



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

1. COMPLAINT NO. 843 OF 2019

Manoj Kumar Gupta

....COMPLAINANT

VERSUS

Ferrous Infrastructure Pvt. Ltd.

....RESPONDENT

2. COMPLAINT NO. 844 OF 2019

Rahul Kumar Rawal

....COMPLAINANT

VERSUS

Ferrous Infrastructure Pvt. Ltd.

....RESPONDENT

3. COMPLAINT NO. 845 OF 2019

Raj Kumar Rai

....COMPLAINANT

VERSUS

Ferrous Infrastructure Pvt. Ltd.

....RESPONDENT

4. COMPLAINT NO. 846 OF 2019

Vinod Kumar Barthwal

....COMPLAINANT

VERSUS

Ferrous Infrastructure Pvt. Ltd.

....RESPONDENT

5. COMPLAINT NO. 847 OF 2019

Ravinder Kumar Singh

....COMPLAINANT

VERSUS

Ferrous Infrastructure Pvt. Ltd.

....RESPONDENT

6. COMPLAINT NO. 848 of 2019

Karan Singh

....COMPLAINANT

VERSUS

Ferrous Infrastructure Pvt. Ltd.

....RESPONDENT

7. COMPLAINT NO. 849 OF 2019

Shalini Sethi

....COMPLAINANT

VERSUS

Ferrous Infrastructure Pvt. Ltd.

....RESPONDENT

8. COMPLAINT NO. 850 OF 2019

Onkar Chand Sud

....COMPLAINANT

VERSUS

Ferrous Infrastructure Pvt. Ltd.

....RESPONDENT

9. COMPLAINT NO. 851 OF 2019

Vandana Sen

....COMPLAINANT

VERSUS

Ferrous Infrastructure Pvt. Ltd.

....RESPONDENT



10. COMPLAINT NO. 852 OF 2019

Deepika Pant

....COMPLAINANT

VERSUS

Ferrous Infrastructure Pvt. Ltd.

....RESPONDENT

11. COMPLAINT NO. 996 OF 2019

Rupesh Kumar Singh

....COMPLAINANT

VERSUS

Ferrous Infrastructure Pvt. Ltd.

....RESPONDENT

12. COMPLAINT NO. 997 OF 2019

Inderpreet Kaur

....COMPLAINANT

VERSUS

Ferrous Infrastructure Pvt. Ltd.

....RESPONDENT

13. COMPLAINT NO. 998 OF 2019

Mira Sengupta

....COMPLAINANT

VERSUS

Ferrous Infrastructure Pvt. Ltd.

....RESPONDENT

14. COMPLAINT NO. 999 of 2019

N Venkateshwarlu

....COMPLAINANT

VERSUS

Ferrous Infrastructure Pvt. Ltd.

....RESPONDENT



15. COMPLAINT NO. 1037 OF 2019

Animesh KashyapCOMPLAINANT

VERSUS

Ferrous Infrastructure Pvt. Ltd.RESPONDENT

16. COMPLAINT NO. 1038 OF 2019

Mahender KumarCOMPLAINANT

VERSUS

Ferrous Infrastructure Pvt. Ltd.RESPONDENT

17. COMPLAINT NO. 1051 OF 2019

Ankur MathurCOMPLAINANT

VERSUS

Ferrous Infrastructure Pvt. Ltd.RESPONDENT

18. COMPLAINT NO. 1079 OF 2019

Raj Kishore GopeCOMPLAINANT

VERSUS

Ferrous Infrastructure Pvt. Ltd.RESPONDENT

19. COMPLAINT NO. 1082 OF 2019

Siya Ram SinghCOMPLAINANT

VERSUS

Ferrous Infrastructure Pvt. Ltd.RESPONDENT



20. COMPLAINT NO. 1291 OF 2019

Ankur GargCOMPLAINANT

VERSUS

Ferrous Infrastructure Pvt. Ltd.RESPONDENT

21. COMPLAINT NO. 1292 of 2019

Susmita KeshriCOMPLAINANT

VERSUS

Ferrous Infrastructure Pvt. Ltd.RESPONDENT

22. COMPLAINT NO. 1640 OF 2019

Kamlesh BaggaCOMPLAINANT

VERSUS

Ferrous Infrastructure Pvt. Ltd.RESPONDENT

23. COMPLAINT NO. 1831 OF 2019

Leelay Kumar MishraCOMPLAINANT

VERSUS

Ferrous Infrastructure Pvt. Ltd.RESPONDENT

24. COMPLAINT NO. 2564 OF 2019

Ankit Sethi and OrsCOMPLAINANT

VERSUS

Ferrous Infrastructure Pvt. Ltd.RESPONDENT



Complaint No. 843,844,845,846,847,848,849,850,851,852,996,997,998,999,1036,1037,1038,1051,1079,1082,1291,1292,1640,1831,2564,2705, 2976 of 2019 and 32 of 2022

8th (in complaint nos. 996, 997, 998, 999, 1036, 1037, 1038, 1051, 1079, 1082, 1291, 1292, 1831 of 2019)

7th (in complaint no.1640 of 2019)

6th (in complaint nos. 2705 and 2564 of 2019)

5th (in complaint no. 2976 of 2019)

1st (in complaint no. 32 of 2022)

