



HARYANA REAL ESTATE REGULATORY AUTHORITY, PANCHKULA.

Mini Secretariat (2nd and 3rd Floor), Sector-1, Panchkula.

Telephone No: 0172-2584232, 2585232

E-mail: officer.rera.hry@gmail.com, hrerapl-hry@gov.in

Website: www.haryanarera.gov.in

Complaint No. 491 of 2018 titled as Ritu Rana Vs M/s. IREO Fiverivers Pvt. Ltd. - Correction in the attendance marked in order dated 08.01.2019.

The Authority after consideration decided to modify its orders dated 08.01.2019 passed in Complaint No. 491 of 2018 titled as Ritu Rana Vs M/s. IREO Fiverivers Pvt. Ltd., to the extent that the name of the Counsel of the Complainant in the said order be read as 'Ms. Sudarshan Thapa, Proxy Counsel on behalf of Sh. Kamal Dahiya, Advocate' in place of 'Ms. Sudarshan Thapa, Advocate'.

True copy



dm
Executive Director,
HRERA, Panchkula

**HARYANA REAL ESTATE REGULATORY AUTHORITY,
PANCHKULA.**

Complaint No. RERA-PKL-491 of 2018

Ritu Rana

...Complainant.

Versus

M/s IREO Fiveriver Pvt. Ltd.

...Respondent.

Date of Hearing: 08.01.2019 (1st Hearing)

Coram:

1. Shri Rajan Gupta, Chairman.
2. Shri Dilbag Singh Sihag, Member.

Appearance:

1. Miss Sudarshna Thapa, Advocate for complainant in Complaint No. 491 of 2018.
2. Representative of Respondent (He did not mark his presence in the attendance sheet).

ORDER:

1. At the out set a representative of the respondent who did not mark his presence, presented an order dated 13.12.2018 passed by Hon'ble National Company Law Tribunal in short "NCLT", New Delhi in Company Petition No.(IB)-408(ND)/2018 titled as M/s Worxpace Consulting Pvt. Ltd. Versus M/s IREO Fiveriver Pvt. Ltd. He stated that the Hon'ble NCLT has issued Moratorium under Section 14(1) of the Insolvency and Bankruptcy Code, 2016 against the respondent company. He also stated that by virtue of the said Moratorium, proceedings before



this Authority cannot be carried on. Para 22 and 23 of the said Moratorium passed by Hon'ble NCLT are reproduced below:-

- "22. As a sequel to above, the application is admitted in terms of Section 9(5) of IBC, 2016 and moratorium as envisaged under the provisions of Section 14(1) as extracted hereunder shall follow in relation to the Corporate Debtor prohibiting all of the following:
- a) The institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
 - b) Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
 - c) Any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
 - d) The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor. However, during the pendency of the moratorium period in terms of Section 14(2) and 14(3) as extracted hereunder:
- 2) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.
 - 3) The provisions of sub section (1) shall not apply to-
 - a) such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
 - b) a surety in contract of guarantee to a Corporate Debtor.
23. The order of moratorium shall have effect from the date of this order till the completion of the corporate insolvency resolution process, provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub section (1) of Section 31 or passes an order for liquidation of corporate debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be."

2. The facts of the case, as alleged by the complainant in Complaint No.491 of 2018, are that in August, 2011 he booked a 2BHK apartment measuring 1800 sq. fts. in the IREO Fiveriver Project located at Sector 3,

4 and 4A, Pinjore Kalka Urban Complex, Tehsil Kalka, District Panchkula being developed by the respondent. He paid booking amount of Rs. 6.00 lakhs. As per application dated 07.08.2011, it was agreed that the respondent shall make an offer of allotment within 9 months from the date of making the application and in case of any default the amount received by the respondent shall be refunded along with 10% interest. However, the allotment letter was issued after a delay of more than 2 years and 8 months vide which Unit No. T1-201, 3 BHK Apartment was allotted with super area of 2046 sq. fts. instead of 1800 sq. fts. which was booked by the complainant. The complainant thereafter sent several e-mails to the respondent seeking refund of the paid amount, but the respondent did not reply to the complainant, instead raised demand notices for the bigger unit. The project of the respondent is nowhere near completion. The license of the project has not been renewed and respondent does not even have statutory approvals to start construction of the project. Respondent does not even have clearance from the Environmental Authority as well as from the National Board of Wild Life. Since there is no hope of completion of the project the complainant seeks refund of the money along with interest and compensation.

