HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 1764 OF 2019

Rameshwar ....COMPLAINANT

VERSUS

Aerens Gold Souk ....RESPONDENT

CORAM:	**Rajan Gupta**	**Chairman**
	Dilbag Singh Sihag	**Member**

Date of Hearing: 24.11.2021

Hearing: 13th

Present: - Mr. Pardeep Sheoran, Counsel for the complainant through VC

Mr. Nitesh, ld. counsel for the respondent through VC

ORDER (RAJAN GUPTA-CHAIRMAN)

1. The present complaint relates to execution of refund order dated 22.01.2019 passed by this Authority in favour of the complainant. In compliance of the said order, the promoter of a project known as Aerens Gold Souk Projects Pvt. Ltd. is required to refund an amount of ₹24,30,099/- to the complainant along with interest as prescribed in Rule-15 of HRERA Rules,

2017. The complainant has not yet received the amount and hence, the present execution.

2. This matter has been heard twelve times. It is observed that the respondent has not complied with orders till date in as much as he has neither delivered possession nor has refunded the amount to the complainant even though the orders were passed in January 2019. No justifiable cause for non-implementation of orders has been brought to the notice of the Authority. Therefore, vide order dated 03.10.2019, it was ordered to issue show cause notice under order 21 Rule 37 of CPC against Directors of respondent company as to why they should not be sent to civil imprisonment for not complying with the orders of the Authority. But no reply to show cause notice has been filed by respondent till date.

3. However, in the previous hearing dated 25.02.2020, it was noted that the project had been taken over by the Department of Town and Country Planning, Haryana (DTCP) on 31.08.2016, therefore, assets and liabilities of the promoter company had vested in the said Department. The Authority vide its order dated 29.10.2019 had issued a notice to the DTCP to file his response as to why the order of refund be not got executed from him. Smt. Priyam Bhardwaj, DTP had marked her appearance and stated that Department was in the process of amending its rules to appropriately and effectively deal with the matters emanating from cancellation of promoter's license and consequent

taking over of the project. No further information has been received in this regard.

4. The complainant had also brought to the notice of the Authority that the promoter is likely to receive compensation from Haryana Shehri Vikas Pradhikaran from the Court of Additional District Judge, Hisar, therefore, the Authority while exercising the powers vested in it under the provisions of Order XXI, Rule-46 of the Code of Civil Procedure, 1908 and on the request of the complainant had issued prohibitory notice in Form 21E requesting the learned Court of Additional District Judge, Hisar to withhold an amount of ₹40,11,139/- from disbursement to M/s Aerens Gold Souk Projects Pvt. Ltd. out of the payable compensation amount. A notice to Haryana Shehri Vikas Pradhikaran was also issued to Show Cause as to why it would not be directed to remit the amount of ₹40,11,139/- to this Authority and the amount so remitted shall be discharged and set off against compensation amount payable to the promoter. No response on the notices so issued have been received till date even after sending reminders.

4. Thereafter, on request of complainant, the Authority had attached respondent's bank accounts being maintained at State Bank of India, New Delhi and Punjab and Sind Bank, Gurugram and notices were issued to the Managers of the said Banks to remit to this Authority a sum of ₹40,11,139/- if found available in the said accounts. No response from State Bank of India,

New Delhi has been received yet. However, a letter dated 04.10.2021 had been received from Punjab and Sind bank stating that an amount of ₹15,440/- available in the account of respondent has been transferred to this Authority. Draft received for the said amount was taken on record and the complainant would be entitled to collect it from the Authority against receipt.

5. Since claim of the complainant has not been satisfied by availing above said remedies, Authority decides to explore alternative remedy to satisfy the decree holder/complainant. Now, the Authority in exercise of powers conferred on it by Section 40 of The Real Estate (Regulation and Development) Act, 2016 and Rule 27 of Haryana Real Estate (Regulation and Development) Rules, 2017, for recovering the refund amount as arrears of land revenue and for executing its orders as decree of a Civil Court, decides to issue a recovery certificate against the company addressed to concerned District Collector with a direction to recover the decreed amount of ₹46,44,966/- (Principal amount ₹24,30,099/-+ interest ₹22,14,867/- @10.75% till 24.11.2021) from the respondents as arrears of land revenue and remit the same to the Authority after such recovery for further payment to the complainant. The District Collector shall send a compliance report to this Authority. Necessary action be accordingly taken.

