned Authority vide interim order dated 12.07.2018. So, the attachment was presumably to cover the shortfall. The learned Authority has appointed Currie & Brown India Private Limited to furnish the financial due diligence report.

As per the said report the estimated cost was 334.0 crores and receivable were Rs.470.24 crores. Thus, he contended that when the estimated cost was less than the receivable, there was no cause of action to attach the property of the appellant. No reasons have been given by the learned Authority for making the attachment of the property of the appellant absolute. He contended that the order of attachment is non-speaking and illegal.

18. He further contended that the Greenopolis project is being developed only in 37 acres of land. There was no impediment for bifurcation of the licensed land as per the policy of the government. He contended that 1862 apartments in 29 towers were to be constructed in the project area measuring 37.0 acres. Thus, he contended that ten acres of land was not the part of this project and was reserved for future development in the Master Layout Plan. Copy of the plan is available at page no.221 of the paper-book and the same is duly signed by the allottee. He further contended that in the Apartment Buyer's Agreement it has been specifically provided in Clause 'F' that there could be variations, additions and modifications in the project area.

19. He further contended that respondent no.2 vide his undertaking before the learned Authority, in the shape of the affidavits dated 08.01.2019 and 23.01.2019 has

undertaken to dedicate four properties to the project. The appellant has agreed to purchase the properties mentioned in para no.1(a), 1(b) of the affidavit dated 23.01.2019 but the said property was already mortgaged and lenders did not agree for transfer of those properties. So, the deal could not mature due to the fault of respondent no.2. He contended that the appellant even handed over 12 cheques of Rs.5.0 crores each in lieu of those properties. Even one cheque was encashed but no property was transferred to the appellant. He further contended that now respondent no.2 has taken the different stand in the affidavit dated 22.07.2019 filed before this Tribunal that these properties are out of its control.

20. He further contended that the directions given by the learned Authority that the promoter/developer will not be entitled to demand any money till the completion of the project, is violative of the terms and conditions of the Buyer's Agreement as well as Section 19(6) of the Act. The allottees are liable to make payment as per Payment Schedule in the agreement.

21. He contended that 90% of the construction of the first phase is already complete. The learned Authority has given responsibility for completion of the construction to respondent no.2, the developer. So, the appellant cannot be

treated on the same footings and cannot be penalised for the default of respondent no.2. The appellant is not being allowed to complete the project. In such a case no adverse order could be passed against the appellant.

22. He further contended that sufficient funds are available in the shape of Rs.470.24 crores as receivable from the sold and unsold units and approximately Rs.55.0 crores are already lying in the ESCROW account of the project. He contended that the Project Management consultant under the direct supervision of the learned Authority to oversee the expenditure for completion of the project should be appointed.

23. He further contended that respondent no.2 should be directed to comply with the undertaking given by them before the learned Authority and also to bring back Rs.154.93 crores in the project account which are the loans advanced by them from the project funds as directed by the learned Authority.

24. He further contended that the land cost projected by the appellant is perfectly correct and is even supported from the report made by the approved valuer before this Tribunal. The learned Authority has also taken the land cost to be Rs.555.0 crores which has not been challenged

before this Tribunal. He further contended that the learned Authority has not relied upon the report of Currie & Brown while ascertaining the valuation of the land. So, the statement made by Shri Amit Chauhan, the representative of Currie & Brown before this Tribunal on 21.08.2019 is baseless and no sanctity can be attached to the said statement. He further contended that the valuation reports have been filed by the appellant before this Tribunal in compliance of the order dated 21.08.2019. Both the valuation reports have shown the value of the land at Rs.567.0 crores and Rs.539.0 crores respectively.

25. He further contended that the respondent no.1 is in collusion with the respondent no.2, which is apparent from the stand taken by them only against the appellant despite the fact that all the breaches are attributable to respondent no.2. Almost all the allottees, who are the complainants in this case, are the customers of respondent no.2 to whom it sold the units out of only its share. The allottees have paid money to respondent no.2 and nothing was paid to the appellant. In such case the primary grievance and responsibility can only be against the respondent no.2. The appellant is only a licensee making the land available for the construction of the project.

26. Thus, he contended that the directions given by the learned Authority to the appellant and attachment of 10 acres of land owned by the appellant is illegal and not sustainable in the eyes of law.

