



HARYANA REAL ESTATE REGULATORY AUTHORITY, PANCHKULA.

Mini Secretariat (2nd and 3rd Floor), Sector-1, Panchkula.

Telephone No: 0172-2584232, 2585232

E-mail: officer.rera.hry@gmail.com, hrerapkl-hry@gov.in

Website: www.haryanarera.gov.in

Subject: Extract of the resolution passed by the Haryana Real Estate Regulatory Authority, Panchkula in its meeting held on 30.09.2019.

Item No. 69.10

(iii) **Promoter : Maximal Infrastructure Pvt. Ltd.**

Project : "Maximal" – Group Housing Colony on land measuring 48.038 acres in Sector-89, Faridabad.

**Represented by: (i) Sh. Sumit Mittal, Director
(ii) Sh. Madhur Mittal, Director
(iii) Sh. Sanjay Khanna, Counsel.**

AND

(iv) **Promoter : Heritage Cottages Pvt. Ltd.**

Project : "Ozone Square (Zone E & EWS)" Group Housing Colony on FAR measuring 21135.94 Sq. Mts. situated in Sector-89, Faridabad.

Represented by: Sh. Praveen Khurana, Director.

AND

(v) **Promoter : ORS Infrastructure Pvt. Ltd.**

Project : "Royal Residency" – Group Housing Colony on FAR measuring 35,355.07 Sq.Mts. situated in Sector-89, Faridabad.

Represented by: Sh. R.P. Gupta, Director.

AND

(vi) **Promoter : Ferrous Infrastructure Pvt. Ltd.**

Project : "Ferrous City, Phase-I" – Group Housing Colony on FAR measuring 1,04,817 Sq. Mts. of a larger colony measuring 48.038 Acres situated in Sector-89, Faridabad.

Represented by: Sh. Reshabh Bajaj, Counsel.



AND

(vii) Promoter : Zion Promoters & Developers Pvt. Ltd.

Project : "Stonecrop-II" – Group Housing Colony on land measuring 3.00 acres situated in Sector 89, Faridabad.

Represented by: Sh. Narinder Hooda, Director.

1. All the captioned five applications for registration of the said projects actually pertain to a single licensed colony which was to be set up over the land area measuring 48.038 acres for which three license No. 34 to 36 of 2007 were granted by the Town and Country Planning Department, Haryana. All the projects are on-going projects against whom the suo-motu complaints had been lodged for not filing applications for registration as per section 3 of the Act.

2. Complex dispute are going on amongst license and developer companies of the projects. Some disputes have reached Hon'ble High Court as well as Hon'ble Supreme Court a number of times. Several complaints by the allottees of the Projects have been filed before this Authority against the promoter of the projects. The Authority from time to time has been passing orders in those complaints for resolving the inter-se disputes between the various promoters as well as for protecting interests of the allottees of the projects. The essence of the orders passed by the Authority in various complaints matters are re-produced below for ready reference:

Order dated 30.04.2019

.....
4. *Complex disputes are going on between the two groups of promoter companies. One of the companies namely TIDCO is under liquidation. The dispute between the parties has reached Hon'ble High Court several times. Even now 2-3 writ petitions are pending. The matter had also reached Hon'ble Supreme Court, when the Hon'ble Court had appointed a Mediator to settle certain set of the disputes between the parties. The award of the mediator has also been converted into an order of the Hon'ble Supreme Court. Apparently one of the parties has not fulfilled the requisite*



obligations vis-à-vis the other which has resulted into non-compliance of the award of the mediator in toto. Disputes between the parties not only relates to the properties of the projects in question but also relating to other properties. FIRs and cross FIRs have also been lodged by both the promoters against each other. Several references have also been made to the Town & Country Planning Department on different Occasions but still serious disputes between the parties persists.

In the complex maze of the legal disputes between various promoters, fate of thousands of allottees is hanging fire. Thousands of innocent allottees have paid their life time earnings to the different promoters of the project who are busy fighting each other rather than focusing their energies on completion of the projects. The allottees are running from pillar to post. They do not have financial resources, time, and energy to participate in the complex disputes pending before various courts. They are simply standing by as mute spectators and are waiting for an end to their woes. They are as helpless as they can be because the promoter companies who apparently have huge stakes are fighting for their own territories with no regard whatsoever for the allottees.

5.