Present: - Adv. Dinesh Kr. Dakoria, learned counsel for the complainants (in complaint nos. 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 996, 997, 998, 999, 1036, 1037, 1038, 1051, 1079, 1082, 1291, 1292, 1640, 2564, 2976 of 2019)
Adv. Gaurav Arora, learned counsel for the complainant (in Complaint no.1831 of 2019)
Adv. Pradeep Srivastava, learned counsel for the complainant (in complaint no. 2705 of 2019)
Adv. Sourabh Goel, learned counsel for the respondents (in all complaints)

ORDER (RAJAN GUPTA - CHAIRMAN)

1. Captioned bunch of complaints is being disposed of together by this common order. The complaint No.843 of 2019 Manoj Kumar Versus Ferrous Infrastructure Pvt. Ltd. has been taken as a lead case. This matter was heard at length on 3.03.2022. Some relevant paras of the order dated 3.03.2022 are reproduced below:

"2. Complainant had booked a flat bearing no.36, first floor in Tower T-2 admeasuring 1203 sq. ft. in respondent's project "Beverly Homes" Phase II, situated in sector 89, Faridabad by paying a booking amount of Rs. 2,50,000/- on 20.11.2009. The total sale consideration of the flat was Rs. 20,56,000 plus

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additional charges against which complainant had already paid an amount of Rs. 23,02,376/- Both the parties signed the flat buyer agreement on 20.06.2011. As per Clause 12 of the agreement, possession of booked property was to be delivered within 24 months with a grace period of 180 days. Therefore, deemed date of possession in this case was 20.12.2013. However, no information of progress regarding completion of the project had been received from the respondent in this regard till date. Moreover, there was no progress for 6 years at site meaning thereby there is no possibility to get the project completed in near future. Therefore, complainant sought relief of refund along with permissible interest as per Rule 15 of HRERA Rules, 2017 framed under RERA Rules, 2016 and the total amount i.e., Rs.23,02,376/- given to the respondent from the date of payment till the payment of the entire amount of principal and accrued delay interest thereon.

3. Learned counsel for the complainants except in complaint case no. 1831 of 2019 and Complaint case no. 2705 of 2019, further submitted that more than 95 percent of the total sale consideration in the respective case had been paid by the complainants in all above captioned complaints. As per clause 12 of the floor builder buyer agreement, "physical possession of the said flats were to be handed over by the respondent company to the complainants within a period of 24 months, further extendable by a grace period of 180 days from the date of entering into the agreement." Occupation Certificate has not been obtained by the respondent company, moreover construction of the project remains incomplete till date. Besides there is severe deficiency in services

on the part of promoter respondent as there is no electricity supply, no sewerage facilities, no firefighting permissions, etc. Therefore, complainants were compelled to seek relief of refund of the amount paid by them along with delay interest due to inordinate delay in completion of the project. To strengthen his pleadings, he has also relied upon two rulings of Hon'ble Apex Court. Hon'ble Apex Court in **Civil Appeal No.12238 of 2018 and 1677 of 2019 titled as Poiner Urban Land & Infrastructure Ltd. Vs. Govindan Raghvan and Ors.** on 02.04.2019 has decided that when possession of the allotted flat/plot/house is not delivered within the specified time, the allottee is entitled to a refund of the amount paid, with reasonable interest thereon from the date of payment till the date of refund. Relevant part of this ruling is reproduced below:

"9. The Appellant – Builder failed to fulfil his contractual obligation of obtaining the Occupancy Certificate and offering possession of the flat to the Respondent – Purchaser within the time stipulated in the agreement, or within a reasonable time thereafter. The Respondent – Flat Purchaser could not be compelled to take the possession of the flat, even though it was offered almost 2 years after the grace period under the Agreement expired."

Same principle has been reiterated by Hon'ble Supreme Court in **Civil Appeal No. 5785 of 2019 titled as Ireo Grace Real Tech Pvt. Ltd. Vs. Abhishek Khanna and Ors.** decided on 11.01.2021. Relevant part of is reproduced below:

"21.2.(iii). The Occupation Certificate is not available even as on date, which clearly amounts to deficiency of service. The allottees cannot be made to wait indefinitely for possession of the apartments allotted to them, nor can he be bound to take the apartments in Phase 1 of the project."

Besides above pleadings, learned counsel of the complainant also apprised the Authority that 14 F.I.R's were registered by the allottees against the respondent company M/s Ferrous Infrastructure Pvt. Ltd. and its director's u/s 406, 409, 420, 467, 468, 471, 506, 120B of IPC. The details of the same are as under as per e-mail dated 03.03.2022 received from the learned counsel –

| S. No | Name of the Complainant | FIR NO. |
|-------|--------------------------|-------------|
| 1. | Sh. Ankit Sethi | 248 of 2019 |
| 2. | Sh. Deepika Pant | 249 of 2019 |
| 3. | Sh. Karan Singh | 257 of 2019 |
| 4. | Sh. Mahesh Kumar | 250 of 2019 |
| 5. | Sh. Manoj Kumar | 259 of 2019 |
| 6. | Sh. Mira Sen Gupta | 251 of 2019 |
| 7. | Sh. Onkar Chand Sud | 254 of 2019 |
| 8. | Sh. Rahul Rawal | 255 of 2019 |
| 9. | Sh. Raj Kishore Gope | 252 of 2019 |
| 10. | Sh. Raj Kumar Rai | 260 of 2019 |
| 11. | Sh. Ravinder Kumar Singh | 256 of 2019 |
| 12. | Sh. Shalini Sheti | 261 of 2019 |
| 13. | Sh. Siya Ram Singh | 262 of 2019 |
| 14. | Vinod Kumar Bharthwal | 253 2019 |

4. Mr. Gaurav Arora, learned counsel for the complainant in complaint case no. 1831 of 2019 also stated that against total sale consideration of Rs. 17,22,430/-. Complainant made payment in full between the years 2012 to 2014, but construction of the project has not been completed till date, rather no progress on site for last 5 years or so. Photographs of the incomplete construction were displayed before the Authority through video conferencing during the court proceedings.

