

PROCEEDINGS OF THE DAY

Day and Date	Tuesday and 04.12.2018
Complaint No.	136/2018 case titled as The Allottees Of The Project "The Olive Spire & Other Vs. M/s Pal Infra Structure & Developers Pvt. Ltd & others
Complainant	The Allottees Of The Project "The Olive Spire & other
Represented through	Shri Venket Rao, Advocate for the complainant.
Respondent	M/s Pal Infra Structure & Developers Pvt. Ltd & others
Respondent Represented through	Shri Prashant Sheoran, Advocate for respondent No.1 and Shri Parmanand Yadav Advocate for the respondents No.2 to 7.
Last date of hearing	5.11.2018
Proceeding Recorded by	Naresh Kumari & S.L.Chanana

Proceedings

Project is not registered with the authority.

Arguments heard.

Reference earlier proceedings dated 24.7.2018, 6.9.2018 and 5.11.2018 (which may be read as part of present proceedings dated 4.12.2018) wherein it has come on surface that as per para No.5 of agreement dated 3.10.2009 inter-se all the three parties i.e. Dayanand, Sumit, Roshan Lal, Brahmprakash and Ram Niwas-land owners and M/s Pal Infrastructure & Developers Pvt. Ltd. (respondent No.1) and M/s Forte Point India Pvt. Ltd. Relevant para No.5 is re-produced as below:-

"It is mutually decided between the first party and the land owner that the usable land area corresponding to the FSI being sold i.e. 8093 sq. meter duly demarcated in red colour in the demarcation plan attached herewith (Annexure-H), shall be registered in the name of the First party M/s Pal Infrastructure and Developers Pvt. Ltd. (a company incorporated under Companies Act, 1956) having its registered office at 149-152, First Floor, Edmonton Shopping Mall, Hotel, the Bristol, Gurgaon and necessary permissions for effecting the transfer of License thereon be taken from the office of the DTCP, Haryana, and/or any other Govt. Agency, as required or the necessary G.P.A. for the same shall be executed in favour of the first party.

Further the First party assures, declares and confirms that the said area of 1,80,000 sft. Of FSI being sold to the Second party, M/s Forte Point India Pvt. Ltd. (a company incorporated under Companies Act, 1956) having its registered office at 260, Sector 15, Part I, Gurgaon as aforesaid, is free from all encumbrances mortgage, loan, gift, hypothecation, attachments, liability, tenancy, unauthorized occupation, claims, liens and charges and that no portion of it is sold/transferred to any other party and there are no dispute pending in the court of law or otherwise. First party shall keep the title clean and marketable of the said area at all the times till the duration and full implementation of this agreement. The first party agrees to keep indemnified and hereby indemnifies and keeps harmless the second party and or his successors in interest for and against any loss, damage, demand, claim, action dispute, costs, charges and expenses of any nature, suffered or sustained by the second party being the purchaser of the said FSI, due to any representations of the first party in this agreement, being found incorrect and/or due to breach of any of the covenants/assurance given by the first party. Further the first party covenants with the second party to reimburse him and/or his nominees and or/successors in title for any claim, cost, charges, and expenses arising thereof.

NOW, THEREFORE, THIS AGREEMENT WITNESSETH AND IT IS AGREED AS UNDER:-

Para No.4 is re-produced as below:-

Further it is mutually understood that the second party is entitled to make bookings and receive advances towards their share of FSI and development thereof in accordance with the Govt. stipulations. The first party shall execute all requisite documents in the favour of second party/banks/financial institutions to enable the potential buyers to avail bank loans to buy apartments from the second party, immediately on execution of GPA. This is a condition precedent of this agreement. The First party and Land owners have agreed to give all co-operations to second party to arrange and facilitate Housing loans for the individual by providing all types of documents as required”.

However, it was never registered. However, two documents are on record one is judgment dated 26.3.2014 passed by Shri J.B.Gupta, Additional District Judge, Gurgaon, in Arbitration case No.3 of 2010/2013 in case titled as M/s Forte Point India Pvt. Ltd. (a company incorporated under Companies Act,1956) having its registered office at 260, Sector 15, Part I, Gurgaon through its Director-cum-Chairman/duly authorized person- Shri Amarjit Singh son of Shri Nirmal Singh resident of A-18/14, DLF, Phase-I, Gurgaon (Petitioner) Versus M/s Pal Infrastructure and Developers Pvt. Ltd. (a company incorporated under Companies Act,1956) having its registered office at 149-152, First Floor, Edmonton Shopping Mall, Hotel, the Bristol, Gurgaon through its Director/duly authorized person Shri Rajesh Kumar son of Harpal Singh, resident of House No.164-P, Sector 15-Part I, Gurgaon (Respondent).

Petition under section 9 (i) of the Arbitration and Conciliation Act,1996 for providing interim measures of protection and interim injunction in respect of subject matter property in question covered under agreement to sell dated 3.10.2009 and addendum to said agreement dated 22.1.2010 containing arbitration clause between the parties to the agreement.

Operative part of the judgment reads as under:-

“In these circumstances, I am of the considered opinion that the petitioner has succeeded in providing prima facie case in its favour, balance of convenience also lies in favour of the petitioner and petitioner shall suffer irreparable loss if the respondents be not restrained from changing the nature of the suit property and from alienating the suit property to any other person till the matter is decided by the arbitrator. With these observations, the present petition filed by the petitioner is hereby allowed and the respondent is hereby restrained from alienating or transferring the suit property in any manner in favour of third party and also restrained from changing the nature of the suit property till the matter is finally decided by the arbitrator”.