6. *Now, the fact situation is that various projects of the respondent promoters are at a standstill for the last many years on account of the pending disputes between the co-promoters. One of the companies is already under liquidation. If this standoff continues like this, other companies may also face serious financial difficulties which will further jeopardize the interest of allottees. The promoters may face whatever fate the law may decide for them, the biggest issue at hand here is watching the interest of the allottees and protecting this huge real estate project in the overall interest of the society and the economy of the State. A larger and comprehensive view therefore, has to be taken for resolving this*



matter. Individual complainants may have their own prayers and they may seek different relief under the law, including the relief of handing over of the possession or refund of the money along with interest and compensation etc., but the focus of the Authority shall remain on the complainant as well as on non-complainant allottees.

7.

8. The background of the matter is summarized as follows: -

I. M/s Triveni Ferrous Infrastructure Pvt Ltd (TFIPL), (now known as Maximal Infrastructure Pvt Ltd, was a joint venture of two groups of shareholder/ owners namely Seth group and Mittal group. A company named Triveni Infrastructure Private Limited (TRIPL) along with Mr. Sumit Mittal and Ferrous Alloys Forging Private Limited (FAFPL) acquired 48.03 acres of land situated in Sector 89, Faridabad, Haryana, and licenses no. 34,35 and 36/2007 were obtained from the competent authority of the state to develop a housing colony at village -Tikkawali, District Faridabad.

II. The said three licensees transferred the development rights under said licenses to five different companies in a following manner: -

Sr. No.	Companies Name	Actual Land area	Rights equivalent to land area
1	M/s Triveni Infrastructure Development Co. Pvt. Ltd.(TIDCO)	10.335	14.80 acres
2	M/s ORS Infrastructure Pvt. Ltd.	3.4568	5.00 acres
3	M/s Heritage Cottages Pvt. Ltd.	2.0643	2.98 acres
4	M/s Ferrous Infrastructure Pvt. Ltd.	10.27	14.80 acres
5.	M/s Pal Infrastructure & Developers Pvt. Ltd.	7.2431	10.458 acres
		33.3692	48.38



9. From the above it may be noted that the physical piece of land was 48.38 acres. By way of the aforesaid five agreements, about 33.370 acres physical land was divided amongst the five developer companies but the development rights divided were equivalent to the 48.38 acre only. A copy of the agreements vide which the development rights were divided and transferred to the five developer companies has not been placed on record but it is presumed that on the remaining about 15 acres land, common facilities like roads, Parks etc. were to be developed.

None of the parties, have made any statement with regard to the approved outlay plan of the colony, nor it has been placed in the record. This Authority would like to determine whether the group of 3 licensees who owned the land and had obtained the license are still under an obligation to create the common infrastructure, or separate infrastructure in respect of each of the 5 said colonies is to be developed by the respective developer companies? This information is necessary for final disposal of the matter.

10. An admitted fact remains, as has also been brought out by Hon'ble High Court in its orders dated 15.10.2018, that one of the developer companies M/s Triveni Infrastructure Development Co. Pvt. Ltd. (TIDCO) is under liquidation. While the rights of the allottees of the apartments/plots of TIDCO will be determined by the Official Liquidator (O.L) in due course of time but in the absence of a copy of the agreements being placed before the Authority, it is difficult to determine who will fulfil obligations for development of infrastructure on their behalf in whole of the colony or on the part belonging to TIDCO.

11.

12.



13. This Authority has gone through the contention of the rival parties. It observes as follows:

(i) It is clear from the submissions made by both the parties that the two groups i.e. Seth Group and Mittal Group had floated a company named Triveni, Ferrous Infrastructures Pvt. Ltd. (TFIPL) with 50% shareholding with each group. This company owned several properties including the properties of the projects in question (License No. 34 to 36 of 2007) and certain other properties like 68 acres land in Sector-70, Faridabad.

(ii) On the lands owned by TFIPL, Madhur Mittal and Ferrous Alloys Forging Pvt. Ltd. Licenses No. 34 to 36 of 2007 were obtained for development of a housing colony. The total area of the colony of all the licensees was 48.38 acres.

(iii) After obtaining Licenses, the group of 3 licensees decided not to develop the project themselves but instead get the same developed from 5 different companies. They divided the licenses land by way of five different agreements in the year 2007 and assigned development and marketing rights to the 5 companies. This agreement in realty amounts to bifurcation of the licenses by the original licensees which is not permitted under the law. As per law all the rights and liabilities remain that of the licensee. It is the licensee itself which has to fulfil all the obligations like getting the plans of the colony sanctioned, depositing the EDC and IDC charges, payment of license fee and responsibility to get the license renewed etc. It is the licensee itself which remain answerable for development of the colony in accordance with the approved plans. The licensee could get the project developed from anyone but the responsibility and liability under the law towards the State Government remain that of the licensee. The five agreements made between the parties, therefore, prima facie violated the conditions of the license.

