



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 09.08.2021.

Item No. 145.12

(ii) Promoter : Ferrous Infrastructure Pvt. Ltd.

Project : “Ferrous City Dharuhera” – Group Housing Colony on land measuring 10.142 acres situated in Sector-19, Garhi Alawalpur, Dharuhera, Rewari.

Temp ID: RERA-PKL-776-2019

Present: Sh. Sourabh Jain, counsel for applicant/ promoter, Sh. R. Jain, representative of allottee association through video conferencing.

1. The Authority refers to its orders dated 09.11.2020 reproduced below:

“This is a matter of registration of project named “Ferrous City, Dharuhera” being promoted by M/S Ferrous Infrastructure Pvt. Ltd. In their project, a group housing colony on land measuring 10.142 acres in Sector-19, Dharuhera is being developed. 548 apartments are being constructed out of which 434 have already been sold. According to the respondent company the project is almost complete, however, on account of non-renewal of their license by the Town & Country Planning Department and non-provision of essential external services by the Town & Country Planning Department, the project could neither been finished nor apartments handed over to the allottees. Now, because of non-registration of the project, sale of remaining apartments has been halted and the project is facing serious difficulties.

2. The promoters had not approached the Authority on their own to get the project registered, therefore, a suo-motu complaint No. 412 of 2019 was lodged, in response to which the promoters have filed this online application on the portal of the Authority for



registration of the project with Temp. Id No. RERA-PKL-776-2019. This matter is now being pursued in furtherance of the said application of the promoters for registration of the project.

3. The application was examined in detail on 14.9.2020 when certain observations were made by the Authority. The promoters in their reply had stated that they had applied to the Town & Country Planning Department for renewal of their license vide Memo No.13653 dated 19.6.2017, but the department wrongfully rejected their request for renewal of license on account of alleged non-payment of external development charges (EDC). Against the said rejection of the application for renewal of license the respondent promoters have filed a civil writ petition No.18226 of 2017 before the Hon'ble Punjab & Haryana High Court. In this writ petition Hon'ble court was pleased to give an order to the department for giving benefit of EDC relief policy dated 20.10.2012 to the promoters.

The controversy regarding non-payment of the EDC is that according to the promoters, the total amount calculated to be payable by the department was Rs.1059.16 lacs, against which the respondent/promoter had deposited Rs.918.77 lacs. Further, the respondent company is ready to pay the remaining amount but the Town & Country Planning Department is not discharging their parts of the obligations by providing essential external services as represented by the respondent/ promoters in their letter dated 13.12.2018 written to the department.

The Authority had passed a detailed order vide agenda item 108.12(x) on 14.09.2020, which shall be read as part of this order.

4. The matter had further come up for hearing on 5.10.2020. When the Authority passed the orders as reproduced below:

"1. Detailed observation has been made by the Authority relating to this project in its order dated 14.09.2020. Shri Ashish Seth,



Managing Director of the promoter company appeared through Video Conferencing and stated that the project is almost complete. Out of the 548 apartments, 434 have already been sold. Out of the total receivable amount on account of booking of the apartments Rs. 94.33 crores out of which Rs. 74.49 crores has been collected from the allottees and 19.84 crores are due to be received. Even though the project is ready, they are not in a position to apply for occupation certificate because of non-renewal of their license.

2. Shri Seth stated that the Town and Country Planning Department is acting unreasonable by not renewing their license even after depositing 100% EDC and IDC dues. For such an attitude of the department, they have even approached the Hon'ble Punjab and Haryana High Court, Chandigarh by way of filing a Civil Writ Petition No. 18226 of 2017, which is now listed for hearing on 24.11.2020.

3. Shri Seth also stated that they have also challenged in the Court that when the license was granted, the colony was supposed to be located at the 75 Mtr wide road. Now, even though the receipt of EDC amount, the department has not even acquired the land for construction of the 75 Mtr. wide road. Other services of the colony merely are not possible to be provided by the department which is causing serious harassment in the development of the colony. All the Existing as well as the future allottees are demanding an appropriate road and other services, without which they refuse to take the possession of their apartments.

4. After briefly hearing to Shri Seth, the Authority directed him to submit a detailed representation to the Authority in respect of the problems they have raised in the Town and Country Planning Department. This Authority will make appropriate request to the department for expeditious redressal of the grievances of the promoters.”



5. In response to the aforesaid observations of the Authority, the respondent/ promoters have filed an affidavit dated 29.10.2020, wherein, it has been represented as follows:

(i) That an amount of about Rs.74.49 crores has been collected from the existing allottees of the project against which Rs.79.82 crores have been invested in the development activities. Further, Rs.19.86 crores are still recoverable from the allottees.