27. Shri Dhananjai Jain, Advocate, learned counsel for respondent no.2 contended that the appellant had shown the cost of the land on the higher side just to show the excess investment in the project. He contended that as per the valuation report of Shri Ravindra Pandit, Chartered Engineer, the present value of the land of the project comes to only Rs.149.0 crores and in the year 2011 it was only Rs.26.5 crores.

28. He further contended that the appellant has not supplied the information with respect to the cashflow on account of the sale of the units. The appellant has not contributed even a single penny towards the construction. It was the joint responsibility of the appellant for the development of the project. He contended that in the impugned order the learned Authority has directed the appellant to inform the Authority the actual cost incurred on the project with documentary proof but no compliance of this direction has been made till date.

29. He further contended that the appellant is causing impediment in the completion of the project as the authorised persons of the appellant are not signing the bills for payment of the expenditure.

30. Learned counsel for respondent no.1 contended that 10 acres of land of the appellant has been rightly attached and justification thereof is very much available in paragraphs no.75 to 88 of the impugned order. He contended that the license for this project was granted for 47.21 acres of land and at the time of issuance of the license the approved lay out plan was also issued. The said lay out plan provides for utilisation of the entire licensed land for this project. The plea that 10 acres of land was reserved for future projects, is ex facie incorrect. He contended that in all the sale brochures and even in the buyer's agreement, the area of the project was mentioned to be 47.21 acres of land. He contended that if 10 acres of land is taken away from the project, the remaining part of the land will lose its connectivity with the main road causing hindrance in approach to the allottees. He contended that no change can be made in the lay out plan without the consent of the allottees in accordance with the policy dated 28.01.2013.

31. He further contended that the Development Agreement dated 02.11.2011 and the Supplemental

Agreement dated 13.09.2017 are not inconformity with the government policy dated 18.02.2015. The aforesaid policy is retrospective in nature and will apply to the existing developers. He contended that such agreements which are in violation of the government policy, cannot be relied upon to exonerate the appellant of its responsibility to develop the project and face the consequences of default. The said agreements are also violative of the mandate of Section 15 of the Act. He contended that the impugned order is liable to be modified and the appellant should be held responsible for all development works in terms of the license. The learned Authority could not have taken the decision contrary to the policy dated 18.02.2015 exonerating the appellant of all penal consequences provided in the 1975 Act as well as this Act.

32. He further contended that the appellants have sold the development rights to respondent no.2 for Rs.111.72 crores and handed over the project on the basis of the Development Agreement. He contended that learned counsel for the appellant has alleged that the appellant had taken loan of Rs.250.0 crores to pay the sale consideration to the land owners. He contended that there are 15 land owners but there is no sale-deed in favour of the appellant. The appellant should clarify when this loan was taken and

from whom. He contended that as per the official website of Director, Town and Country Planning, the appellant is the developer of the project. The appellant is also in default of the EDC amount approximately Rs.80.0 crores which the appellant had failed to clear despite its assurance to clear the same within one month. He contended that the license is going to expire on 22.12.2019.

33. He further contended that the value of the land shown by the appellant is false. The appellant has not produced any document or copy of the sale-deed before the auditor to ascertain actual sale price paid by it to the land owners.

34. He further contended that the respondent no.1 has filed the cross objections. This Tribunal has the powers of Civil Court under the Code of Civil Procedure, 1908 (hereinafter called 'CPC') for the purpose of discharging its functions under this Act. He further contended that the general principle of CPC and principle of natural justice are applicable in the proceedings before this Tribunal. The cross objections are maintainable as per Order 41 rule 22 CPC. So, the cross objections filed by the respondent no.1 are perfectly maintainable.

35. He further contended that appellant and respondent no.2 are not taking any step for compliance of the conditions stipulated in the government policy dated 18.02.2015 and Section 15 of the Act. They have misappropriated the entire sale consideration without the consent of the allottees and intimation to the department. Learned Authority should have given directions for imposition of the penalty as prescribed in section 38 of the Act. He further contended that unless and until the department of Town and Country Planning acknowledges respondent no.2 as a licensee, the learned Authority should not have recognised the position of respondent no.2. Finally, learned counsel for respondent no.1 has pleaded for grant of the relief as sought in the complaint and modification of the impugned order to that extent.

36. We have duly considered the aforesaid contentions.

37. Firstly, we take up the issue regarding maintainability of the cross-objections filed by respondent no.1. It is settled principle of law that right of appeal or the cross-objection is a statutory right which is expressly provided by the legislature in the statute itself and it cannot be impliedly inferred. In the Act or the rules framed thereunder there is no provision for filing of the cross-

objections. As per Section 44 of the Act, the only remedy available to the aggrieved person by any direction or order or decision of the Authority or the Adjudicating Officer, is to prefer an appeal before the Appellate Tribunal.