3. Notices to the respondent were dispatched by this Authority through courier. In Complaint No. 491, dasti summons were issued.

Respondent have refused to accept the notices sent through courier. Nor have they accepted dasti notice. In the circumstances, the Authority decides to proceed ex-parte against the respondent. Another reason for proceedings ex-parte is that in an earlier bunch matter of 16 similar complaints, with lead Complaint Case No. 69 of 2018, the respondent had filed reply only in one case and had stated that the same reply may be adopted in all the remaining cases.

4. The ratio of the bunch matter earlier disposed of by this Authority vide orders dated 26.09.2018, with lead case No.69 of 2018 titled as Bhai Rajinder Pal Versus M/s IREO Fiveriver Pvt. Ltd. shall be applicable on the facts of this case as well for the reasons stated in the said complaint case No.69 of 2018 that the respondents have abandoned the project and no steps are being taken for its completion. Further, as per the agreement between the complainant and the respondent, a 2 BHK apartment measuring 1800 sq. ft. was agreed to be allotted whereas the respondents after delay of more than two years allotted a bigger 3 BHK apartment measuring 2046 sq. ft. without the consent of the complainant. This allotment was not acceptable to the complainants, therefore, through various e-mails he requested for cancellation of the allotment and refund of the money paid. The respondent could not have allotted a larger and more expensive apartment to the complainant without their express



consent. The breach of contract therefore is attributable to the respondent. For this reason also the complainant deserves refund of the money paid along with interest at the rates provided for in Rule 15 of the HRERA Rules, 2017.

5. A new facet of the dispute of the complainants with the respondent has come before the Authority today by way of the order dated 13.12.2018 passed by the Hon'ble NCLT. This order was presented to the Authority by a representative of the respondent company. From the judgment of the Hon'ble Tribunal it is made out that the respondent company has to pay certain dues to one consultant M/s Worxpace Consulting Pvt. Ltd. The total amount payable to the consultant who has approached the NCLT, as shown in Para-7 of the judgment, is Rs.7,52,400/-. For the reason of non-payment of Rs.7,52,400/- an order of Moratorium under Section 14(1) of the Insolvency and Bankruptcy Code, 2016 has been issued. By virtue of the moratorium under Section 14(1) neither fresh institution of a suit nor continuation of pending suits or proceedings are allowed as per provisions of the IBC Code 2016.

6. In this regard, Section 79 of the RERA Act, 2016 is reproduced hereunder:-

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.

Further, provisions of Section 89 of the RERA Act, 2016 is reproduced hereunder:

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.

7. Cumulative effect of the aforesaid provisions of Sections 79 and 89 is that the proceedings before the Real Estate Regulatory Authority cannot be stopped or debarred by any Court or Authority. By virtue of the aforesaid provisions of the law, this Authority is not debarred from passing this order for providing relief to the aggrieved allottee of the Real Estate Project promoted by the respondent. At the same time however a full effect must be given to the orders passed by Hon'ble NCLT. There appears to be a conflict of laws in this regard. Both the statutes i.e. RERA and the Insolvency and Bankruptcy Code, 2016 confers power upon the respective authorities to grant relief to the aggrieved parties irrespective of the provisions of any other law in consistent with the provisions of both the statutes.

In the face of this situation a harmonious interpretation deserves to be given with an objective that both the laws could operate

simultaneously without giving rise to any anomalous situation. It is observed that Hon'ble NCLT has passed their orders dated 13.12.2018 on the basis of an application filed by an aggrieved party M/s Worxpace Consulting Pvt. Ltd. for payment of Rs.7,52,400/-. Satisfaction of such a small claim can be made from even a small piece of property of the project of the respondent. It can even be satisfied from one of the moveable properties of the respondents.

On the other hand the claims of the allottees who have already approached this Authority runs into crores. There may be large number of other similarly placed allottees who may eventually approach this Authority. If the moratorium under Section 14 of the Insolvency and Bankruptcy Code, 2016 is to be continued against the entire project property the legitimate claims of the allottees duly recognised by this Authority will remain in suspended animation.

Allottee of the current complaint No.491 of 2018 or other similarly placed allottee, therefore, may approach Hon'ble NCLT for appropriate modification of their orders relating to the moratorium imposed under Section 14 of the IBC Code, 2016 on the project properties of the respondent.

