



**HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA**

Website: www.haryanarera.gov.in

**COMPLAINT NO. 1252 OF 2019**

Narender Gupta

....COMPLAINANT

**VERSUS**

Aerens Gold Souk International Ltd.

....RESPONDENT

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

**Chairman**  
**Member**

**Date of Hearing: 24.11.2021**

**Hearing:           14<sup>th</sup>**

**Present: -**           Mr. Akshat Mittal, Id. Counsel for the complainant  
                          through VC

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

**ORDER (RAJAN GUPTA-CHAIRMAN)**

1. This complaint has been filed for execution of the order dated 22.11.2018 passed by this Authority in favour of complainant. Vide the said order, Authority had ordered to refund entire paid amount of ₹22,00,000/- along with interest as prescribed under Rule 15 of HRERA Rules, 2017 by the respondent. Respondent has not complied with the orders even after lapse of three years.
2. This matter has been heard ten times. It is observed that respondent has not complied with orders of the Authority till date. No justifiable reason for non-implementation of orders has been brought to the notice of the Authority. Vide order dated 21.11.2019, 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. Said notice had been delivered to only one director Sh. Amit Gupta and could not be effected to other directors due to wrong address. Since no reply to show cause notice has been filed by the Director Sh. Amit Gupta, the Authority had decided to issue arrest warrant against the directors of the respondent company vide order dated 16.01.2020. However, no response was received from Commissioner of Police in this regard. On 21.04.2020, it was ordered to issue arrest warrant

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afresh against directors of respondent company. Thereafter, letter dated 03.09.2020 was received from Commissioner of Police informing that arrest warrant were forwarded to Deputy Commissioner of Police for taking further action. Till date no response has been received in the Authority. Authority has been apprised by learned counsel for respondent that liquidation proceedings are going on against the respondent company. Current status of such proceedings however, has not been placed before the Authority.

4. Because of severe defaults and mismanagements of the respondent, the complainant is suffering for many years. Therefore, Authority decides to explore alternative remedy to satisfy claim of the decree holder/complainant. 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 decreed amount as arrears of land revenue and for executing the orders as a decree of the civil court, the Authority decides to issue recovery certificate against the company addressed to concerned District Collector with a direction to recover the decreed amount of ₹41,74,721/- (Principal amount ₹22,00,000/-+ interest ₹19,74,721/- @10.70% 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.

5. It has been brought to the notice of the Authority that liquidation proceedings are going on against respondent company, therefore, Authority considers it just and fair to grant the similar rights to the complainant as granted to the allottees in a bunch of cases in lead case No.383/2018 titled Gurbaksh Singh versus ABW Infrastructure Pvt Ltd., in which Authority had inter alia ordered 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.

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: -

(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

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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]