HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

1. COMPLAINT NO. 2 OF 2020

Hanuman Prashad Bishnoi ....COMPLAINANT

VERSUS

1.Aerens Gold Souk Projects Pvt Ltd

2.Director Town and Country Planning ....RESPONDENT(S)

2. COMPLAINT NO. 3082 OF 2019

Shiv Dutt ....COMPLAINANT

VERSUS

1.Aerens Gold Souk Projects Pvt Ltd

2.Director Town and Country Planning ....RESPONDENT(S)

3. COMPLAINT NO. 3123 OF 2019

Balram Bishnoi and Nihal Singh ....COMPLAINANT

VERSUS

1.Aerens Gold Souk Projects Pvt Ltd

2.Director Town and Country Planning ....RESPONDENT(S)

4. COMPLAINT NO. 3129 OF 2019

Vinod Kumar Bhalotia ....COMPLAINANT

VERSUS

1.Aerens Gold Souk Projects Pvt Ltd

2. Director Town and Country Planning ....RESPONDENT(S)

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

Date of Hearing: 01.04.2022

Hearing: 5th

Present: - Mr. Kunal Thapa, learned counsel for the complainant
None for the respondents

ORDER: (DILBAG SINGH SIHAG- MEMBER)

1. While perusing the case file, it is observed that Complainants have sought relief of refund of the amount paid by them to respondents along with applicable interest. Initially Authority had not been hearing the matters in which relief of refund was sought for the reasons that its jurisdiction to deal with such matters was sub-judice first before Hon'ble High Court and later before Hon'ble Supreme Court.

2. Now the position of law has changed on account of verdict of Hon'ble Supreme Court delivered in similar matters pertaining to the State of Uttar Pradesh in lead SLP Civil Appeal No. 6745-6749 titled as M/s. Newtech Promoters and Developers Pvt. Ltd. v. State of Uttar Pradesh & Ors. Etc.

Thereafter, Hon'ble High Court of Punjab and Haryana have further clarified the matter in CWP No. 6688 of 2021 titled as Ramprastha Promoters and Developers Pvt. Ltd. v. Union of India and Ors. Vide order dated 13. 01.2022.

3. Consequent upon above judgment passed by Hon'ble High Court, this Authority has also passed a Resolution No. 164.06 dated 31.01.2022 the operative part of which is reproduced below:

> "4. The Authority has now further considered the matter and observes that after vacation of stay by Hon'ble High Court vide its order dated 11.09.2020 against amended Rules notified by the State Government vide notification dated 12.09.2019, there was no bar on the Authority to deal with complaints in which relief of refund was sought. No stay is operational on the Authority after that. However, on account of judgment of Hon'ble High Court passed in CWP No. 38144 of 2018, having been stayed by Hon'ble Supreme Court vide order dated 05.11.2020, Authority had decided not to exercise this jurisdiction and had decided await outcome of SLPs pending before Hon'ble Apex Court.
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> Authority further decided not to exercise its jurisdiction even after clear interpretation of law made by Hon'ble Apex Court in U.P. matters in appeal No(s) 6745-6749 of 2021 - M/s Newtech Promoters and Developers Pvt. Ltd. Versus State of UP and others etc. because of continuation of the stay of the judgment of Hon'ble High Court.
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> It was for the reasons that technically speaking, stay granted by Hon'ble Apex Court against judgment dated 16.10.2020 passed in CWP No. 38144 of 2018 and other

matters were still operational. Now, the position has materially changed after judgment passed by Hon'ble High Court in CWP No. 6688 of 2021 and other connected matters, the relevant paras 23, 25 and 26 of which have been reproduced above

5. Large number of counsels and complainants have been arguing before this Authority that after clarification of law both by Hon'ble Supreme Court as well as by High Court and now in view of judgment of Hon'ble High Court in CWP No.(s) 6688 of 2021, matters pending before the Authority in which relief of refund has been sought should not adjourned any further and should be taken into consideration by the Authority.

Authority after consideration of the arguments agrees that order passed by Hon'ble High Court further clarifies that Authority would have jurisdiction to entertain complaints in which relief of refund of amount, interest on the refund amount, payment of interest on delayed delivery of possession, and penal interest thereon is sought. Jurisdiction in such matters would not be with Adjudicating Officer. This judgment has been passed after duly considering the judgment of Hon'ble Supreme Court passed in M/s Newtech Promoters and Developers Pvt. Ltd. Versus State of UP and others etc.