**Sd/-
J.B. Gupta,
Additional District Judge,
Gurgaon**

Thirdly, a BBA dated 21.9.2013 (copy placed on record) inter-se ‘Forte Point India Pvt. Ltd’ and 72 buyers have been signed by authorized signatory of M/s Forte Point India Pvt. Ltd. for construction of 110 flat-units out of which 72 allottees are on record. M/s Forte Point India Pvt. Ltd. has accepted considerable amount from allottees.

M/s Forte Point India Pvt Ltd. Shri Amarjit Singh son of Shri Nirmal Singh, Managing Director has placed an affidavit dated 4.12.2018 on record (copy placed on record). He is under obligation by way of construction of flats for which he will pay EDC, IDC as well as other licence fees etc. to the

D.T.C.P. as per the proportionate share. He has purchased an FSI of 1.80 lakhs square feet from respondent no.1 - M/s Pal Infrastructure & Developers Pvt. Ltd. with the consent of respondent no.2. However, any hitch and glitch in the matter is to be cleared by DTCP Department i.e. by way of (i) DTCP may allow BIP permission on account of sale of FSI so that M/s Forte Point India Pvt. may complete his obligation as per the BBA towards the allottees (ii) the Forte Point India Pvt. Ltd. will fulfill all his obligations with regard to EDC IDC charges proportionately alongwith licence renewal fee etc. (iii) keeping in view the judgment dated 26.3.2014 as mentioned above, the licence for this portion of the land (2 acres) be given to M/s Forte Point India Pvt. Ltd so that he may come with clean hands as per his affidavit dated 4.12.2018.

As per provisions of Section 3 of the Real Estate (Regulation & Development) Act, 2016, M/s Forte Point India Pvt. will get his project registered upon due approvals of DTCP and other competent authorities failing which action under section 59 of the Act ibid shall be initiated against M/s Forte Point India Pvt.

Complaint stands disposed of. Detailed order will follow. File be consigned to the registry.

Samir Kumar
(Member)
4.12.2018

Subhash Chander Kush
(Member)
4.12.2018

**BEFORE THE HARYANA REAL ESTATE REGULATORY
AUTHORITY, GURUGRAM**

Complaint No. : 136 of 2018
First date of hearing: 15.05.2018
Date of decision: 04.12.2018

1. Allottes of the project- The Olive Spire
2. Forte Point India P. Ltd.
(both represented by Mr. Amarjit Sngh and
Ms. Kanchan S Sathpathy)
Add.:260, sector-15, Part -I,
Gurugram-122001.

Complainants

Versus

1. M/s Pal infrastructure & Developers P.
Ltd.
Regd. Office: Pal Tower, 3rd Floor, M.G.
Road, Sikanderpur, Gurugram, Haryana
2. Sh. Dayanand , karta (Landowner)
3. Sh. Brahm Prakash (Landowner)
4. Sh. Ramnivas(Landowner)
5. Sh. Roshan Lal (Landowner)
6. Sh. Amit Kumar(Landowner)
7. Sh. Sumit Kumar (Landowner)
Respondent no. 2 to 7 R/o., House no. 14, Sector
15, Gurugram.

Respondents



CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Shri Venkat Rao
Shri Prashant Sheoran

Authorised representative for the
complainant
Advocate for respondent no. 1

ORDER

1. A complaint dated 06.04.2018 was filed under section 31 of the Real Estate (Regulation and Development) Act, 2016 read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 by the complainant no.1 who are allottees of the project 'the olive spire' & complainant no. 2, M/s.Forte Point India Pvt Ltd. represented by Mr. Amarjit Singh & Ms. Kanchan S Satpathy, against the promoters M/sPal infrastructure and land owners who are the respondents in the present complaint for non compliance of their contractual obligation in terms of the MoU and agreement to sell dated 03.10.2009 between the respondent no. 1 and complainant no. 2.

2. Since, the agreement to sell and memorandum of understanding was executed on 03.10.2009, prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, so the penal proceedings cannot be initiated retrospectively. Hence, the authority has decided to treat this complaint as an application for non- compliance of



obligation on the part of the land owners and promoters under section 34(f) of the Act *ibid*.

3. The particulars of the complaint case are as under: -

1.	Name and location of the Project	“the olive spire” at sector 70A, Gurugram
2.	Nature of real estate project	Group housing complex
3.	RERA registered/unregistered.	unregistered
4.	Date of execution of MOU & agreement to sell between respondent 1 & complainant no. 2	03.10.2009 (Annx P/3)
5.	Total amount paid/invested by the complainant no. 2 till date	Rs. 26,87,53,948/- (Annx P/5)
6.	Amount collected from the buyers by the complainant no. 2	Rs.23,87,18,786/-
7.	DTCP license (22.08.2008)	45 of 2009
8.	First addendum to agreement to Sell dated 03.10.2009	22.01.2010 (Annx P/6)
9.	Initiation of petition & interim injunction (3 of 2010/2013)	25.11.2010 (Annx P/7)
10.	Date of order in petition no.3 of 2010/2013	26.03.2014 (Annx P/7)
11.	cancellation of DTCP license (1 st Time)	29.05.2011 (Annx P/9)
12.	2 nd addendum to agreement to Sell dated 03.10.2009	22.07.2011 (Annx P/10)
13.	order for revival of cancelled license no. 45/2009	30.08.2011 (Annx P/12)
14.	cancellation of license 45/2009 (for 2 nd time)	27.05.2015 (Annx P/13)



4. The details provided above have been checked on the basis of record available in the case file which has been provided by the complainants and the respondents.

