

**BEFORE THE HARYANA REAL ESTATE APPELLATE
TRIBUNAL**

Appeal No.67 of 2020

Date of Order: 14.10.2020

M/s Alta Vista Info Solutions Pvt. Ltd. (Formerly known as M/s Combitic Global Pharma Pvt. Ltd.), having office at 17, New Rohtak Road, Karol Bagh, New Delhi-110005 through its Director Mr. Pavel Garg.

Appellant

Versus

1. M/s Haryana State Industrial & Infrastructure Development Corporation Ltd. (HSIIDC Ltd.) Vanjjya Nikunj Complex, Udyog Vihar, Phase V, Gurugram, Haryana through Estate Manager.

Also at:

M/s Haryana State Industrial & Infrastructure Development Corporation Ltd. (HSIIDC Ltd.) C 13-14, HUDA Complex, Sector-6, Panchkula-134109 through its Managing Director.

2. Department of Industries & Commerce, Haryana, 1st Floor, 30 Bays Building, Sector-17, Chandigarh through its Principal Secretary.

Respondents

CORAM:

Justice Darshan Singh (Retd.)
Shri Inderjeet Mehta
Shri Anil Kumar Gupta

Chairman
Member (Judicial)
Member (Technical)

Present: Shri Vikas Deep, Advocate, counsel for appellant.
Shri Padamkant Dwivedi, Advocate, Counsel for respondents.

[The aforesaid presence is being recorded through WhatsApp Video Conferencing since the proceedings are being conducted in virtual court.]

ORDER**JUSTICE DARSHAN SINGH (Retd.) CHAIRMAN:**

The respondents have filed the Status Report through email which is taken on record.

2. The present appeal has been preferred against the order dated 18.12.2019 passed by learned Haryana Real Estate Regulatory Authority, Gurugram (hereinafter called the 'Authority') vide which the complaint filed by the appellant/allottee was summarily disposed of.

3. Learned counsel for the appellant has contended that the respondents fall within the definition of 'Promoter'. The project was not completed within the stipulated period. Physical possession of the plot has not been handed over to the appellant so far. So, the provisions of the Real Estate (Regulation and Development) Act, 2016 (hereinafter called 'the Act') have become applicable and the learned Authority has wrongly dismissed the complaint.

4. On the other hand, learned counsel for the respondents contended that the respondents are ready to hand over the possession of the plot in question to the appellant/allottee. He further contended that the learned Authority has given the liberty to the appellant to approach the Principal Secretary to the Government of Haryana, Town and Country Planning Department. He contended that the

complaint filed by the appellant before the learned Authority was not maintainable.

5. We have duly considered the aforesaid contentions.

6. The learned Authority has disposed of the complaint filed by the appellant/allottee by passing the following short order: -

“None is present on behalf of the respondent, hence the respondent is proceeded against ex-parte.

The plot in question was allotted by the HSIIDC in the year 2008 i.e. prior to coming into force of RERA Act and as such, this authority has no jurisdiction to adjudicate the matter and the complainant is advised to follow the matter with Principal Secretary to Government of Haryana, Town & Country Planning Department, Chandigarh to get the grievances redressed.

The matter stands disposed of accordingly. File be consigned to the registry.”

7. As per the aforesaid order, the plot in question was allotted by the respondents in the year 2008 and the learned Authority has taken the view that as the plot was allotted prior to coming into force the Act, so it has no jurisdiction to adjudicate the matter and the appellant was advised to approach the Principal Secretary to Government of Haryana, Town & Country Planning Department, Chandigarh to get the grievances redressed. In our view, this approach of the learned

Authority is totally contrary to law and even to their own judgments in various cases.

8. It cannot be disputed that the respondents clearly fall within the definition of 'Promoter' as defined in Section 2(zk) of the Act, which reads as under: -

(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 apartment, for the purpose of selling all of some of the apartments to other persons and includes his assignees; or*
- (ii) *a person who develops land into a project, whether or not the person also constructs structures on any of the plots, for the purpose of selling to other persons all or some of the plots in the said project, whether with or without structures thereon; or*
- (iii) *any development authority or any other public body in respect of allottees of—*
 - (a) *buildings or apartments, as the case may be, constructed by such authority or body on lands owned by them or placed at their disposal by the Government; or*
 - (b) *plots owned by such authority or body or placed at their disposal by the Government,*
for the purpose of selling all or some of the apartments or plots; or

- (iv) *an apex State level co-operative housing finance society and a primary co-operative housing society which constructs apartments or buildings for its Members or in respect of the allottees of such apartments or buildings; or*
- (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; or*
- (vi) *such other person who constructs any building or apartment for sale to the general public.*

Explanation.—For the purposes of this clause, where the person who constructs or converts a building into apartments or develops a plot for sale and the person who sells apartments or plots are different person, both of them shall be deemed to be the promoters and shall be jointly liable as such for the functions and responsibilities specified under this Act or the rules and regulations made thereunder.”