6. In view of above interpretation and reiteration of law by Hon'ble Supreme Court and Hon'ble High Court, Authority resolves to take up all complaints for consideration including the complaints in which relief of refund is sought as per law and pass appropriate orders. Accordingly, all such matters filed before the Authority be listed for hearing. However, no order will be passed by the Authority in those complaints as well as execution complaints in which a specific stay has been granted by Hon'ble Supreme Court or by Hon'ble High Court. Those cases will be taken into

consideration after vacation of stay. Action be initiated by registry accordingly."

4. Now the issue relating to the jurisdiction of Authority stands finally settled. Accordingly, Authority hereby proceeds with dealing with this matter on its merits.

5. All above captioned complaints are taken up together as grievances involved therein are more or less identical and pertains to same project of the respondent. So, Complaint no. 2 of 2020 titled "Hanuman Prashad Bishnoi Versus Aerens Gold Souk Projects Pvt Ltd" is taken as lead case. Case of the complainant is that he had booked an apartment in respondent's project named 'Gold Souk Cannaught Place' Sector 25 Hisar, Haryana, on 23.02.2012 by paying an amount of Rs. 2,28,375/- as earnest money. Agreement was executed on 23.02.2012 by which complainant was allotted a commercial space bearing no. F-127 admeasuring 203 sq. ft. In terms of clause 9 of the Agreement, possession was supposed to be delivered by December 2014 with additional grace period of 6 months, which comes to May 2015. Complainants alleges that they have so far paid an amount of Rs.8,35,649/- against basic sale price of Rs. 9,13,500/-. Complainant further alleges that project is still not complete. In fact, it is far from completion and there is no sight of its completion in foreseeable future. Complainant has

prayed for refund of the amount paid by him along with permissible interest as respondents have failed to complete the project.

6. Learned counsel for complainant pleaded that matter in question in these complaints against the same respondent had already been disposed as allowed in complaint no. 44 of 2018 titled "Rameshwar v. Aerens Gold Souk Projects ltd. and anr.". In concerned complaint no. 44 of 2018, Authority had directed the respondent to refund the money to the complainant within 90 days.

7. Notice to respondent no. 1 was delivered successfully on 07.01.2020 but no reply has been filed by them till date. For such non-compliance, cost of Rs. 10,000/- payable to Authority was imposed on respondent no. 1 vide order dated 21.10.2020. Notice dated 03.01.2020 could not successfully served on respondent no. 2 for want of correct address, therefore a fresh notice dated 05.11.2020 was served on them which was delivered successfully. Pursuant to fresh notice dated 05.11.2020, respondent no. 2 filed their reply on 05.04.2021 whereby they averred that as builder's buyer agreement was a bilateral agreement between complainant and respondent no. 1, therefore being a stranger to contract, they cannot intervene in it. Further, the relief of refund has been sought from respondent no.1 and not from respondent no. 2, hence complaint is not maintainable qua them.

8. Authority while perusing the case file observes that the matter in question in these captioned has already been discussed in detail and

adjudicated in complaint no. 44 of 2018 titled "Rameshwar v. Aerens Gold Souk Projects ltd. and anr.". Vide order dated 22.01.2019, relief of refund to the complainants has been allowed along with permissible interest rate as per Rule 15, RERA Rules, 2017. Therefore, these cases are also disposed off in similar terms as that of complaint no. 44 of 2018. Relevant order is reproduced below:

ORDER: -

This case has been listed before this Authority eight times earlier. Today is ninth hearing of the matter. All the orders passed by the Authority on the earlier dates shall be read as a part of this order.

2. The case of the complainant is that he had booked two shops No. D-12 and D-18, measuring 385 sq. ft and 203 sq. ft. respectively in the project "Gold Souk Connaught Place", Sector-25, Hisar of respondent no. 1 in the year 2012. The complainant alleged that he has paid a total sum of Rs.28,18,299/- against both the shops, out of which an amount Rs.3,88,200/- was paid in cash to respondent no. 2 and rest by way of cheques to respondent no. 1. As per the agreement dated 07.02.13, the possession of the shops was to be delivered in the year 2016. Not only the possession has not been delivered, but the project is also at standstill for the last more than three years. The licence of the project has been cancelled because the respondent no. 1 has failed to deposit the EDC/IDC dues of the State Government. The respondent no. 1 has failed on all accounts in discharging his responsibilities and the complainant has suffered badly. For these reasons, the

complainant seeks refund of the money paid by him along with interest and compensation on account of mental and physical harassment caused to him.