5. Taking cognizance of the complaint, the authority issued notice to the respondents for filing reply and appearance. The respondent no.1 has filed the reply on 24.05.2018 and the respondent nos. 2 to 7 have filed their common reply on 28.05.2018 along with an application seeking deletion of their names from the array of parties. The respondent appeared on 15.05.2018, 06.06.2018, 05.07.2018, 24.07.2018 & 06.09.2018. The case came up for hearing on 15.05.2018.

Facts of the complaint: -

6. Briefly stated, the facts of the case as culled out from the case of complainant are that on 08.05.2007, respondent no. 1 (M/s. Pal Infrastructure and Developers Pvt. Ltd.) being the developer/promoter entered into a collaboration agreement with respondent no. 2 to 7 (Sh. Dayanand, Sh. Brahm Prakash, Sh. Ram Nivas, Sh. Roshan Lal, Sh. Amit Kumar and Sh. Sumit Kumar - land owners herein) for development of land admeasuring 12 acres 1 kanal 1 marla into a group housing complex located at sector -70A, Gurugram, Haryana. In terms of said collaboration agreement dated 08.05.2007 respondent 1 to 7 obtained a license no. 45 of 2009 dated 22.02.2008 from DTCP for the said land.



7. After obtaining the license the complainant no. 2 (M/s. Pal Infrastructure and Developers Pvt. Ltd.) alongwith respondent no 1 and with no objection certificate from landowners (respondent no. 2 to 7) entered into an agreement to sell /MoU dated 03.10.2009 for purchase of FSI of 1,80,000 sq. ft. i.e. corresponding dwelling units (DU) in the project "The olive spire". The land owners/promoters namely the respondents no 2 to 7 expressed their no objection through their karta Sh. Dayanand along with the above referred agreement to sell. Further, in terms of agreement & MOU, usable land aggregating to 8093 smt. sell & MOU dated 03.10.2009 an FSI of 1,80,000 sq. ft. i.e. corresponding dwelling units (DU) thereof (along with corresponding density commensurate with 2.4 acres land, with any such permissible increase thereof, utilized over usable land area of 8093 smt. i.e. approx. 2.0 acres falling in land bearing Rect.No.17 Killa no. 4/1(6-0), 4/2(2-0), 5(8-0) admeasuring 16 kanal i.e. out of the respondent No 1 areas share (i.e. 60% of the area share devolved by virtue of which the land owners/promoters namely the respondents no. 2 to 7 expressed their no objection through their karta Sh. Dayanand along with the above referred agreement to sell. Respondent



no. 1 promised to obtain a general power of attorney in its own favour from landowners and also for enabling of further sales by complainant no.2 (M/s. Forte Point India Pvt. Ltd.). Complainant no. 1 (allottees of the project - 'the olive spire') also get GPA from landowners for enabling it to get all the papers executed in their favour.

8. Complainant no. 2 (M/s. Forte Point India Pvt. Ltd.) stated that they sold 72 dwelling units to the buyers (subsequent allottees) in the project. In the course of said sales, they collected Rs. 23,87,18,786/- from the buyers, however, they invested an amount of Rs.26,87,53,948/- i.e. far greater than the amount collected from the buyers. Complainants alleged that respondent no. 1(M/s. Pal Infrastructure and Developers Pvt. Ltd.) in connivance with landowners failed to execute GPA in favour of complainant no. 2 (M/s. Forte Point India Pvt. Ltd.) to enable them to facilitate the bank loans to buyers or subsequent allottees.

9. Further, in terms of first addendum dated 22.01.2010 to the agreement to sell/MOU dated 03.10.2009 between the respondent 1 and complainant 2, respondent no.1(promoter herein) again failed to get GPA executed from landowners in



favour of complainant no.2. Due to failure of commitment as per the terms of agreement (MOU), complainant no. 2 initiated arbitration proceedings against the respondent no. 1 on 25.11.2010 in District court, Gurugram and obtained an injunction order dated 26.03.2014 (Annexure P/7) against the respondent no. 1 restraining them from creating any third party interest to suit/subject property. Moreover, complainant no. 2 also filed another arbitration petition u/s. 11 of arbitration and conciliation Act, 1996 (case no. 74/2011) before Punjab & Haryana high court for the alleged embezzlement of funds by the directors of respondent 1.

10. The DTCP license no. 45/2009 got cancelled on 30.05.2011 by competent authority for non-payment of outstanding EDC and for violations of sanction/approval terms.

11. On 22 July 2011 - second addendum: The responded no. 1 (promoter herein) approached the complainant no 2 to enter into a second addendum to agreement to sell (MOU) dated 03.10.2009, since they were totally starved of liquidity to pay the above dues for the renewal of the license. The responded no. 1 also demanded a further revised value for FSI of 1,80,000 sq. ft. to the tune of Rs.20,00,00,000/- (rupees twenty crores



only) instead of initially agreed consideration of Rs.13,20,12,000/- (rupees thirteen crore twenty lac twelve thousand only). Finding no alternative, and having fully engrossed in the project, by investing crores of rupees in the development of the project ,the complainant no. 2 in the best interest of the buyers and subsequent allottees, agreed to the above referred unreasonable demand and paid Rs.3,00,00,000/- (rupees three crores only) as (part of his payment towards FSI) and insisted to make the said payment directly in the favour of the chief administrator, HUDA, Chandigarh as part of payment towards outstanding dues of EDC on the conditions, *interalia*, that the respondent no. 1 and the respondent nos. 2 to 7 will sign a registered agreement with the complainant no. 2 on the lines of a copy of the agreement which was made part of the second addendum, as its enclosure, within 7 days of its execution, but again to no avail. Despite payment of outstanding dues, the respondent no.1 failed to take an initiative to fulfill their part of obligation.



