

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

**Complaint no. : 225 of 2018**  
**Date of first hearing : 05.06.2018**  
**Date of decision : 23.01.2019**

Greenopolis Welfare Association  
R/o EA-49, Maya Enclave, Harinagar,  
New Delhi 110064

**Complainant**

Versus

1. Orris Infrastructure Ltd.  
Regd. Office: RZ-D-5, Mahavir Enclave,  
New Delhi
2. M/s Three C Shelters Pvt. Ltd.  
Regd. Office: C- 23, Greater Kailash  
Enclave -I, New Delhi

**Respondents**

**CORAM:**

Dr. K.K. Khandelwal  
Shri Samir Kumar  
Shri Subhash Chander Kush

**Chairman**  
**Member**  
**Member**

**APPEARANCE:**

Shri Venkat Rao  
Shri Ishaan Dang  
Shri Nirmal Singh, Vidhur  
Bhardwaj and Supreet

Advocate for the complainant  
Advocate for the respondent no.1

Directors for the respondent no. 2

Shri Dhananjai Jain and  
Shri Manish Lamba

Advocate for the respondent no.2



### ORDER

1. A complaint dated 04.05.2018 was filed by the complainant Greenopolis Welfare Association through its president, Mr. Ravi Prasad and member, Mr. Lalit Khanna against the promoters M/s Orris Infrastructure Pvt. Ltd and M/s Three C Shelters Pvt. Ltd. on account of violation of clause 5.1 of the various apartment buyer's agreements in the project "Greenopolis" for not giving possession by the due date which is an obligation of the promoter under section 11 (4) (a) of the Act *ibid*.
2. Taking cognizance of the complaint, the authority issued notice to the respondents for filing reply and for appearance. The case came up for hearing on 05.06.2018, 12.07.2018, 06.09.2018, 25.09.2018, 06.11.2018, 12.12.2018, 18.12.2018, 08.01.2019 and 23.01.2019. The reply has been filed on behalf of the respondents.

### Facts of the case

3. The complainant submitted that Greenopolis is a residential group housing project being developed by respondent no.1 and respondent no. 2 jointly, on a land falling in the revenue estate of village Hayatpur Badha, Sector 89, Dist. Gurugram under the license issued by Department of Town and country



Planning, Haryana to develop and construct said group housing project in favour of owner vide licence no. 115 of 2011 dated 23.12.2011.

4. The complainant submitted that the complainant in the present complaint, Greenopolis Welfare Association, is a society registered under the Societies Registration Act, 1860 vide registration no. District East / Society / 550/2013.
5. The complainant submitted that the complainant is a consumer association, the membership of which is voluntary. It is submitted that since its inception in May,2013, the complainant society has been working for the welfare of the allottees of the project irrespective of whether they are member of the complainant society or not. The complainant society regularly takes up the concerns of the allottees of the project with various government authorities. It is submitted that the complainant society is a bonafide consumer association which has been working for the benefit of the consumers who have booked apartment in the project for the past three years and will continue to do whatever is necessary to protect and promote the interests of the consumers of the project. It is submitted that it is in pursuance of its aims and objectives, that the complainant society has filed the present



complaint before this hon'ble forum. It is submitted that, out of more than one hundred of the members of complainant society, the complainant society had filed couple of consumer complaints for and on behalf of 63 members in aggregate of the complainant society who are the buyers/ allottees in this Greenopolis project. The present complaint filed by the complainant has been filed to represent common interests and seek redressal of common grievances of the buyers/ allottees of the said project.

6. The complainant submitted that at the time of launching and in the apartment buyer's agreement executed between Orris, Three C and the buyers, the respondents had jointly undertaken and promised that delivery of possession of the apartments will be given to the buyers within 36 months from the date of the allotment of apartment.
7. The complainant submitted that despite receipt of nearly 90% of the consideration amount under the apartment buyer's agreement, the respondents have failed to deliver possession of the apartments on the dates provided in the apartment buyer's agreement of respective buyers.
8. The complainant submitted that in early 2016, i.e. when the construction of the Greenopolis project should have been



completed, the respondents discontinued all construction activity at the project site. Pertinently, by early 2016, most of the allotments of the Greenopolis project, including the complainant herein, had paid around 90% of the total consideration of their apartments and hence this sudden discontinuation of construction activity at the project site is beyond understanding.

9. The complainant submitted that the construction activity at the project site did not resume for over 6 months, the complainant society alongwith its members and several other buyers/allottees of the Greenopolis project organized several meetings with the respondents, visited the Greenopolis project site, and concerned departments including DTCP, CM office etc. and was shocked to know certain facts narrated hereinafter which the respondents did not disclose to the complainant and other buyers of the project: -

- (a) It is pertinent to mention that the reference of the said development agreement was given in clause A of the recitals of the apartment buyer's agreement but there was no disclosure on the terms agreed between Orris and Three C including the allocation of built up area, fund distribution and proposed utilisation thereof in the



apartment buyer's agreement. Following details were not disclosed to buyers: -

- (i) Land and DTCP License details procured by Orris;
  - (ii) Orris and Three C have jointly agreed to outsource the construction of the apartments and the development of the project thereon to contractor/sub-contractor like L & T or SP etc under the said development agreement, the details of such contracts have to be disclosed to the allottees.
  - (iii) Orris is a registered DTCP licensee under the provision of the Haryana Development and Regulation of Urban Area Act/Rules vide license no. 115/2011 dated 23.12.2011 and renewed upto 22.12.2019 vide letter dated 16.01.2018.
  - (iv) The total built up area was divided vertically and horizontally in the ratio of 65:35 i.e. 65% of built up area/units and 65% of saleable facilities in the Greenopolis project and parking being allocated to Three C and 35% of built up area/units and 35 % of saleable facilities in the Greenopolis project and parking being allocated to Orris. Details of such areas have to be disclosed to the allottees.
- (b) The complainant submitted that there is nallah (Chemical Effluent Drain) passing through the middle of the Greenopolis project. Further, submitted that the DTCP



License is not valid as on date i.e. DTCP License was last renewed on 16th January, 2018.

(c) The phase wise construction- The respondents have communicated to the buyers in the meeting that an area around 37.09 acres in the Greenopolis project comprising of 1862 apartment in 29 towers will be handed over in three phases:

- (i) 1st Phase Tower No. 15, 16, 17, 18, 19, 20, 21
- (ii) 2nd Phase- Tower No 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12
- (iii) 3rd Phase Tower No. 12A, 14, 22, 23, 24. 25, 26, 27, 28, 29

(d) Change of Project Size without any approval of the buyers: It is submitted that, out of the total land plot of 47.218 acres originally committed to the size of the Greenopolis project in the apartment buyers agreement, DTCP license, building plan and all other documents, 10 acres has been relinquished and released by the Three C in favour of Orris, thus reducing the project land to 37.218 acres. It is submitted that this reduction in the size of the project has been done without any concurrence of the buyers of the Greenopolis project or even intimation to them. It is imperative to mention that, as on date, there is no approach and connectivity to this 37 acres area of Greenopolis project, as the front facing side of 10 acres has been relinquished in favour of Orris and the buyers of the project would not have access to the facilities



available in this 10 acres area which was mentioned as a part of Greenopolis project as committed to the buyers at the time of accepting bookings for the Greenopolis project.