3. The complainant states that the project of respondent no. 1 is not amenable to provisions of RERA Act, 2016. Moreover, there is an arbitration clause in the buyer agreement which the complainant has not resorted to. The respondent no. 1 admits the allotment of two shops to the complainant but admits only receipt of Rs.24,30,099/- and denies the receipt of cash of Rs.3,88,200/-. Further, construction work on the project could not be started in time because of denial of environmental clearances. Further, in April, 2016 NHAI started construction of elevated road in front of the project without any notice and entry to the project was stopped. Now, the respondent no. 1 has got permission from NHAI to develop the service road to reach the project. Respondent no. 1 further states that the service road will be constructed after obtaining permission from the Forest Department.

The respondent no. 1 alleges that DTCP has coercively cancelled their Licence No.54 of 2009 against which they have filed an appeal before the Financial Commissioner-cum Additional Chief Secretary, Town & Country Planning Department and the matter is sub-judice. Respondent no. 1 also state that the Haryana Government has been charging huge amount of EDC without providing requisite external services. This matter is sub-judice before the Hon'ble Supreme Court. He prays that delay cause in completion of the project is beyond his control and for the reasons external to them. The respondent no. 1 has given option to the allottees to shift to their another project and the

amount paid by the complainant shall be adjusted in their alternate project.

4. The Authority in its orders dated 25.10.2018 had observed that the Director, Town & Country Planning Department vide its orders dated 31.08.2018 had cancelled the licence of the project on account non-payment of EDC dues and had taken over the project and handed over the same to a committee headed by Administrator, HUDA Hisar. It was also observed that the progress of the work of the Administrator, HUDA Hisar was reviewed by the DTCP in which a plan of action for completion of the project was discussed. Apparently, nothing has been done in furtherance thereof.

5. After consideration of the matter, the Authority was of the view that since the project has now been taken over by the DTCP, therefore, now the Director is answerable to the allottees for competition of the project and handing over the possession of shops to them. A reply from the DTCP, accordingly, was sought. Having not received the reply, learned Director was asked to appear before the Authority to explain the stand of the Department. Certain additional information as recorded in the orders was also sought.

6. During the course of hearing of this matter, three replies have been received from the office of the DTCP. The last comprehensive letter was received on 16.01.2019. The important portion of which are reproduced below: -

1. *"Vide above said order..... additional points.*

2. In this connection, the Department would like to draw kind attention to para no-2 to 6 of the reply dated 28-09-2018, wherein, the position regarding handing over the possession of the commercial

units /sites to the allotees of the colony in dispute has already been explained. It is once again reiterated that the Department at this stage is not in a position to already been explained. It is once again retreated that the Department at this stage is not in a position to specify the exact date within which it would be possible to handover possession of the commercial sites to the allottees of the project.

Apart from the above as already submitted in the earlier reply,the developer company has preferred an appeal before the Appellate Authority under section 19 of the Haryana development and regulation of urban areas Act, 1975 against the order dated 31-08-2016 passed by the DTCP cancelling Licence no 54 of 2009 dated 20-08-2009 granted to Aerens Gold Souk projects Pvt. Ltd. The appeal was heard on 27-12-2018 by the Appellate Authority, However, the order has been reserved.

Further, as per rough estimates prepared by the Engineering wing of HSVP, about Rs.200 crores is likely to be spent on the completion of the project. The works already executed are also not in accordance with the approved buildings plans. Therefore, services plans estimate shall also have to be revised.

Hence, it is reiterated that specific reply to the observations made by the Authority has already been provided by this office.

3. Further, in order to clarify the facts w.r.t the obligation of the Director, it is important to consider the following definitions in the relevant Acts as provided below:

A. Real Estate Regulation.....made thereunder.

B. Haryana Development and Regulation of Urban Areas Act, 1975:

Section 2(d) "Coloniser" means an individual, company or association or body of individuals, whether incorporated or not, owning land for converting it into a colony and to whom license has been granted under this Act and shall include a developer.

