HARYANA REAL ESTATE REGULATORYAUTHORITY PANCHKULA, HARYANA

Date:

11.12.2018

1. Complaint No. 510/2018

Hearing:

2nd

Hoshiar Singh Mandiwal

...Complainant

Versus

M/S Piyush Colonisers Ltd

...Respondent

2. Complaint No. 486/2018

Hearing:

2nd

MeenuRustagi

...Complainant

Versus

M/S Piyush Colonisers Ltd

...Respondent

3. Complaint No. 487/2018

Hearing:

 2^{nd}

Ranjan Gupta

...Complainant

Versus

M/S Piyush Colonisers Ltd

...Respondent

4. Complaint No. 488/2018

Hearing:

2nd

Meenu Rastogi

...Complainant

Versus

M/S Piyush Colonisers Ltd

...Respondent

5. Complaint No. 489/2018

Hearing:

2nd

Ritu Singh

...Complainant

Versus

M/S Piyush Colonisers Ltd

...Respondent

6. Complaint No. 490/2018

Hearing:

2nd

Atul Bawa&Anr.

...Complainant

Versus

M/S Piyush Colonisers Ltd

...Respondent

7. Complaint No. 492/2018

Hearing:

2nd

Sunita

...Complainant

Versus

M/S Piyush Colonisers Ltd

...Respondent

8. Complaint No. 493/2018

Hearing:

2nd

Vinay Kumar

...Complainant

Versus

M/S Piyush Colonisers Ltd

...Respondent

9. Complaint No. 494/2018

Hearing:

2nd

Prateek Bhatnagar & Anr

...Complainant

Versus

M/S Piyush Colonisers Ltd

...Respondent

2nd 10. Complaint No. 495/2018 Hearing: ...Complainant Sube Singh Versus ...Respondent M/S Piyush Colonisers Ltd 2nd 11. Complaint No. 496/2018 Hearing: ...Complainant Rupali Singh Versus ...Respondent M/S Piyush Colonisers Ltd 2^{nd} Hearing: 12. Complaint No. 498/2018 ...Complainant Dr. Ida Bharti Versus ...Respondent M/S Piyush Colonisers Ltd 2^{nd} 13. Complaint No. 500/2018 Hearing: ...Complainant Pingaksh Versus ...Respondent M/S Piyush Colonisers Ltd 2^{nd} Hearing: 14. Complaint No. 502/2018 ...Complainant Ram Niwas Bansal Versus ... Respondent M/S Piyush Colonisers Ltd

2nd Hearing: 15. Complaint No. 503/2018 ...Complainant Rajinder Kumar Rustagi&Anr. Versus ...Respondent M/S Piyush Colonisers Ltd 2nd Hearing: 16. Complaint No. 505/2018 ...Complainant Yashpal Bhutani Versus ...Respondent M/S Piyush Colonisers Ltd 2nd Hearing: 17. Complaint No. 507/2018 ...Complainant Ashu Jain Versus ...Respondent M/S Piyush Colonisers Ltd 2nd Hearing: 18. Complaint No. 508/2018 ...Complainant Vinay Kumar Jain &Anr. Versus ...Respondent M/S Piyush Colonisers Ltd 2nd Hearing: 19. Complaint No. 509/2018 ...Complainant Sachin Sharma Versus ...Respondent

M/S Piyush Colonisers Ltd

20. Complaint No. 485/2018

Hearing:

2nd

Anita Rustagi

...Complainant

Versus

M/S Piyush Colonisers Ltd

...Respondent

21. Complaint No. 506/2018

Hearing:

2nd

Prabina Kumar Mohapatra

...Complainant

Versus

M/S Piyush Colonisers Ltd

...Respondent

CORAM:

Sh. Rajan Gupta

Chairman

Sh. Anil Kumar Panwar

Member

Sh. Dilbag Singh Sihag

Member

APPEARANCE:

- 1. Sh. Kamal Dahiya Counsel for Complainant in all the above listed matters
- 2. None present on behalf of Respondent

ORDER

This bunch of 21 complaints is being disposed of by this common order because the facts of all the complaints are similar and related to the same project of the respondent.