6. In view of written and verbal submissions of all concerned, Authority is of tentative view that all these complaints deserve to be allowed as per Section 18 of RERA Act, 2016 with permissible delay interest as per Rule 15 of HRERA Rules, 2017. To make order more comprehensive, a table has been got prepared by the Authority in its office wherein complete details regarding date of booking; date of FBA execution ; deemed date of completion of project as per Clause 12 of FBA; payment made by the complainants against their respective sale consideration have been summarised in following table to comprehend the facts and submissions of all the complainants that they have either made payment more than their respective total sale consideration or more than 95 percent.

| Sr. No. | COMPLAINT NO. | DATE OF AGREEMENT | TOTAL SALES CONSIDERATION (In Rs.) | TOTAL AMOUNT PAID BY THE COMPLAINANT (In Rs.) | DEEMED DATE OF POSSESSION |
|---------|---------------|-------------------|------------------------------------|---|---------------------------|
| 1. | 843/2019 | 20.06.2011 | 20,56,000/- | 23,02,376/- | 20.12.2013 |
| 2. | 844/2019 | 01.11.2010 | 23,37,000/- | 27,99,470/- | 01.05.2012 |
| 3. | 845/2019 | 01.11.2010 | 26,57,944/- | 31,37,544/- | 01.05.2013 |
| 4. | 846/2019 | 01.11.2010 | 21,56,000/- | 23,15,612/- | 01.05.2013 |
| 5. | 847/2019 | 07.04.2010 | 16,08,000/- | 20,32,587/- | 07.10.2012 |
| 6. | 848/2019 | 23.06.2010 | 22,53,952/- | - | 23.12.2012 |
| 7. | 849/2019 | 16.01.2013 | 27,10,456/- | 25,98,606/- | 16.07.2015 |
| 8. | 850/2019 | 27.09.2013 | 27,10,456/- | 25,72,599/- | 27.03.2016 |
| 9. | 851/2019 | 15.04.2010 | 16,08,000/- | 19,03,160/- | 15.10.2012 |
| 10. | 852/2019 | 06.06.2010 | 16,08,000/- | 21,99,617/- | 06.12.2012 |
| 11. | 996/2019 | 23.04.2010 | 22,37,000/- | 24,63,519/- | 23.10.2012 |
| 12. | 997/2019 | 01.11.2010 | 22,37,000/- | 30,16,320/- | 01.05.2013 |
| 13. | 998/2019 | 06.06.2010 | 16,08,000/- | 19,38,735/- | 06.12.2012 |
| 14. | 999/2019 | 10.02.2011 | 26,37,000/- | 29,86,614/- | 10.08.2013 |
| 15. | 1037/2019 | 29.07.2010 | 22,37,000/- | 23,46,551/- | 29.01.2013 |
| 16. | 1038/2019 | 07.07.2011 | 16,08,000/- | 21,06,771/- | 07.01.2014 |
| 17. | 1051/2019 | - | 20,56,000/- | 25,33,514/- | - |
| 18. | 1079/2019 | 23.06.2010 | 20,56,000/- | 23,50,000/- | 23.12.2012 |
| 19. | 1082/2019 | 07.04.2010 | 20,56,000/- | 24,19,976/- | 07.10.2012 |

Complaint No. 843,844,845,846,847,848,849,850,851,852,996,997,998,999,1036,1037,1038,1051,1079,1082,1291,1292,1640,1831,2564,2705, 2976 of 2019 and 32 of 2022

| | | | | | |
|-----|-----------|------------|-------------|-------------|------------|
| 20. | 1291/2019 | 01.11.2010 | 21,56,000/- | 28,88,728/- | 01.05.2012 |
| 21. | 1292/2019 | - | 22,37,000/- | 26,96,020/- | - |
| 22. | 1640/2019 | 21.04.2015 | 19,53,200/- | 23,15,799/- | 21.10.2017 |
| 23. | 1831/2019 | 28.11.2013 | 17,22,430/- | 17,22,430/- | 28.11.2016 |
| 24. | 2564/2019 | 03.03.2012 | 20,56,000/- | 23,91,800/- | 03.09.2014 |
| 25. | 2705/2019 | 01.10.2010 | 22,11,060/- | 24,69,712/- | 16.08.2012 |
| 26. | 2976/2019 | 20.04.2015 | 16,08,000/- | 23,01,052/- | 20.10.2017 |

It has also been concluded at the glance of the table that booking in majority of these complaints is between 2010-2013. The deemed date of possession in these complaints is between 2012-16. Further, it is clear from the photographs shown by the learned counsel of the complainant during the court proceedings that construction of the project is not complete and project site appears to be abandoned for more than 5 years or so as constructed buildings appear to be in completely dilapidated state. No progress is evident in the past five years or so. There is unlikelihood of completion of project and delivery of possession and in near future.

In brief sum up, Authority is prima facie is of the view that all these complainants deserve to be awarded refund as per their prayer under the provisions of Section-18 of RERA Act, 2016. They are also entitled to get delay interest of their respective payments made to the promoter respondent from date of receipt of various payments till refund of the entire amount as per provision of Rule 15 of HRERA Rules, 2017.”