Section 2(f) "Director" means the Director, Town and Country Planning, Haryana and includes a person for the time being appointed by the Government, by notification in the official gazette, to exercise and perform all or any of the powers and functions of the Director under this Act and the rules made thereunder.

Further, kind attention is drawn towards the Rule 19 of the HDRUA Rules, 1976 which are reproduced as under:

19. Development works to be carried out by the Director in the colony {Section 8}- (1) After cancellation of the license or permission of the Director shall by notice in from LC-XI call upon the coloniser to furnish within a specified time an audited statement of accounts duly certified and signed by the chartered accountant showing the amount actually recovered by him from each plot-holder and the amount he has actually spent on development works in the colony.

(2) The Director shall also ascertain from the plot-holders the amount, paid by them to the colonizer and the balance amount, if any, to be paid by each of them to the colonizer.

(3) The Director shall intimate to the colonizer and the plot-holders the charges he may have to incur on development works in the colony and shall call upon the colonizer and the plot holders in form LC-XII and LC-XIII to pay these charges within thirty days. In case they

fail to pay these charges, the Director, may recover these charges as arrears of land revenue.

4. However, point wise information as desired by this authority vide order dated 21.11.2018 has been obtained from Administrator, HSVP, Hisar- cum-chairman, committee constituted for carrying out development works in licence no. of 2009 and STP, Hisar as well as the Directorate is as under: -

a. ***Total number of allottees of the project and amount collected from each allottee till date**: -As per information provided by the Colonizer, vide letter dated 20.11.018, total no. allottees of the project is 420 and Rs. 25,04, 79,995 /- have been collected from the allottees against the total amount of Rs 38,98,79,950/-. Therefore, only an amount of Rs. 13,93,99,955/- is left balance. There are total number of commercial units/ stake holders in this project is 420, out of which 247 nos. of shops/units are owned by firms i.e. M/s Mac Gold Hospitality Services Pvt. Ltd., Goldeglitz projects Pvt. Ltd. SE Developers Pvt. Ltd., Golden Line Infrastructure Pvt. Ltd., Goldenare Infrastructure Pvt. Ltd. And Fetish Realtor Pvt. Ltd. Etc. and remaining shops are owned by individual. (The list of the allottees is annexed as **Annexure-I**)*

b. ***The details of outstanding amount payable to any Government Agency with regard to the project: -** The outstanding dues to be recovered are Rs. 16029.24 lacs (as on 10.01.2019) on amount EDC. However, since the license stand rejected, therefore, the details regarding license renewal fee has not been added.*

c. ***Total number of shops/offices space created in the project: -** As per approved building plan, 443 nos. of shops/offices space have been created in this project.*

d. ***Details of unsold property of the project along with its specific area: -** As per the approved building plan, total nos. of shops/office space have been created in this project and out of which third party rights have been*

created on 420units. Therefore, only 23 nos. shops/office spaces have remained unsold.

e. ***Total expenditure already incurred by the respondent on development of project; -*** *As per information provided by the Colonizer, vide letter dated 20.11.2018, the total cost of the project including internal development works is Rs. 25,05,26,069.23/-. However, no information regarding internal expenditure incurred on this project has been provided by the colonizer. Further, as already submitted in the earlier reply dated 28.09.2018, the works already executed are not in accordance with approved building plans. Therefore, not only the building plans but also the service plan estimate shall have to be revised. It is likely to further enhance the cost of the project.*

f. ***The total approved area of the project site as per the building plans:*** *The total approved area of this project is 34081.51Sq. Meter as per the approved building plans. However, as already mentioned, the licensee has not raised the building (party) as per the approved building plans.*

g. ***Any other relevant information as many be necessary for assistance of the Authority:***

(i) *The allotees/stake holders of licensed commercial colony Aerens Gold Souk Project Pvt Ltd. Sec-25 Hisar were advised through public notice published in " Dainik Bhaskar" dated 16.09.2018, "The Tribune" dated and "Dainik Bhaskar" dated 01.11.2018 to submit their claims/interests in the office of undersigned , but up to 30.11.2018 (last date for submission of claim), out of 420 nos of inventory only 72 nos. of claims were received in this office.*

(ii) *During the last meeting held on 04.01.2019 under the Chairmanship of Administration, HSVP Hisar of the committee constituted by DTCP, Haryana for*

taking over the colony in question , Executive Engineer, Division No. 1 HSVP, Hisar was directed to get approve the service plan estimate from DTCP, Haryana Chandigarh through Chief Engineer , HSVP, Panchkula and initiate the process of calling of expression of interest to hire the services of well-known developer to complete the remaining project as per present site condition and put up the draft of the same at the time of next meeting of committee.