38. As per Section 53(1) of the Act, the Appellate Tribunal shall not be bound by the procedure laid down by the CPC but shall be guided by the principles of natural justice. So, the procedure laid down in the CPC is not applicable to the proceedings before the Appellate Tribunal.

39. The cross-objections are specifically provided in Order 41 rule 22 CPC. So, there is a specific provision in the CPC that the respondent, even though has not filed any appeal, can file the cross-objections to assail the findings on any issue against him but there is no such provision in the Act or the rules framed thereunder. So, this Tribunal cannot create any right in favour of respondent no.1 to entertain the cross-objections filed by it by extending the purview of Section 44 of the Act as that shall be the violence to the plain meaning of Section 44 of the Act. If the respondent no.1 was really aggrieved with the impugned order, they were at liberty to file their own appeal which they did not file.

40. Thus, the cross-objections filed by the respondent no.1 are not maintainable and are hereby dismissed.

41. The undisputed facts are that the license of the residential group housing colony project named Greenopllis was issued to the landowners in collaboration with the appellant. There were total 15 land-owners. They entered into separate Collaboration Agreements with the appellant pursuance to which the owners granted the development rights to the appellant in respect of the land admeasuring 47.218 acres forming the project land. Out of the aforesaid land, the land measuring 0.236 acres was permitted to be developed as commercial land by the Director, Town and Country Planning as per directions of the letter of intent. The license of the project was issued on 25.07.2011 for setting up the housing project on 47.218 acres, the building plans were approved by the Directorate of Town and Country Planning, Haryana vide memo dated 07.06.2012 on the entire land measuring 47.218 acres in Sector-89, Gurugram in collaboration with the appellant.

42. Thereafter, respondent no.2 stepped into the picture. The appellant executed the Development Agreement dated 02.11.2011 with respondent no.2 for development of the project. The marketing rights were also given to the respondent no.2. However, no permission, as per the policy

of the government and the provisions of the 1975 Act was obtained. The appellant and the respondent no.2 also entered into a Memorandum of Understanding (MoU) dated 15.09.2011 but the copy of the said MoU was not brought on record. This project was to be completed in three phases. There were total 1862 units which were planned in 29 towers. In Phase-I, there were 7 towers consisting 512 units. In Phase-II, there were 12 towers consisting 766 units and in Phase-III, there were total 10 towers having 584 units.

43. As per the Development Agreement, the appellant was allotted 35% of the built-up area alongwith other facilities and 65% of the built-up area alongwith facilities fell into shares of respondent no.2. The project was finally launched in July/August, 2012 by booking of the units by both, the appellant and the respondent no.2 of their respective shares. The appellant has sold 533 units whereas the respondent no.2 has sold 1091 units. As per the terms of the Apartment Buyer's Agreement, the construction of the apartments was to be completed within 36 months i.e. up to the end of 2015 with grace period of six months.

44. Respondent no.2 had engaged M/s Globus Construction Private Limited and then M/s Straight Edge

Contractors Private Limited for the construction of the project.

45. It is further pertinent to be mentioned that vide Supplemental and Relinquishment Agreement dated 13.09.2017 ten acres of land out of 47.218 acres of the land was relinquished in favour of the appellant by the respondent no.2 and thereafter the development work was carried out on the land measuring 37.218 acres. But this action of the appellant and the respondent no.2 is violative of the terms and conditions of license and the provisions of the Act. The documents available on record show that the license for setting up the residential group housing project was issued on the land admeasuring 47.21 acres which is evident from the copy of the license issued by the Director, Town and Country Planning Haryana (available at page 166 of the paper-book). The license holders have furnished an undertaking (available at pages no.174 to 180 of the paper-book) wherein also the area of the project has been shown to be 47.218 acres. Then, there is copy of the Press Release (available at page 188 of the paper-book) wherein also the area of the project has been shown to be 47.0 acres of land. Even in the Apartment Buyer's Agreement (available at page no.193 to 325 of the paper-book at page no.198) the area of the project has been mentioned to be 47.218 acres. This