2. When this matter further came up for hearing on 10.03.2022, Authority had decided to appoint local commissioner for giving reports regarding factual position of various construction works undertaken at the site. Relevant para 5 and 6 of the said order dated 10.3.2022 are reproduced below:

“ 5. Upon examination of the matter Authority observes that diametrically opposite claims and counter claims have been made

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by both sides in regard to the stage of completion of the project. In order to arrive at a fair and just solution, Authority considers it appropriate to have the site of the project inspected by learned Chief Town Planner of Authority.

6. Accordingly, learned CTP is directed to visit project site after giving due notice to respondent company as well as counsels for complainant. Entire project should be visited in detail, and inter-alia, report on following issues should be submitted:

- (i) Whether apartments of the project have been constructed in accordance with layout plans and building plans approved by Town & Country Planning Department?
- (ii) How many allottees are actually residing in the project?
- (iii) Whether Engineering Department of HUDA has examined the site and given its certificate in regard to laying and functioning of critical services i.e. roads, sewage system, water supply system and storm water drainage system?
- (iv) Whether any part of the project is lying in dilapidated condition and apartments therein are un-inhabitable. Further, whether project is being maintained properly?
- (v) Whether electricity supply system has been installed in the project? If yes, what is the quantum of power connection obtained.

Learned Chief Town Planner may ask the respondents to produce requisite documents in this regard or call SDO, DHBVNL to provide requisite information.

3. In all the captioned complaints complainants are seeking relief of refund. These complaints were filed in the year 2019 but it had not been taken into consideration by Authority due to the fact that jurisdiction of the Authority to deal with complaints in which relief of refund was sought was subjudice before Hon'ble High Court and Hon'ble Supreme Court.
4. 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.

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Newtech Promoters and Developers Pvt. Ltd. v. State of Uttar Pradesh & Ors. Etc. Thereafter, Hon'ble High Court of Punjab and Haryana has 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.

5. Consequent upon above judgement passed by Hon'ble High Court, this Authority has 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.

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.

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 was 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."

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

7. Learned CTP of Authority was appointed the Local Commissioner to submit a site report. Learned CTP submitted his report on 19.04.2022. A copy

of report was sent to learned counsels for complainants as well as respondents by email on 22.04.2022. Physical copy of the report was sent to Sh. Dinesh Kumar Dakoria, learned counsel for complainants on 27.04.2022, which was successfully delivered on 29.04.2022, and to Sh. Sourabh Goel, learned counsel for respondents on 28.04.2022. However, Sh. Gaurav Arora, learned counsel for complainant in complaint case no. 1831 of 2019 and Sh. Pradeep Srivastava, learned counsel for complainant in complaint case no. 2705 of 2019 did not insist on delivery of physical copy as same was already sent to them through e-mail.

8. None of the parties have filed any written objection to the report of Local Commissioner.

9. The report submitted by the learned Local Commissioner is reproduced below:

“ 1. License No. 229 of 2007 dated 28.09.2007 was granted for a Group Housing Colony on land measuring 11.85 Acres in Sector-89, Faridabad. This license was transferred under Rule 17, of the HDRUA Rules 1976 to M/s Ferrous Infrastructure Pvt. Ltd. on 22.09.2008. The site plan/building plans of this Group Housing scheme were approved vide Memo No. 10053-59 dated 16.08.2010. This scheme comprises of 4 Group Housing Blocks having a total of 540 Units an EWS Block of (stilt + 8 floors) having 151 units and 313 Units of (G + 2 and G +1 floor).

2. No multistoried apartment except 'Block D' (1 Bed room apartments having 56 units) has been constructed. The structure of this building is complete, however, no internal finishes have started. However, all G + 1 and G + 2 units have been constructed at site.

3. The construction of the G + 1 and G + 2 units seem to be 7 to 8 years old. The photographs taken at site (Annexure A) show that the quality of construction is poor. No maintenance is taking place. However, residents are being charged a maintenance fee of Rs. 2000/- per month.
4. The Service Plans/rough cost estimates of this project were forwarded for approval on 09.10.2014 by the chief Administrator HUDA to the Directorate of Town and Country Planning. However, the same are yet to be approved by the Town and Country Planning department.
5. Above 40 families are actually residing in the project.
6. The EWS block within the complex is yet to be constructed and therefore it will be difficult for the promoter to obtain Occupation Certificate for the general category units. Most of the allottees are therefore reluctant to take over the possession of the constructed units as occupation certificate has to be obtained by the promoter.
7. The Sewerage treatment plant though under construction is still not operational and the sewer is being transported through tankers.
8. Water supply is being supplied through bore wells and the water testing report of the Private Agency i.e. MICRO Engineering and Testing Laboratory in Dec'2021 shows that the water of the bore well is fit for drinking purpose.
9. As far as the electricity supply system is concerned a temporary commercial connection of 180 kw has been obtained by the promoter on 06.01.2020, wherein the per unit rate is Rs. 11/- for the first 2 years and Rs. 14 per unit thereafter. At present DHBVN is supplying electricity to the said complex @ of Rs. 14/unit. This electricity is being supplied to the residents who are charged Rs. 9/ per unit, the remaining amount of Rs. 5/ is being paid by the promoter from the maintenance fee being collected at the rate of Rs. Two thousand per month.