(iii) A criminal complaint against the said colonizer was lodged with SP, Hisar by the Administration, HSVP vide office memo no. 14478 dated 26.309.2018. But FIR has not been lodged. Hence, during the last meeting held on 04.01.2019 under the Chairmanship of Administration, HSVP Hisar, it was decided to send remainder to SP, Hisar.

5. *In view of position explained above and the fact that the appeal filed by the colonizer against the cancellation order of the license is still pending decision before the Appellate Authority, the Department is not in position at the stage to specify the exact time within which it would be possible to handover the possession of the commercial sites to the allotees of the project in question. However, the complaint has the alternative remedy of getting refund of the amount paid by him from the colonizer.*

Further, it is submitted that the project can be completed, subject to the condition that the allottees are willing to share the cost of the project which is approximately Rs. 200 crores."

7. Learned Director Shri Makrand Pandurang, IAS, who was present personally today stated that Rule 19 of the Haryana Development & Regulation of Urban Areas Rule, 1976 as reproduced above was enacted in mid-

seventies in the circumstances when only plotted colonies used to be developed in the State. In those days, there was virtually no concept of multi-storeys high rise apartment complexes or housing societies anywhere in the State. He stated that the expression "development works" used in sub-clause 3(f) of Rule 19 refers only to the basic infrastructure works in a plotted colony and not to the construction of apartments etc. Accordingly, the development works, as envisaged in the Rule 19, pertain only to the development of infrastructure facilities in a plotted colony. Learned Director stated that the State Government and the Directorate cannot undertake construction of housing complexes or commercial complexes on behalf of the developers after cancellation of their licence. He further stated that it is not possible for the State Government to undertake such tasks of construction of such large buildings. Government does not have requisite wherewithal for the same. Such taskss require huge investments, mobilization of resources, mobilization of manpower and machinery which is neither available with the State Government nor is possible for the State Government to mobilize on behalf of the developers/allottees. He further stated that the State Government is in the process of amending this Rule so as to align it with modern day realities.

8. After consideration of the facts of the matter, reply of the Department and statements made by learned Director, the Authority orders as follows: -

i) This project is at standstill for last many years and its finances are in disarray. Huge liabilities in respect of the project remains to be discharge by the developers. Licence of the project has been cancelled and the project has been taken over by the State Government and, importantly, State Government is not in a position to complete the project after taking it over.

In the circumstances, there is no other option but to allow refund of the money paid by the complainant to the respondent company. Accordingly, the Respondent no. 1 shall refund the amount of Rs.24,30,099/- which admittedly has been paid by the complainant by way of cheques to the respondent no. 1. This money shall be refunded along with interest at the rate prescribed in Rule 15 of HRERA Rules, 2017.

With regard to the alleged payment by cash, in the absence of any proof thereof this claim cannot be admitted at this stage. The complainant may prove the payment of this money to the respondent no. 2 before an appropriate court of law where-after file a separate petition to get this money refunded.

The respondent no. 1 shall pay Rs. 24,30,099/- within a period of 90 days, 50% in first 45 days from the date of uploading this order on the website of this Authority and remaining 50% within next 45 days. The complainant shall be entitled to satisfy this order against the assets of the project or any other assets of the respondent company. In this regard, this Authority has laid down a law relating to the rights of the allottees in **Complaint no. 383 of 2018 Gurbaksh Singh & Anr. Versus ABW Infrastructure Pvt. Ltd.** The complainant of this case shall be entitled to similar rights and may file a suitable petition for grant of those rights before the relevant Authority or Court of Law.

ii) Another important question arises in this case is what would be the fate of a project after its licence is cancelled and the project is taken over by the Department of Town & Country Planning? Before proceeding further, it is necessary to make certain observations relating to the orders passed by

various authorities of the Town and Country Planning Department from time to time.

a) The order dated 27.10.2016 reads as "*Due to failure of the licensee to get the renewal of the license and to pay the deficit renewal fee, EDC etc. and to rectify the deficiencies conveyed to them from time to time, the aforesaid license was cancelled....*".

b) Para-27 of the same order reads "*after taking over the colony, the issue like preparation of schedule to carry development works, their execution, maintenance of public services, electricity supply, registration of properties, receipt of instalments and maintenance of accounts etc. are to be taken care thereof for this purpose, it has been decided to constitute the following committee.....*".