agreement was executed on 29.05.2013. Learned counsel for the appellant has drawn our attention to Annexure-C of this agreement i.e. Master Layout Plan wherein the vacant land has been shown for future development. He stated that this piece of land is measuring 10 acres and it was not the part of the project. But this plea raised by the appellant is devoid of the substance because as per the license only 0.263 acres of the land was permitted to be commercial land and the remaining entire land was the part of the residential group housing project. This piece of 10 acres of land has been relinquished vide Supplemental and Relinquishment Agreement dated 13.09.2017 without following the due procedure of law under the provisions of the 1975 Act and the rules framed thereunder as well as section 15 of the Act. It is also violative of the govt. policy dated 28.01.2013 as the consent of the allottees was not sought for the reduction of the licenced project land. So, the bifurcation of 10 acres of land from the project land was an illegal and un-authorised act of the appellant and respondent no.2. The reduction in the area of the project will certainly affect the rights of the allottees.

46. The impugned order shows that the learned Authority has tried to explore every possible option for the completion of the project. Various meetings of the

authorised persons of the appellant, respondent no.2 and the respondent no.1 were held. Dr. (Prof.) M.S. Turan, was appointed as Commissioner Investigation and Monitoring Officer vide order dated 02.08.2018. The learned Authority also engaged the services of M/s Quantum Infra Project Pvt. Ltd. for undertaking quantity survey and Currie & Brown India Pvt. Ltd. for carrying out the financial due diligence of the project. The gist of the report of Currie & Brown has been reproduced by the learned Authority in the impugned order which shall be beneficial to reproduce herein in order to know the position of cash flow/receipts and estimated cost of the project etc, which is as under: -

"

Sr. No.	***Description***	***No. of Units***
1	*Total no. of units*	*1862*
2.	*Total no. of units allotted*	*1650*
3.	*No. of units allotted by Orris*	*533*
4.	*Units allotted by Orris for which no sale transactions have taken place*	*26*
5.	*Total no of units disposed off by Orris (column 3+4)*	*559*
6.	*No. of units allotted by Three C Shelters*	*1091*
7.	*Unsold units in the share of Orris*	*93*
8.	*Unsold units in the share of Three C shelter*	*119*
9.	*Total No. of units unsold (column 7+8)*	*212*

55. As per the sales MIS, customer ledgers, bank statements, cash flow statement etc. prepared by M/s Currie & Brown following amount has been received by both the promoters:

Sr. No.	***Description***	***Amount in Cr.***
1	*Sale proceeds received by Orris in respect of 533 units*	*383.06*
2.	*Sale proceeds received by Three C Shelters in respect of 1091units.*	*776.6*
3.	*The sale proceeds received by Three C. shelters in respect of 1091 units including the GST*	*862.9*
4.	*Amount realized from sale by both the promoters excluding GST and other charges.*	*1159.78*
5.	*Amount realized from sale by both the promoters including GST and other charges.*	*1209.97*

56. As per the financial due diligence report of M/s Currie & Brown the expenditure incurred by M/s Three C Shelters Pvt, Ltd. 1s as under:

Sr. No.	***Description***	***Amount in Cr.***
1.	*Land and related cost*	*196.13*
2.	*Construction cost*	*511.55*
3.	*Sales and marketing*	*35.62*
4.	*Overhead and other misc. expenses*	*29.23*
5.	*Total (column 1+ 2+ 3+4)*	*772.56*
6.	*Financial cost and loans as per the books of accounts. (finance cost Rs.55,02 cr. and loan Rs. 154.93 Cr)*	*209.95*
Collection and expenditure by Three C		
1.	*Total expenses incurred by Three C Shelters Pvt. Ltd. Directly in the project.*	*772.56*
2.	*"Total collection by Three C Shelters Pvt. Ltd.*	*776.67*

Accordingly, the plea taken that three C shelters has siphoned off the funds is not supported by the report of Currie & Brown and Quantity surveyor.

57. Collection and valuation of licensed land at market rate of orris

Sr. No.	***Description***	***Amount in Cr.***
1.	*Amount received: the receipt by Orris in lieu of land licensed, EDC&IDC etc.*	*196.13*
2.	*Amount realized from buyers*	*383.06*
3.	*Cost of 26 units having area of 46333 @ Rs. 4000/-*	*18.53*
	Total (1+ 2 +3)	*597.72*
4.	*Value of licensed land @ Rs.15 crore per acre*	*555.00*