12. Thereupon, the order for cancellation of license was revived on 30.08.2011 vide memo no. DS-(R) -LC-

1343/2011/12678 (annexure P/12) subject to certain conditions by the competent authority.

13. On 27th May 2015 - cancellation of license (2nd time): The license again got cancelled due to non-deposit of the remaining EDC/IDC charges by the respondents. The respondents have violated various terms and conditions of the license issued by the competent authority and thereby acted in utter violation of section 7 and other applicable provisions of Real Estate (Regulation and Development) Act, 2016.

14. In spite of best efforts of the complainant no 2, it is neither in a position to carry out any development work nor is in position to fulfill any of its obligations including towards registration of the project/phase in terms of section 3 of Real Estate (Regulation and Development) Act, 2016, in spite of pouring large amounts of money, putting in time & effort.

15. The respondents individually or/and severally till date failed to register their aforesaid project or phase constituting the project 'the olive spire' in gross violation of section 3 read with section 4 of Real Estate (Regulation and Development) Act, 2016. Furthermore, the respondents as promoters of the entire licensed colony have failed in performing various



functions and failed to fulfill various obligations under section 11 of the Act.

16. **Issues raised by the complainants: -**

(a) *Whether the respondents' are required to register the phase/project 'the olive spire' constituting the corresponding land area along with constituent FSI as stated in para 4.1.3 of the agreement, as such, as a separate phase /project' in terms of section 3 of the Act?*

(b) *Whether the respondents have to seek all such approvals, get such licenses validated or revalidate, comply/abide with all such requirement of competent /or other statutory authority, for whole or part of the project or group housing colony concerned, in order to ensure a valid license & development permissions for the phase/project 'the olive spire'?*

(c) *Whether the respondents should execute the general power of attorney forthwith in favour of M/s Forte Point India Pvt. Ltd., the complainant no.2 and/or the execute requisite documents (including creation of such lien or charge wherever applicable), from time to*



time, in favour of buyers/ subsequent allottees, M/s Forte Point India Pvt. Ltd ,the complainant No.2, financial institutions and banks to enable allottee/buyers/subsequent allottee concerned for availing loans including housing Loans from banks/financial institutions?

(d) Whether the respondents have to seek such permission for transfer of license and also to transfer and register the corresponding land referred in para 4.1.3 of the phase/project 'the olive spire' in favour of M/s Forte Point India Pvt Ltd., the complainant no.2?

(e) Alternatively, the project or phase be registered in the best interest of the complaints and issue such orders or directions, to the respondents, the competent authority and such other authority or body, as may be appropriate and deeming fit, under section 7 read with section 8 for smooth development and completion of the project 'the olive spire'.

(f) Upon (e) , whether to issue such directions or orders to the respondents ,the competent authority to transfer/ permit part transfer of above referred land



and renew /issue license in favour of M/s Forte Point India Pvt Ltd. the complainant no.2 or as deeming fit , and to levy and structure the recovery of renewal licence fee / EDC/ IDC/other charges and dues to the extent of and as may be confined to the of land referred above & development thereon on the part of the phase /project 'the olive spire' as per the plan to be furnished over the remaining period of development & completion?

(g) Upon (e) & (f), whether to issue such orders or directions to the competent authority to permit carrying out of development & completion by the complainant No. 2 (i.e. through M/s Forte Point India Pvt. Ltd.) or in any other manner, as may be deemed fit by the Authority.

(h) To conduct such inquiry under section 35 of the Act into the affairs of the respondents.

(i) To impose such penalties on the respondents, as deemed appropriate, under section 59, 60& 61 of the Act for violation of various provisions of the Act.



(j) To award such compensation for losses as deemed appropriate suffered by the complainants.

(k) To pass such direction, as may be deemed fit, under section 37& 38 of the Act, towards giving effect to any one or more of the above can be passed.

Reliefs Sought: -

17. The complainants humbly wish to pray for the following relief(s):-

(a) Direct the respondents' to register the phase/project 'the olive spire' constituting the corresponding land area along with constituent FSI as stated in para 4.1.3 as such as a separate phase /project' in terms of section 3 of Real Estate Regulation & Development Act, 2016.

(b) Direct the respondents to seek all such approvals , get such licenses validated or revalidate, comply/abide with all such requirement of the competent /or other statutory authority, for whole or part of the project or licensed group housing colony concerned, in order to ensure a valid



license & development permissions for the phase/project 'the olive spire'.

(c) Direct the respondents execute the general power of attorney forthwith in favour of complainant no.2 and/or to the execute requisite documents (including creation of such lien or charge wherever applicable), from time to time, in favour of buyers/ subsequent allottees, M/s Forte Point India Pvt. Ltd, the complainant no.2, financial institutions& banks to enable allottee/buyers/subsequent allottee concerned for availing loans including housing loans from banks/financial institutions.

(d) Direct the respondents to seek such permission for transfer of license and also to transfer and register the corresponding land referred in para 4.1.3 of the phase/project 'the olive spire' in favour of M/s Forte Point India Pvt. Ltd., the complainant no.2

(e) *Alternatively*, to register the project or phase, as such, in the best interest of the Complaints and to issue such orders or directions, to the respondents,



the competent authority and such other authority or body , as may be appropriate and deeming fit , under section 7 read with section 8 for smooth development and completion of the project 'the olive spire'.