(iv) The Town and Country Planning Department in February, 2015 came out with a policy for transfer of beneficial interest in a project. Under this policy, subject to fulfilment of certain conditions a developer can be allowed to be substituted for the licensee by the Department for development of the project. This policy effectively means that with the approval of the department license can be bifurcated subject to condition and restrictions to be imposed by the department. Except in the case of TIDCO which



is facing liquidation, the respondent has not approved transfer of beneficial interest in respect of any of the four other companies.

(v) Even though a copy of the agreement made between the parties has not been annexed, it is presumed that the successor 5 companies are liable to pay the due amount of EDC and IDC charges in respect of the portion of land being developed by them to the parent / licensee company for onward transmission to the Town and Country Planning Department. Precise provisions of the agreement in this regard needs to be ascertained. Further, it is presumed that the original license is supposed to take all requisite actions for development of common / connecting infrastructure as per overall layout plans approved by the department for the colony. A copy of the overall plan has not been provided by any of the parties therefore, it is assumed that the common infrastructure was to be developed by the Licensees and not by the successor companies. This presumption, however, can be rebutted on facts.

(vi) All the 5 companies commenced the process of development of housing complexes on the pieces of lands which came into their share. In some area full development has taken place and in others it is yet to commence.

(vii) During the course of time one of the company's M/s TIDCO owned by Mittal group ran into trouble and was ordered to be wound up / Liquidated by the Hon'ble Delhi High Court. The stage of winding up / Liquidation of this company has not been brought before this Authority, therefore its status is not known to the Authority at this point of time. Since, this company is being liquidated, obviously it will not be able to discharge its responsibilities and obligations towards the State Government regarding payment of license fee, EDC and IDC charges etc. From the letter dated 27.03.2015 of DTCP it appears M/s TIDCO has a liability of the order of Rs 55.60 crores. The Director, Town and Country Planning will not take any action for resolution of any dispute till the said amount is also paid by TIDCO or the Official Liquidator. The stage of development of the project belonging to TIDCO has also not been brought to the knowledge of the Authority by any party. No information has been placed before the Authority explaining liability of TIDCO towards development of infrastructure of the colony.



(viii) As regards 3 companies, namely PAL Infrastructures, ORS Infrastructures and Heritage Cottage, detailed facts have not been brought before the Authority. However, it can be gathered from the hints given by all the parties, that the projects of these companies are partly developed but now stopped. This Authority has received eighteen complaints in respect of TIDCO; four against PAL Infrastructure and thirty-Two against Ferrous Infrastructure. All those complaints reveal that the projects have been launched but no progress is happening at this stage due to which the allottees are suffering.

(ix) With regard to the Ferrous Infrastructure Pvt. Ltd., they are developing a colony on 10.270 acres of land with development rights equivalent to 14.80 acres. They have constructed nearly 700 apartments which are at different stages of completion. It appears that substantial number of apartments are at advanced stages of completion or have already been completed, and can be handed over to the allottees. They, however, have not been handed over to the all allottees for the reason that the company could not apply for grant of occupation / part completion certificate due to non-cooperation of the licensees/TFIPL which is the company competent to apply to the Town & Country Planning Department for issuance of Completion certificate. Accordingly, even this fact of the project is stuck in the log-jam.

Order dated 22.08.2019

1. The Authority had passed a detailed order after hearing of the matter on 30.04.2019. The said order was uploaded on the website of the Authority on 04.06.2019. The facts of the matter and the complexity of the legal disputes pending between litigating parties were captured in the said order. Some specific directions were given in para 15 of the order and all the parties were directed to submit the information asked for by way of an affidavit within a period of three weeks. Information on all the issues was also asked from the Director, Town & Country Planning Department.

2. In compliance of the aforesaid directions a reply has been filed by M/S Maximal Infrastructures Pvt. Ltd. No explanation could be furnished by M/S Ferrous Infrastructures Pvt. Ltd. for not submitting the requisite information.



M/S Ferrous Infrastructures Pvt. Ltd. is directed to collect a copy of the reply/information submitted by M/S Maximal from the registry. They are also directed to submit their own written reply in response to the earlier directions of the Authority as well as to the information submitted by M/S Maximal on the next date of hearing failing which adverse inferences will be drawn against them.