- (e) Unjust enrichment by Orris by non-deposit of EDC (external development charges) amount collected by Orris from the buyers of Orris units.
- (f) Greenopolis project is not registered under the RERA in spite of payment of more than 90% of the consideration by the buyers/ allottees of the Greenopolis project:

**10. Issues raised by the complainant**

- (a) Whether the respondents have violated the provisions of the Real Estate (Regulation and Development) Act, 2016 read with Haryana Real Estate (Regulation And Development) Rules, 2017?
- (b) Whether Orris Infrastructure Private Limited shall be considered as "Promoter" within the meaning of section 2 (zk) and other applicable provisions of the Real Estate (Regulation and Development) Act, 2016 ("RERA") read with the Haryana Real Estate (Regulation and Development) Rules, 2017?
- (c) Whether Three C Shelters Private Limited shall be considered as "Promoter" within the meaning of section 2 (zk) and other applicable provisions of the Real Estate (Regulation and Development) Act, 2016 ("RERA") read







with the Haryana Real Estate (Regulation and Development) Rules, 2017?

- (d) Whether Orris is required to deposit in separate bank, in accordance with the provision of the RERA and HRERA, the amount collected by Orris from the buyers/allottees of Greenopolis project equivalent to 35% of built up area/units and 35% of saleable facilities in the Greenopolis project and parking being allocated to Orris?
- (e) Whether Orris is required to deploy the entire amount collected by Orris from the buyers / allottees of Greenopolis project (i.e, equivalent to 35% of built up area/units and 35% of saleable facilities in the Greenopolis project and parking being allocated to Orris) towards the construction and development of the Greenopolis project or it could take the entire amount for itself use by over-valuing it as the cost of land and license?
- (f) Whether supplemental and relinquished agreement to the development agreement dated 02.11.2017 by and amongst Orris Infrastructure, Three C Shelters and land owners is valid and enforceable?
- (g) Whether change of project size from 47 acres to 37 acres is permitted without the approval of two third of the buyers/ allottees of the Greenopolis Project?
- (h) Whether non-deposit of EDC by Orris to the concerned government department after collecting it from the



buyers will be considered in violation of the RERA / HRERA?

- (i) Whether there was deliberate or otherwise, misrepresentation or fraud on the part of respondents in not disclosing nallah (Chemical Effluent Drain) passing through the middle of Greenopolis project in the apartment buyers agreement?
- (j) Whether rejection by the RERA department of the application submitted by the respondents for registering the project Greenopolis is in the interest of the buyers/allottees?
- (k) If so, what are the directions (including those specified in 7(4) of the RERA Act and other applicable provisions of the RERA and HRERA) that may be passed in the interest of buyers/allottees of the project Greenopolis specifically considering the fact that more than 90% of the consideration amount has already been paid to the respondents?
- (l) Whether raising of demand by Three C Shelters towards instalments, pending registration of the Greenopolis project under RERA regulations, will be considered as a violation of the RERA HRERA?
- (m) Whether change of developer from Orris Infrastructure to Three C Shelters Private Limited is permitted considering the objectives submitted by the complainant society with your department on 19th April, 2018?



## 11. Relief sought

- (a) Direct Orris Infrastructure Private Limited, one of the promoter and DTCP Licensee, to provide the details required to be disclosed by the promoter under rule 4 (1)(a) of HRERA rules in respect of 35% of built up area/units and 35 % of saleable facilities in the Greenopolis project and parking being allocated to Orris, as it was not disclosed in the application for registration of Greenopolis project under the Real Estate (Regulation And Development) Act, 2016 read with Haryana Real Estate (Regulation And Development) Rules, 2017
- (b) Direct Orris to provide the details of the land and license costs actually incurred by Orris (along with all supporting documents) in terms of the Rule 4 of HRERA Rules
- (c) Direct Orris to deposit an amount equivalent to seventy percent of the amount already realized and to be realized (including towards overdues, unsold inventory and construction which is yet to be completed) by it from the allottees of the Orris units in a separate bank account for the RERA Regulations which shall be used solely for the construction and development of the Greenopolis project in compliance with the provisions of Rule 4 of the HRERA rules;
- (d) Direct the respondents to produce the complete books of accounts and the complete records so that your good office could validate and get the same



audited/investigated by an independent agency to verify and ensure that the entire consideration amount paid/payable by the buyers of the Greenopolis project is used solely for the construction and development of the Greenopolis project in compliance with the provisions of Rule 4 of the HRERA Rules;

- (e) Direct the respondents to re-infuse requisite money (which is estimated to be less than 500 crores) in the separate bank account/dedicated development account required for completing the Greenopolis project in compliance with the provisions of rule 4 of the HRERA Rules.
- (f) Direct Orris to deposit entire EDC amount payable to DTCP into the dedicated development account designated under the RERA regulations that the delayed payments of the facilities to DTCP could be ensured under the provisions of the Haryana Development and Regulation of the Urban Area Rules, 1976 read with Section 11 (4) (g) of RERA;
- (g) Direct the respondents to rectify the on-time schedule for construction of the project as stated by them in the RERA application and affidavits attached thereto, in terms of Rule 4(1)(b) of HRERA rules
- (h) Direct the respondents to submit phase wise completion schedule with your good office;



- (i) Direct the respondents to complete the entire project and handover the possession of all the apartments within maximum 6 months from the date of this complaint;
- (j) Direct the respondents, severally and jointly, to make adequate arrangement to cover the nallah flowing through the Greenopolis project in a time bound manner within 3 months from the date of the complaint (in any case prior to applying for occupation certificate/completion certificate of the Greenopolis project);
- (k) Direct the respondents to ensure that the dedicated development account designated in the RERA application shall be a joint account where the payment could be released only with the joint signatures of both Orris and Three C signatories;
- (l) Direct the respondents to ensure that any money shall be paid from the dedicated development account only after the prior written approval of authorized representatives/agencies (including chartered engineer, architect and/or chartered accountants) of the complainant;
- (m) Direct the respondents to reimburse the amount incurred by the complainant for engaging such agencies including chartered engineer, architect and/or chartered accountants, out of their respective profit share;



## **Respondent's reply**

### **Reply of respondent no. 1**

12. The respondent submitted that complaint before the Ld. authority, besides being misconceived and erroneous, is untenable in the eyes of law. The complainant have misdirected in filing the above captioned complaint before this Ld. authority as the reliefs being claimed by the complainant cannot be said to even fall within the realm of jurisdiction of this Ld. authority.
13. The respondent submitted that complainant are seeking a claim of refund of amount along with interest as also the compensation, which, from reading of the provisions of the 2016 Act and 2017 Rules, would be liable for adjudication, by the adjudicating officer and not by this authority.
14. The respondent submitted that in any event they cannot get their claims adjudicated under the provisions of 2016 Act and rules framed there under inter-alia, keeping in view the fact that the project in respect whereof the complaint has been made, is not even registered as on date with this authority. Till such time the project is registered with this authority, no complaint or claim, much less as raised by the complainant can be adjudicated upon.