(f) Upon (e) , to issue such directions or orders to the respondents and /or the competent authority to transfer/permit part transfer of above referred land and renew/issue license in favour of M/s Forte Point India Pvt. Ltd. the complainant no.2 or as deeming fit , and to levy and structure the recovery of renewal licence fee / EDC/ IDC/other charges and dues to the extent of and as may be confined to the of land referred above & development thereon on the on the part of the phase /project 'the olive spire' as per the plan to be furnished over the remaining period of development & completion.

(g) Upon (e) & (f), whether to issue such orders or directions to the competent authority to permit carrying out of development & completion by the



complainant No. 2 (i.e. through M/s Forte Point India Pvt. Ltd.) or in any other manner, as may be deemed fit by the Authority.

(h) To conduct such inquiry under section 35 of the Act into the affairs of the respondents.

(i) To impose such penalties on the respondents, as deemed appropriate, under section 59, 60 & 61 of the Act for violation of various provisions of the Act.

(j) To award such compensation for losses as deemed appropriate suffered by buyers / subsequent allottees & M/s Fort Point India Pvt. the complainant No.1 to 2

(k) To pass such direction, as may be deemed fit, under section 37 & 38 of the Act, towards giving effect to any one or more of the above sought reliefs.

Respondent's reply -

18. Prior to filing of reply, counsel for respondent no. 2 to 7 have filed an application seeking deletion of their names from the array of parties on the grounds that (i) they do not fall under the category of 'promoter' as defined under section 2(zk)



of the Act; (ii) they had not received any single penny from the transaction between the complainants and respondent no. 1.

19. The respondent no.1 raised preliminary objections.

Firstly, that the complainant have no locus standi to approach this authority as they do not fall within the definition of 'allottee' under section 2(d) of the Real Estate (Regulation and Development) Act, 2016 as no plot, apartment or building was ever allotted to either of the complainants. Secondly, the no objection certificate so obtained by the complainant was signed by respondent 2 only and not by all other owners as stated by the complainant in the complaint. Moreover, the reliefs sought by the complainant are incapable of being granted by the authority.

20. It was further contended by the respondent no. 1 that although the DTCP license no. 45/2009 was cancelled on 30.05.2011 due to non payment of EDC dues but it was revived on 30.08.2011 and the said license was again cancelled on 27.05.2015 by DTCP. Challenging the said cancellation order dt. 27.05.2015, the respondent have filed review petition for renewal of license on 04.04.2016 which is pending disposal. In these circumstances the complainants cannot seek abrogation



of powers vested with DTCP for revalidation of license through this authority.

21. Since, town & country planning ,Haryana is not a party to the present petition, so no relief can be granted in favour of complainant in the absence of said department. It was also contended by the respondent no. 1 that respondent no. 2 to 7 are under no legal obligation to execute any general power of attorney in favour of complainant no. 2. In addition to it, it was stated that complainant no. 1 is not a legal or juristic entity and they are not the allottees or purchasers of any apartment in the subject project.

22. The complainant no. 2 never fulfilled the terms of MOU. As per said MOU the complainant no. 2 has to pay Rs. 13,12,20,000/- which was never paid by them, so they have no right to raise any construction or sell the units of the subject project. Further, as per clause 4 of MOU dated 03.10.2009, the complainant no. 2 can only raise construction or sell his share only after obtaining GPA but as per their own admission the said GPA was never executed since complainant no. 2 had failed to make payment of Rs.5,00,00,000/- for the execution of general power of attorney.



23. Respondent no. 1(promoter herein) contended that possession was also not transferred in favour of complainant no.2 in terms of clause 6 of MOU as they had failed to pay the amount of Rs. 13,12,20,000/-. It was also contended by respondent 1 that no permission from DTP and other concerned authorities was ever granted qua transfer of FSI/FAR in favour of complainant no. 2.

24. The complainant no. 2 further entered into two MOUs' with respondent 1, whereby they were liable to pay Rs. 20,00,00,000/- to respondent no. 1 which they again failed to pay, hence under all circumstances the complainant no.2 had no right to raise the construction or develop the land in question. And due to above stated reasons the respondent 1 was not able to apply for registration of its project under RERA as on today.

25. Respondent no. 2 to 7 (landowners herein) filed their common reply and contended that none of the complainant as specified in the list of complainants annexed as annexure P/17 have placed on record a single allotment letter issued in their favour by either respondent no. 1(promoter herein) or complainant no. 2 (M/s. Forte Point India Pvt. Ltd.). Also, under



the present Act, there is no provision for filing of complaint by group of persons. In the present complaint, the complainant is seeking relief which is beyond the specified provision of section 18 of the RERA Act as the project has not even been started by the developer and even the DTCP license has been cancelled.

26. Further contentions raised by respondent 2 to 7 are that it is not the prerogative of theirs either to complete the project or get it registered as they are merely the landowners who entered not collaboration agreement dated 18.05.2007 with respondent 1. In terms of said collaboration agreement, respondent 2 to 7 were to get 40% of the constructed area of the project. Such an arrangement clearly excludes the respondents from the purview of promoter as defined u/s. 2 (zk) of the Act. The complainants have wrongly impleaded respondent no. 2 to 7 in the array of parties.



27. **Determination of issues:-**

After hearing arguments of the parties and perusal of records, the issue wise findings given by the authority are as under: -

- i. Regarding the **issue (a)** raised by the complainant, from the perusal of the record and the submissions made by

the parties it is found that the respondent has failed to get the project registered in terms of the provision of section 3(1) of the Real Estate (Regulation and Development) Act, 2016 which is reproduced below –

“.....provided that the projects that are ongoing on the date of commencement of this Act and for which the completion certificate has not been issued, the promoter shall make an application to the authority for registration of the said within a period of three months from the date of commencement of this act.....”