The Town and country Planning Department, Haryana has written a detailed letter dated 28.09.2018 to this Authority in which it has been repeatedly stated that the committee of the officers constituted for execution of the project shall get the revised building plan and service plans estimates prepared. This along with rest of the wording of the report and orders of the Town and Country Planning Department can be safely interpreted to say that the Department understood that after taking over of the project further development works including construction of apartments shall be undertaken by the Committee of officers constituted for this purpose. In our view, the wording of the law/rules and the orders passed by the Department cannot be interpreted in any other way.

The statement of the Learned Director, however, is otherwise. The difficulties expressed by the Learned Director are understandable, but that leaves the project nowhere. It is then not clear what is the purpose of taking over. There appears to be a lack of understanding in the Department on this subject. The order of taking

over of the colony nowhere specifies that it is being taken over only for carrying out of infrastructure development works.

The Town and Country Planning Department in their letter dated 28.09.2018 have estimated that Rs. 191 crores may be required for the completion of the project. Such a huge amount is not required for the infrastructure facilities only, otherwise also, it makes no sense to take over a multistoried apartment complex for laying infrastructure facilities only.

(iii) From the above, it is quite obvious that the Town and Country Planning Department is not clear about its own policy on the subject. Once a colony is taken over, it means it is taken over with all its assets and liabilities for the purpose of completing it through lawful means available. It is for this reason that, even after taking over the colony in the year 2016, nothing whatsoever has been done on the ground and only some formal meetings of the officials have been held. From the statements made by the Learned Director, it appears that they may not be able to do anything about it even in future.

(iv) It appears that the Town and Country Planning Department is concerning itself only with recovery of license fee and EDC dues, without having any regard for protecting the interest of the allottees or for completion of the project. The views conveyed by the Ld. Director, the provisions of the Rules and the action taken by the Department over last two to three years as demonstrated through the letter dated 28.09.2018 run in complete contradictions with each other. After taking over the colony the Department is not clear whether it is supposed to complete it in a comprehensive way or this process of taking over is only meant to assist them in recovery of the EDC etc. After taking over the colony, it must be completed by any means so as to protect interest of the allottees or it

should not be taken over at all. The Department shall be well advised to revisit this subject in a comprehensive way and frame suitable alternate policy.

(v) It has been repeatedly observed by this Authority in a large number of cases including the **Complaint No. 383 of 2018 Gurbaksh Singh & Anr. Versus ABW Infrastructure Pvt. Ltd.** that it is the Act of granting of license which transforms an ordinary piece of land into a Real Estate Development Project. The conditions of the license includes monitoring the progress of the project by Town and Country Planning Department. If a colony fails to develop properly, equal liability and responsibility must fall upon the Department also along with liability and responsibility of the developers. In the stressed projects like in the instant case, Town and Country Planning Department cannot have a narrow vision and objective of effecting recovery of the deficit of license fee or the EDC dues only. In all such cases, a comprehensive and workable plan of action ought to be prepared with a view to protect the interest of the allottees and the third parties and in overall interest of development of the real estate sector. The allottees invest their hard-earned money in a real estate project on the assurance of the State Government announced to the public at large by way of grant of a license. Licensing a project is a public commitment made by the State Government that it will protect the interests of the public and allottees. The act of granting a license has to be understood in this sense, otherwise the license will lose all its meaning and in the situations like the current case at hand it will become synonymous with giving a handle to the promoters to entangle innocent unsuspecting public.

