



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 89 of 2019

Piyush Heights Residents Tower J & K
Welfare Association

....COMPLAINANT

VERSUS

Piyush Buildwell India Ltd.

....RESPONDENT

CORAM:

Rajan Gupta
Anil Kumar Panwar
Dilbag Singh Sihag

Chairman
Member
Member

Date of Hearing: 24.03.2021

Hearing: 16th

Present:

Mr. M. C. Jain, President of Piyush Heights Residents Tower J & K Welfare Association for complainant

Mr. Rahul Rathore, counsel for Piyush Heights RWA through video conference

None for respondent

ORDER (ANIL KUMAR PANWAR - MEMBER)

1. The complainant-association in this case was allowed to take over towers J and K of project named Piyush Heights under section 8 of Real Estate (Regulation and Development) Act, 2016 for completion and handing over

possession to its members who are allottees of the project. The case is being monitored by the Authority and the complainant-association is apprising the Authority on each date about the status achieved in the matter.

2. The President of Piyush Heights Residents Tower J and K Welfare Association has today apprised the Authority that No Objection Certificate from the fire department and licence for lift licence has been obtained in respect of both towers. However, fittings in 28 bathrooms and 39 electric meters are yet to be installed. The works still requiring completion are in respect of external electrification, cleaning of floors and installation of requisite fittings in common areas including stilt area.

3. Issue regarding scrap material lying around the project was also raised and permission was sought from Authority to auction the same. Authority observes that complainant-association can auction the scrap material on as and where basis in presence of a committee which besides the managing body of complainant-association, will also comprise of one representative each of DC, Faridabad and DTP, Faridabad. The complainant before effecting the auction shall also send a notice to the respondent at his last known address, informing him about the date, time and venue of auction.

4. The Authority was apprised that the concerned department would not entertain complainant's application for grant of Occupation Certificate (OC) because the licence granted for the project has already been cancelled. It was



further submitted by the President of complainant-association that difficulty is likely to crop up for obtaining OC till all payments pertaining to statutory levies and cess are cleared by the promoter who is primarily responsible to make these payments.

5. The Authority is of the considered opinion that OC cannot be withheld in respect of a project handed over to association of allottees on the ground that promoter had committed certain defaults leading to cancellation of licence because the very purpose of section 8 would otherwise stand defeated for the reason that the allottees despite completing the project would not be able to enjoy the fruits of their efforts made towards completion of the project. Once a licence is granted for development of a real estate project over some land and the concerned promoter had created third-party rights by selling units in such project on payment of heavy amounts, the concerned department granting licence then cannot defeat the rights of the allottees on the ground of cancellation of licence because it is by virtue of the licence granted by the department that the promoter derives a right to launch his project and sell units to the allottees. In other words, the concerned department by virtue of granting licence causes to be constructed by the builder the real estate project into plots, apartments, flats etc. for the purpose of selling the same to other persons. Significantly, section 2(zk) of the Real Estate (Regulation and Development) Act, 2016 makes it clear that not only a person who contracts but also a person



who causes to be constructed and independent building or a building comprising of apartments for the purpose of selling to other persons comes within the ambit of expression 'promoter'. The department granting licence thus is essentially a promoter vis-a-vis the allottees of a project and it cannot be therefore allowed to cause any hurdle in respect of allottees' rights to obtain OC after the association of allottees completes a project on exercising their right under section 8 of the Real Estate (Regulation and Development) Act, 2016.

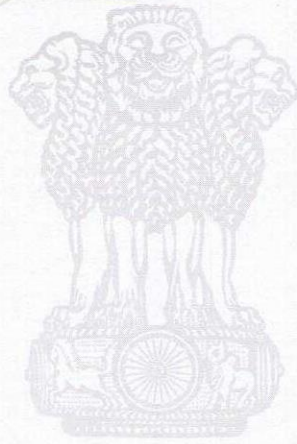
6. For the purpose of obtaining OC by complainant-association, the only requirement needs to be complied on its part is to complete laying of all services as per approved plans. Once such services have been completed by the association of allottees, the concerned department will not have a valid reason for not entertaining an application for grant of OC or withholding the permission for grant of OC merely because the licence owing to the promoter's own defaults in respect of terms of licence, has been cancelled. All unpaid statutory levies and cess mandated to be paid prior to obtaining of OC shall be payable by the respondent-promoter only.

7. Viewed from above-discussed perspective, the Authority directs the complainant-association to submit certificates from registered Structural Engineer and registered Architect showing that services as per approved plans have been laid down and are fully functional in respect of towers J and K. The Authority will consider the feasibility of issuing further directions as are

necessary to the concerned department for grant of OC after receiving such certificates.

8. The complainant-association shall also submit a copy of above referred certificates to DTP, Faridabad who shall thereafter conduct an inspection and submit his report regarding completion and functional status of services. A copy of this order be therefore sent to DTP, Faridabad for necessary compliance.

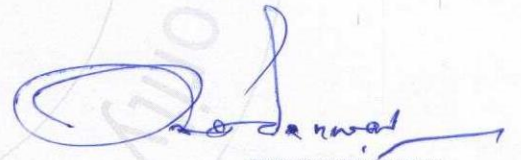
9. Adjourned to 18.05.2021.



सत्यमेव जयते



RAJAN GUPTA
[CHAIRMAN]



ANIL KUMAR PANWAR
[MEMBER]



DILBAG SINGH SIHAG
[MEMBER]