This is second hearing of the matter. Despite delivery of the notice none has appeared on behalf of the respondent nor any written

statement has been filed. Keeping in view the facts narrated in the orders dated 23.10.2018, it has been decided to proceed against the respondents ex-parte. Facts of complaint no. 510 of 2018, Hoshiar Singh Mandiwal vs Piyush Colonisers have been taken into consideration for disposal of this bunch of complaints.

2. The Authority in its orders dated 23.10.2018 had made certain observations about the respondents and their project in question. The said orders dated 23.10.2018 shall be read as a part of this order.

In brief the Authority had observed in its orders dated 23.10.2018 that, the complainant has paid an amount of about Rs.26.25 lakhs for purchase of an apartment in the project of the respondent which constitutes about 85% of the total sales consideration. Its deemed date of delivery was April, 2015 but still the project is far from completion, in fact, it has been abandoned for the last many years as no construction work is going on. Despite repeated efforts, the complainants have not even been able to communicate with the respondents. Criminal complaints have been filed against the respondents on multiple occasions. The Directors of the respondent company are in jail and are facing civil and criminal proceedings. Even an MoU arrived at between a group of allottees and the respondents has not been honored by the respondent. Allegedly, since the project



has been abandoned even the structures which have been constructed at the site are deteriorating and may have already become unsafe. It may require lots of time, effort and money to revive the project, for which the respondents does not appear to be having the resources as well as intent.

The Authority had observed that respondents have put the allottees in serious difficulties, therefore, in the circumstances they deserve relief by way of refund of money paid along with interest and appropriate compensation.

3. In view of the aforesaid observations certain directions were given to the respondents as well as to the Director, Town & Country Planning Department Haryana in the order dated 23.10.2018. The Director Town and Country Planning has not submitted his reply. It is not know whether they have even got the site inspected. Clearly the DTCP is failing in discharging its legal duties and responsibilities spelt out by way of conditions of license. It is the license granted by the Director which has given birth to this project. In terms of the conditions of the license director is duty bound to take remedial actions if the project is not developed in time but they have failed to do so. Now, to make the matter worse they are not even bothering to file a reply before this Authority. A notice for filing a reply was



delivered to the office of the Director by hand on 16.11.2018, a receipt of which is available in the record.

At this juncture it is ordered that a copy of this order shall be delivered to the Director as well as to the Secretary to Govt., Haryana, Town & Country Planning Department. The secretary is requested to issue appropriate directions to the Director for submitting their reply to the Authority in all such matters. The Director is duty bound to assist the Authority in resolving such complex issues relating to the stuck real estate projects. If they do not cooperate such projects cannot be completed.

Authority observes that there appears to be no scope for completion of the project in near future because the Directors of the respondent company are in jail and are facing multiple civil and criminal proceedings. Faith of the allottees and complainants in the respondent is completely eroded. The project is already delayed by more than 3½ years and keeping in view its current stage of its construction, it may further take many more years. In the circumstances, the complainants deserve to be granted relief as provided to them by Section 18 of the RERA Act, 2016.

It is, therefore, ordered that the respondents shall refund the entire sum of money paid by the complainants to them along with interest as prescribed in Rule 15 of RERA Rules, 2017. The respondents shall pay the money within a period of 60 days from the date of passing these orders.

5. The authority also realizes that in the circumstances it may be difficult for the complainants to get these orders executed. It may not be possible to realize the money from the assets of the project only. The money may actually be realized from the other assets of the respondents whenever those are monetized by the appropriate process of law.

In another matter vide which bunch of 6 complaints was disposed of with lead case Complaint No. 383of 2018-Gurbaksh Singh M/s ABW Infrastructures Pvt. Ltd. and Ors, certain orders have been passed by this Authority in the similar circumstances. The facts of the current bunch matters is similar to the facts of that case.