3. *The Town & Country Planning Department also have failed to clarify their stand on the issues relating to them. It is expected that the department will assist the Authority in understanding the point of view of the State Government for just and fair resolution of this complex matter.*

4. *The Authority decided to hear arguments of both the parties on the basis of admitted and undisputed documents and facts available in the case file. In addition to the facts which have been captured in the orders dated 30.4.2019, following additional facts have been brought to the notice of the Authority: -*

(i) *Approved lay out plan of the entire 48.038-acre colony which was licensed vide license No.34-36 of 2007 has been placed before the Authority. A copy of the plan has been taken in the record. Examination of the plan reveals following facts: -*

(a) *The colony is bound by 30 meters wide road on the one side and 24 meters road on the other.*

(b) *The colony is comprised of 5 distinct zones; A, B, C, D and E. Each zone, more or less, is separated from each other by certain natural feature like canal, a rasta or a dividing road.*

(c) *All five zones have been so carved out that each zone abuts either a 24-meter road or a 30-meter road. The external services have been provided/scheduled to be provided by the State Government Agencies on 24-meter road as well as on the 30-meter-wide road. The planning of the five zones has been so done that services of each zone can be independently connected with the external services to be provided by the State Government agencies. Internal services of each zone however have been planned separately and independently of each other. Virtually no zone is dependent on any other zone in respect of colony level Infrastructural services. This is intended to make each zone a distinct and independent identity. For all practical purposes, each zone is a separate stand alone colony.*



(d) Designs of the apartments in each zone have also been prepared separately and distinct from each other and there is nothing common between them.

(e) After planning some community services like schools, dispensaries, community centres etc. sites have been left out in each zone with the responsibility of the owner of the respective zone to develop those facilities (This observation shall be re-confirmed by the parties on the next date of hearing). Together, the community services proposed to be developed will fulfil overall requirements of entire licensed colony. However in some zones more community services have to be developed than the other. This arrangement probably has been done by way of commercial understanding between the licensee and the developers. This fact also needs to be re-confirmed by the parties.

(f) Some amount of land has also been acquired by the State for development of the sector roads. The same has also been duly accounted for while carving out five independent Zones to be developed by the respective developer companies.

(ii) During the course of hearing, learned counsel for M/S Maximal also produced a document suggesting that the Town & Country Planning Department had approved separate FAR in respect of each zone of the colony. A copy of the said document has not been kept on record of the Authority, which M/S Maximal shall do on the next date of hearing.

5. Learned counsel for Ferrous Infrastructures accepted the aforesaid submissions made by the learned counsel for M/s Maximal. Based on these submissions the Authority makes following observations for resolution of this complex problem:

(i) The Town & Country Planning Department has consciously approved the colony to be developed in five distinct zones because each zone has its own independent lay out plan, drawings, design etc. in respect of the buildings as well as in respect of the internal infrastructure to be laid in the Zone. Separate plans for development of infrastructures within each zone has been prepared. Separate FAR has been approved by the department of each zone. It has been agreed and approved that essential services of each zone shall be independently connected with the external services to be provided by the State agencies.



It is thus abundantly clear that right from the beginning the whole project was conceived as five separate and distinct zones/colonies within the same licensed colony. It was implied as well as express understanding while approving the Plans that the colony will be developed in five zones and by five separate

individuals. The intention of the colony to be developed by five distinct entities was abundantly clear right from the beginning.

Now the only way forward for resolution of this complex dispute is to formally treat them as five independent, separate and standalone colonies, which are factually being developed by five different promoters-developers. These five independent promoters have floated five independent colonies and have executed agreements for sale of apartments separately with different sets of Allottees. The most important thing now to be achieved is that the Town & Country Planning Department must upfront recognize this fact, which has impliedly been accepted repeatedly at the time of the approval of the plans etc.

- (ii) The first and foremost requirement, thus for resolution of the dispute is that beneficial rights should be transferred in favour of each of the developer companies in respect of the zone which has come into their share. The Town & Country Planning Department must review their decision of declining the request of the licensee and developer companies for transferring beneficial rights in their favour for development of respective zones of the colony. The successor/developer companies had approached the Town & Country Planning Department for transferring beneficial interest in their favour so as to treat them as separate and independent licenses responsible for development of their own zone irrespective of the liability of the promoters of the other zones. This course of action must be approved by the department in the interest of allottees as well as in the interest of real estate projects. This proposition is permissible as per laws and the rules of the Town & Country Planning Department. This fact has also been recognized by Hon'ble High Court in Complaint No. 24568/2018 titled as M/s Landmark Apartments Pvt. Ltd. V. State of Haryana & Ors. Relevant portion of the said judgment is reproduced below:

"Interim order dated 29.10.2018 shall continue to ensure to the petitioner. The petitioner is also directed to deposit sum proportionate to the area for which license is sought and not the entire 10% as a measure of satisfaction of requirement of proviso to Rule 17, considering that prayer is for bifurcation of license against some area which is now to be developed by the petitioner.