15. The respondent submitted that even otherwise the complainant cannot invoke the jurisdiction of the Ld. adjudicating officer in respect of the unit allotted to the complainant especially when there is an arbitration clause provided in the flat buyer's agreement, whereby all or any disputes arising out of or touching upon or in relation to the terms of the said agreement or its termination and respective rights and obligations is to be settled amicably failing which the same is to be settled through arbitration. The apartment buyer's agreement of the members of the complaint itself is containing the arbitration clause no.10.2.
16. The respondent submitted that the registered welfare association of the allottees has file an application titled as Greenopolis Welfare Association V/s Orris Infrastructure Pvt. Ltd. before the National Consumer Dispute Redressal Commission bearing consumer case no.2116/2016 for the same relief as claimed in the present complaint. The reply of the same has been filed by the answering respondent and the same is fixed for 17.08.2018.
17. The respondent submitted that various persons/allottees have applied for the flats with the respondent no.2 and some of the allottees have applied with the answering respondent,



though the positive notice and knowledge of all the allottees it was the respondent no. 2 which had undertaken to complete the construction of the project in terms of development agreement dated 02.11.2011 between the answering respondent and respondent no.2. However, the complainant has neither attached the total list of members of their alleged, association, nor the details of the allottees of the answering respondent and respondent no.2 has been given and in the absence of the same the complaint cannot continue. Besides it the complainant has specifically stated in para no.3 of brief facts that "The present complaint filed by the complainant has been filed to represent common interest and seek redressal of common grievances of the buyers/allottees of Greenopolis project which may or may not be a member of the complainant society, who have availed the same service of the respondents". However, many other complaints filed by the individual allottees separately are also pending before the hon'ble authority i.e. "Satish Kumar Chawla Vs Orris Infrastructure Pvt. Ltd. and Anr." Pending for 10.07.2018, Vipin Khanna and Anr. Vs Orris Infrastructure Pvt. Ltd. and Anr., Saurabh Ganeriwala Vs Orris Infrastructure Pvt. Ltd. and Anr. Both are pending for 05.07.2018, Hetal Darji and Anr. Vs Orris Infrastructure Pvt. Ltd. and Anr. Pending for 17.07.2018,





Sudipta Banwar Karnik Vs Orris Infrastructure Pvt. Ltd. and Anr. Pending for 18.07.2018 and in view of pendency of the same the present complaint on behalf of society for common relief is also not maintainable as the relief claimed by the aforesaid complainant is altogether different to that of the relief claimed in the present complaint under reply.

18. The respondent submitted that the present complaint is not maintainable against the answering respondent since the respondent is only the land owner and license holder for the project land, whereas it is the respondent no.2 which is the developer of the residential group housing project land, namely Greenopolis and solely responsible for carrying out the construction in the above project. And without admitting anything, it is stated that if there is any delay in construction or deficiency in service, then it is solely attributable to the respondent no.2. The present complaint is not maintainable against the answering respondent as the construction in the project was the sole responsibility of the respondent no.2 and therefore the answering respondent cannot be held liable for any delay or any compensation payable for such delay, if any. The answering respondent entered into a development agreement dated 02.11.2011 with the respondent no.2 and



this fact is well within the notice and knowledge of the complainant.

**Reply of respondent no. 2**

19. The respondent submitted that the complainant society has filed two consumer complaint bearing no. 2126 of 2016 and 188 of 2018 before the hon'ble National Consumer Disputes Redressal Commission, New Delhi. Hence, the present case before the hon'ble authority, is not maintainable in view of provisions of section 71 of the RERA Act, 2016.
20. The respondent submitted that respondent no. 2 has performed all their obligations till date in accordance with the terms of the apartment buyer agreement. Therefore, there is no deficiency of service as has been alleged against the respondent no.2 and complaint needs to be dismissed on this ground itself.
21. The respondent submitted that the points raised in the complaint are in contravention of the terms and conditions of the apartment buyer agreement executed with the complainant individually and the same cannot be adjudicated as a common dispute. Hence, the complaint is liable to be dismissed as not maintainable in the eyes of law.



22. The respondent submitted that complaint itself is not maintainable also on the grounds that the relief sought for in the complaint is premature. The entire complaint is premised on the grievance that the respondents have failed to deliver the apartments to the complainant within the time frame agreed to and assured by the respondent no. 2.
23. The respondent submitted that license no. 115 of 2011 and approval of building plan and other approvals granted for the Greenopolis project has been obtained by the Orris Infrastructure Pvt. Ltd and the same is developed by the respondent in the terms of the development agreement dated 02.11.2011.
24. The respondent submitted that he has acquired development rights over the project through the development agreement dated 02.11.2011 executed between respondent no. 2 and the Orris Infrastructure Pvt. Ltd and other land owing companies of Orris Infrastructure Pvt. Ltd. and by virtue of which the answering respondent is executing the project. As per the said development agreement, out of the total development of the project, the Orris Infrastructure Pvt. Ltd. is entitled to 35% of developed area and in lieu of the construction made by answering respondent is entitled to 65% of the developed



- area. The respondent started the construction of the project upon receipt of environmental clearance (which was granted on 04.09.2013) and consent to establish (which was granted on 27.11.2013).
25. The respondent submitted that after receipt of required EC, consent to establish and despite the challenges on account of huge default by buyers and demonetization affecting the development of the project, the construction of the Greenopolis project was undertaken by the answering respondent no.2 in right earnest and the same proceeded in full swing. It may be seen that the construction of tower no. 1,2,7,8,17,18,19 and 20 are 90% complete and almost ready for the possession and the structure of balance all other towers no. 3 to 5 ,9 to 16,21 to 29 are also completed and MEP and finishing works are due to be undertaken.
26. The respondent submitted that as per clause 5.1 read with clause 5.2 of the apartment buyer agreement executed with the complainant, the time period for completion of the construction is to be calculated from the grant of environmental clearance dated 04.09.2013 and the consent to establish which was received in November 2013 if the period of 42 (36+6 )months is to be calculated as per flat buyer



agreement then the time period ended in November, 2017. The slowdown in construction and delay, if any, is primary because of the default in making timely payments of the instalments by the buyers including the complaints of Rs. 117.59 crores.

27. The respondent submitted that most of flat buyer's in the group housing project have wilfully defaulted in the payment schedule which is main cause of delay in construction activity and affecting the completion of the project. As on date the unrealized payment due from the flat buyer is around Rs.117.59 crores.
28. The respondent submitted that the details of the project were in public domain with complete location address since beginning and also shown in the sanctioned lay-out of the project. Further, submitted that almost all the buyers have visited the project site and were aware of the existence of nallah/'sewage canal' passing through the project as these being the physical structures and characteristic existing thereon and its vicinity since beginning could not have been kept hidden by the respondent no.2. Further, submitted that respondent no. 2 has already applied for grant of permission to cover nallah and on receipt of the same; the 'sewage canal'



is to be covered along with the completion of the project and shall not affect the mobility of the residents.