Hence, in view of violation of the provision of section 3(1) of the Act *ibid*. The authority has decided to initiate penal proceedings under section 59 of the Act against the respondent for not getting the project registered.

This project is registerable as a whole through license holder and the developer, as both come within the definition of colonizer and are squarely covered under the definition of promoter in section 2 (zk) of the Act. It is further surprising that although the license was cancelled by the DTTC in the year 2016, even the colonizer cannot take a plea that as their license was cancelled, accordingly, they are not liable for registration. They should have made the application to the authority within the prescribed time as this is an on-going project. Where license stands cancelled which either may have to be revived or



a decision is to be taken by all the three promoters to refund the amount received by them alongwith the prescribed interest to the allottees who have booked their apartment falling to their designs. The detailed reply submitted by the respondent no.1 regarding non-registration of the project was considered and it was decided that the application should have been made to the authority within the prescribed time which has not been applied. During the course of proceedings, the authority has directed the respondent/ license holders on 24.07.2018 to make an application for registration of the whole of project which shall be made by the license holder. In addition to it, the license holder may give power of attorney to the developer for making an application. But the said application has not been applied by the respondents.

- ii. Regarding the **issue (b)** raised by the complainant, as per clause 2 of the MOU/ agreement to sell dated 03.10.2009, the respondent no. 1 (promoter herein) is duty bound to develop the subject land after obtaining all the requisite sanctions/ approvals from the statutory authorities. The relevant extract of clause 2 of the agreement is reproduced below –



“.....the first party is to develop and construct the entire land into a Group Housing Complex after obtaining all requisite sanctions/approvals/licenses for the same at their own cost and provide 40% of the total permissible built up area to the land owners in lieu of the land so given by them.....”

The respondent no. 1 by not complying with the said terms of the agreement dated 03.10.2009 i.e. by not getting the license renewed after cancellation for the second time by DTCP on 27.05.2015 has violated the provision of section 11(4)(a) of the Real Estate (Regulation and Development) Act, 2016.

- iii. Regarding **the issue (c)** raised by the complainant, the respondent no. 1 (M/s. Pal Infrastructure and Developers Pvt. Ltd. – promoter herein) is liable to execute the GPA in favour of complainant no. 2 (M/s. Forte Point India Pvt. Ltd.) in terms of para 4.1.3 of the agreement inter se signed between the complainant no. 2 (developer herein) and respondent no. 1 (promoter herein) dated 03.10.2009 –

“.....the first party shall execute a GPA in favour of the second party, for one tower on receipt of cumulative payment of Rs. Five crores towards purchase/cost of FSI.....”



In this regard, the respondent no. 1 in their reply stated that GPA was not executed in favour of complainant no. 2 as they did not pay the requisite amount of Rs. 5 crores in terms of para 4.1.3 of the agreement dated 03.10.2009, however, no statement of accounts have been produced by the respondent in support that they had ever raised the demand of Rs. 5 crores as stated above and the said amount have not been paid by the complainant no. 2.

28. Regarding the **rest of the issues** so framed by the complainant, the authority in exercise of its powers as envisaged under section 37 of the Act gave their findings and directions detailed wise which is given in the succeeding paragraphs.

29. During the course of arguments, respondents nos. 2 to 7 (landowners herein) have raised an objection that he is only a farmer not a colonizer which is contrary to the legal provisions under section 2 (d) of the Haryana Development and Regulation Urban Area Act, 1975. The land owner is the colonizer including developer with whom a collaboration/development agreement has been made by land



owner. The purpose of collaboration agreement is to authorize the developer for making an application for grant of license and for completion of formalities required on behalf of such owner to develop a colony. In spite of making position clear time and again, the plea taken by the respondent no.2 (landowners herein) was that they have no status in the project except they are the farmers whereas they are license holders and have entered into bilateral agreement with DTCP, Haryana in the form LC-IV-A. The LC-IV-A bilateral agreement has been entered by owner of land and not by developer intending to set up a colony. Although it is signed by the developer many times but on behalf of land owner acting on his power of attorney. The license holder cannot escape from his responsibility as a promoter. Large number of illegalities have been committed by the land owner and now he is taking a plea that he is a poor farmer. He entered into a collaboration agreement with the developer where he has authorized developer to sell the units independently. The land owner and developer may execute any kind of agreement, it is binding between the two but the fact remains that it is the land owner/license holder who is the seller of the units and the units may be sold on the strength of



power of attorney by the developer. The land owner/license holder has also not come out with clean hands and now wants to take advantage by saying that they are innocent and poor farmers, they do not know about the project. It is the developer who is solely responsible for all these misdeeds. It is further to add that the license holder knowing fully well that a third party is constructing on a particular patch of area at a back on the strength of some MOU signed between one landowner and the developer. It is surprising and strange to accept that it was without their knowledge. Had it been the case, then they should have approached the proper forum regarding encroachment on their land. Everything has been done with the active connivance of the license holder and developer alongwith third party and now the allottees are suffering because of irregularities committed by various stake holders in this project. The application by the counsel for respondent nos. 2 to 7 regarding deletion of their names was considered at length and keeping in view the facts and circumstances narrated above, it was decided by the authority that being a license holder, their names cannot be deleted as has been held by the authority in many cases.



