

M/s Ferrous Infra Pvt. Ltd.

Vs.

Maximal Infra Ltd.

Appeal No.1399 of 2019

Present: Shri Gaurav Chopra Advocate, Id. Counsel for the appellant.

Presence of respondent no.1 already exempted.

Shri Parveen Kumar, Id. Govt. Pleader with Shri Jitender Singh Sihag, Chief Town Planner, office of Director Town & Country Planning, Haryana, Chandigarh. (In person).

[The aforesaid presence of learned counsel for the appellant is being recorded through Video Conferencing]

ORDER

In the present appeal, the appellant/promoter is aggrieved with the direction no.9 in the impugned order dated 01.10.2019 which reads as under:-

“(ix) As pointed out by the Local Commissioner, there has been serious violation of the building plans by some of the developers. The Town & Country Planning Department should visit the site of the project immediately. All the compoundable and non-compoundable offences should be dealt with strictly in accordance with law. Some indications have also been given by Local Commissioner regarding poor quality construction which may affect safety of the building. The Town & Country Planning Department is advised to get the structural strength of the buildings re-examined with the help of experts and take suitable action as per law. It must ensure that only those buildings are granted occupation certification which have been developed as per approved plans and are safe in all respects.

The developers are strictly prohibited from offering possession to any allottees without first obtaining the occupation certificate from the Town & Country Planning Department.”

2. The main contention raised by learned counsel for the appellant is that the learned Authority has wrongly relied upon the report of the Local Commissioner i.e. Planner Plus in pursuance of the order dated 02.05.2019 passed in complaint no.245 of 2019 titled as HRERA, Panchkula vs. Triveni Ferrous Infrastructure.

3. Learned counsel for the appellant has contended that the said report was filed in the complaint wherein the appellant was not the party. He further contended that the Local Commissioner has travelled beyond the order of reference. He contended that it is settled principle of law that the report beyond reference cannot be taken into consideration. He has relied upon cases **Gian Chand vs. Janki Devi, 2017(2) ILR (H.P.) 462** and **Dhoom Singh vs. Baisakhi Ram, 1997(1) R.C.R. (Civil) 147**.

4. Learned counsel for the appellant contended that the learned Authority was not competent to give direction as the Director Town and Country Planning is to deal with the issue for issuance of the Occupancy Certificate as per the provisions of the Haryana Building Code, 2016.

5. We have duly considered the aforesaid contentions.

6. We have perused the order dated 02.05.2019 passed by the learned Authority in complaint no.245 of 2019 vide which the Local Commissioner was appointed. The relevant portion of the order giving reference to the Local Commissioner is reproduced as under:-

“For proper disposal of this matter, facts relating to each of the five projects as are available on the ground, should be collected. For this purpose, Local Commissioner should be appointed for visiting the sites and submit its reports on relevant parameters

including the nature of colony i.e. whether it is a plotted, multi-storey apartments, commercial, mixed land use etc., the current status of the development of the project separately in respect of the apartments and the infrastructure; the number of apartments/plots sold and unsold; facts relating to over dues like EDC, license fee etc. relating to the whole of the project and if possible in respect of each of the five components of the project; photographs of the project from different angles should be collected and copies to be placed in the file. The Local Commissioner will also visit the office of District Town Planer concerned to obtain any other relevant information. A copy of this order be sent to the DTP concerned to give full cooperation to the Local Commissioner. CTP shall separately seek information from the office of DTCP Haryana relating to renewal of license, outstanding dues on account of EDC and license fee, stage of processing of the application for transfer of the beneficial rights; whether any application has been received for grant of OC or not etc.”

7. Admittedly, in the aforesaid order there is no reference regarding quality of construction of the structure. Thus, the note given by the Local Commissioner with respect to the poor construction quality is obviously beyond the scope of the reference.

8. But, this fact cannot be disputed that the learned Authority is competent under Section 35 read with Section 81 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter called ‘the Act’) to appoint the Local Commissioner for site inspection.

9. It is also not disputed that at the time of issuance of the Occupancy Certificate, the Director Town & Country Planning satisfies himself with respect to the compliance of the provisions of

the Building Code. It has been informed to us by Shri Jitender Singh Sihag, Chief Town Planner, who is present before us, that as per the procedure being followed they obtain the certificate of the structural engineer of the promoter along with other requirements for the satisfaction of the competent authority and to process the case. Thus, it is expected that the Town & Country Planning Department will take all necessary steps required under law before issuance of the Occupancy Certificate such as the necessary approvals, safety angle of the building, compoundable and non-compoundable violations. The mentioning of these incidences is just for example and not exhaustive.

10. Thus, the grievances raised by learned counsel for the appellant can be well-met out with some modification and clarification in direction no.9 given by the learned Authority in the impugned order. Thus, the direction no.9 given by the learned Authority in the impugned order stands modified/clarified to the extent that the Director Town and Country Planning will consider the issuance of the Occupancy Certificate of the project without being influenced with the report of the Local Commissioner appointed by the learned Authority in Complaint No.245 of 2019 to the extent which is beyond the scope of the reference of its appointment. The remaining part of the direction no.9 shall remain intact.

11. As the delivery of possession to the allottees has already been delayed much, so it is expected that the Director Town and Country Planning will make every possible endeavour to expedite the issuance of the Occupancy Certificate of the project obviously on completion of all the formalities by the appellant/promoter as required under the law.

12. The appeal stands disposed of accordingly.
13. Copy of this order be also placed on record in appeal no.1400 of 2019.
14. Copy of this order be communicated to learned counsel for the parties/parties and the learned Authority for compliance.
15. File be consigned to the records.

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

Inderjeet Mehta
Member (Judicial)

Anil Kumar Gupta
Member (Technical)

April 07, 2021
CL