29. The respondent submitted that the Real Estate (Regulation and Development) Act, 2016 came into force w.e.f. 28.07.2017 (wrongly quoted it is 01.05.2017). As per RERA, registration of every project is mandatory by the developer and at the time of registration time limit for completion of the project is mentioned. It is submitted that the instant project is ongoing and the prescribed time limit in the apartment buyer agreement has expired in November 2017 due to force majeure reasons which are beyond the control of respondent. However, the RERA Act 2016 has penal consequences and it is established law that any penal law cannot be implemented from the retrospective date that promoter should not be punished in the old project for the past deficiencies. In the application of registration of project, the respondent has given time limit upto 31.12.2020 and the respondent shall complete the project within the time limit.



30. The respondent submitted that the present complaint has been filed seeking possession, interest and compensation for alleged delay in delivering possession and refund of the apartment booked by the complainant. Thus, it was further

submitted that complaints pertaining to possession, compensation and refund are to be decided by the adjudicating officer under section 71 of the said act read with rule 29 of HARERA Rules 2017 and not by this authority.

**31. Determination of issues**

After considering the facts submitted by the complainant, reply by the respondent and perusal of record on file, the issue wise findings of the authority are as under:

**With respect to issue no. 1**

After considering the facts and circumstances of the case, it is found that the respondents have not delivered possession to the allottees on due date as per builder buyer agreement. Accordingly, there is a violation of clause 5(I) of the agreement for sale in respect of most of the allottees.

As per section 11(4)(a) the promoter shall be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be :



Accordingly, the promoters have failed in their obligation and responsibility to deliver possession of the apartments on due date and thus violated section 11(4) of the Haryana Real Estate (Regulation and Development) Act, 2016 and the Haryana Real Estate (Regulation and Development) Rules, 2017. As the agreements were signed much before the coming into force the RERA Act, 2016 hence penal proceedings can not be initiated against the promoters but in terms of section 18(i) promoters shall be liable to fulfil their obligation regarding interest for every month of delay.

**With respect to issue no. 2**

Orris Infrastructure Pvt. Ltd. was granted license by the Director, Town and Country Planning vide license No. 115 of 2011 for development of a group housing colony on the land measuring 47.2 acres. Orris Infrastructure Pvt. Ltd being the licensee and developer having license for sale is categorically covered under the definition of the promoter within meaning of section 2(zk)(i) which is reproduced hereunder :

Promoter means :-

(i) ***"a person who constructs or causes to be constructed an independent building or a building consisting of apartments, or converts an existing building or a part thereof into apartments, for the purpose of selling or some of the apartments to other persons and includes his assignees...."***

Orris Infrastructure Pvt. Ltd entered into development agreement with M/s Three C shelters Pvt. Ltd. to develop the





project and for sharing the apartments in the ratio of 35:65 to be sold to the buyers their respective allocated apartments, In respect of the allottees of 35% of the apartments falling in the share of Orris, Orris Infrastructure Pvt. Ltd is main promoter and as the sale agreement have been entered by Orris Infrastructure Pvt. Ltd with the buyers have been executed by Orris and Three C shelters as the confirming party. Accordingly, both are the promoters.

**With respect to issue no. 3**

Three C Shelters Pvt. Ltd. is also the promoter within the meaning of section 2(zk)(v) which reads as under :

Promoter means

***(v)....."any other person who acts himself as a builder, colonizer, 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 apartments is constructed or plot is developed for sale...:"***

The buyers of apartments falling in 65% share of Three C Shelters Pvt. Ltd., Three C shelters is the promoter as the agreement have been signed with the buyers by Three C Shelters with Orris as the confirming party. Accordingly, the Orris being the license holder of the project is also promoter.

Both Orris and Three C Shelters are joint promoters whereas primary responsibility to discharge obligation of promoters



lies with respective promoter in whose allocated share the apartments have been bought by the buyers.

**With respect to issue no. 4**

Treating the project as one now a separate ESCROW account shall be opened by the developer-cum-promoter i.e. M/s Three C shelters Pvt. Ltd. All money received in this account either of the share of Orris or Three C Shelters shall be spent for the purpose of completion of this project and for payment of dues etc.

**With respect to issue no. 5**

Primary responsibility of completion of project lies with Orris and Orris having entered into development agreement with Three C shelters is required to get the project completed. The matter regarding retention of the sale proceeds does not arise at this stage as out of the sale proceeds by the promoter the first priority should have been to invest the amount for the project. The matter regarding diversion of fund unreasonably and disproportionately has been examined by Currie and Brown the financial auditor. This issue does not warrant determination at this stage as project is now to be completed as per the revised dates without affecting the rights of allottees to seek any remedy under the law.

**With respect to issues no. 6 and 13**

Since these issues are inter-related, therefore, have been taken up together for discussion. As per the contract law the



agreement between the two parties is valid and enforceable if not otherwise established. This is an agreement between two parties and in case of default by one party, the other party has got remedy of specific performance of the contract apart from any other legal remedy available to the one party against the defaulting party.

As there is a practice in the State that such kind of agreements are entered into by the license holders and developers, and government has also started giving recognition to such agreements on payment of certain fee, popularly known as BIP permission. As far as supplemental relinquish agreement to the development agreement dated 2.11.2017 is concerned it is again contract between the two parties. The license for the project was given for the whole land i.e. for 47.2 acres and the project is one and Orris Infrastructure Pvt. Ltd is bound to get it developed as single project, but it can be developed in phases. The layout plan, the internal development, services etc. shall remain the same and there cannot be any variation. The matter regarding access through the land to be developed in second phase shall not be altered and rights of the allottees for use of service of the entire project including the land around 10 acres being the part of the supplemental and relinquish agreement shall remain intact.



**With respect to issue no. 7**

Regarding issue no. 7 it is held that project size cannot be changed, and it will remain the same. Only the things

permissible under the RERA Act that project can be developed in phases. Now after coming into force the RERA Act no change can be made without concurrence of the allottees. This change being prior to enforcement of RERA Act hence the provision is not applicable.

**With respect to issue no. 8**

Non-deposit of EDC by the promoter to the concerned department is violation of terms and condition of the license and provisions of the Haryana Urban Area Development and Regulation Act, 1975, Accordingly, director Town and Country Planning has to initiate action against the license holder. In future the amount received in the project shall be put in ESCROW account and it cannot be taken by any of the promoter except for the purpose of construction of project and payment of government dues.

**With respect to issue no. 9**

This is a fact that nalla is passing through the Greenopolis project which should have been very categorically disclosed to the buyers at the very start of the project. As this lapse has occurred prior to coming into force the RERA Act no penal action can be taken except responsibility to cover the nalla is put on the builder/promoter with the permission of competent authority.





**With respect to issue no. 10**

For the ongoing project there is a mandatory requirement to make an application for registration of the project under the RERA Act within three months of the coming into force of the Act. Although, the application for registration of the project was made by the promoter but on account of certain deficiencies registration was not done. It is understood that promoters have not sold any unit after coming into force of the RERA Act. Accordingly, penal proceedings cannot be initiated. Now the authority in the interest of allottees have decided to register the project. The promoters have also been asked to provide necessary information so that these are disclosed to the buyers as required under the law. The promoters have been given one-month time for supplying the information. This interim registration will be applicable with effect from 5<sup>th</sup> of January, 2019.

