



Complaint no. 144 of 2020

## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

### COMPLAINT NO. 144 OF 2020

Dwarkadhish Projects Pvt. Ltd.

....COMPLAINANT

VERSUS

Department of Town and Country Planning  
Haryana Through its Director

....RESPONDENT

**CORAM: Rajan Gupta  
Dilbag Singh Sihag**

**Chairman  
Member**

**Date of Hearing: 09.11.2021**

**Hearing: - 13th**

**Present: - Mr. Shubhankar Baweja, complainant in person through video conferencing  
None for the respondents.**

### **ORDER (RAJAN GUPTA-CHAIRMAN)**

This matter was heard at length by the Authority on 29.09.2020.

After hearing both parties Authority had passed a detailed order which is reproduced below;

“1. This complaint has been filed by the promoter’s company M/s. Dwarkadhish Projects Pvt Ltd. against Town and Country Planning Department, Haryana. The complainant

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company is seeking the relief that from 17.03.2017 till service plans estimates are approved by the Town and Country Planning Department, the entire period should be treated as covered by force majeure conditions. Further, since the Director General Town and Country Planning Department is unjustifiably delaying renewal of the license, extension of three years may be granted to the complainant company for completion of the project. Further, directions should be given to the Town and Country Planning Department for expeditious renewal of the license and approval of the service plans estimates. Complainant also sought relief of giving the directions to Town and Country Planning Department for giving them benefit of interest on Rs. 13.20 crores EDC paid in advance by the complainant company.

2. The complainant company has submitted the facts as follows: -

i) A license No. 13 of 2013 was granted to the complainant company by the Town and Country Planning Department on 18.03.2013, which was valid up to 17.03.2017. The complainant applied for renewal of said license before the date of expiry on 17.02.2017 for the period 2017 to 2019, and further on 15.05.2019 for the period from 2019 to 2024.

ii) Director, Town and Country Planning Department had conveyed certain shortcomings to the complainant on 14.12.2017, to which a proper reply was sent on 11.01.2018.

iii) Now, the matter is under consideration with the department since March, 2018 and the department has been





repeatedly taking a stand that the case for renewal of license is at advanced stage of consideration.

iv) The complainant is suffering a huge loss on account of inconsistent policies of the department and is not able to complete the project or sale the units. In fact, to mitigate his losses, the complainant company has got 8.376 acres of land converted into an affordable colony.

v) On account of non-renewal of license by the department, the loaning banks have stopped disbursing the instalment of loans sanctioned to the allottees of the project. For that reason, flow of money for the project has stopped and the development of the project has been halted.

vi) RERA has granted registration to the project despite non-renewal of license to protect the interest of the allottees. However, only RERA registration is not being and much help to the developers or the allottees because banks that demand both the requirements i.e. registration of the project as well as renewal of the license should be fulfilled.

vii) The department is demanding more EDC from the complainant company, whereas, according to complainant, department has to pay interest on the advance amount of EDC deposited by them. The department is not finalizing the matter of renewal of license of the complainant company, which is causing huge irreplaceable loss to the complainant company.



3. Despite issuance of notice to the Town and Country Planning Department on 06.02.2020 and 27.05.2020 and despite receipt of the said notices, DTCP has not submitted his reply.
4. The matter was heard today. Shri Shubhankar Baweja, learned counsel for the complainant company reiterated their stand as narrated above and stated that for no fault of the complainant company, both the promoters as well as allottees are suffering, which is resulting into a huge loss to the public at large and to the economy of the State. The Town and Country Planning Department is refusing to act on the genuine demand of the complainant company; therefore, they should be directed to act upon the representation of the complainant company within a time bound manner.
5. Learned counsel for the complainant further stated that this complaint has been filed under Section 32 of the RERA Act. As per provisions of Section-32 of the Act, the Authority is duty bound to make recommendations to the appropriate Government or competent authority for the purpose of protection of interests of allottees and promoters; and promoter of real estate sector.
6. The Authority has considered the matter. It observes as follows: -
  - i) This matter had earlier come up before the Authority at the time of registration of the project when an order dated 09.05.2019 was passed, the operative part of which is reproduced below: -





*“At this point of time, the Authority is considering it appropriate to analyze the theory of granting of license by the State Government to a project and its renewal from time to time.*

*A piece of raw land become a ‘real estate project’ after grant of a license and approval of its building plans by the State Government. Granting of license and approval of plans pre-supposes that the builders has paid all the dues and has also complied with all prescribed terms and conditions of law/rules/guidelines framed by the state government from time to time. Accordingly, after receipt of license and approval of plans the developer become fully entitled and authorized to launch the project and seek booking from prospective allottees.*

*The allottees pay their hard money to the developers’ licensed colony with duly approved plans on the basis of licensed and approved plans thus attained the status of sovereign assurance of the State Government given to the general public that they may safely invest in the project and nothing will go wrong with this investment. This assurance given by the Town and Country Planning Department is a sovereign guarantee to the public. The sovereign assurance granted to the allottees by way of license and other approvals cannot be amended, altered or re-structured in any manner with retrospective effect or without appropriate Authority of the legislature. The grant of license and approval of plans becomes a commitment of the state Government to the allottees that they will get the apartment in terms of the agreement as per the approved plans. It also implies guarantee of the safety of their investment.*