58. Examination of completion of the project

Sr. No.	***Description***	***Amount in Cr.***
1.	*Estimated cost of completion/construction of the project.*	*311.00*
2.	*Estimated cost of completion of the project excluding GST*	*264.7*
3.	*Balance payment of EDC principal amount*	*67.29*
4.	*Interest on delayed payment of EDC*	*10.10*
5.	*Total (column 3+4)*	***77.39***
6.	*Proportionately to be apportioned 77.39X37 divided by 47.2*	*60.66*
7.	*Misc. cost including marketing and brokerage for sales of unsold Units*	*8.69*
	Grand Total (column 2+6+7)	***334.05***

As on today approximately 77.39 crores of EDC/IDC and penal interest thereon is pending against the license holder M/s Orris Infrastructure Pvt. Ltd. The proportionate share of 37 acres out of total 47 acres of land comes out to be Rs.60.66 crores.

The Orris Infrastructure Pvt. Ltd. being the license holder is to clear EDC/IDC and to avail the benefit of rescheduling of EDC/IDC policy of the state government. Necessary dues shall be cleared by M/s Orris Infrastructure Pvt. Ltd and shall thereafter be reimbursed from the receivables of the project by M/s Orris Infrastructure Pvt. Ltd. in the project from the ESCROW account on availability of funds in the account without disturbing the completion schedule of the project.

59. Estimated cash inflows in the project for sold and unsold units

Sr. No.	***Description***	***Amount in Cr.***
1.	*Sales price of 93 unsold units of ORRIS Infrastructure Pvt. Ltd. (Worst Scenario) + 119 unsold units of Three C Shelters Pvt. Ltd.*	*Rs.142.58*
2.	*Balance receivable from sold units of Orris infrastructure Pvt. Ltd. and Three C Shelter Pvt. Ltd.*	*Rs.3 27,66*
	Total (column 1+2)	*Rs.470.24*

60. Surplus for setting delayed interest, compensation, penalties etc.

Sr. No.	***Description***	***Amount in Cr.***
1.	*Estimated future cash inflows in the project*	*470.24*
2.	*Post-paid charges by Orris i.e. on*	
3.	*Post-paid cheque by Three C*	*60.00*
4.	*Attached property sale receipt of Three C*	*140.00*
5.	*Total (column 1+2 +3+4)*	***670.24***

47. Learned counsel for the parties have not disputed the figures mentioned therein except the cost of the land. So, from the tables reproduced above, there is a clear picture regarding the total number of units, the units fell in

the share of the appellant and the respondent no.2, the units allotted/sold by them, the sale proceeds of the units received by them and the expenses incurred by the appellant and respondent no.2 in the project. The report of the expert further depicts the estimated cost for the completion of the project and the funds available.

48. Learned counsel for the respondent no.1 has rightly contended that the appellant has received Rs.383.06 crores by the sale of units of its share. The appellant also received Rs.111.72 crores from the respondent no.2 for grant of development rights which is in the shape of proceeds/premium. The appellant has also availed the loan of Rs.325.0 crores from Vistara Finance against the unsold property. The appellant has also transferred 26 units to Lal Singh, collaborator, the value of that comes to Rs.18.53 crores. The respondent no.2 has received a sum of Rs.776.67 crores from the sale of units without GST. In this way, the appellant and the respondent no.2 have received huge amount from the sale of the units of the project. But still they are escaping their responsibility to complete the project for taking the shield of their internal dispute.

49. We have noticed during the course of arguments that the appellant and the respondent no.2 are putting blame on each other for non-completion of the project.

Merely by executing the Development Agreement dated 02.11.2011, the appellant cannot escape its responsibility and obligations to the allottees of the project being licensee of the project.

50. Promoter has been defined in section 2(zk) of the Act. The relevant portion of this section reads as under: -

> *"**2. Definitions**. — In this Act, unless the context otherwise requires —*
>
> *(zk) "promoter" means, —*
>
> *(i) a person who constructs or causes to be constructed an independent building or a building consisting of apartments, or converts an existing building or a part thereof into apartments, for the purpose of selling all or some of the apartments to other persons and includes his assignees; or*
> *(ii) xxx*
> *(iii) xxx*
>
> *(iv) xxx*
>
> *(v) any other person who acts himself as a builder, coloniser, contractor, developer, estate developer or by any other name or claims to be acting as the holder of a power of attorney from the owner of the land on which the building or apartment is constructed or plot is developed for sale;"*

51. As per the aforesaid provision of law a person who constructs or causes to be constructed a building for the purpose of selling all or some of the apartments to other persons, falls in the definition of 'Promoter'. Similarly, as per Clause (v) of section 2(zk) if a person who acts himself as a builder, coloniser, contractor, developer, estate developer

or by any other name or claims to be acting as a holder of a power of attorney from the owner of the land on which the building or apartment is constructed or plot is developed for sale, will also fall in the definition of the 'Promoter'. The aforesaid definition of promoter will cover both the appellant and respondent no. 2. So, they will be jointly and severally liable for the completion of the project. The learned Authority has rightly observed that both, the appellant and respondent no.2, are joint promoters whereas the primary responsibility to discharge the responsibilities of promoter lies with respective promoter in whose allocated share the apartments have been bought by the buyers. We do not find any reason to differ with the aforesaid observations.