8. This Authority in another bunch matters with lead Complaint Case No. 383 of 2018 titled as "Gurbaksh Singh Versus M/s ABW



Infrastructure Pvt. Ltd. has passed a detailed order thereby declaring that the rights of the allottees of a real estate project shall be treated superior to the rights of any other creditor including the commercial creditors. The operative part of the said judgment is reproduced hereunder:-

“In the light of above facts, there is no doubt that the complainants deserve relief by way of refund of the money paid by them along with interest prescribed in Rule 15 of HRERA Rules. The main question is, however, against whom will this order be directed because assets of the project have been attached; recovery proceedings are going on and the respondent No.1 is in jail in multiple criminal matters. This Authority is duty bound to provide effective relief to the complainants. When assets of project and also that of the promoters have been attached, how will this order be implemented is a question. The complainants may have to approach multiple forums/authorities and may have to compete with multiple claims under variety of laws.

It is also possible that the money to be realized from the assets of the project may be less than the total claims against the property. Those claims may relate to the financial institutions, depositors or other creditors. Different laws of the land will be applicable in this situation for satisfying those claims. There may be competition amongst various claims. This matter may even reach higher courts and take long time to attain finality.

1. At this point of time it is relevant to take note of the system by which the real estate projects are usually developed in the State of Haryana. Prospective developers of the real estate project arranges land at their own level by way of out right purchase from the original landowners or by way of allotment from other developers or by way of entering into collaboration agreement with the original landowners for development for a real estate project. The original landowners himself or the landowners in collaboration with a developer apply to the Town & Country Planning Department of the Government of Haryana for grant of licence for development of real estate colony. The Town & Country Department carries out requisite due diligence



about the project, applicable laws, probability of linking the essential services with the town level infrastructure and financial strength of the applicant developer. They also examine the title of the land of the applicant. After due diligence, Director, Town & Country Planning takes a decision to grant licence for development of colony subject to fulfilment of prescribed conditions.

2. Apart from other requirements, the developer of Real Estate Project in Faridabad, Haryana is supposed to pay EDC which at present is Rs. 93.68 lakhs and Rs. 3.74 crores per acre of land for Residential and Commercial Project respectively. These EDCs are chargeable from the allottees of the real estate project. With this money collected by the State Government, the State agencies are supposed to provide town level infrastructure facilities.

After obtaining licence, several plans also have to be got approved from the Town & Country Planning Department and other State Government agencies. These plans include estimates in respect of plans relating to provision of services like water supply, sewerage, storm drainage water, road infrastructure, fire escape and electricity supply etc. layout plans of the apartments, architectural plans of the apartments, Zoning plans etc. are also approved by the State Government.

After approval of the plans and payment of specified amount of EDC etc. the developers usually advertise the project and seek booking from prospective allottees. Plots/apartments are booked in the real estate projects on the basis of variety of payment plans which usually are comprised of 10-20 per cent as booking amount followed by payments as per plan. The payments are either construction linked or time linked. Thereafter, agreements are made between the parties and usually full amount of money is received from the allottees within 1-3 years of launching the project. The developer is supposed to develop the project and handover the plots/apartments to the allottees in a time bound manner. It is mandatory that after completion and handing over of the plots/apartments conveyance deeds are executed in favour of the allottees.

By way of conveyance deed, the ownership of the apartment or the proportionate share in the piece of land under the apartments and the land



under the plot comes into the ownership of the allottee. Thus, eventually, the allottee becomes owner of the plot or the apartment and proportionate share of the land under the apartment complex. The State Government in turn puts various conditions while granting licence and while approving development plans.

The State is also supposed to closely monitor the progress of the project and grant approvals of various stages of development of the project. The district level machinery of the State is supposed to visit the project site on a regular basis to ensure that slippages do not happen.

If above concept of Project development is understood in a logical manner, then when an allottee books an apartment or plot he is deemed to have acquired a stake in the proportionate part of the land of the project. Further, when he pays full or substantial part of the consideration to the developer, he has to be considered a deemed owner of the proportionate piece of land of the project. He acquires a valuable interest in the Project which cannot be alienated by anybody other than himself. Further, this presupposes that his right is considered superior to any other right over the land including that of lenders of money. Nobody can lawfully alienate his right in the Project.