**With respect to issue no. 11 & 12**

The authority after taking into account views and expressions of allottees of the project with the consent of parties decided that project be completed within the fixed time frame. Accordingly, the authority shall be monitoring the project and in case of default shall not hesitate in taking penal action against the promoters.



### Findings of the authority

32. This complaint has been filed by Greenopolis Welfare Association which professes to espouse the cause of apartment purchasers in the residential group housing project known as "Greenopolis" (hereinafter referred to as "said project") situated in Sector 89, District Gurgaon. License bearing number 115 of 2011 for development of the said project had been obtained by Orris Infrastructure Private Limited (hereinafter referred to as "Orris") from Directorate of Town & Country Planning, Haryana, Chandigarh on 23rd of December 2011.

33. In a nutshell, the complainant has claimed that it has already filed a consumer complaint on behalf of 63 members. It has been claimed that the license referred to above had been granted in respect of land measuring 47.21 acres situated in village Hayatpur, tehsil and district Gurgaon. It has been claimed by the complainant that physical possession of the apartments in the said project has not been delivered by Orris and Three C. It is further claimed that most of the allottees have paid around 90% of the total consideration in respect of their apartments.





34. Various lapses/defaults have been attributed by the complainant to the developers in the complaint. It has been stated by the complainant that the developers do not have funds to complete the project. Large-scale improprieties have been imputed to the developers by the complainant and it has been contended that Three C had received around Rs. 825 crores from the concerned buyers till date. It has also been claimed that a sum of approximately rupees hundred crores is receivable from the purchasers of apartments forming part of allocation of Three C inclusive of unpaid amounts and cost of unsold inventory.
35. That the complainant has alleged that Orris would be realising approximately a sum of over Rs. 500 crores from sale of its allocation in the project. It has been contended by the complainant that out of the aforesaid amount a sum of approximately Rs. 300 crores has already been received by Orris from its prospective purchasers and the balance component of Rs. 200 crores would be the receivables from purchasers of units forming part of its allocation.
36. The complainant has also asserted that Orris has received a sum of approximately 108 crores as non-refundable and non-adjustable deposit and conversion charges amounting to Rs. 3





crores approximately from Three C. The complainant has alleged that Three C has stated in several meetings that it does not have financial capacity to construct the project and on this account, it has proceeded to stall the construction activity at the spot. It has been alleged by the complainant that there has been diversion of funds from the project.

37. The complainant has contended that there passes a Chemical Effluent Drain from the said project. It has also been contended by the complainant that the said project is being developed over area measuring 37.09 acres and consists of 1862 apartments and 29 towers. It has been asserted by the complainant that the construction of the said project is being undertaken by the developers in phases. In the same breath it has been alleged by the complainant that no disclosure of phase wise construction of the project had been made to them.
38. The complainant has further contended that Orris has failed to deposit the external development charges collected from its prospective purchasers and even the license for the said project is not valid and subsisting. Amongst other lapses attributed to the developers, the complainant has claimed that the project has not been registered under provisions of the Real Estate (Regulation and Development) Act (hereinafter





referred to as "RERA Act"). It has been submitted on behalf of the complainant that the application for registration of 37 acres submitted by Orris had been rejected for want of valid/subsisting license.

39. Various violations of RERA Act and rules framed thereunder have been attributed to the developers by the complainant. It has been stated by the complainant that details of total money collected have not been disclosed by the developers and separate bank account in accordance with applicable statute has not been opened and operated by the developers. It has also been alleged that the receivables from the project have been misappropriated elsewhere by the developers.

40. The complainant has also questioned the development of the said project by Three C by contending that such change of developer ought not to have been permitted. In this factual background during the subsistence of proceedings instituted by the complainant before National Consumer Disputes Redressal Commission (hereinafter referred to as "NCDRC") the complainant has instituted the present proceedings and has sought multiple reliefs.

41. At the time the complaint was instituted, it had been specifically submitted on behalf of the complainant that the





complaint had not been filed by the complainant with the intention of seeking any refund or penalty but with the objective of implementation of statutory provisions of the RERA Act and Rules framed thereunder. Order dated 12th of July 2018 had been passed by this authority wherein it was specifically mentioned on the basis of statement made by counsel for the complainant that the complaint had been preferred not with the intent of seeking/recovering compensation but for fulfilment of the obligations by the promoter under section 18 (3) of the RERA Act.

42. Orris had put in appearance and had filed its detailed reply contending that since proceedings had been instituted by the complainant before NCDRC, it was precluded and disentitled from filing the present proceedings. It was also claimed that since the said project had not been registered under the RERA Act, the institution of the complaint was misconceived. It was also claimed that the dispute redress mechanism as provided in the apartment buyers agreement contemplated adjudication of disputes by arbitration.

43. Orris in its reply persistently tried to pass on the buck to Three C. It was claimed by Orris that a Development Agreement dated 2nd of November 2011 (hereinafter referred to as



“development agreement”) had been executed and registered between Orris and Three C in terms of which the conceptualization, promotion and construction of the said project was to be undertaken by Three C. Reference of various clauses of development agreement has been given by Orris in the reply filed by it in terms of which it has tried to convince the authority that the entire construction/development activity was to be undertaken by Three C. Orris has also informed that it has availed a loan of Rs. 250 Crores. from M/s Indostar Capital Finance Ltd. against its receivables in the project.

44. It has been even claimed by Orris that Three C has cheated and duped Orris also and that Three C did not proceed to complete the project despite collecting/receiving more than Rs. 820 crores from various allottees on the basis of development agreement. Orris has even contended that it cannot be called a developer of the project and Three C alone is the developer of the project. In this factual background the contentions put forth by complainant have been repudiated/denied by Orris (respondent number 1).

45. In its reply Three C has also claimed that the complaint preferred by the complainant is barred on account of



institution and prosecution of complaint before NCDRC. The non- registration of the said project under RERA Act has also been set up as a ground by Three C for declining relief to the complainant. It has been submitted by Three C, that out of license land measuring 47.218 acres, the project had been launched only on area measuring 37.218 acres and the balance licensed land parcel measuring 10 acres, which was vacant at the site had been returned/surrendered to Orris along with all rights and liabilities vide Supplemental and Relinquishment Agreement dated 13th of September 2017 bearing vasika number 1459 registered on 14th of September 2017 (hereinafter referred to as "Supplemental and Relinquishment Agreement").

46. It has been stated by Three C that Orris is entitled to 35% of developed area and in lieu of construction made by Three C, it is entitled to 65% of the developed area in the said project. Three C has further claimed that the environment clearance for the project had been counted on 27<sup>th</sup> of November 2013 and as on date substantial construction work of the said project already stood completed at the spot.

47. Three C Shelters Pvt. Ltd. has urged in its reply that there had been huge default on the part of buyers and even the de-



monetization had badly affected the said project. It has been stated that construction of structural finishing work of 7 towers falling between towers number 15 to 21 (Phase – I) had been completed and the same would be ready within a span of 3 months. It was further stated by Three C that construction of the structure of 12 towers falling between towers number 1 to 12 was complete and final finishing works were in progress (Phase-II).