52. The appellant is mainly aggrieved of direction given in para No. 89(g). The observations of the learned Authority in para no.80 of the impugned order restraining the appellant and the respondent No.2 to demand any further money from any allottee till the completion of Phase-I of the project and the attachment of 10 acres of land of the appellant.

53. In para no.89(g), direction has been given that the future collections from all sold and unsold inventories will be deposited by the promoter in ESCROW account No.558011059169 opened with Kotak Mahindra Bank, Noida

and the said money can only be drawn for payment of construction purposes of the project and payment of EDC/IDC and other statutory dues. It has also been directed that the money from the said account will be drawn under signature of both the promoters or their signatories following the due procedure as prescribed in the Act, rules and regulations made thereunder after obtaining permission from the Monitoring Officer.

54. We do not find any illegality in the direction so given by the learned Authority. As already mentioned, the appellant and respondent no.2 had procured huge amount from the sale of the units but they are not contributing the requisite funds in the construction of the project by putting blame on each other and taking shelter of their internal dispute. The allottees have invested their hard-earned money to fulfil their needs of the house.

55. As discussed above, both the appellant and respondent no.2 are the promoters of the project and are duty bound to take the requisite steps to complete the project. Instead of cooperating with each other in the completion of the project, they started raising dispute to stall the development of the project. The construction of the project has virtually come to stand still in early 2016 but even thereafter, the appellant and respondent no.2 had

executed the Supplemental and Relinquishment Agreement dated 13.09.2017 and 10 acres of land was left out of the project, which shows that when the appellant and the respondent no.2 are to serve their own interest they can sit together and execute the documents to garner the benefits but there is always dispute between them when the matter pertains to the obligations towards the allottees i.e. to ensure the completion of the project.

56. Thus, we find nothing wrong in the direction given by the learned Authority that the future collections from all sold and unsold inventories will be deposited by the promoter in the ESCROW account and shall only be used for construction purposes of the project and payment of EDC/IDC and other statutory dues for making the funds available for completion of the project. This direction was essential to raise the funds for the completion of the project.

57. In para no.80 of the impugned order, the learned Authority has directed that no amount towards the sale consideration amount shall be demanded by the promoters from any allottee till the completion of Phase-I of the project. At the same time, the liberty has been given to demand the payments by offering the physical possession of the apartments of Phase-I after obtaining the Occupation Certificate. Payment Plan is Annexure-B of the Buyer's

Agreement which shows that it is a Construction Linked Plan. It is an admitted fact that the development/construction activities are virtually stand still. The appellant and respondent no.2 have already collected huge amount from the allottees. The Authority in order to regulate the project has rightly ordered to take up the project in phased manner and in that pursuit has asked to collect the amount from allottees on completion of part of the project so as to aspire the confidence amongst the allottees to continue with the project. The payment from the allottees to the appellant has not been denied but only regulated so that the work is completed in phased manner. So, how the appellant or the respondent no.2 can raise the demand of money from the allottees. The terms and conditions of the agreement can bind the parties, but the Authority is not precluded to exercise its powers to regulate the project under Section 37 of the Act which reads as under:

> ***"37. Powers of Authority to issue directions***.— *The Authority may, for the purpose of discharging its functions under the provisions of this Act or rules or regulations made thereunder, issue such directions from time to time, to the promoters or allottees or real estate agents, as the case may be, as it may consider necessary and such directions shall be binding on all concerned."*

58. As per the aforesaid provision of law, the Authority is competent to issue such direction from time to time to the promoters or allottees or real estate agents, as the case may be, as it may consider necessary for the purpose of discharging its functions under the provisions of the Act or the rules or regulations made thereunder. It is further provided that such direction shall be binding on all the concerned. As per the aim and object of the Act, the functions of the Authority are to regulate the real estate sector and to protect the interest of the customers in the real estate sector.