30. As per the provisions of Real Estate (Regulation and Development) Act, 2016, the prime object of the Act is to bring transparency and efficiency inter se between the respondents and the complainants. In the present complaint, there are 72 complainants/buyers who have come up in arms against the promoter, M/s Pal Infrastructures and Developers Pvt. Ltd. alongwith 6 landowners, namely, M/s Forte Point Indian Pvt. Ltd and Dayanand, Shri Braham Prakash, Ram Niwas, Roshan Lal, Amit Kumar, Sumit Kumar who have signed an MOU dated 03.10.2009 annexed as annexure P/3 and annexure P/5 on record. As per para No.5 of the MOU dated 03.10.2009 signed inter se all the parties which is reproduced as under:-

“5. Now the first party is desirous of selling 1,80,000 sq. ft. of FSI to the second party, to which the landowners have no objection (copy of NOC already enclosed)

It is mutually decided between the party and the landowner that usable land area corresponding to the FSI being sold i.e. 803 sq. mtr. duly demarcated in red colour in the demarcation plan attached herewith (Annexure - H), shall be registered in the name of the First Party and necessary permissions for effecting the transfer of license thereon be taken from the office of the DTCP, Haryana and/or any other Govt. agency, as required or the necessary G.P.A. for the same shall be executed In favour of the first party.

Further the first party assures, declares and confirms that the said area of 1,80,000 sq. ft. of FSI being sold to the second part, as aforesaid, is free from all encumbrances, mortgage, loan, gift, hypothecation,



attachments, liability, tenancy, unauthorized occupation, claims, liens and charges and that no portion of it is sold/transferred to any party and there are no dispute(s) pending in the court of law or otherwise. First party shall keep the title clean and marketable of the said area at all the times till the duration and full implementation of this agreement. The first party agree to keep indemnified and hereby indemnities and keeps harmless the second party and/or his successors in interest for and against any loss, damage, claim, action, dispute, costs, charges and expenses of any nature, suffered or sustained by the second party being the purchaser of the said FSI, due to any representations of the first party in this agreement being found incorrect and/or due to breach of any of the covenants with the second party to reimburse him and / or his nominees and/or successor in the title for any claim, cost, charges and expense arising thereof.

Further it is mutually understood that the second party is entitled to make bookings and receive advances towards their share of FSI and development thereof in accordance with the Govt. stipulations. The first party shall execute all requisite documents in the favour of second party/banks/financial institutions to enable the potential buyers to enable the potential buyers to avail the bank loans to buy apartments from the second party, immediately on execution of GPA. This is a condition precedent to this agreement. That first party and land owners have agreed to give all co-operations to the second party to arrange and facilitate housing loans for the individual customers by providing all types of documents as required."



31. However, nowhere on record there is any BBA inter se any party who are builder and who are buyers, all are collaborators. A direction was given by the authority to the applicant-complainant on 05.11.2018 to bring on record the copy of BBA from where the jurisdiction of RERA Act may be

ascertained and also the obligation of builder/buyer in terms of the provisions of section 11 and section 19(a) of the Act can be determined failing which RERA authority may not have the jurisdiction. In compliance of the order dated 05.11.2018, the authorized representative for complainant no. 2 has filed four copies of apartment buyer's agreements signed inter se between the allottees namely (i) Shyamali Mukherjee and complainant no. 2 (M/s. Forte Point India Pvt. Ltd.) dated 21.09.2013 for apartment no. A-303; (ii) Mrs. Kanchan S. Sathpathy (allottee) and complainant no. 2 of the Act (M/s. Forte Point India Pvt. Ltd.) dated 16.06.2016 for apartment no. A-101; (iii) Mrs. Sudershan Kaur and complainant no. 2 (M/s. Forte Point India Pvt. Ltd.) for apartment no. C- 703 of the project, which are taken on record.

32. Besides this, 72 so called allottees have come in the authority with their respective grievances. However, in order to ensure justice to each and every buyer and to enforce the provisions of the Act, it is incumbent that they should come in individual capacity so that matter can be listed/sorted out inter se builder and complainants in an amicable manner.



Findings of the authority: -

33. The preliminary objections raised by the respondent regarding jurisdiction of the authority stands rejected. The authority has complete jurisdiction to decide the complaint in regard to non-compliance of obligations by the promoter as held in *Simmi Sikka V/s M/s EMAAR MGF Land Ltd.* leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

34. Arguments were heard at length. It has come on surface that as per para no. 5 of the agreement dated 03.10.2009 inter-se all the three parties i.e. Dayanand, Sumit Roshan Lal, Brahmprakash and Ram Niwas- land owners and M/s. Pal Infrastructure and Developers Pvt. Ltd. (respondent no. 1 herein) and M/s. Forte Point India Pvt. Ltd. (complainant no. 2 herein). Relevant para no. 5 is as reproduced below –

“It is mutually decided between the first party and the land owner that the usable land area corresponding to FSI being sold i.e. 8093 sq. meter duly demarcated in red colour in the demarcation plan attached herewith (Annexure – H) shall be registered in the name of the first party M/s. Pal Infrastructure and Developers Pvt. Ltd. (a company incorporated under Companies Act, 1956) having its registered office at 149-152, first floor, Edmonton Shopping Mall, Hotel, the Bristol, Gurgaon and necessary permission for effecting the transfer of license thereon be taken from the office of the DTCP, Haryana, and/or any other



Govt. Agency, as required or the necessary G.P.A. for the same shall be executed in favour of the first party.