48. Three C has also stated in its reply that construction of structure of the balance 10 towers numbered 12 A, 14, 22 to 29 (Phase –III) also stands completed and MEP and finishing works are in progress and the same would be ready after completion of Phase –II. Three C has also admitted that it had received a sum of Rs. 822.57 crores (including service tax, EDC/IDC, transfer charges, overdue interest etc.) whereas the total expenses incurred by it for the project were Rs. 823.07 crores. However, later on in affidavit dated 23.01.2019 they have declare that “there is no diversion on fund as we have received Rs. 775 Crores and we have spent Rs. 776 Crores on the project.” The difference in figures mentioned in the reply to the complaint and in the affidavit is attributable to the factoring in of service tax, EDC/IDC, transfer charges, overdue interest, etc.





49. It has been claimed by Three C that period for completion of the project ought to be calculated from grant of Environmental Clearance dated 4<sup>th</sup> of September 2013 and Consent to Establish received on 27<sup>th</sup> of November 2013. Three C has asserted that the period for completion of construction had expired in November 2017. Three C has contended that the slowdown in construction/delay was primarily due to default in making timely payment of instalments by the buyers including the complainant Association to the tune of approximately 117.59 crores. Three C has tried to assert that no lapse could be attributed to it in the sequence of events.
50. The application filed by the respondent for rejection of complaint raising preliminary objection regarding jurisdiction of the authority stands dismissed. 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.
51. A complaint was filed by M/s Greenopolis Resident Welfare Association against M/s Orris Infrastructure Pvt. Ltd. and Others. The same was registered as complaint no. 225/2018.



As the outcome of the complaint may affect more than 1500 buyers in this project, it was decided with the consent of complainant and respondents that project be got audited and an estimate be made as how much cost has been incurred so far and what will be the cost required to complete the project.

52. M/s Currie & Brown India Pvt. Ltd. was appointed as the financial auditor and M/s Quantum Infra projects Pvt. Ltd. as the quantity surveyor, broadly to determine cash inflows & cash outflows in the project, cost incurred & cost to be incurred in the project and preparation of project completion plan/mitigation plan for the project, again with the consent of both the parties.
53. Exercising its power under section 35 of the RERA Act in its order the HARERA appointed Dr (Prof) M.S. Turan as the Commissioner Investigation and Monitoring Officer with the consent of both parties. Both, financial auditor and quantity surveyor prepared their reports under the guidance and supervision of Dr. M.S. Turan. Necessary information was obtained to the extent possible from the promoters and developer of the project and factored in financial due diligence report.



54. It is evident from the agreement executed between promoter M/s Orris Infrastructure Pvt. Ltd. and the developer, M/s Three C Shelters Pvt. Ltd. in 2011 that Orris being the possessor of the land parcel admeasuring 47.218 acres at sector 89 in Gurugram granted the development rights to Three C. The agreement entailed that 35% of the units in the project would be sold by Orris and 65% units by Three C. The liability of completing the construction work in the project stands at Three C. The project was supposed to be delivered to homebuyers in 2015/Early 2016 but till date the project is incomplete which led the aggrieved home buyers to approach the HARERA.

The details of units in the Greenopolis project are as under:

Sr. No.	Description	No. of Units
1	Total no. of units	1862
2.	Total no. of units allotted	1650
3.	No. of units allotted by Orris	533
4.	Units allotted by Orris for which no sale transactions have taken place	26*
5.	Total no of units disposed off by Orris (column 3+4)	559



\* Investigation revealed that these 26 units were given by M/s Orris Infrastructure Pvt. Ltd. to Sh. Lal Singh, 'collaborator' against the land contributed by him as informed by M/s Orris Infrastructure Pvt. Ltd. vide their letter dated 27.12.2018. These units did not generate any cash receivables. This information is not a part of financial due diligence report.





6.	No. of units allotted by Three C Shelters	1091
7.	Unsold units in the share of Orris	93
8.	Unsold units in the share of Three C shelter	119
9.	Total No. of units unsold (column 7+8)	212

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

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



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



Sr. No.	Description	Amount in Cr.
1.	Land and related cost	196.13
2.	Construction cost	511.58
3.	Sales and marketing	35.62
4.	Overhead and other misc. expenses	29.23
5.	Total (column 1+2+3+4)	<b>772.56</b>
6.	Financial cost and loans as per the books of accounts. (finance cost Rs. 55.02 cr. and loan Rs. 154.93 Cr)	209.95
<b>Collection and expenditure by Three C</b>		
1.	Total expenses incurred by Three C Shelters Pvt. Ltd. Directly in the project.	772.56
2.	Total collection by Three C Shelters Pvt. Ltd.	776.67

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

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



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



4.	Value of licensed land @ Rs. 15 crore per acre	555.00
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58. Examination of completion of the project

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

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

The Orris Infrastructure Pvt. Ltd. being the license holder is to clear EDC/IDC and to avail the benefit of rescheduling of





EDC/IDC policy of the state government. Necessary dues shall be cleared by M/s Orris Infrastructure Pvt. Ltd and shall thereafter be reimbursed from the receivables of the project by M/s Orris Infrastructure Pvt. Ltd. in the project from the ESCROW account on availability of funds in the account without disturbing the completion schedule of the project.

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

Sr. No.	Description	Amount in Cr.
1.	Sales price of 93 unsold units of ORRIS Infrastructure Pvt. Ltd. (Worst Scenario) + 119 unsold units of Three C Shelters Pvt. Ltd.	Rs. 142.58
2.	Balance receivable from sold units of Orris Infrastructure Pvt. Ltd. and Three C Shelter Pvt. Ltd.	Rs. 327.66
	Total (column 1+2)	<b>Rs. 470.24</b>

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



Sr. No.	Description	Amount in Cr.
1.	Estimated future cash inflows in the project	470.24
2.	Post-paid charges by Orris i.e. on	
3.	Post-paid cheque by Three C	60.00



4.	Attached property sale receipt of Three C	140.00
5.	Total (column 1+2+3+4)	<b>670.24</b>

61. The pleadings of rival parties have been minutely examined by us. We have also patiently heard the contentions of the parties/counsel. The fate of allottees of 1650 units hangs in balance in the present litigation. We are convinced that the said allottees have been suffering because of avoidable inaction on the part of promoters. Slowdown in the real estate market and demonetisation cannot be considered to be valid factors/circumstances to justify the apparent delay in implementation of the project.

62. As highlighted above Orris had been granted license by the competent authority. The said company (Orris) entered into a Joint Development Agreement with Three C. As on date the internal differences between Orris and Three C cannot be used as a shield to cause mischief and fraud to allottees of 1650 units who have been running from pillar to post and have been waiting indefinitely for timely delivery of possession of their apartments.