When the promoter applied for approval of electrification plan for release of individual/multipoint connections in Oct'2021, certain observations were conveyed by DHBVN on 22.11.2021. The observations basically included



- (i) The ear making of land for electrical Infrastructure/sub-station.
- (ii) A copy of the valid license.
- (iii) The load calculation sheet of the complete scheme.

The said information has yet to be provided by the promoter.

Thereafter, learned counsel for complainant requested to take into consideration the photographs placed on record by learned CTP of the Authority during his site visit, which proves the abandoned and dilapidated condition of the project.”

10. Today, during arguments Shri Dinesh Kumar Dakoria, learned counsel for the complainants submitted as follows:

- (i) That report submitted by Ld. Local Commissioner clearly establishes that the project has been abandoned by respondent and is lying in highly dilapidated condition. The photographs submitted by Local Commissioner substantiates the fact that even constructed areas of the project are falling apart and are completely un-inhabitable. In fact, it may be unsafe for human habitation.
- (ii) There are severe deficiencies in service as is proved from the facts submitted by Ld. Local Commissioner. The sewerage plant is not operational. The water supply is being made through bore-wells which is illegal in terms of the guidelines of Hon'ble National Green Tribunal relating to ground water extraction. In fact, a criminal complaint has been filed against the respondent in respect of extraction of ground water. Further, electricity connections has not been obtained as per report, even preliminary formalities in regard to

obtaining electricity connection are yet to be gone through. The respondent company has obtained only a temporary commercial connection of 180 KW since June,2020, wherein the rate of supply of electricity is Rs.11/- for first two years and Rs.14/- per unit thereafter. At present, electricity is being supplied in the complex @ Rs.14/-per unit wherein, Rs.9/- per unit are being charged from the complainants and remaining Rs.5/- per unit are being paid out of maintenance fee being collected from residents @ Rs.2000/- per month.

(iii) Occupation Certificate in respect of project has not even been applied for much less to talk about receiving the Occupation Certificate. The respondents are claiming that project is complete and complainants should pay remaining dues to the respondents, whereafter possession will be offered to them, learned counsel argued that how respondent could even offer the possession without obtaining the occupation certificate and how could the respondents ask for remaining payments without giving them a statement of accounts after adjusting delay interest admissible. Ld. counsel argue that under no circumstances the project can get occupation certificate.

It was argued that respondents have completely abandoned the project. No construction activities or maintenance activity is taking place for the last 6-7 years. The project is completely dilapidated. Occupation Certificate has neither been applied nor obtained. There are severe deficiencies. More importantly, on account of extreme delay having been

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caused in completing the project and no offer of possession having being made, complainants are entitled to the relief of refund as provided in Section-18 of the RERA Act.

In support of their contention that in such circumstances, complainants are entitled to relief of refund, ld. counsel cited orders of Hon'ble Supreme Court passed in **M/S Pioneer Urban Land and Infrastructure Ltd. Versus Govindan Raghvan & Ors.in Civil Appeal No.12238 of 2018 and 1677 of 2019**. It was argued that if a builder has failed to fulfill his contractual obligations within a reasonable time frame of the time stipulated in the agreement, flat purchasers could not be compelled to take possession of the flat.

11. Shri Sourabh Goel, learned counsel for respondent company and Shri Ashish Seth, M.D. of promoter's company, were present and argued this case as follows:

(i) Ld. counsel presented some photographs of a portion of the colony to show that apartments are ready and in a habitable condition. Learned counsel Shri Sourabh Goel argued that ld. Local Commissioner has presented photographs of backlanes of the project. Admittedly, no construction work and maintenance work is happening for the last 5-6 years. Therefore, lot of garbage

has got accumulated. Shri Goyal argued that many portions of the colony are complete and habitable.

(ii) In support of his arguments, he reiterated that out of 335 sold units, 149 allottees have already taken possession and most of them are living in the colony.

(iii) Shri Ashish Seth, M.D. of respondent company stated that EWS apartments will be constructed in next six months, whereafter they will apply for grant of occupation certificate and after that offer of possession will be made to the complainants.

(iv) Respondents claim that the project could not be completed because large numbers of allottees, including complainants have been defaulting in making payments. About Rs.5.00 Crores is due from allottees who are presently complainants before this Authority.

(v) Learned counsel Shri Sourabh Goel stressed upon the point that if the allottees pay money and time of another six months is allowed to the respondent company, they would complete EWS apartments and apply for grant of occupation certificate. He also stressed the point that Authority has to strike a balance between the interests of project as a whole as well as interests of individual allottees. The respondent promoter has made arrangements to complete the project. Now, they should be



allowed an opportunity to complete it and prayer of the complainants to refund the amount paid by them may not be allowed.

12. Authority has examined the rival contentions. It has examined all facts and evidence placed on record. Authority has also gone through report of learned CTP. Oral arguments have been considered in depth. Authority observes and orders as follows:

(i) Most of the allottees had executed BBA with respondents in the years 2010 and 2011. A few had executed the agreement in the year 2012 and 2013 and two in the year 2015. Accordingly, due date for offering possession to most of the allottees fell in the years 2012 and 2013. A delay of 8-9 years has already been caused. It is an extra-ordinary delay. In the event of such extra-ordinary delay having been caused, allottees become entitled to relief of refund for the simple reason that basic purpose of purchasing a house gets frustrated when so much of delay had been caused.