We are acutely conscious of the fact that this project since its inception was lawful and the only dispute that has emerged is from the concern of the State regarding impermissibility of bifurcation of the licence which would mean that the petitioner would develop some additional area out of the composite area, already a part of the project when conceptualized.



We have noticed that proviso to Rule 17 does permit transfer in part and, therefore, it is not a case where license necessarily has to be transferred as a whole only as is argued by the State. Evidently, there are certain conditions prescribed to such a transfer. Assuming for the sake of argument that such a transfer is totally impermissible as the State contends, then the question that needs attention is whether the residents of the area who have invested in the project considering it to be lawful as it was indeed, can be made to suffer on account of technical objection of the respondents in not permitting such a transfer of license against some portion of the land, which originally was a part of the land owned by the developer in agreement for development with the petitioner. Needless to say, the State is very well within its right to see that the project as conceptualized and executed is not flouted for which what has to be ensured is the execution. Bifurcation of a license is a procedure between the developer and the State. Law permits it either in complete or in parts with a stipulation of payment, an accompanying amount, provided under Rule 17 which the petitioner indeed would be bound to satisfy through payment but is proportionately as per the area mentioned. We permit the petitioner to seek occupancy certificate which the respondents shall not deny after the payment as above so as to ensure that the interest of flat owners does not suffer particularly when no objection has been raised by the State regarding the lawful character of the project and its execution".

This Authority is of the considered view that technicalities cannot be allowed to come in the way of protecting the interests of thousands of allottees of the project who have invested their hard-earned money in the project on the basis of licenses and approvals granted by the State Government. Now, the state Government is duty bound to protect their interest. It is a sovereign duty of the State.

- (iii) The entitlement rights and liabilities of each Zone have to be determined separately and independently. the promoters of each zone have to be held answerable to their allottees in respect of their contractual obligations. The big mistake, which is complicating the matters, being committed by the Town & Country Planning Department is that inspite of the ground realities being very different, they are treating all the five zones together as one licensed colony. Accordingly, the liabilities of the promoters are being determined jointly. As per facts of the matter, those liabilities are neither sole responsibility of the licensee company nor jointly of the five developer-promoter companies. This fact has to be recognized that five separate & independent zones have practically nothing to do with each other.

Unless rights and responsibilities of five promoters in respect of their own zones are determined separately, the matter will never be resolved. The Town & Country Planning Department therefore should recognize this fact



and review their earlier decision and take actions to effectively consider the license having been divided into five parts or the rights of beneficial development having been devolved from the licensee company to the five developer-promoter companies.

It is relevant to observe that department have already accepted this position in respect of the zone 'b', which is largest zone of the colony, being promoted by M/S Triveni Infrastructure Development Company Ltd. (TIDCO). If this position could be accepted in respect of TIDCO, then what prohibits the same logic being accepted for other zones of the colony as well?

- (v) It is observed that the relationships of M/S Maximal and Ferrous extends much beyond the real estate project in question. There are other pending disputes with regard to some other lands eg. in Sector-70, Faridabad, as well as certain issues pertaining to the exchange of money in respect of transactions outside the scope of this Project.

It has already been held by this Authority that this Authority will have jurisdiction to resolve the dispute between the parties only pertaining to the real estate project in question. If there are disputes pertaining to the subjects outside the purview of the RERA, those disputes cannot be resolved by this Authority for the want of jurisdiction. If after the resolution of disputes relating to the colony in question, any other disputes remain pending between the parties, those will remain pending as they are, to be resolved by due process of law at the level of appropriate court or forum. RERA will not have any jurisdiction to deal with those issues which do not pertain to the real estate project in question. Principle objective of RERA Act at this stage is to protect interest of thousands of allottees who are awaiting possession of their dream homes for last nearly 10 years.

6. Having laid down the above principles, the Authority would direct all the five developer companies to submit separate information relating to the zone which has come into their share as per the agreement made with the licensee companies, as follows:

- (a) Total number of apartments to be constructed in the zone.
- (b) Number of apartments sold/booked upto date.
- (c) Stage of construction of booked, sold as well as unsold apartments, separately.
- (d) Total amount of EDC, IDC and other charges liable to be paid for their zone.
- (e) The amount of EDC, IDC and other charges etc. which in turn are to be paid by the State Government, collected from the allottees.
- (f) The amount of EDC & IDC charges and other charges etc. paid to the State Government.
- (g) The amount of EDC and IDC and other charges received from the allottees and yet to be paid to the State Government.