59. Section 34 of the Act provides the functions of the Authority. As per section 34(f) of the Act, it is the duty of the Authority to ensure compliance of the obligations casted upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

60. As per Section 11(4)(a) of the Act, the promoters are responsible to fulfil all the obligations, responsibilities and functions under the provisions of the Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale. So, the direction given by the learned Authority in para no.80 of the impugned order also does not call for any interference by this Tribunal.

61. In para no.88 of the impugned order, the learned Authority has mentioned that 10 acres of land shall remain attached till substantial progress is made by the promoters or the completion of the project and occupation certificate is obtained by the appellant/respondent no.2. The reason for attachment of the aforesaid land is obvious i.e. to ensure the completion of the project. As discussed above these 10 acres of land is also the part of the license of this project. The plea raised by learned counsel for the appellant that sufficient funds are available for completion of the project and the attachment of the land was not required, is without any substance as the estimated cost for completion of the project has been worked out by taking into consideration the sale of the unsold units and receivable from the units already sold. This is a stuck project. The construction activities are virtually stand still. It is not expected that the customers will come forward to purchase the units in such a project. The learned Authority has given direction that further money shall not be demanded from the allottees till the completion of Phase-I of the project. So, this amount of cashflow of Rs.470.24 crores is just an imaginary figure. The attachment of the land is only effective remedy to ensure the completion of the project. Thus, the attachment of the land

of the appellant was fully justified and we do not find any legal infirmity therein.

62. As already mentioned, both the appellant and respondent no.2, are playing with the hard earned money of the allottees. Respondent no.2 has given the undertaking dated 08.01.2019 that in order to expedite the completion of the project, it will dedicate four properties worth over Rs.200.0 crores. It was further mentioned in affidavit dated 23.01.2019 that they had dedicated properties worth more than Rs.200.0 crores but it is an admitted fact that this arrangement could not mature due to the default of respondent no.2 as it could not get the consent of the lenders and such properties were under encumbrances. Respondent no.2 has already given the dates for completion of the construction of the project vide affidavit dated 23.01.2019. As per that affidavit the construction of Phase-I was to be completed by 31.07.2019 which has already been passed. But the said phase is still not complete.

63. If the respondent No.2 is not fulfilling the undertaking given by it to the learned Authority, the learned Authority is not helpless and can take appropriate action as warranted by law.

64. It is pertinent to mention that during the pendency of this appeal vide order dated 21.08.2019, we had

given opportunity to the appellant and respondent No.2 to bring on record the valuation reports of land of the project as on the date of floating the project. Both the parties have filed the reports of their experts. The appellant has filed the reports of two experts. The first report is by Er. Birendra Parsad Singh, Government Approved Valuer and Chartered Engineer. He has determined the fair market value of the project land to be Rs.567.43 Crore. He has taken the value at the rate of Rs.2000/- per square feet. The second report has been made by Er. Gaurav Vashist, Government Approved Valuer. He has determined the market value of the land to be Rs.539.05 Crore. He has taken the FSI value @ Rs.1900/- per square feet. Respondent No.2 has filed the report of Sh. Ravinder Pandita, Chartered Engineer and Government Approved Valuer. As per his report the present value of the land is Rs.149 Crore and in the year 2011 it was only Rs.26.05 crore.

65. There is material variation in the reports submitted by both the parties. The best evidence for valuation of the land was the copy of the sale-deed vide which the appellant had purchased the land of the project. But that documentary evidence presumed to be available with the appellant, has been withheld. In the absence of

said primary evidence, the reports filed by the parties cannot be relied upon.

66. Sh. Amit Chauhan, the Authorised Representative of Currie & Brown India Pvt. Ltd. has appeared before this Tribunal on 21.08.2019 and stated that the appellant has not supplied them the land cost in spite of repeated written requests. Due to this reason they could not mention the land cost in their report. But it is not clear that how in para No.57 of the impugned order the learned Authority has taken the value of the land to be Rs.555.0 Crore, i.e. @ of Rs.15.0 crore per acre. But neither respondent No.1 nor respondent No.2 has filed any appeal to challenge this observation of the learned Authority. The cross-objections filed by the respondent No.1 have been found to be not maintainable in the absence of any specific provision in the Act.