More impactfully, the allottees pay money to the promoter on the strength of a sovereign assurance granted by the Town & Country Planning Department announcing to the public at large that the promoter is a bona fide person; he has financial means to execute the project; he has technical capability to develop the project in a time bound manner; the project has legitimate licence; it is approved in accordance with the sanctioned plans and all services will be provided in the project including the external services which will be connected with the town level services etc. The allottee, on the strength of the licence and the aforesaid sovereign assurances, is given a confidence that his money is safe and the State takes responsibility to safeguard his interest. It is this base and theory on which entire economic system of the Country rests. This confidence of the public and ordinary citizens cannot be allowed to erode, otherwise it will have disastrous economic and social consequences.



11. At this stage, in view of foregoing facts, circumstances and legal arguments, a question arises that in a project of which deemed owners are allottees of the apartments/plots, whether a promoter is entitled to alienate the land of the project to a third party, including a banking or a financial institution, to the prejudice of rights of the allottees? Further, if any banking/financial institutions lends money to the promoter against physical assets of the project without seeking consent of the allottees, whether the rights of the allottees in the project can be said to also have been alienated without their consent?

Another question that needs to be answered is, if there are multiple claims on the assets of the project as well as on the other assets of the promoter, whether claims of the allottees should be considered superior to that of the other claimants in respect of the assets of the real estate project concerned?

12. It may be relevant here to make a mention of the **'Insolvency and Bankruptcy (Amendment) Ordinance, 2018** which came into force on 6th June, 2018. The related provision of the ordinance is reproduced below:-

"In section 5 of the principal Act,—

(ii) in clause (8), in sub-clause (f), the following Explanation shall be inserted, namely:—

'Explanation. —

For the purposes of this sub-clause,— (i) any amount raised from an allottee under a real estate project shall be deemed to be an amount having the commercial effect of a borrowing; and

(ii) the expressions, "allottee" and "real estate project" shall have the meanings respectively assigned to them in clauses (d) and (zn) of section 2 of the Real Estate (Regulation and Development) Act, 2016"

As a result of the aforesaid provisions incorporated by the ordinance, home buyers have been brought within the definition of "financial creditors under the insolvency and bankruptcy code". As a result of the amendments, the amounts received from the allottees by the promoters of the real estate projects shall be deemed to be the amounts having a commercial effect of a



borrowing. Therefore, the amounts received from the allottees shall be regarded as financial debts and the allottees shall be deemed to be the financial creditors. Under the Insolvency and Bankruptcy Code, 2016, their claims can be pressed at par with the other financial creditors.

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, the allottees of a project after having paid the EDC to the State Government 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 get their claim satisfied from other assets of the promoters. They can press their claim even against the sureties and guarantees offered by the promoters.

13. 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 deciding to lend money. They have expert manpower and machinery to adjudge 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 factors-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 plot, house or an apartment. 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 accounts 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 to those of the financial institutions.

- (iii) It is relevant to quote here the provisions of Section 18(1), Section 19(3) and (4), Section 79 and Section 89 of the Real Estate (Regulation & Development) Act, 2016.

Section 18: Return of amount and compensation- (1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building,— (a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or (b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act: Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.

Section 19(3): Rights and Duties of allottees- The allottee shall be entitled to claim the possession of apartment, plot or building, as the case may be, and the association of allottees shall be entitled to claim the possession of the common areas, as per the declaration given by the promoter under sub-clause (C) of clause (I) of sub-section (2) of section 4.

(4) The allottee shall be entitled to claim the refund of amount paid along with interest at such rate as may be prescribed and compensation in the manner as provided under this Act, from the promoter, if the promoter fails to comply or is unable to give possession of the apartment, plot or building, as the case may be, in accordance with the terms of agreement for sale or due to discontinuance of his business as a developer on account of suspension or revocation of his registration under the



provisions of this Act or the rules or regulations made thereunder.

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.

14. It has been discussed in detail in foregoing paras that when complex legal proceedings are going on against a project and against the promoters of the project, it may take long time for it to get resolved. Accordingly, it is ordered that whenever such resolution happens, the rights of the allottees shall



be treated superior most. The money paid by the allottees shall be refunded before entertaining claim, if any, of the commercial creditor.

15. Another question that arises at this juncture is whether by granting a superior right to the allottees compared with other creditors, whether purposes of the RERA Act are fully served or not? This Authority observes that RERA Act is supposed to provide expeditious remedy to the allottees and also ensure that real estate sector develops in a systematic manner and ongoing projects are completed within a time bound manner. This necessarily brings us to the question of responsibilities of the State Government, through the Town & Country Planning Department, which is the license/approving authority for development of a real estate project.

