



HARYANA REAL ESTATE REGULATORY AUTHORITY, PANCHKULA.

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Extract of the resolution passed by the Haryana Real Estate Regulatory Authority, Panchkula in its meeting held on 09.11.2020.

Item No. 116.09

(v) Promoter : Creative Buildwell Pvt. Ltd.

Project : "Tulip City" – Affordable Residential Plotted Colony on land measuring 10.006 acres in Sector-17, Sonipat.

Temp ID: RERA-PKL-880-2020

Present: None.

1. M/s Gee City Builders Pvt. Limited had obtained a license No. 188 of 2007 dated 08.06.2007 for area measuring 10.006 acres for development of a Group Housing Colony. The said colony could not be developed nor has it been launched for marketing. Now the licensee has got entire area migrated into an affordable plotted colony for which Town and Country Planning Department has granted a fresh License No. 31 of 2020 dated 26.10.2020 valid upto 25.10.2025.

2. An application for registration of the project (License No. 31 of 2020) has been filed by a developer company M/s Creative Buildwell Pvt. Ltd. The applicant M/s Creative Buildwell has not submitted any collaboration agreement executed with licensee-landowner or any Power of Attorney conferring upon them rights for development and sale of the colony. In brief, the applicants/promoters at present has not shown their legal standing in respect of land of the project in question. An email has been received from the applicants/promoters stating that they have approached Town and Country Planning Department for transfer of beneficial interest in their favour from the original licensee. The Town and Country Planning



Department is yet to take a decision on the said application for transfer of beneficial interest.

3. After consideration, the Authority observes as follows: -

i) Definition of promoter as given in Sub Section (zk) of Section-2 of the RERA Act, the relevant portion of which is reproduced below: -

(zk) "promoter" means, -

(i) a person who constructs or causes to be constructed an independent building or a building consisting of apartments, or converts an existing building or a part thereof into apartments, for the purpose of selling all or some of the apartments to other persons and includes his assignees; or

(v) any other person who acts himself as a builder, colonizer, contractor, developer, estate developer or by any other name or claims to be acting as the holder of a power of attorney from the owner of the land on which the building or apartment is constructed or plot is developed for sale; or

(vi) such other person who constructs any building or apartment for sale to the general public.

ii) The policy of the Town and Country Planning Department on the subject is that, first a project should be developed by the licensee himself who usually is also the landowner of the land of the project; or by a collaborator who enters into a collaboration agreement with the landowner/licensee for the purpose of development of the project. The Town and Country Planning Department has been frequently granting licenses for development of projects by collaborating developers, who in turn obtains authorization to develop the project from licensees/landowners. In most of the cases, however, the developer himself is the licensee/landowner.

Numerous instances have come to the notice of this Authority when developers in turn engages a sub developer to develop a part of the colony/project. In strict terms of law and policy of the department getting part of the project developed from a sub developer is not permissible because that effectively amounts to division of license. The department insists that all obligations towards them should be fulfilled by the licensee/developer only. The factual position however is that large number of projects are actually being developed by the sub developers who execute development agreements with licensees/landowners.

iii) In order to get over this difficulty, Town and Country Planning Department has formulated a policy dated 18.02.2015 vide which the



'beneficial interest' are transferred in favour of such sub developers. In terms of this policy, a sub developer is allowed to develop a part of the colony provided permission in this regard is obtained from the department.

4. This Authority has considered the above facts/position in detail and observes that mere recognition of a sub developer by the Town and Country Planning Department by way of approval to transfer of beneficial interests for development of part of the colony may not be enough to recognize such sub developer as developer/promoter of the colony under RERA Act. In order to qualify to be registered as a promoter of the project, such holders of the beneficial interest must also exhibit that they have obtained all rights from the licensee-landowner to develop, market and sell the plots in the colony to the third parties and also to execute conveyance deeds. For this purpose, an irrevocable collaboration agreement and irrevocable Power of Attorney is necessary to be executed by the licensees-landowners in favour of the promoters-developers. It is only after these two documents are submitted to the Authority that a sub developer recognized by the department by way of transfer of beneficial interests can be recognized by this Authority as the promoter of the project.

5. The Authority has considered the provisions of sub section (zk) of Section-2 of the Act. The Act clearly stipulates that even a person who is holder of the Power of Attorney from the owner of the land on which the project is to be constructed qualifies to be recognized as Promoter of the project. By virtue of the provisions of sub section (zk) of Section-2 of the Act, a person who executes an irrevocable collaboration agreement with the licensee/developer and obtains an irrevocable Power of Attorney conferring upon him all rights to develop the project, to sell the plots and to execute the conveyance deed can be recognized as promoter by the Authority regardless of the fact whether he is recognized by the Town and Country Planning Department or not. In simple words, subject to strictly adhering to the development plans approved by the department and subject to fulfilling other conditions of the license, any licensee/promoter may get a part of the project developed from any other person by conferring upon him the requisite rights by way of a collaboration agreement and an irrevocable Power of Attorney.



Looked at from this angle, if the conditions of execution of a collaboration agreement and Power of Attorney are fulfilled, this Authority has to register such projects by recognizing such persons as promoters. The requirement of obtaining transfer of beneficial rights from the Town and Country Planning Department is not necessary at all.

6. The Authority also observes that Real Estate (Regulation and Development) Act, 2016 is an Act of the Parliament of India. By virtue of the provisions of Constitution of India it will have an over-riding effect over any law made by the State Legislature. Accordingly, the definition of the promoter as given in sub section (zk) of Section 2 of the Act cannot be given a restrictive meaning on account of an administrative policy dated 18.02.2015 of the Town and Country Planning Department.

7. In the light of the foregoing discussions, if the applicants/promoters submit these two documents i.e. irrevocable collaboration agreement and irrevocable power of attorney conferring all rights upon them, the project can be registered in their favour.

Before taking final decision in this regard on the next date of hearing, an opportunity is granted to the Town and Country Planning Department to submit their views by way of an affidavit prepared in consultation with legal advisors of the Department. If no response is received from the department, on the next date it will be presumed that the department does not have any objection to the views expressed above. Applicants/promoters are also directed to submit their arguments on the views expressed above.

8. Adjourned to 07.12.2020 for final arguments.

True copy

dmr
Executive Director,
HRERA, Panchkula



A copy of the above is forwarded to CTP, HRERA Panchkula, for information and taking further action in the matter.

20/11/20 LA (Neha)
93/11/2020