It is appropriate to reproduce the operative part of the orders passed by this Authority in the said Complaint Case No.383 of 2018- Gurbaksh Singh M/s ABW Infrastructures Pvt. Ltd. and Ors, as follows:

"In the light of above facts, there is no doubt that the complainants deserve relief by way of refund of the money paid by them along with interest prescribed in Rule 15 of HRERA Rules. The main



question is, however, against whom will this order be directed because assets of the project have been attached; recovery proceedings are going on and the respondent No.1 is in jail in multiple criminal matters. This Authority is duty bound to provide effective relief to the complainants. When assets of project and also that of the promoters have been attached, how will this order be implemented is a question. The complainants may have to approach multiple forums/authorities and may have to compete with multiple claims under variety of laws.

It is also possible that the money to be realized from the assets of the project may be less than the total claims against the property. Those claims may relate to the financial institutions, depositors or other creditors. Different laws of the land will be applicable in this situation for satisfying those claims. There may be competition amongst various claims. This matter may even reach higher courts and take long time to attain finality.

At this point of time it is relevant to take note of the system 1. by which the real estate projects are usually developed in the State of Haryana. Prospective developers of the real estate project arranges land at their own level by way of out right purchase from the original landowners or by way of allotment from other developers or by way of entering into collaboration agreement with the original landowners for development for a real estate project. The original landowners himself or the landowners in collaboration with a developer apply to the Town & Country Planning Department of the Government of Haryana for grant of licence for development of real estate colony. The Town & Country Department carries out requisite due diligence about the project, applicable laws, probability of linking the essential services with the town level infrastructure and financial strength of the applicant developer. They also examine the title of the land of the applicant. After due diligence, Director, Town & Country Planning takes a decision to grant licence for development of colony subject to fulfilment of prescribed conditions.

2. Apart from other requirements, the developer of Real Estate Project in Faridabad, Haryana is supposed to payEDC which at present is Rs. 93.68 lakhs and Rs. 3.74 crores per acre of landfor Residential and Commercial Project respectively. These EDCs are chargeable from the allottees of the real estate project. With this money collected by the State Government, the State agencies are supposed to provide town level insfrastructure facilities.

After obtaining licence, several plans also have to be got approved from the Town & Country Planning Department and

other State Government agencies. These plans includes estimates in respect of plans relating to provision of services like water supply, sewerage, storm drainage water, road infrastructure, fire escape and electricity supply etc. layout plans of the apartments, architectural plans of the apartments, Zoning plans etc. are also approved by the State Government.

After approval of the plans and payment of specified amount of EDC etc. the developers usually advertise the project and seek booking from prospective allottees. Plots/apartments are booked in the real estate projects on the basis of variety of payment plans which usually are comprised of 10-20 per cent as booking amount followed by payments as per plan. The payments are either construction linked or time linked. Thereafter, agreements are made between the parties and usually full amount of money is received from the allottees within 1-3 years of launching the project. The developeris supposed to develop the project and handover the plots/apartments to the allottees in a time bound manner. It is mandatory that after completion and handing over of the

plots/apartments conveyance deeds are executed in favour of the allottees.

By way of conveyance deed, the ownership of the apartment or the proportionate share in the piece of land under the apartments and the land under the plot comes into the ownership of the allottee. Thus, eventually, the allottee becomes owner of the plot or the apartment and proportionate share of the land under the apartment complex. The State Government in turn puts various conditions while granting licence and while approving development plans.

The State is also supposed to closely monitor the progress of the project and grant approvals of various stages of development of the project. The district level machinery of the State is supposed to visit the project site on a regular basis to ensure that slippages do not happen.

If above concept of Project development is understood in a logical manner, then when an allottee books an apartment or plot he is deemed to have acquired a stake in the proportionate part of the land of the project. Further, when he pays full or substantial part of the consideration to the developer, he has to be considered a deemed owner of the proportionate piece of land of the project. He acquires a valuable interest in the Project which cannot be alienated by anybody other than himself. Further, this presupposes that his right is considered superior to any other right over the land including that of lenders of money. Nobody can lawfully alienate his right in the Project.

More impactfully, the allottees pay money to the promoter on the strength of a sovereign assurance granted by the Town & Country Planning Department announcing to the public at large that the promoter is a bona fide person; he has financial means to execute the project; he has technical capability to develop the project in a time bound manner; the project has legitimate licence; it

is approved in accordance with the sanctioned plans and all services will be provided in the project including the external services which will be connected with the town level services etc. The allottee, on the strength of the licence and the aforesaid sovereign assurances, is given a confidence that his money is safeand the State takes responsibility to safeguard his interest. It is this base and theory on which entire economic system of the Country rests. This confidence of the public and ordinary citizens cannot be allowed to erode, otherwse it will have disastrous economic and social consequences.