9. As per Section 2(zk)(ii) of the Act, a person who develops land into a project for the purpose of selling to other persons, will fall within the definition of the ‘Promoter’. Section 2(zk)(iii) further provides that even the development authority or any other public body indulging in the sale of buildings, apartments and plots will also be promoter. Thus, the respondents being a development authority/public body, shall fall within the definition of ‘Promoter’ in respect of the appellant.

10. The real estate project has been defined in Section 2(zn) of the Act which reads as under: -

(zn) "real estate project" means the development of a building or a building consisting of apartments, or converting an existing building or a part thereof into apartments, or the development of land into plots or apartments, as the case may be, for the purpose of selling all or some of the said apartments or plots or building, as the case may be, and includes the common areas, the development works, all improvements and structures thereon, and all easement, rights and appurtenances belonging thereto;

11. As per the aforesaid section, the development of the land into plots for the purpose of sale will also fall within the definition of the 'Real Estate Project'.

12. Learned counsel for the respondents could not dispute that the respondent-Corporation is developing the land into industrial plots situated in Sectors 34-35, Gurugram for the purpose of sale. So, the respondent-Corporation clearly falls within the definition of 'Promoter' and the project being developed by it also falls within the definition of the 'Real Estate Project'.

13. As per the status report filed by the respondents-Corporation, the work of motorable road in front of the plot of the appellant was completed in June, 2017; the water supply system was completed in December, 2018. It is further

categorically mentioned that the physical possession of the plot could not be offered as the work of sewerage system/sewerage disposal network has not been completed in front of the plot which indeed is required to be done by the appellant only after construction of the building.

14. Learned counsel for the appellant has drawn our attention to the Estate Management Procedures (EMP), 2015, Chapter-4, Clause 4.1 which reads as under: -

“4.1 An ‘offer of possession’ means that the Corporation makes an offer of physical possession of the plot/site to the allottee. The Corporation would offer the site(s) for physical possession after it has completed the basic infrastructure facilities comprising of (i) a motorable access road to the site, (ii) water supply system i.e. availability of water connection at site for construction & drinking purpose; (iii) Sewerage disposal Network; (iv) Electrical Infrastructure comprising of the Distribution system network for construction purpose; and (v) Provision of security service in the Estate, and made these facilities available at site in respect of the plots for which the possession is offered so as to enable the allottee to start construction of building for the project. It would be in order to offer the possession of plots in an estate in parts or in a phased manner. (The amendments in EMP with respect to basic infrastructure facilities to be provided before offer of possession shall be applicable for estates to be planned/developed in future i.e. after 08.03.2017).”

15. As per the aforesaid clause, the Corporation will offer the physical possession after completing the basic infrastructure facilities comprising of motorable road, water supply system, sewerage disposal network alongwith certain other requirements. So, even as per their own Estate Management Procedures, it was the duty of the respondents-Corporation to complete the sewerage disposal network before offering the possession.

16. The relevant provisions of the Act have come into force w.e.f. 01.05.2017. On that date, there was no motorable road in front of the plot of the appellant; there was no water supply system and the sewerage disposal network is not yet complete. The physical possession of the plot has not been offered to the appellant even today. So, we are of the considered opinion that the provisions of the Act have become applicable to the project in question and the learned Authority was required to adjudicate the complaint filed by the appellant on merits. The view taken by the learned Authority that it has no jurisdiction as the allotment was made in the year 2008, is totally erroneous as the respondents/promoter have yet to fulfil their obligations. Consequently, the impugned order cannot be sustained in the eyes of law.

17. Thus, keeping in view our aforesaid discussions, the present appeal is hereby allowed. The impugned order dated

18.12.2019 passed by the learned Authority is hereby set aside. The case is remanded to the learned Authority for adjudication of the complaint filed by the appellant on merits.

18. The parties are directed to appear before the learned Authority on 02.11.2020.

19. Copy of this order be communicated to the learned counsel for the parties/parties and the learned Authority for compliance.

20. File be consigned to the records.

Announced:
October 14th, 2020

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

Inderjeet Mehta
Member (Judicial)

Anil Kumar Gupta
Member (Technical)

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