- (h) The amount of investment required for completing booked/allotted apartments.
- (i) Investment required for completing the entire zone.
- (j) The amount of investment required for completing the infrastructural facilities in respect of the allotted apartments and the entire colony separately.
- (k) Assuming that requisite permission is granted by the State Government, the time lines for completing the allotted apartments and handing them over to the allottees.
- (l) Whether they had applied for grant of completion/Occupation Certificate? If yes, then a copy of the entire correspondence undertaken with the department including the objection, if any, raised.

7. Since responsibilities of promoters of each zone are to be determined separately, if any tower/group of apartments in any zone have been completed and in respect of which application for grant of Occupation Certificate can be applied, the promoters of the relevant zone shall file an application in the Town & Country Planning Department for grant of Occupation Certificate etc. The Town & Country Planning Department shall revisit and re-examine the application as a new application to be examined only in respect of the said zone and make their observations as per available facts and pass suitable orders as per law.

8. While considering Suo-Motu complaint No 1218 of 2019 the Authority had also passed orders for visit of the site by a Local Commissioner. It is understood that the Local Commissioner has visited the site but is yet to submit its report. The Law Associate concerned shall follow up with the CTP by sending a note to him to ask the Local Commissioner to submit its report before the next date of hearing.

9. Since dispute relating to each zone will be handled separately, the remaining three developer's M/S ORS, M/S PAL and M/S Heritage should also be issued a notice and they shall be treated as co-respondents in both the petitions for expressing their point of view for resolving disputes relating to the overall colony. They also shall submit information as asked for in para-above.

10. At this juncture, the Authority would strongly recommend the department of Town & Country Planning as well as the parties to the present dispute to understand the letter and spirit of the orders passed by the Hon'ble Supreme Court in CWP No. writ Petitions(c) No. 940/2017 titled as "Bikram Chatterji & Ors. Versus Union of India & Ors.". Hon'ble Supreme Court has laid down the principle that the rights of the allottees of a project as well as the overall interest of the project will supersede the rights of the State Government Departments as well as the rights of the financial institutions for satisfaction of their claims against the colony. Similar principles have been laid down by this Authority by passing orders in Complaint case No. 1121 of 2018 titled as "Mrs. Nalini Sharma Versus M/s ABW Infrastructure Ltd. & Ors.". It will be expected from the Town



& Country Planning Department that in the interest of the Allottees, for that matter even for recovery of their EDC etc. dues, they must adopt flexible, practical and realistic approach. Liabilities of promoters of each zone should be determined separately and resolved separately. By creating a legal fiction or otherwise, in the face of facts of the case, the license should be bifurcated or its beneficial interests formally should be transferred to the developer companies. This is expected from the department in the interest of the allottees. They may however, recover their over dues from the unsold inventory or from any other assets of the licensee or promoter.

The Authority would also express its views that in case the promoters-developers are not able to resolve disputes in the letter and spirit of this order, the Authority would explore the possibility of handing the full or part of the colony to the Association of Allottees where-ever such Association comes forward with their willingness to take over.

11. The Authority would further observe that the Town & Country Planning Department, after grant of license and after receipt of massive amount of EDC, cannot be a bystander and let the allottees suffer the agony and pain of waiting for their dream home for endless period of time. The Allottees part with their money and book the apartments on the basis of the license granted by the State Government. The Act of grant of license is like a sovereign assurance to the Allottees that the State Government would protect their interest. Whenever a colony goes into problems, of this nature, the Town & Country Planning Department has to find a solution by taking over of the colony itself or by getting it developed from any other agency. In the instant case with cooperative and supportive attitude being adopted by the department the problems being faced by the developers of this colony are possible to be resolved. The Authority would expect the department to come up with their views on the suggestions given by this Authority.

Order dated 02.09.2019

1. Today is the 7th / 8th / 9th hearing of the different captioned complaints. Detailed observations had been made by this Authority in its orders dated 30.04.2019 and 22.08.2019 in which way forward for resolving this complex matter also had been suggested, which inter-alia requires a strong initiative on the part of Town and Country Planning Department for bifurcating the licenses and apportioning separate responsibilities and liabilities of each of the five developer companies. No reply from the Town and Country Planning Department has been received so far despite service of the notices and receipt of aforesaid orders in the office of Director, Town and Country Planning Department. It is reiterated that without active participation and intervention of the department this dispute cannot be resolved and interest of thousands of allottees cannot be secured.