63. As per status report submitted by Dr. M. S. Turan, Commissioner Investigation and Monitoring Officer after obtaining the financial due diligence report and quantity





survey report from consultancy firms (Currie and Brown and Quantum) Orris has received 196.13 crores from Three C under various heads and has also collected Rs. 383.06 crores from prospective purchasers by selling apartments in the project. Further, the report submitted by Commissioner Investigation and Monitoring Officer also brings out that Three C has advanced loans to the tune of Rs. 154.93 crores towards group/related companies at very nominal rate of interest which has still not been recovered and spent on the project. It is being disallowed for the purposes of expenditure incurred by the promoters in the project and shall have to be pumped into the project for its completion.

64. As per report of Commissioner Investigation and Monitoring Officer Three C has issued debentures (CCD's/FCCD's and OCD's) of Rs. 167.61 crores at an exorbitant rate of interest of 17.75%, resulting into hefty amount of interest that is Rs. 35.19 Crores casting undue burden on the financial health of Greenopolis project. In terms of agreement executed between Orris and Three C no doubt construction/development is to be undertaken and concluded by Three C. However, the main responsibility lies with M/s Orris for completion of the project being the licence holder.





65. The apartment purchasers were also made to believe by Three C that it would proceed to undertake construction/development of the project. In its sale promotion Orris also represented that construction/ development would be undertaken by Three C. The mutual relationship of Orris and Three C is absolutely irrelevant. The authority is committed to ensure that the purchasers are not cheated/defrauded and the hard-earned money of the purchasers is not misappropriated. The authority in the interest of the project afforded sufficient time to the two companies to amicably settle their inter se disputes. The authority feels that the non-registration of the project shall also be a stumbling block in the attempt of the authority to dispense justice to the prospective purchasers.

66. In order to obviate such an eventuality, interim registration is granted for Greenopolis project. At the same time it is directed that Three C and Orris shall forthwith submit a duly complete application for registration of the said project and project completion schedule along with quarterly progress to be achieved during the completion period of the project. We have been informed that an application for approval for change of developer (COD has been made to Director General Town and Country Planning Haryana (DGTCP) on 07/09/2018. We direct Three C to expeditiously obtain the said COD approval





within 30 days. On 18th of December 2018 it had been directed by the authority, that the construction of the project shall be undertaken by Orris and M/s Orris had indicated his commitment to do so. It had further been directed that Orris would be bound to commence construction work of the project at the site in full swing by 5th of January 2019. It has been conveyed to us that on 5th of January 2019 hostile vendor/contractors did not permit the labour/staff to enter the project site and to commence/complete construction work therein. It is further conveyed by Three C and M/s Orris being joint venture partner to the authority that thereafter, the matter was resolved and, on this day, more than 150 labourers are working at the spot.

67. On 18th of December 2018 a provisional understanding had been reached between Orris and Three C in terms of which certain properties were to be transferred by Three C in favour of Orris. In accordance with the said provisional understanding communicated to the authority, Orris had been directed to proceed with the completion of the said project. Subsequently, the said provisional understanding did not get consummated and eventually it was stated in writing before the authority that Three C would proceed to undertake the construction/implementation of the said project.





68. In order to convince the authority of its bona fide Three C has voluntarily filed an affidavit that it is dedicating four properties situated in Delhi/Noida valued at approximately Rs. 200 crores as per the details given below to ensure timely and smooth completion of the project: (the affidavits submitted by the Three-C Shelter given by Shri Vidhur Bhardwaj have been placed on record).
69. The official/counsel for Three-C have assured the authority that the construction/implementation of the said project shall be done in an uninterrupted, smooth, planned and regulated manner.
70. M/s Orris shall pay the total amount of 60 Crs being the consideration in respect of inter-se arrangement w.r.t. exchange of properties in 12 tranches of Rs.5 crores each per month for a period of one year commencing from January, 2019 to secure the aforesaid payment Orris at the directions of this authority has deposited 12 cheques which were later replaced by the the following 12 cheques amounting to Rs.60 crores were submitted to Commissioner Investigation and Monitoring officer: -



Sr. No.	Cheque No.	Dated	Amount
1.	000015	08/01/2019	50000000



2.	000016	25/02/2019	50000000
3.	000017	25/03/2019	50000000
4.	000018	25/04/2019	50000000
5.	000019	25/05/2019	50000000
6.	000020	25/06/2019	50000000
7.	000021	25/07/2019	50000000
8.	000022	25/08/2019	50000000
9.	000023	25/09/2019	50000000
10.	000024	25/10/2019	50000000
11.	000025	25/11/2019	50000000
12.	000026	25/12/2019	50000000
<b>Total Amount</b>			<b>600000000</b>

71. The aforesaid cheques worth Rs.60 crores submitted by Orris against two properties of Rs. 70 Crores purchased from Three C Shelter Pvt. Ltd. are taken on record in original and handed over to Dr. M.S. Turan, Commissioner Investigation and Monitoring Officer, who shall keep these cheques in his custody and deposit the same in the project account opened by Three C on the due dates indicated on the cheques which amount shall be utilized by Three C for construction and development of the project. Similarly, Three C vide its letter dated 08.01.2019 has also stated that out of the aforesaid four properties worth more than Rs. 200 Crores after deduction of





loan and liabilities thereon are dedicated to Greenopolis project to increase the cash flow of the project, balance two properties namely Arena 3, Sector 79, Noida and Arena 10, Sector 79, Noida shall be sold by Three C within 12 months and the sale consideration realized from the two properties shall be used towards construction and development of the project. Further to show its bona fide, Three C has through its associates company M/s. Three C Universal Developers Pvt. Ltd. submitted following 12 cheques worth of Rs.60 crores as under: -

Sr. No.	Cheque No.	Dated	Amount
1.	002511	08/01/2020	50000000
2.	002512	08/02/2020	50000000
3.	002513	08/03/2020	50000000
4.	002514	08/04/2020	50000000
5.	002515	08/05/2020	50000000
6.	002516	08/06/2020	50000000
7.	002517	08/07/2020	50000000
8.	002518	08/08/2020	50000000
9.	002519	08/09/2020	50000000
10.	002520	08/10/2020	50000000





11.	002521	08/11/2020	50000000
12.	002522	08/12/2020	50000000
<b>Total Amount</b>			<b>600000000</b>

72. The aforesaid cheques have also been handed over to Dr. M. S. Turan, Commissioner Investigation and Monitoring Officer who shall keep these cheques in his custody and ensure that out of sale of the aforesaid two plots namely Arena 3 and Arena 10, the value of Rs. 60 Crores and Rs. 75 Crores respectively are realized and utilized towards construction of the project and upon such realization the cheques submitted by Three C on behalf of M/s. Three C Universal Developers Pvt. Ltd. shall be returned to Three C in proportion to the payment receipt.

73. The counsel for the complainant as well as the individual allottees appearing before us, claiming to be members of the complainant have expressed the apprehension that there is a very strong likelihood of misappropriation of funds from sale of the unsold inventory by Orris as well as Three C in the said project. In any case the authority cannot permit the exercise of any unbridled and unfettered right by the developers, especially in the chequered history of the project.

74. At the same time a practical view of the matter has to be taken by the authority. Subjective satisfaction of every





allottee/developer in the present case cannot be achieved. The placing of riders/restraints on Three C with regard to receivables from the said project is essential to safeguard timely completion of the project. It has been submitted before the authority by the counsel for Three C that such financial restraints prove to be operational stumbling blocks in the expeditious construction/implementation of real estate projects.