Further the first party assures, declares and confirms that the said area of 1,80,000 sq. ft. of FSI being sold to the second party, M/s. Forte Point India Pvt. Ltd. (a company incorporated under Companies Act, 1956) having its registered office at 260, sector 15, Part I, Gurgaon as aforesaid, is free from all encumbrances mortgage, loan, gift, hypothecation, attachments, liability, tenancy, unauthorized occupation, claims, liens and charges and that no portion of it is sold/transferred to any other party and there are no dispute pending in the court of law or otherwise. First party shall keep the title clean and marketable of the said area at all the times till the duration and full implementation of this agreement. The first party agrees to keep and hereby indemnifies and keep harmless the second party and/or his successor in interest for and against any loss, damage, demand, claim, action, dispute, costs, charges and expenses of any nature, suffered or sustained by the other party being the purchaser of the said FSI, due to any representation of the first party in this agreement, being found incorrect and/or due to breach of any of the covenants/assurance given by the first party. Further, the first party covenants with the second party to reimburse them and/or his nominees and/or successors in title for any claim, cost, charges and expenses arising thereon.

NOW THEREFORE, THIS AGREEMENT WITNESSTH AND IT IS AGREED AS UNDER:-

Para no.4 is reproduced below-

Further it is mutually understood that the second party is entitled to make bookings and receive advances towards their share of FSI and development thereof in accordance with the govt. stipulations. The first party shall execute all requisite documents in the favour of second party/ bank/financial institution to enable the potential buyers to enable bank loans to buy apartments from the second party, immediately on execution of GPA. This is a condition precedent of this agreement. The first party and land owners have agreed to give all cooperation to second party to arrange and facilitate



housing loans for the individual by providing all types of documents as required.”

However, it was never registered, however, two documents are on record, one is judgment dated 26.03.2014 passed by Sh. J.B. Gupta, Additional District Judge, Gurgaon, in arbitration case no. 3 of 2010/2013 in case titled as M/s. Forte Point India P. Ltd. (a company incorporated under the Companies Act, 1956) having its registered office at 260, Sector 15, part I, Gurgaon through its Director –cum Chairman/duly authorized person- Sh. Amarjit Singh s/o Sh. Nirmal Singh R/o. A-18/14, DLF, Phase I, Gurgaon (petitioner) versus M/s. Pal Infrastructure Developer P. Ltd. (a company incorporated under the Companies Act, 1956) having its registered office at 149-152, 1st floor, Edmonton, Shopping Mall, Hotel, the Bristol, Gurgaon through its Director/duly authorized person- Sh. Rajesh Kumar s/o Harpal Singh, R/o. House no. 164- P, sector 15, Part I, Gurgaon (respondents).



35. Petition under section 9(i) of the Arbitration and Conciliation Act, 1996 for providing interim measures of protection and interim injunction in respect of subject matter property in question covered under the agreement to sell dated 03.10.2009 and addendum to said agreement dated 22.10.2010

containing arbitration clause between the parties to the agreement.

Operative part of the judgement reads as under: -

“In these circumstances, I am of the considered opinion that the petitioner has succeeded in providing prima facie case in its favour, balance of convenience also lies in favour of the petitioner and the petitioner shall suffer irreparable loss if the respondent’s be not restrained from changing the nature of the suit property and from alienating the suit property to any other person till the matter is decided by the arbitrator. With these observations, the present petition filed by the petitioner is hereby allowed and the respondent is hereby restrained from alienating or transferring the suit property in any manner in favour of third party and also restrained from changing the nature of suit property till the case is finally decided by the arbitrator.”

Thirdly, two different BBA dated 04.06.2013 and 16.05.2016 (copies placed on record) signed inter se respective allottee and ‘M/s. Forte Point India P. Ltd.’ and 72 buyers have been signed by the authorized signatory of ‘M/s. Forte Point India P. Ltd.’ for the construction of 110 flats/units out of which 72 allottees are on record. M/s. Forte Point India P. Ltd.’ has accepted considerable amounts from allottees.



M/s. Forte Point India P. Ltd., Sh. Amrjit Singh s/o Nirmal Singh, managing Director has placed an affidavit dated 04.12.2018 on record. He is under obligation by way of construction of flats for which he will pay EDC/IDC as well as other license fees etc. to the DTCP as per the proportionate share. He has purchased an FSI of 1,80,000 sq. ft. from respondent no. 1- M/s. Pal Infrastructure and Developers Pvt. Ltd. with the consent of respondent no. 2 (landowners herein).

Decision and directions of the authority: -

36. After taking into consideration all the material facts as adduced and produced by both the parties, the authority exercising powers vested in it under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby issues the following order in the interest of justice. However, any hitch and glitch in the matter is to be cleared by DTCP department i.e. by way of -

- i. DTCP may allow BIP permission on account of sale of FSI of 1,80,000 share of land so that 'M/s. Forte Point India P. Ltd.' may complete his obligation as per the BBA towards the allottees.



- ii. The Forte Point India Pvt. Ltd. will fulfill all his obligations with regard to EDC/IDC charges proportionately alongwith license renewal fee, etc.
- iii. Keeping in view the judgement dated 26.03.2014 as mentioned above, the license for this portion of the land (2 acres) be given to M/s. Forte Point India Pvt. Ltd. so that he may come with clean hands as per his affidavit dated 04.12.2018.

37. As per the provisions of section 3 of the Real Estate (Regulation and Development) Act, 2016, M/s. Forte Point India Pvt. Ltd. will get his project registered upon due approvals of DTCP and other competent authorities failing which action under section 59 of the Act ibid shall be initiated against M/s. Forte Point India Pvt. Ltd. The authority has decided to take suo-moto cognizance against the promoter for not getting the project registered & for that separate proceeding will be initiated against the respondent u/s 59 of the Act by the registration branch.

38. Order is pronounced.

39. Case file be consigned to the registry. Copy of this order be endorsed to registration branch.



(Samir Kumar)
Member

(Subhash Chander Kush)
Member

(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated:

Judgement Uploaded On 08.01.2019



HARERA
GURUGRAM