(vi) The policies and views of the Town and Country Planning Department need drastic revision in respect

of such stuck projects. The Department must own and accept joint responsibility along with the developers if a project fails as in this case. Acceptance of joint responsibility will automatically mean that vision of the Department shall extend to finding a solution in the overall interests of all the stakeholders rather than having a narrow vision of effecting recovery of the fees and EDC dues only. Secondly, whenever such a situation arises, a policy framework must be evolved to find a solution with the primary objective of protecting the interests of the allottees and other third parties. The objective of recovery of the license fee and EDC etc. should be a secondary objective. Such dues can be recovered from the collateral assets or any other assets of the developers after the allottees and the third party have been protected and after the colony is fully developed. The right of recovery of license fee and EDC cannot have the primacy over the rights of the allottees and the third party. This Authority is of the view that such a policy will help create confidence of the investors in the State Government and it would be in the larger interest of the State, society and the economy.

(vii) It has been witnessed repeatedly by this Authority that licenses of numerous projects are not renewed because the developers fail to pay EDC dues. In some of the cases, for the want of renewal of the license, the projects could not be registered with the Authority and as a result the possession of the developed plots or apartments have also not been handed over to the allottees despite colony being fully developed. Apparently, the Town and Country Planning Department considers that it has a relationship only with the licensee/developer and not with the allottees. The Department has to review its understanding of the subject. The Haryana Development and Regulation of Urban Areas Act,

1975 and the Rules thereunder have been framed for regulating urban development in the State. The basic objective of the law and the rules is to allow regulated growth of housing sector for providing houses to the people. The Town and Country Planning Department appears to have forgotten about the eventual beneficiaries of the law and have confined their role to being a Collector of taxes/ charges/ dues from the developers/licensees. The correct position of the law on the subject, however, is that developers/ licensees and the Town and Country Planning Department have joint and several responsibilities towards the allottees. The Department cannot escape their responsibility towards the allottees in this case as well as in all other similarly stuck projects. The Department is duty bound to find a solution. If they decide to take over a colony, then they must develop it in a comprehensive way, including development of the houses and the apartments. In case they are not in a position to develop buildings, as stated by the learned Director, then they must not take over the colony. Rather the Department should find alternate ways, including handing over the colony for the development to the Association of the allottees as envisaged under Section 8 of the Real Estate Regulatory Authority (RERA) Act, 2016 or find some way to substitute a developer with another developer under the supervision of a neutral committee of Department officials and the allottees.

(viii) The Department of Town and Country Planning is well advised to revisit their law and Rules on the subject and for helping completion of this as well as several other similarly placed projects in which the license has not been renewed due to default in payment of EDC dues etc. and the allottees are waiting for their houses despite having paid their entire life time savings.

In the instant case, Town and Country Planning Department is directed to take a comprehensive view for protecting the interests of the allottees.

(ix) While this complaint is being disposed of qua the complainant with an order to the respondent to refund the money of the complainant within a period of 90 days i.e. 50% in first 45 days of the uploading of the order and remaining 50% in next 45 days, a suo motu complaint has been filed bearing **Complaint No. 745 of 2019** against the Town and Country Planning Department for monitoring the action taken by them in furtherance of the aforesaid observations and directions.

8. Authority accordingly hereby orders refund of the amount paid along with interest in accordance with Rule 15 of the RERA Rules, 2017. The principal amount and interest thereon payable to each of the complainants is tabulated below:-

S.No	Complaint No.	Date of Agreement	Amount Paid	Interest	Total
1.	**2/2020**	23.02.2012	Rs. 8,35,649/-	Rs. 6,96,278/-	Rs. 15,31,927/-
2.	**3082/2019**	14.06.2013	Rs. 14,30,823/-	Rs. 11,98,798/-	Rs. 26,29,621/-
3.	**3123/2019**	01.04.2014	Rs. 7,03,515/-	Rs. 5,96,145/-	Rs. 12,99,660/-
4.	**3129/2019**	24.07.2013	Rs. 5,65,261/-	Rs. 4,72,229/-	Rs. 10,37,490/-

In complaint no. 3082 of 2019, complainant claims to have paid additional Rs. 5,19,750/- as premium in cash. Since no receipt is available for this alleged payment, it is not allowed as refund being a disputed amount.

9. Respondents are directed to refund the amount along with interest shown in the table above within time period of 90 days as prescribed in Rule 16 of RERA Rules, 2017.

10. Complaints are **disposed off**. Files to be consigned to record room after uploading of order.

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RAJAN GUPTA
[CHAIRMAN]

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DILBAG SINGH SIHAG
[MEMBER]