2. In the orders dated 22.08.2019 certain information's had been demanded from all the parties, which have been submitted today by all the parties except M/s Pal Infrastructure limited. The Authority now decides to analyze the information submitted by each party and record their oral arguments.

3. The Authority had also appointed M/s Planners Plus as its Local Commissioner to visit the site and submit factual position about the stage of construction of the buildings in each of the projects. The Local Commissioner has submitted its report vide letter dated 29.08.2019. The report is taken in record. All the parties should obtain a copy of the report from the Registry of the Authority.

Information and arguments submitted by the M/s Ferrous Infrastructure Pvt Ltd, the complainant in complaint no. 826 of 2018.

4. Following information has been submitted by M/s Ferrous Infrastructure Pvt Ltd:

- (i) 848 apartments are to be constructed in Zone-A of the project which has come into their share out of which 792 apartments have been sold/ booked.
- (ii) 12 towers are to be constructed in whole of the project of Zone-A out of which occupation certificate in respect of 4 towers i.e. C-5, C-6, D-4 and D-5 has been applied for in the office of Director, Town and Country Planning Department.
- (iii) As per Complainants they are liable to pay about Rs 25.27 crores as EDC, out of the total liability of the entire project, comprised of all five zones, amounting to Rs 59.05 crores calculated along with interest upto 23rd March, 2015. The Complainant states that out of their share of EDC liability of Rs 25.27 crores they have already paid Rs 19.95 crores comprised of Rs 9.40 crores by way of demand draft and Rs 6.65 crores + Rs 3.54 crores by way of bank guarantee. The Complainant further states that they are ready to pay the balance EDC of about Rs 5.68 crores. Separately they would be requesting the department to grant them benefit of EDC relief policy.
- (iv) An amount of Rs 11.54 crores only so far has been collected from the Allottees as EDC and IDC.
- (v) The estimated cost of the project was Rs 192.23 crores against which Rs 180.98 crores have already been spent and remaining Rs 11.24 crores will be spent by the Complainant for its completion.
- (vi) If various legal hurdles are cleared, the complainants state that they will be able to complete the entire project by 20.12.2020.



- (vii) On the question of correspondence with Town and Country Planning Department regarding grant of occupation certificate, a detailed reply has been submitted stating that they had applied for grant of occupation certificate in respect of 4 towers on 25.04.2016. The site had also been inspected by the officers of the Town and Country Planning Department. The matter regarding grant of occupation certificate, however was taken before the Hon'ble High Court by the respondents and some Allottees. Hon'ble High Court had passed directions to the department for taking appropriate decision as per law on the issues raised in the writ petitions. The matter, however, has not yet been concluded by the department and their application for grant of occupation certificate is still pending in the office of Director, Town and Country Planning Department. By way of oral submissions, the complainant M/s Ferrous Infrastructure Pvt Ltd again referred to the complex legal disputes going on between them and the respondent company. Reference was again made to the pendency of their disputes before the Hon'ble Supreme Court, before the Hon'ble High Court and before Police Authorities in respect of certain cross FIRs.
- (viii) The complainants are ready and in a position to complete their project, as it is already complete to the extent of 95%, subject to grant of occupation certificate in respect of 4 towers by Town and Country Planning Department; grant of registration certificate by the RERA; and bifurcation of license/ transfer of rights of beneficial interest, in their favour by the Town and Country Planning Department.

Information and arguments submitted by the M/s ORS Infrastructure Pvt. Ltd, the complainant in complaint no. 1344 of 2018.

1. Following information has been submitted by M/s ORS Infrastructure Pvt Ltd:
- (i) 328 flats and 64 EWS apartments are to be constructed in Zone-D of the project which has come into their share out of which 187 apartments have been sold/booked.
 - (ii) The Complainants are liable to pay Rs 6,59,39,977.74 as EDC, IDC and other charges, and same stands paid to M/S Maximal Infrastructure Pvt. Ltd., as per clause 5 of the agreement.
 - (iii) The estimated cost of the project was Rs. 13023 lakhs against which Rs. 5169 lacs have already been spent and remaining Rs.8000 lacs approx. will be spent by the complainant for its completion after renewal of licence by the licensee or bifurcation of the licence and granting fresh license in their favour in respect of the Zone D.
 - (iv) If legal hurdles are cleared, the developer stated that they will be able to complete the project by 31-03-2021.
 - (v) Work of the project is at standstill due to pending disputes between M/s Ferrous and M/s Maximal



Information and arguments submitted by the M/s Heritage cottage Pvt. Ltd. the complainant in complaint no. 1343 of 2018.