11. At this stage, in view of foregoing facts, circumstances and legal arguments, a question arises that in a project of which deemed owners are allottees of the apartments/plots, whether a promoter is entitled to alienate the land of the project to a third party, including a banking or a financial institution, to the prejudice of rights of the allottees? Further, if any banking/financial institutions lends money to the promoter against physical assets of the project without seeking consent of the allottees, whether the rights of the allottees in the project can be said to also have been alienated without their consent?

Another question that needs to be answered is, if there are multiple claims on the assets of the project as well as on the other assets of the promoter, whether claims of the allottees should be considered superior to that of the other claimants in respect of the assets of the real estate project concerned?

12. It may be relevant here to make a mention of the 'Insolvency and Bankruptcy (Amendment) Ordinance, 2018 which came into force on 6th June, 2018. The related provision of the ordinance is reproduced below:-

[&]quot;In section 5 of the principal Act,—

(ii) in clause (8), in sub-clause (f), the following Explanation shall be inserted, namely:—

'Explanation. —

For the purposes of this sub-clause,— (i) any amount raised from an allottee under a real estate project shall be deemed to be an amount having the commercial effect of a borrowing; and (ii) the expressions, "allottee" and "real estate project" shall have the meanings respectively assigned to them in clauses (d) and (zn) of section 2 of the Real Estate (Regulation and Development) Act, 2016"

As a result of the aforesaid provisions incorporated by the ordinance, home buyers have been brought within the definition of "financial creditors under the insolvency and bankruptcy code". As a result of the amendments, the amounts received from the allottees by the promoters of the real estate projects shall be deemed to be the amounts having a commercial effect of a borrowing. Therefore, the amounts received from the allottees shall be regarded as financial debts and the allottees shall be deemed to be the financial creditors. Under the Insolvency and Bankruptcy Code, 2016, their claims can be pressed at par with the other financial creditors.

13. We are of the considered view that the right granted to an allotee 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, the allottees of a project after having paid the EDC to the State Government 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 get their claim satisfied from other assets of the promoters. They can press their claim even against the sureties and guarantees offered by the promoters.

- 13. 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:-
 - The financial institutions are expert agencies which (i) carry out due diligence about the promoter as well as his project before deciding to lend money. They have expert manpower and machinery to adjudge 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 factors-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 middleclass person who harbours the dream of owning plot, house or an apartment. 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 accounts 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 to those of the financial institutions.

- (iii) It is relevant to quote here the provisions of Section 18(1), Section 19(3) and (4), Section 79 and Section 89 of the Real Estate (Regulation & Development) Act, 2016.
- Section 18: Return of amount and compensation- (1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building,— (a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date

specified therein; or (b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act: Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.

Section 19(3): Rights and Duties of allottees- The allottee shall be entitled to claim the possession of apartment, plot or building, as the case may be, and the association of allottees shall be entitled to claim the possession of the common areas, as per the declaration given by the promoter under sub-clause (C) of clause (I) of sub-section (2) of section 4.

(4) The allottee shall be entitled to claim the refund of amount paid along with interest at such rate as may be prescribed and compensation in the manner as provided under this Act, from the promoter, if the promoter fails to comply or is unable to give possession of the apartment, plot or building, as the case may be, in accordance with the terms of

agreement for sale or due to discontinuance of his business as a developer on account of suspension or revocation of his registration under the provisions of this Act or the rules or regulations made thereunder.

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.