75. We are not convinced with the submissions made by the counsels for the promoters. We are of the firm opinion that rights of allottees in the project need to be protected by ensuring that project receivables to be received by the promoters from their customers as well as amounts received from sale of unsold inventory are only used/utilised for construction/implementation/completion of the said project and for payment of statutory dues and for no other purpose.
76. It has been submitted before the authority by Orris and Three C that a period of 36 months is required for completion of the project even if the construction activity is steadily carried on at a rapid pace. This request made to us seems to be unreasonable. The hardship suffered by the allottees needs to be mitigated. Strong, emphatic and decisive steps are required





to be taken. The authority will not shirk in imposing harsh conditions so as to ensure timely construction/implementation of the project. No developer should be permitted to play with the fate of purchasers with impunity. Therefore, it is directed that only a period of 2 years from the date of passing of this order shall be available to Three C for completing the said project.

77. At the same time the request of Three C to be permitted to complete the said project in phases is justified. It is practically not feasible to undertake the construction/development of the said project which is considerably huge in magnitude. Therefore, Three C shall be entitled to complete the project in the same phases as set out in the affidavit dated 23.01.2019 filed by Three C. It is further directed that the construction/development of Phase -I, will be completed upto 31.07.2019 as per own commitment of Three C Shelter Pvt. Ltd. in their affidavit taken on record by the authority.



78. The promoters submitted that in terms of clauses 5.1 and 5.2 of apartment buyers agreement, the period for construction/development of the project shall end in November 2017. However, the due date of handing over possession will be worked out as per BBA and that will be



material for calculations of interest for every month of delay at prescribed rates. Correspondingly, in case Three C does not complete the construction/development of the said project upto 31.12.2020 as committed by them in their affidavit dated 23.01.2019, the allottees shall be entitled to demand and realise interest for every month of delay at prescribed rate/compensation for delay from Orris and Three C for their respective apartments.

79. It has been brought to our attention that the license for the said project shall expire on 22nd of December 2019. Orris and Three C are directed to apply for renewal of license well in time to Directorate of Town & Country Planning, Haryana, Chandigarh so that the license for the said project is kept valid and subsisting in accordance with law.
80. In order to ascertain the sincerity and bona fide of Orris and Three C it is further directed that no amount towards sale consideration amount shall be demanded by the said companies from any allottee till completion of Phase - I of the project, as set out in the reply filed by Three C. Pursuant to completion of Phase - I Orris and Three C may demand payments upon offering physical possession of apartments after obtaining OC comprised in Phase - I of the said project.





Needless to say amounts realized by Three C and Orris shall be used/utilized only for construction/development/completion of the balance phases of the said project and shall be credited in the escrow account for the project on behalf of both promoters.

81. This case has a very peculiar character and is unlike complaints preferred before authority. As highlighted earlier, at the threshold, complainant had made it crystal clear that it was not seeking any refund or compensation and only wanted enforcement of provisions of RERA Act and rules framed thereunder. The welfare of allottee under the said statute is paramount. It is our considered opinion that needless institution and prosecution of unwarranted litigations, before various forums would not be prudent and in the best interest of the allottees. Multifarious and protracted litigation does not sub-serve any useful purpose.

82. Through this order, the authority has made every conceivable attempt to ensure expeditious implementation of the project, thereby protecting the interests of the allottees which as on date stands exposed to peril and is completely unguarded. A miniscule minority of allottees who have appeared before us were pressing for refund. The large majority of allottees







wanted the project to be completed so as to enable the allottees to have a roof over their head. The officials of Orris and Three C on the other hand claimed that allottees had committed persistent and substantial defaults as they were not able to realise the anticipated escalation in value of apartments booked by them.

83. We cannot treat all allottees as speculators as contended by officials of Orris and Three C. The ordering of refund at the instance of a miniscule minority would be completely prejudicial and detrimental not only to the interest of the vast majority of allottees which opposes it, but at the same time would end up completely destroying any possibility of implementation and completion of the project.

84. No doubt under law various forums are available to allottees to seek redress of their grievances. Under the RERA Act the authority does not have jurisdiction to restrain any allottee from pursuing its remedy before alternative forums. At the same time a holistic view of the matter deserves to be adopted. Needless prosecution of litigations before different forums by allottees of the same project at loggerheads with each other would entangle the project in avoidable litigation and would only result in delaying the completion of the project.





85. Under these circumstances the authority does hope that while deciding litigations pertaining to the project, NCDRC and other forums/courts/commissions would take into reckoning the fact that implementation/completion of the said project is on the anvil and the same is likely to be brought about in a time bound manner in terms of this order. We are of the definite opinion that order of compensation and/or refund at this crucial stage would completely extinguish any possibility of implementation of the said project as it will inflict a crippling blow to the cash flow of the project. In our opinion, it would be in the fitness of things if relief in the other proceedings relating to the project is modulated in any manner, harmonious and conducive to the present order.

86. With consent of parties it was agreed that the appointment of Dr. M. S. Turan, Commissioner Investigation and Monitoring Officer, shall continue till completion the project on the same honorarium as being paid now who shall discharge his duty as the Monitoring Officer for the smooth implementation and completion of Greenopolis project and upon completion of each phase of construction, intimation be given to this Authority. Dr. M. S. Turan, Commissioner Investigation and Monitoring Officer, shall ensure implementation of this order





both by Orris and Three C as well as the complainant and its members viz. other allottees of the project.

87. Three C and Orris shall ensure monthly/ quarterly report to be submitted to the authority in consultation with Dr. M. S. Turan and also shall be made available to him and further to ensure appropriate sitting place and office at project site along with meeting room for Dr. M. S. Turan, Commissioner Investigation and Monitoring Officer to have project review meeting at project site. However, weekly progress report be submitted during initial 2 months of the take-off of the project in full swing.

88. In terms of this order and in light of reasons assigned herein above the complaint filed by the complainant is disposed off. It is clarified that in light of the directions contained in this order all interlocutory and interim orders earlier passed stand vacated. However, 10 acres of land shall remain attached till substantial progress is made by the promoters or the completion of the project and occupation certificate is obtained by M/s Orris/ M/s Three C Shelter Pvt. Ltd.



### **Decision and directions of the authority**

89. 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 directions to the respondent in the interest of justice and fair play:

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

(i) Phase I Tower No. 15 to 31

31.07.2019

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(ii) Phase II Tower No. 1 to 12 31.03.2020

(iii) Phase II Tower No. 12A, 14, 22 to 29 31.12.2020

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

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

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

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



- (i) The promoters are also directed to submit detail of EDC/IDC collected from the allottees in case it has been charged separately from them.
- (j) The parties shall be at liberty to approach the authority for any clarification.

90. The order is pronounced

91. Case file be consigned to the registry.

**(Samir Kumar)**  
Member

**(Subhash Chander Kush)**  
Member

**(Dr. K.K. Khandelwal)**

Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 23.01.2019

**Judgement Uploaded on 25.01.2019**