6. Further, it is brought notice to the Authority that liquidation proceedings are going on against the respondent company. Therefore,

Authority considers it just and fair to grant similar rights to the complainant as granted to some allottees in a bunch of cases in lead case No.383/2018 titled Gurbaksh Singh versus ABW Infrastructure Pvt Ltd., as follows: -

> "13. We are of the considered view that the right granted to an allottee by the amendment ordinance of 2018 is a value-able right and that right can be pressed before the appropriate forum/authority for satisfaction of their claims against the promoters/debtors.
> However, we are of the further view that the rights guaranteed by the RERA Act, 2016 for protection of allottees are very wide in nature and must be interpreted accordingly. As already stated in the arguments listed in Para 10 above that the allottees of a project, after having paid the EDC and substantial amount of money to the developer should be treated as deemed owners of the proportionate piece of the land and assets of the project, and their rights cannot be alienated by way of an agreement made between the promoter and the lending financial institution. Rights of the allottees must be treated superior to the rights of the lending financial institutions. The financial institutions, in so far as the assets of the related real estate project are concerned, are free to satisfy the claims from the remainders of the assets of the project after satisfaction of the claim of the allottees, and in addition they are free to set their claim satisfied from other assets of the promoters. They can press their claim even against the sureties and guarantees offered by the promoters.
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> 14. The aforesaid conclusion that the rights of the allottees should be treated superior to those of other financial creditors are also supported by the principles of natural justice and the express provisions of RERA Act, 2016. In support of these arguments, it is observed as follows: -
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> (i) The financial institutions are expert agencies which carry out due diligence about the promoter as well as his project before taking decision to lend money. They have expert manpower and machinery to adjudge the viability of the project and creditworthiness of the promoters. They have capability to understand risk factors involved

Accordingly, at the stage of lending, either they are fully aware of the facts that full or a portion of the project has been allotted to the allottees, thus creating third party rights or they are fully aware that the allotments will be made by the promoters in future, thereby creating third party interests in the assets hypothecated or kept with them as security. It is to be presumed that lenders have factored-in these facts at the time of lending.

Lending institutions are also supposed to monitor progress of the project in order to ensure that money lent by them is safe and is invested properly in the project. If the money lent by them is diverted or siphoned away, they must also share burden for the same for the purpose of protecting the rights of ordinary citizens. If the lenders fail to monitor the Project closely and if their loan is not repaid in time, they themselves also must share the blame. The allottee, however, must not suffer on behalf of the promoter or the financial institution.

(ii) On the other hand, an allottee typically is a middle-class person who harbours the dream of owning a house for his family. Savings of two or three generations usually have to be mobilized to own a house. He invests money on the basis of assurances held out to him by the promoters and the State Government agencies. He cannot access or understand the account of the project nor does he have any power to monitor progress of the project on day-to-day basis.

The principles of natural justice, therefore, dictate that the rights of the allottees should be treated superior and higher to those of the financial institutions.

(iii) It is relevant to quote here the provisions of ..... Section 79 and Section 89 of the Real Estate (Regulation & Development) Act, 2016.

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Section 79: Bar of Jurisdiction*- No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Authority or the adjudicating officer or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other*

authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

Section 89: Act to have over-riding effect- *The provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force."*

It is observed that Section 89 explicitly mandates that provisions of RERA Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force. Further, Section 18 guarantees that in the event of a project not being completed he shall have a right to seek refund of his money along with interest without prejudice to any other remedy available. Similarly Sub Section 3 and Sub Section 4 of Section 19 assure the allottee that he will be given refund of the money deposited by him in the event of default in completion of the project by the promoters.

This Authority is, therefore, of the considered opinion that since these rights of the allottees have been held superior to any other law for the time being in force, the rights of the allottee, therefore, shall be treated superior to that of the rights of other creditors including the financial institutions.

(i) The allottees of the project in question shall be treated as deemed owners of the project. The promoters of the project and the lending financial institutions cannot alienate the ownership rights of the allottees at their own level without their consent. Therefore, the claim of the allottees against the assets of the project shall be treated superior to any other right of any other person or entity including the financial institutions and/or other creditors.

(ii) If claims of the allottees are not satisfied fully from the assets of the project in question, they shall be treated creditors of the promoters at par with other creditors for satisfaction of their claims from the assets of the promoters other than the assets of the project in question.

(iii) ***

(iv) ***

(v) The complainants and other similarly placed allottees may present these orders before any authority dealing with liquidation of assets of the Project, or the respondents and seek satisfaction of their claims on priority. It is, however made clear that the claims of the allottees shall be restricted to the refund of the money paid by them to the respondents along with interest as provided for in rule 15 of the HRERA Rules, 2017.

6. Case is **disposed of** accordingly. File be consigned to record room.

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RAJAN GUPTA
[CHAIRMAN]

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DILBAG SINGH SIHAG
[MEMBER]