- 14. It has been discussed in detail in foregoing paras that when complex legal proceedings are going on against a project and
- 15. against the promoters of the project, it may take long time for it to get resolved. Accordingly, it is ordered that whenever such resolution happens, the rights of the allottees shall be treated superior most. The money paid by the allottees shall be refunded before entertaining claim, if any, of the commercial creditor.
- 16. Another question that arises at this juncture is whether by granting a superior right to the allottees compared with other creditors, whether purposes of the RERA Act are fully served or not? This Authority observes that RERA Act is supposed to provide expeditious remedy to the allottees and also ensure that real estate sector develops in a systematic manner and ongoing projects are completed within a time bound manner. This necessarily brings us to the question of responsibilities of the State Government, through the Town & Country Planning Department, which is the license/approving authority for development of a real estate project.
- 17. In a situation like the facts of the case, it must be determined whether the State Government and its agencies have faithfully discharged the duties cast upon them by law? Have the State agencies monitored the project in a proper manner through the

course of its development? Why did they allow the project to slip in the manner that it has become a stuck project to the prejudice of the allottees as well as society in general?

18. It can be safely said that there must have been failure of some organs of the machinery of the State which resulted into the state of affairs that are being faced here. The promoters have been defaulting in payment of dues to the Government. In this situation, especially when the project promoters have turned serious defaulter of other financial institutions and criminal cases are pending against them, the Town & Country Planning Department should have taken timely steps to safeguard interests of the allottees. The allottees purchased the apartments on the basis of the sovereign assurances held out to them by the State Government. Now, it is an equal duty of the State Government to come to their rescue and take all steps necessary to get the project completed by taking it over or in any other manner considered appropriate. The Town & Country Planning Department cannot allow a licensee to collect money from the allottee and abandons the project. The Department is duty bound to take coercive action.

We hereby direct that for safeguarding interests of the allottees, Director, Town & Country Planning Department, Haryana shall immediately make an assessment of the assets of the project and take appropriate decision for getting the project completed by taking it over themselves or through any other appropriate agency. They shall take these steps regardless of the claims of the other financial creditors against the project promoters or the project land. After cancellation of the licence, once the project is taken over by the Town & Country Planning Department, the rights of the allottees can be secured. The financial institutions or other creditors, however, may get their claims satisfied from the remaining assets of the project or from the other assets and properties of the promoters

or by involving guarantees and securities. It is only by taking over of the project by Town & Country Planning Department that the purposes of the RERA Act will be served and interest of the allottees can be protected.

- 19. The directions issued in the foregoing paras are summarized as follows:-
 - (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 allotees 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.
 - Department, Haryana is duty bound to protect interest of the allottees and to ensure that the project on the licenced land is completed in accordance with sanctioned plans. The Director shall immediately take steps to take over the project and get it completed in the manner considered appropriate. The Director shall take over the project regardless of any other proceedings pending against the project assets including under the SARFAESI Act, 2002 or the

- "Haryana Protection of Interest of Depositors in the Financial Establishment Act, 2013".
- (iv) While all the captioned complaints are being disposed of by this final order, Executive Director shall file a suo-moto complaint against respondents No.1 & 2 and also implead Director, Town & Country Planning Department, Haryana as a respondent for monitoring of follow up actions taken on these directions.
- (v) The complainants and other similarly placed allottees may present this order 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."
- 6. Accordingly, it is ordered as follows:-
 - (i) All the complainant as well as other similarly placed allottees of the disputed project of the respondent company shall have a superior right to satisfy their claims for refund of the money along with interest, over the rights of any other person including financial institutions and other creditors of any kind.

- (ii) If claims of the allottees are not fully satisfied from the assets of the project in question, the allottees shall be treated as creditors of the respondents 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..
- Department, Haryana is duty bound to protect interest of the allottees and to ensure that the project on the licenced land is completed in accordance with sanctioned plans. The Director shall immediately take steps to take over the project and get it completed in the manner considered appropriate. The Director shall take over the project regardless of any other proceedings pending against the project assets.
- (iv) While all the captioned complaints are being disposed of by this order, Executive Director of this Authority shall file a suo-moto complaint against the respondent M/S Piyush Colonisers Ltd. and also implead Director, Town & Country Planning

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Department, Haryana as a respondent for monitoring follow up actions taken on these directions.

The complainants and other similarly placed allottees may present this order before any authority or court dealing with liquidation of assets of the Project as well as other assets of the respondent company and seek satisfaction of their claim 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.

Dilbag Singh Sihag Member Anil Kumar Panwar Member Rajan Gupta Chairman