It is equally important to note that almost entire consideration amount had been paid by complainants well before the due date of offering possession in 2012-2013. After having received almost entire consideration, there is no justification available

Complaint No. 843,844,845,846,847,848,849,850,851,852,996,997,998,999,1036,1037,1038,1051,1079,1082,1291,1292,1640,1831,2564,2705, 2976 of 2019 and 32 of 2022

with the respondent company to delay construction for such a long period of time. No plausible explanation has been submitted by respondents in this regard.

(ii) It is equally important to note that even now there is no hope of completion of project in near future. All the captioned complaints were filed in the year 2019. Even after a lapse of 3 years since filing of complaint construction of the project is exactly as it existed then. No signs of development are visible even after 2019. Had the respondents been serious about completing the project, they would have done something during the pendency of litigation before this Authority. Nothing has been stated as to what stopped them from completing the project.

(iii) Respondents are claiming that substantial portions of the project is complete and offer of possession to 149 allottees has been made and most of them are already living.

It is observed that offering possession without obtaining occupation certificate itself is an illegality. Those allottees who have taken possession have done so on account of their own personal circumstances like having no other place to live, but without obtaining occupation certificate no allottee can be held liable to take possession as per law. Many allottees take

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possession because the apartment booked by them is the only habitable place available to them and they need to have a roof on their head. But that does not discharge the respondents of their responsibility of completing the project as per law and norms and obtain occupation certificate. Without an occupation certificate several rights of the allottees are severely curtailed. Even safety of building cannot be certified without such a certificate. Accordingly, the allottees can legitimately refuse possession, if offered to them, without obtaining occupation certificate.

v) In captioned complaints, even an offer of possession sans OC has not been made. Respondent's case is that they have demanded balance due amount from complainants which they refusing to pay. In support of their arguments, respondents have not placed any statement of accounts before the Authority.

Whether any amount is due, has to be established by way of statement of accounts. The respondent have not issued any statement of accounts to the complainants duly incorporating therein delay interest payable to them as per provision of Section 18 of RERA Act and Rule 15 of the RERA Rules. Respondents have not even tried to take any remedial steps even after filing of the complaints in the year 2019. Mere generalised statement by

respondent will serve no purpose. Rather than making a generalised statement that the complainants are defaulting in payments respondent should have issued them a statement of accounts as per law duly reflecting the amounts receive-able and payable by both sides. Having not done that, the Authority has no hesitation in concluding that the project is neither complete, nor it has received occupation certificate, nor any offer of possession has been made even after a delay of 8 to 9 years.

13. The Authority in its project jurisdiction, in its meeting held on 20.12.2021 had passed following orders in respect of this project of the respondent:

"During the hearing dated 25.10.2021, the Authority had observed as follows:

"On 27.01.2020, the Authority had directed the promoter to deposit pending fee amounting to Rs.5,84,028/-, penal fee amounting to Rs. 22,14,048/-and cost of Rs. 3 Lakhs. Later on, 24.02.2020 the Authority granted adjournment subject to payment of further cost of Rs. 1.00 Lakh. The said fee/costs have not been deposited by the promoter till date.

2. On 06.09.2021, the Authority had observed that:

"2. It is the responsibility of the promoter to fulfil all the requirements of law for getting their licence renewed. On account of dispute relating to small amount of Rs. 26.00 lakh of renewal fee with department, promoters are not getting their licence renewed, as a result registration of the project is held up and numerous allottees are suffering.



3. Shri Sourabh Goel Learned Counsel for the promoter stated that he needs to seek instructions from his client regarding the deposition of renewal fee of Rs. 26.00 lakh with the Town & Country Planning Department for renewal of licence. Learned Counsel sought a short adjournment for this purpose.”
4. After considering the reply and arguments put forth by the counsel, the Authority directed the counsel to be present along with the promoter on the next date of hearing and reiterates that the registration fee and late fee/penalty as ordered by the Authority should be paid by the next date. Without payment of requisite fee their application for registration cannot be entertained.
3. In compliance of the above orders, the applicant/promoter has submitted a reply dated 10.09.2021 mentioning:
“That the respondent had applied for renewal of license on 01.12.2020 with a request that required license renewal fee may kindly be deducted from the interest amount of Rs.13.52 crore payable to Ferrous Infrastructure for Dharuhera Project under license no. 202 of 2007. Despite several opportunities granted to DTCP to expedite renewal of the license, the License has not been renewed till date.
2. The Authority observes that apparently license of promoter’s company is not being considered for renewal by the office of DTCP because respondent company is failing to deposit remaining due renewal fees amounting to Rs.26.00 lakhs. Stand of respondent company is that they have to recover huge amount of interest from the Town & Country Planning Department, therefore, renewal fees should be deducted by the department from amounts payable to them.
3. Authority has considered this matter. It observes that system in the State Government does not work in the manner being projected by respondent promoter. Government does not maintain account of individual /persons, like that of a bank. Claims of Government in respect of payable renewal fees is a separate subject and the same is creditable into receipt head of the Government. Similarly, if a person claims money to be recovered from Government, a separate decision has to be taken for payment of the money.

4. Authority observes that, it is a huge project involving hundreds of allottees. Authority considers that by not depositing small amount of Rs.26.00 lakhs with State Government, the promoter licensee is deliberately avoiding to get their license renewed. For the want of renewal of license their application for registration of project also cannot be considered. The Authority tentatively observes that it is a deliberate attempt on the part of the promoter to avoid registration of the project. This as such will constitute violation of Section 3 of the Act thus making them liable for action under Section 59.