(ii) The promoters had paid almost the entire amount of the due EDC to the Town & Country Planning Department, but the Department has miserably failed to carry out any of the external development works. The project is supposed to be located on 75-meter road for which the department is yet to even acquire the land for construction of the road. There appears to be no hope for provision of the promised road. At present, the promoters are approaching the project from a 2 karam village road. Now, due to the non-provision of promised road, for which the requisite EDC had been deposited in the year 2010, the project is not possible to be completed, nor the promoters are in a position to sale remaining apartments because the existing as well as prospective allottees demand proper access road and other facilities.

(iii) It has further been represented that despite the company having paid entire amount of EDC way back in 2010 from its own internal resources prior to creation of third-party rights, still the department has arbitrarily rejected their application for renewal of license on account of non-payment of EDC. They have further illegally and arbitrarily appropriated Rs.4.40 crores out of Rs.918.77 lacs EDC already paid towards assumed overdue interest. The department has given no regard to their own policy under which EDC is payable in low potential zones only after two years from the commencement of the external development works. In this case no external development work has commenced.



(ii) According to the respondent, as per policy parameters of EDC relief policy of 2010, they are entitled to receive interest on the advance EDC payments deposited by them with the department. The promoters have calculated Rs.13.52 crores to be paid by the department to them as interest on the advance EDC paid.

6. The Authority has gone through the contentions of the respondent company, and it observes and orders as follows:-

(i) As per the statement of the respondent they have faithfully developed the project in compliance of the conditions of license granted by the Town & Country Planning Department and in accordance with building plans approved by them. The project is more than 90% complete and now only a small investment of about Rs.10.00 crores is required for giving finishing touches to the entire project.

(ii) 434 apartments out of 548 apartments have already been sold. Effectively, therefore, now the project really belongs to the allottees who have invested their hard earned money in the project and are awaiting possession of their apartments for many years. It is only because of non-renewal of the license by the department and non-provision of promised external facilities, that the project has neither been completed nor apartments have been handed over to the allottees.

(iii) The department has already received Rs.918.77 lacs from the promoters in the form of EDC way back in the year 2010. A reasonable interpretation of the law of the land or a term of contract executed between the State Government on one hand and the promoter on the other, would dictate that after receiving almost entire amount of money from one party, the other party should discharge its obligations within a reasonable period of time. Accordingly, having received 918.77 lacs from the respondent in 2010, all external development works should have been carried out and completed within a reasonable period of time. Such reasonable



period of time ordinarily should be 3 years and under some explainable special circumstances upto 5 years.

If the facts alleged by the respondent developer are correct that Town & Country Planning Department has not even initiated the steps for provision of the external services and if process for acquisition of land for providing 75-meter road has not been initiated, then now and when the promised road will be provided? Allegedly, even after lapse of 10 years the department has not even begun to fulfil its responsibilities.

(iv) If the above allegations are based on facts, then for such utter non-performance of the obligations cast upon the department by the law for providing external services, the department should also be proportionately held responsible for delay caused in completion of the project including for compensating the allottees for denying them their houses for such long period of time. More seriously, later than trying to resolve the problem, the department is not even renewing the license of the promoter. This Authority has repeatedly ruled that after creation of 3rd party rights and after substantial development of the project, renewal of license ceases to have any meaning. Renewal of license in such situation should be deemed to have been done automatically. If the department is interested in renewal fee, the same can be recovered by any other measures without prejudice to the rights of the innocent allottees.

(v) To the best of understanding of this Authority, several critical and essential services like, water supply, sewerage, storm water drainage, electricity supply system etc. are also provided alongside the main road. If the main road itself has not been constructed, even its land has not been acquired, the Authority fails to understand how will the department provide these critical external services at all? In the absence of such services the project will never be fully operationalized.



As per provision of the RERA Act, unless all the services are provided, the allottees have an option to continue with the project; or to withdraw from the project; and/or seek delay interest from the promoters. The liability of promoter towards allottees on accounts will run into crores.

The question to be answered at these stages is, who will compensate the allottees for which they are legally entitled under the provisions of RERA Act? Apparently, the principal factor for non-completion of the project is the Town & Country Planning Department itself. In this situation, will the department compensate the allottees? Should the department be held liable to proportionately compensate the allottees as well as the promoters. This Authority is struggling to answer these questions.

(vi) Another question is to be answered is, after getting almost all the entire EDC deposited, should the department not pay reasonable interest to the promoters for the delay caused in provision of external services at the same rate as the promoters are liable to pay interest to the allottees for not delivering the apartments in time?

(vii) If the allegations of the promoters are correct, the Act of the department in appropriating Rs.4.40 crores towards alleged due interest, from the principal amount of Rs.918.88 lacs deposited by the promoters is illegal and arbitrary. The issue of payable to EDC, and the interest payable for delay caused in payment of EDC, must be directly co-related with actual provision of external services. The interest on alleged delay caused in payment of EDC can be levied only when external services have been actually provided by the department. However, if even initial steps are yet to be taken for providing external services despite lapse of 10 years, promoters deserve to be compensated for that rather than being held responsible for payment of interest to the department.