*Now, after launching of the Project and creation of 3<sup>rd</sup> party interests, the license and the development plans becomes irrevocable. It is possible that some developers may become defaulters in payment of EDC, license fee etc. to the State Government. To enforce the payment of such over-dues, the State Government is entitled to adopt any lawful means available it cannot implicitly or explicitly mean that the license for the sanctioned project would be withdrawn/withheld/altered. In other words, the state government is entitled to recover its over-dues by attaching any property of the attaching any property of the developers or by filing civil or by attaching unsold or undeveloped portion of the project in respect of which third party rights have been created that goes out of the powers of State Government excepts for the purpose of granting occupation certificates at the relevant stage of for ensuring that development has been done in accordance with the approved plans, etc. accordingly, the state Government cannot withhold renewal of license of a project in respect of which third party rights have been created. The Authority is of considered opinion that in the event of delay in renewal of license on the part of the State Government, the Authority cannot and should not withhold grant of registration because banks and financial institutions will no finance an apartment in project which has been registered with the Authority.*

*Thus, a project which is otherwise been developed as per plans cannot denied registration if its delay is being caused in renewal of its license.*





ii) Consequent upon above observations, the project was registered by the Authority on 09.05.2019. However, the problems of the project and of the allottees have not been solved because the license of the complainant company has not been renewed. The lending financial institutions and banks are insisting on renewal of license as well.

iii) This project is at the advance stage of completion. Number of complaints has been received relating to the project citing the reasons of delay in completion. While on one hand allottees are suffering because they are not able to get their homes, on the other promoter is suffering because the project is getting delayed despite all efforts being made by the promoter. It has been observed by the Authority that the promoter has invested the considerable amount of money from his own pockets.

7. In the light of above observations, the Town and Country Planning Department is directed to expedite the decision on the matter pending before them since long. They must realize that the project has been launched only after getting a license from the Town and Country Planning Department and also after due approval of their building plans etc. Now, creation of the third-party rights, department cannot refuse to renew the license. If any dispute has arisen for the reason of non-payment of EDC etc., the same can be resolved by other means but the department cannot bring development of the project to halt by non-renewal of the license.





The Authority would ask a question that who will be liable for the period of delay in completion of the project, when the allottees are entitled to get delay interest and compensation for the period delay. Evidently, the project is suffering due to inaction on the part of the department. In such situation, the Authority is of the view that Town and Country Planning Department could also be held responsible and liable to bear burden of interest and penalty leviable to be paid on account of delay in handing over the possession to the allottees.

The Authority would expect the department not to cause any further delay and take a final decision relating to the renewal of license of the complainant company as well as in respect of approval of the service plan estimates.

8. The Authority hereby decides to make recommendations under Section 32 of the RERA Act to the Town and Country Planning Department to take expeditious decision on the above issues. They should amend their policies and related guidelines so that once third-party rights are created in a project, renewal of its license is not denied or delayed; and if any money is due to be recoverable, the same may be done by any other means which do not adversely affect development of the project. The Authority would expect a considered reply from the department within a period of 30 days.

9. Copy of the order be sent to the Principal Secretary as well as to the Director General of Town and Country Planning Department by name. Concerned Law Associate shall ensure





that the letters enclosing therewith a copy of this order is delivered to both the authorities immediately

10. Adjourned to 24.11.2020.”

2. Mr. Shubhankar Baweja, learned counsel for the complainant submitted that even after various reminders he has not received any communication from the Town and Country Planning Department with regard to renewal of license. The company is suffering huge loss on account of non-renewal of license as loaning banks have stopped disbursing instalment of loans sanctioned to allottee and consequently because of lack of funds development works of the project have halted.

3. After hearing above submissions, Authority observes that it has already ordered Town and Country Planning Department for renewal of license of complainant company in a time bound manner. Regarding other reliefs sought in para C of the prayer clause, Authority observes that the same has to be decided by State Government in accordance with appropriate laws of land. Authority is unable to issue any directions in that regard.


4. Considering above order dated 29.09.2020, Authority observes that Town and Country Planning department has still not renewed license of the complainant company resultantly allottees of the project are suffering badly. Therefore, Authority reiterates its view that Town and Country Planning





Department will also be responsible for causing delay in completion of the project if required permissions are delayed by them

5. In view of above, Authority disposes of this matter with a direction to Town and Country Planning department to dispose of all pending requests of promoters by passing a detailed speaking order as per law within 30 days. In the event of failure of department to comply with the orders of this Authority further action will be taken for enforcement of these orders in the same manner as a decree of civil court.



RAJAN GUPTA  
[CHAIRMAN]



DILBAG SINGH SIHAG  
[MEMBER]