



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 07.12.2020.

Item No. 118.12

(xii) **Promoter :** Parsvnath Developers Ltd.

Project : "Parsvnath City Karnal" a Residential Plotted Colony on land measuring 81.136 Acres in Sector-35, Meerut Road, Karnal.

Temp ID: RERA-PKL-33-2018

Present: Shri Bharat Bhushan, Additional Vice President of the applicant company through video conferencing.

1. The captioned matter has been heard by the Authority numerous times. Crux of the matter is that the project is almost complete. In principle approval to the revised plans of the project have also been granted by the Town and Country Planning Department. Said plans however, have not been formally released by the Department because license of the project has not been renewed, which in turn is pending for the want of clearance of EDC over-dues. Further facts is that if the plans are released, sufficient funds can be arranged by the promoter which will help clear the overdue EDC as well as satisfy the allottees.

2. The Authority had passed several orders in this regard. The relevant portion of the order dated 6.11.2019 are reproduced below:

"3. Keeping in view the above submissions, it is ordered as follows:-

- i) Large number of plots of the project have already been sold and the allottees have deposited almost entire consideration amount, as such strong third party interest have been created in the colony. The allottees of the colony are awaiting for possession of their plots from many years. It has been ruled by the



Authority in the case of Dwarkadhis bearing Registration no. HRERA-RWR-105-2019 dated 21.05.2019 that renewal or otherwise of the license is a subject to be dealt with between the promoter and the department after creation of substantial third party interests. Delay in renewal of the license should not adversely affect the rights of the allottees. Relevant part of the said orders dated 09.05.2019 passed by this Authority in the Dwarkadhis case is reproduced hereunder:-

“vi. At this point of time, the Authority is considering it appropriate to analyse the theory of granting of license to a project and its renewal from time to time.

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

The allottees pay their hard money for the developers' licensed colony with duly approved plans. The licensed and approved plans were thus attained the status of an assurances of the State Government. This assurance given by the Town and Country Planning Department a sovereign assurance to the public. A sovereign assurance granted to the allottees cannot be amended, altered or re-structured in any manner with retrospective effect or without appropriate Authority of law of the legislature grant of license and approval of plans becomes a commitment of the State Government to the allottees that they will get the apartment in terms of the agreement as per the approved plans. It also implies guarantee of the safety of their investment.

vii. Now, after creation of 3rd party interests, the license and the development plans becomes irrevocable. It is possible that the developers becomes defaulters in payment of EDC, license fee etc. to the State Government but to enforce the payment of such over-dues, the State Government is entitled to adopt any lawful means to recover the said over-dues but it cannot implicitly or explicitly imply that the license of the sanctioned project would be withdrawn/withheld/ altered. In other words, the State Government is entitled to recover its over-dues by attaching any property of the developers or by filing



civil suit or by attaching unsold or undeveloped portion of the project third party rights are not created but the project in respect of which third party rights have been created goes out of the powers of the State Government except for the purpose of granting occupation certificates at the relevant stage or for ensuring that development has been done in accordance with the approved plans, etc. The State Government cannot withhold renewal of license of a project in respect of which third party rights have been created. The Authority is of considered opinion that in the event of delay in renewal of license on the part of the State Government, the Authority cannot and should not withhold grant of registration because banks and financial institutions will not finance an apartment in a project which has not been registered with the Authority. Thus, a project which is otherwise being developed as per plans cannot denied registration if tis delay is being caused in renewal of its license. ”

ii) In accordance with the above principle, the Authority directs the promoter to start offering possession of the plots to the allottees after approval of revised layout/demarcation plan and after completing requisite infrastructure works.

4. Shri Jain, Managing Director stated that they could not offer the possession to all the allottees because the Town and Country Planning Department has not yet approved their revised demarcation plan of the colony. Said revised plan was submitted to the department in the year 2015 but the same has not been approved only for the reason that one of the allottees had filed a complaint in the department that the promoters had sold the plots by pre launching the project. Taking cognizance of the said complaint, Town and Country Planning Department has imposed a penalty of Rs. 4.00 crores upon the promoters by assuming that the entire colony had been advertised for pre launching i.e. launching before obtaining the license. Shri Jain stated that the department has wrongly imposed the said penalty on the basis of a single frivolous complaint filed to infame them. He also stated that against the said penalty, they have filed a representation before the department for reconsideration of their decision. The said representation is pending consideration in the department since February, 2017 i.e. for the last more than 2 ½ years.

5. The Authority observes that the department has to bear in mind that each of their decision/lack of decision affects hundreds of allottees. While dealing with a sold colony, the department not only deals with the promoter but also decides the fate of hundred of allottees. Such decision cannot be kept pending for such a long period of time. It has to be understood that for such delay, the allottees are entitled to get the delay compensation. If the delay is caused by department for no good



reasons, would the State Government pay compensation to the allottees? Surely, the promoter can plead Force-majure conditions because the delay had been caused for the reasons beyond his control.

6. Accordingly, the Authority directs that the department should decide the representation of the promoters within a period of 30 days. A copy of this order be sent to the department for early action.”

3. Further relevant portion of the order dated 23.12.2019 is reproduced below:-

“3. Shri Rahul Singla, Assistant Town Planner is present. He is directed to place this order before the Director General, Town and Country Planning Department with a request for approving the revised layout plans, which have already been in-principally approved subject to the following conditions:-

- i) That a designated escrow account to the satisfaction of the Town and Country Planning Department shall be opened in which all the future receipts from the allottees or any other source shall be credited.
- ii) The money received in the escrow account shall be exclusively used for payment of EDC dues, license fee and other dues of the State Government.
- iii) Another parallel dispute going on between the promoter and the department is in regard to the composition fee of Rs. 4.00 crores imposed upon the promoter for alleged pre-launching of the project. This composition fee has been imposed on account of only one complaint received from the single allottee. The revised layout plans should be approved subject to the condition that in case the contention of the projects are not accepted by the Appellate Authority, the same will be deposited.”

4. The department should take a practical view. It can create a win win situation in the sense that the allottees will get possession of their plots, the project will get completed, and the department will get its overdue EDC amount. The Authority fails to understand why the department is not taking appropriate decision in this regard.


5. The Authority decides that the Director, Town & Country Planning Department should be asked once again to take decision in terms of the aforesaid order. The Authority also directs CTP to send a copy of this order to the Principal Secretary, Town & Country Planning Department for intervening for resolving the problem in public interest.




6. Adjourned to 22.02.2021.



True copy


Executive Director,
HRERA, Panchkula

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


15/12/20
LA(Divya)