5. The applicant promoter should complete all formalities for renewal of license by next date, failing which Authority will consider initiating action under Section 59. A detailed reply should be submitted by promoter in support of their contentions.

2. On 10.12.2021 the applicant submitted a reply dated 27.11.2021 the relevant part is reproduced below:

“Company is developing some other projects besides the present project and our company is struggling hard to manage the funds for making the payments of outstanding government dues pertaining to these projects. In furtherance of this, we have recently made the payment of Rs. 2.18 crores for renewal of license; Rs. 16.86 crores for EDC on 30.09.2021 and Rs. 64 Laacs approx. on 16.11.2021 for some other statutory compliances for our project namely “Ferrous City” at sector-89, Faridabad against Licence no. 34-36 of 2007. It is submitted that due to making said payments, our company is in a state of financial crunch and is unable to pay the license renewal fee as of now for our project in question under license no. 229/2007, as has been directed by the Hon’ble Authority though we are very much willing to do the same and have made up our mind to clear the renewal fee on our own. In these circumstances, we therefore need some more time to do the needful. It is also requested to Authority to grant 2 month time for submitting the license renewal fee as per directions of Hon’ble Authority.”

3. Today, Id. Counsel for respondent, Sh. Sourabh Goel and Sh. Ashish Seth appeared before the Authority and requested for two months time for depositing license renewal fee to Director



Town and Country Planning Department. They further informed the Authority that project is complete and only EWS flats remains to be constructed. Further, they are yet to recover Rs. 28 Crores from the allottees of apartments but they are not paying the due amounts due to non-renewal of their license and non-registration of project. It was also stated that promoters had requested Town and Country Planning Department to adjust the due amount of license renewal fee out of certain other amounts deposited by them in regard to another project. Learned Counsel also informed that 150 allottees have taken possession of apartments and 55 families are residing in the project.

4. In view of various orders passed by Authority and after consideration of submissions made by Learned Counsel Sh. Sourabh Goel and promoter Sh. Ashish Seth, Authority observes that primary concern of the Authority is to have completed apartments delivered to the allottees. If case of the respondent is that the project is complete except the portion relating to EWS flats, then nothing prohibits them from offering possession to the allottees. Those allottees willing to take possession may do so and other allottees may wait till receipt of occupation certificate. The Authority further observes that renewal of licence at this stage is a mere formality which also can be discharged by depositing a small amount of fee of Rs. 26 lacs. In any case, the respondent company is not precluded from undertaking the construction work of EWS flats, which they have to construct. Without construction of EWS flats, occupation certificate will not be granted to them by Town & Country Planning Department. It is not understood why respondents are refusing to pay remaining small amount of Rs. 26.00 lacs licence renewal fees upfront. Instead, they are incurring a huge liability of paying delay interest to allottees of the project.

Looked at from any angle, it is the respondents only who are at fault by discharging their statutory obligations.

5. In order to protect interests of allottees and to generate their confidence in the project, the Authority directs the respondents as follows: -



- i. The respondents should organise a meeting with all the allottees of the project on 8th January, 2022 at 12:00 O'clock at the project site. Progress of the project should be informed to them. Further plan of action for completing remaining works be also brought to their notice. Detailed minutes of meeting should be prepared and submitted before this Authority.
- ii. A representative of Authority will also attend the meeting to note proceedings.
- iii. The promoter should individually deposit deficient licence fees of Rs.26 lacs. Further, this being an ongoing project, deficient registration fees etc. as recorded in opening paragraphs of this order should also be paid to the Authority without which this application cannot be considered.
- iv. Offer of possession should be made to all the allottees. Those allottees who wish to take possession may do so as per their choice. It should be clearly stated in the letter of offer of possession that the occupation certificate of the project will be obtained in due course of time when remaining portion of the project is also completed. Allottees who do not wish to take possession without receipt of occupation certificate therefore may wait."

14. Authority has tried to resolve problems of the project and is surprised by the fact that respondents are not even ready to deposit due license fee to the department to renew their license. Without such renewal of license many approvals including electricity connection will not be granted to them. From reticence of respondents in fulfilling their basic obligations, Authority is forced to arrive at conclusion that respondents are deliberately not completing the project for reasons best known to them.

15. During the hearing dated 20.12.2021 the Authority had also directed the respondents to organise a meeting with all the allottees of the project to inform



them of the plan of action for completing remaining works. Authority accordingly had made an attempt to resolve problems of the project by building confidence amongst allottees. Respondent have failed to even hold a meeting with the allottees. Agreed, that in January,2022 such a meeting could not have been held because of outbreak of omicron variant of Covid-2019, but no such situation is prevailing for last nearly 3 months, but respondent have failed to hold such a meeting.

16. Authority accordingly is forced to conclude that respondents are deliberately neglecting to fulfil their obligations and are probably seeking to abandon the project. Report of learned CTP is categorical on several counts. The photographs submitted by him, which have been made part of record of the file shows extremely dilapidated condition of the project. It is evident that it has not been maintain for the last many years. The photographs gives impression that it is not safe for human habitation.

17. Admittedly there is no authorised water supply in the project and water is being drawn through bore-wells. It has been alleged that extraction of water from such bore-wells is prohibited by guidelines of Hon'ble NGT.