67. It is further pertinent to mention that during the pendency of the appeal Dr. (Prof.) M.S. Turan, Commissioner Investigation and Monitoring Officer, of the project appointed by the Authority was asked to file the status report of the project which has been filed by him before this Tribunal on 21.08.2019, which shows that right now the work is in progress only of Phase-I of the project comprising 07 towers and 512 units which are complete in the range of 96-98 per

cent. Mainly the work in progress is with respect to the false ceiling work, paint work, tile work, plumbing work and stone polish work. It is further mentioned that the major pending works for completion of Phase-I are ventilation system for basement area, renewal of CTE certificate, commissioning of elevators, development of external road, electrical connection, fire system installation, WTP and STP installation.

68. It has also been pointed out that the appellant and the respondent no.2 are not taking the necessary steps for getting the permission from the Town and Country Planning Department for the change of developer as per the policy of the Haryana Government, 1975 Act and rules made thereunder. The learned Authority has rightly given the direction in para no.66 of the impugned order to obtain the change of developer approval within 30 days. If during monitoring of project the learned Authority finds any wilful, intentional and deliberate violation of this direction, it will attract the action as per law.

69. It has also been pointed out that it was the responsibility of the appellant being licensee to pay the EDC/IDC and other statutory dues of the government for keeping the license valid. If the appellant is neglecting to perform its duties for validation of the license, the Authority

can take appropriate action for violation of the direction. The allottees can also approach the competent authority, under 1975 Act, to take appropriate action in accordance with law so that the interest of large number of allottees in the project is safeguarded.

70. During the course of argument, it was brought to our notice that there is impediment in the construction activities as the bills are not being signed by the appellant. Learned Counsel for the appellant has alleged that the bills are always inflated/exaggerated. It is evident from the discussions of the Authority under issues No.11 and 12 that the Authority shall monitor the project. So, the learned Authority is directed to depute its senior most and competent engineer to verify the genuineness of the bills prepared by respondent No.2 so that the grievance of the appellant may be taken care of. It is made clear that this direction will not dislodge the actions already being taken by the learned Authority in order to ensure the completion of the project and for the implementation of the impugned order, rather this direction is in aid and addition of the said steps.

71. It is further pertinent to mention that during the pendency of the appeal both the appellant as well as respondent No.2 had filed their proposal for completion of

the project. But it has been informed that the learned Authority is already monitoring the project. So, they can submit their proposals to the learned Authority for consideration. However, it is made clear that the proposal so submitted will not debar the learned Authority to take steps already being taken by it for the completion of the project. During the pendency of this appeal, a sum of Rs.52.5 crores has come to the ESCROW account of this project. It is directed that this amount shall be exclusively used to meet out the construction and labour expenses and for no other purpose.

72. We have observed from the record and particularly the stand of the appellant and the respondent No.2 that they have internal dispute. The appellant and respondent No.2 can resolve their internal dispute amicably in the interest of the project and welfare of the allottees or in the alternative they can avail the appropriate legal remedy available to them to settle their score but they cannot be allowed to jeopardize the interest of the allottees.

73. Thus, in view of our aforesaid discussions, we do not find any illegality in the impugned order passed by the learned Authority. Consequently, the present appeal is without any merits and same is hereby dismissed. However, no order as to costs.

74. File be consigned to record.

Announced:
December 23, 2019

Justice Darshan Singh (Retd.)
Chairman,
Haryana Real Estate Appellate Tribunal,
Chandigarh

Inderjeet Mehta
Member (Judicial)

Anil Kumar Gupta
Member (Technical)

M/s Orris Infrastructure Pvt. Ltd.
V/s
Greenopolis Welfare Association and M/s Three C Shelters Pvt. Ltd.

Appeal No. 158/2019

Present: Sh. Abhinav Kansal for Sh. Surjeet Bhadu, Advocate, ld. counsel for the appellant.

Ms. Parul Chadha, Advocate, for Sh. Shekhar Verma, Advocate, ld. Counsel for the respondent no. 1.

None for the respondent no. 2.

The present appeal filed by the appellant M/s Orris Infrastructure Pvt. Ltd. and the cross objections filed by the respondent no. 1 stand dismissed vide our detailed judgment of even dated.

Copy of the detailed Judgment be communicated to all the parties and the ld. Real Estate Regulatory Authority, Gurugram.

File be consigned to the records.

Justice Darshan Singh (Retd.)
Chairman,
Haryana Real Estate Appellate Tribunal,
Chandigarh
23.12.2019

Inderjeet Mehta
Member (Judicial)
23.12.2019

Anil Kumar Gupta
Member (Technical)
23.12.2019