(viii) The Authority observes that due to the illogical interpretation of the policy by the department, not only promoter is suffering but much more importantly 434 allottees are suffering badly who are awaiting for their apartments despite having invested their life savings in the project for owing a dream homes. Needless to mention that majority of the allottees are middle class people. For making such investments their savings of three generations are invested. They even raise bank loans for their purpose for their on which a heavy interest is paid.

The department however appears to completely insensitive of the plight of the allottees. The department appears to consider that allottees of an apartment are not their subject at all. It is only the promoter whom they deal with. The officials of the department should understand that after creation of third-party rights and after initiation of project as per terms and conditions of license and building plans as approved by them, the project essentially belongs to such allottees. They cannot deny renewal of the license or levy unjustified demands in utter disregard to the interest of the allottees.

7. In furtherance of aforesaid observations, the Authority decides to forward a copy of the representation received from the promoters to the Director, Town & Country Planning Department. The Authority would expect the department to submit their well-reasoned reply to the observations made by the Authority. The Authority would also expect that the department would initiate steps for rectifying their policies appropriately because such problems have come up before the Authority not only in the instant case but also in large number of other similar cases. Further action in the matter will be taken after receiving a considered reply on each of the issues from the department.

8. The Authority directs learned CTP to send a copy of this order to Ld. Principal Secretary, Town & Country Planning Department for taking appropriate policy decisions for rectifying this situation.



On the next date a senior officer of the department should be present to submit their reply and to explain the position to the Authority.

9.”

2. It is re-stated that a large housing colony of 548 apartments is being constructed by the promoters on 10.142 acres area in Sector-19, Dharuhera. 434 apartments have already been sold and reportedly the project is nearly complete. License of the project has not been renewed by Town and Country Planning Department because of some pending dispute relates to payment of EDC. The promoters have applied for relief under EDC relief policy which is pending consideration of the department since long. Since the issue relating to EDC has not been decided and the license has not been renewed and consequently the project could not be registered. Fate of 434 allottees is critically dependent upon decision of the Town & Country Planning Department relating to application of the promoters for relief in EDC as per policy.

3. One of the major grouse of the applicant company is that they have paid 90% of the EDC but still even basic external infrastructure has not been laid. Allegedly, even land for constructing approach road has not been acquired. Needless to state that all other services will be constructed along the road for which the land is yet to be acquired.

4. No reply from the department is forthcoming despite repeated reminders. No information has been submitted regarding status of acquisition of land and construction of services. The claim of the promoter is that department is severely defaulting in its obligations. The Authority observes that the department is not even disclosing factual position of the matter.

5. The Authority is finding it extremely difficult to regulate the real estate sector in the absence of cooperation from the Town & Country Planning Department. The Authority further observes that for all practical purposes Town & Country Planning Department should be considered a co-promoter of the real estate project along with other promoters because substantial amount of facilities have to be constructed by the department to make the project registrable. A real



estate project is comprised of two components i.e., the building itself along with internal services, and the external services. Without external services no project can be called complete. The Authority further observed that after receipt of substantial amount of EDC external services must be constructed. It will be a very sorry state of affairs if the department has actually failed to even acquire land for constructing roads and other infrastructure even after receipt of 90% of EDC. The allottees of such projects can legitimately refuse to take possession or otherwise participate in completion of the projects when they are not assured of even a proper access road to the project which falls within responsibility of the state.

6. The Authority takes serious note of the fact that the officials of the Town & Country Planning Department are not even disclosing factual position and also not tendering time frame within which those facilities will be provided.

7. The Authority after consideration decides to invoke the provisions of Sub Section (2) of Section 35 of the Real Estate (Regulation and Development) Act, 2016 as reproduced below:

“35(2)- Notwithstanding anything contained in any other law for the time being in force, while exercising the powers under sub-section (1), the Authority shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) while trying a suit, in respect of the following matters, namely: —

- (i) the discovery and production of books of account and other documents, at such place and at such time as may be specified by the Authority;
- (ii) summoning and enforcing the attendance of persons and examining them on oath;
- (iii) issuing commissions for the examination of witnesses or documents;
- (iv) any other matter which may be prescribed.”

3. In exercise of the aforesaid powers the Authority hereby directs Director, Town & Country Planning Department and the Chief Town Planner, Haryana to



produce before the Authority the original file on which the application of the promoter for taking a decision on their request for relief under the policy of the State Government is being considered. It further directs the Director, Town & Country Planning Department and the CTP, Haryana to state on affidavit the reasons for delay caused in consideration of the application and the time frame within which final decision on the pending application will be taken. The Authority observes that in the event of failure to comply with orders of the Authority, the Authority will be constrained to enforce its orders in accordance with the provisions of Civil Procedure Code, 1908.

4. CTP of the Authority is directed to deliver a copy of this order to the Director, Town & Country Planning Department and CTP, Haryana separately, and also upload it on the website of the Authority.
5. Adjourned to 13.09.2021.



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. ✓