16. In a situation like the facts of the case, it must be determined whether the State Government and its agencies have faithfully discharged the duties cast upon them by law? Have the State agencies monitored the project in a proper manner through the course of its development? Why did they allow the project to slip in the manner that it has become a stuck project to the prejudice of the allottees as well as society in general?

17. It can be safely said that there must have been failure of some organs of the machinery of the State which resulted into the state of affairs that are being faced here. The promoters have been defaulting in payment of dues to the Government. In this situation, especially when the project promoters have turned serious defaulter of other financial institutions and criminal cases are pending against them, the Town & Country Planning Department should have taken timely steps to safeguard interests of the allottees. The allottees purchased the apartments on the basis of the sovereign assurances held out to them by the State Government. Now, it is an equal duty of the State Government to come to their rescue and take all steps necessary to get the project completed by taking it over or in any other manner considered appropriate. The Town & Country Planning Department cannot allow a licensee to collect money from the allottee and abandons the project. The Department is duty bound to take coercive action.



We hereby direct that for safeguarding interests of the allottees, Director, Town & Country Planning Department, Haryana shall immediately make an assessment of the assets of the project and take appropriate decision for getting the project completed by taking it over themselves or through any other appropriate agency. They shall take these steps regardless of the claims of the other financial creditors against the project promoters or the project land. After cancellation of the licence, once the project is taken over by the Town & Country Planning Department, the rights of the allottees can be secured. The financial institutions or other creditors, however, may get their claims satisfied from the remaining assets of the project or from the other assets and properties of the promoters or by involving guarantees and securities. It is only by taking over of the project by Town & Country Planning Department that the purposes of the RERA Act will be served and interest of the allottees can be protected.

18. The directions issued in the foregoing paras are summarized as follows:-

- (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) The Director, Town & Country Planning Department, Haryana is duty bound to protect interest of the allottees and to ensure that the project on the licenced land is completed in accordance



with sanctioned plans. The Director shall immediately take steps to take over the project and get it completed in the manner considered appropriate. The Director shall take over the project regardless of any other proceedings pending against the project assets including under the SARFAESI Act, 2002 or the "Haryana Protection of Interest of Depositors in the Financial Establishment Act, 2013".

- (iv) While all the captioned complaints are being disposed of by this final order, Executive Director shall file a suo-moto complaint against respondents No.1 & 2 and also implead Director, Town & Country Planning Department, Haryana as a respondent for monitoring of follow up actions taken on these directions.
- (v) The complainants and other similarly placed allottees may present this order 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."

9. Ratio of the above order shall be fully applicable on this complainant as well. Accordingly, it is ordered as follows:-

- (i) All the complainant as well as other similarly placed allottees of the disputed project of the respondent company shall have a superior right to satisfy their claims for refund of the money along with interest, over the rights of any other person including financial institutions and other creditors of any kind.

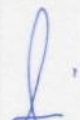


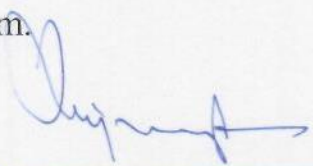
- (ii) If claims of the allottees are not fully satisfied from the assets of the project in question, the allottees shall be treated as creditors of the respondents at par with other creditors for satisfaction of their claims from the assets of the promoters other than the assets of the project in question.
 - (iii) The complainant of this complaint or any other similarly placed allottee may present this order before the Hon'ble NCLT with a request to appropriately modify their orders so as to suitably protect the interest of the allottees as recognised by this Authority.
 - (iv) The complainants and other similarly placed allottees may present this order before any authority or court dealing with liquidation of assets of the Project as well as other assets of the respondent company and seek satisfaction of their claim 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.
10. In accordance with the above judgment, the complainant shall be entitled to refund of the entire amount paid by them to the respondent along with interest calculated under the provisions of Rule-15 of the



Haryana Real Estate (Regulation and Development) Rules, 2017 in short HRERA Rules, 2017. The respondent shall be liable to pay the amount so calculated within a period of 60 days i.e. 50% of the amount within 30 days and the remaining 50% in next 30 days from the date of uploading of the order.

11. **Disposed of** in above terms. Orders be uploaded on the website of the Authority and the file be consigned to the record room.


Dilbag Singh Sihag
Member


Rajan Gupta
Chairman