18. It is not understood why the promoters apart from not getting license renewed have also not got EWS apartments constructed. It is an obligation which has to be fulfilled. For the past many years, they have been making claims that EWS apartments will be constructed but nothing appears to have been done on



the ground. It has been reported by Ld. CTP that the respondent had submitted their service plan estimates to the Chief Administrator, HUDA on 9.10.2014. The same has not yet been approved. It is to be presumed that same has not been approved on account of some default on the part of the promoters. Surely, the respondents have failed to pursue the matter with HUDA. In this regard they have failed to discharge their responsibilities. This by itself amounts to deficiency in service.

19. For a large colony as this, only 180 KW commercial electricity connections has been taken which is grossly insufficient for colony of this size. Such electricity connection actually amounts to no electricity in the colony. The respondents have been claiming that most of allottees out of 149 who have taken the possession are living in the project. If so, the connection available per apartment will be less than 1 KW. Accordingly this also amounts to severe deficiency in service. Even now application of the respondent for grant of electricity connection is at very preliminary stage as HDBVNL have asked the promoters to earmark land for electrical infrastructure/sub-station. In the absence of valid license etc. receipt of electricity connection will face several hurdles.

20. In conclusion, Authority observes that project is not complete; OC has not been even applied for; services are highly deficient; project is in a dilapidated condition; even an offer of possession sans occupation certificate also has not been made; statement of account has not been furnished; and no effort has been made to take the project further even after filing of captioned complaints in 2019,



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therefore, right of the complainants to seek refund of the money paid by them along with applicable interest as per rules cannot be denied.

21. Authority accordingly orders refund of the money paid by all the complainants along with interest as shown in the table below-

| Sr. No. | COMPLAINT NO. | DATE OF AGREEMENT | TOTAL AMOUNT PAID BY THE COMPLAINANT (In Rs.) | INTEREST (In Rs.) | TOTAL AMOUNT TO BE REFUNDED BY RESPONDENT (In Rs.) |
|---------|---------------|-------------------|---|-------------------|--|
| | 843/2019 | 20.06.2011 | 23,28,757/- | 24,80,031/- | 48,08,788/- |
| 2. | 844/2019 | 01.11.2010 | 27,99,470/- | 28,92,775/- | 56,92,245/- |
| 3. | 845/2019 | 01.11.2010 | 28,16,029/- | 25,64,813/- | 53,80,842/- |
| 4. | 846/2019 | 01.11.2010 | 24,91,146/- | 22,97,090/- | 47,88,236/- |
| 5. | 847/2019 | 07.04.2010 | 20,29,291/- | 18,64,802/- | 38,94,093/- |
| 6. | 848/2019 | 23.06.2010 | 20,83,712/- | 21,52,600/- | 42,36,312/- |
| 7. | 849/2019 | 16.01.2013 | 28,12,142/- | 28,53,374/- | 56,65,516/- |
| 8. | 850/2019 | 27.09.2013 | 26,41,048/- | 26,97,867/- | 53,38,915/- |
| 9. | 851/2019 | 15.04.2010 | 18,80,838/- | 41,37,371/- | 60,18,209/- |
| 10. | 852/2019 | 06.06.2010 | 21,99,617/- | 22,25,568/- | 44,25,185/- |
| 11. | 996/2019 | 23.04.2010 | 24,91,461/- | 25,37,253/- | 50,28,714/- |
| 12. | 997/2019 | 01.11.2010 | 30,00,776/- | 30,69,165/- | 60,69,951/- |
| 13. | 998/2019 | 06.06.2010 | 19,38,735/- | 20,26,097/- | 39,64,832/- |
| 14. | 999/2019 | 10.02.2011 | 31,37,825/- | 32,13,557/- | 63,51,382/- |
| 15. | 1036/2019 | 01.06.2010 | 27,89,982/- | 28,92,117/- | 56,82,099/- |
| 16. | 1037/2019 | 29.07.2010 | 23,33,502/- | 24,65,079/- | 47,98,581/- |
| 17. | 1038/2019 | 07.07.2011 | 17,23,701/- | 18,52,930/- | 35,76,631/- |
| 18. | 1051/2019 | 24.02.2011 | 28,79,979/- | 29,09,838/- | 57,89,817/- |
| 19. | 1079/2019 | 23.06.2010 | 23,50,600/- | 24,30,221/- | 47,80,821/- |
| 20. | 1082/2019 | 07.04.2010 | 24,19,976/- | 25,12,160/- | 49,32,136/- |
| 21. | 1291/2019 | 01.11.2010 | 26,46,500/- | 27,16,722/- | 53,63,222/- |
| 22. | 1292/2019 | 04.08.2015 | 24,80,748/- | 23,91,791/- | 48,72,539/- |
| 23. | 1640/2019 | 21.04.2015 | 23,15,799/- | 30,19,273/- | 53,35,072/- |
| 24. | 1831/2019 | 28.11.2013 | 17,22,430/- | 19,71,021/- | 36,83,451/- |
| 25. | 2564/2019 | 03.03.2012 | 23,84,208/- | 24,60,483/- | 48,44,691/- |
| 26. | 2705/2019 | 01.10.2010 | 23,69,712/- | 19,51,788/- | 43,21,500/- |
| 27. | 2976/2019 | 20.04.2015 | 23,00,202/- | 22,58,141/- | 45,58,343/- |
| 28. | 32/2022 | 10.09.2010 | 25,47,944/- | 25,06,485/- | 50,54,429/- |

22. Respondents shall refund the money along with interest within period prescribed in Rule 16 of the RERA Rules of 2017.



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Disposed of. Files be consigned to the record room after uploading of order.



RAJAN GUPTA
[CHAIRMAN]



DILBAG SINGH
[MEMBER]