2. Following information has been submitted by M/s Heritage Cottage Pvt Ltd:

- (i) 200 flats and 32 EWS apartments are to be constructed in Zone-E of the project which has come into their share, out of which 125 apartments and 32 EWS have been sold/booked.
- (ii) The Complainant are liable to pay Rs 3,94,20,182.94 in total for EDC, IDC and same stands paid to M/s Maximal Infrastructure Pvt. Ltd., as per clause 15.23 of the agreement.
- (iii) The estimated cost of the project was Rs. 6293.00 lakhs against which Rs. 3493 lacs have already been spent and remaining Rs.2800 lacs approx. will be spent by the complainant for its completion after resolution of various disputes.
- (iv) If legal hurdles are cleared, the complainants stated that they will be able to complete the project by 31-03-2021.

7. Arguments of the respondent M/s Maximal Infrastructure Pvt. Ltd. :

- (i) Ld. Counsel for M/s Maximal Infrastructure Pvt Ltd briefly referred to the ongoing disputes with the complainant the nature of which in brief has been captured in the earlier orders dated 30.04.2019 and 22.08.2019 of this Authority. Due to paucity of time detailed arguments of the respondent were not recorded. It was decided that on the next date final arguments of the respondent will be recorded where-after the Authority will pass its final judgement.

8. Report of Local Commissioner:

- (i) In Para 4 (e) of the orders dated 22.08.2019 certain observations were made with regard to the common infrastructure and development of community sites. It has been revealed today before the Authority that all communities' sites abutting various zones have already been sold by the Licensee Company. Now only small community sites falling within the zones have to be developed by the developers of the respective zones. The colony level community sites however, have been disposed of for development by private parties, therefore nothing needs to be done by the licensee company in regard to development of Infrastructural facilities or common facilities.
- (ii) While considering the application for registration of the project of the complainant M/s Ferrous Infrastructure Pvt Ltd the Authority had appointed the local Commissioner for visiting the site of the project and submitting its report regarding development works carried out by various promoters. The report has been received. All the parties should obtain a copy of the report from the Registry of this Authority.



- (iii) *The Authority has gone through the observations made by the Local Commissioner, Gross violations by some parties have been reported. Such gross and serious violations may make the grant of occupation certificate by the Town and Country Planning Department very difficult. Some of the violations may be compoundable and others may be not compoundable. The Town and Country Planning Department will have to take a decision with regard to all the issues pointed out by the Local Commissioner. A copy of the report should be sent to the Director, Town and Country Planning Department for taking a decision in the light of the observations made by the Local Commissioner.*

9. *While adjourning the matter for hearing arguments of M/s Maximal Infrastructure Pvt Ltd, the Authority would reiterate its line of thought that a solution to this complex problem can be found only by adopting the following step-wise approach:*

- (a) *That Town and Country Planning Department should realize its own responsibility for getting the projects completed because it is by virtue of the license granted by them that the projects have come into existence. Further the conditions of license, the provisions of the Haryana Urban Development Act and the Rules framed there-under obliges the department to take all steps necessary for monitoring the progress of projects and getting it completed. The Town and Country Planning Department has to adopt a pro-active approach in such matters. This approach is necessary for protecting the interests of thousands of allottees who have invested their hard-earned money on the basis of the license granted by the State Government. The department shall be well advised to visit the sites of the project again and decide whether the development works are being carried out in accordance with law. The Local Commissioner of the Authority has pointed out several defects and violations. Those also should be appropriately taken into account.*
- (b) *Since the main licensee companies have disposed of all the lands of the project to five developer companies and they retain no further interest in it, either such an action on the part of the licensee company should have been stopped and prohibited well within time by the Town & Country Planning Department in the year 2008 itself, or now they have to appreciate the ground level realities and decide to bifurcate the license in favour of the five developer companies in the interest of thousands of allottees. Without this bifurcation of license nothing can move further.*
- (c) *Bifurcation of the license in favour of five developer companies would logically lead to separate determination of the liabilities of each of the developer companies towards the State Government. The liabilities on account of overdue license fee, EDC, IDC, penal interest and other charges will have to be and should be separately determined in respect of each of the developer companies by the department. Since*



principal responsibility for not acting in contravention of the conditions of license was that of the licensee company. Town and Country Planning Department should credit the EDC/IDC and other duties received from the license in favour of four developers only, namely M/s Ferrous Infrastructure; M/s ORS; M/s Heritage Cottage and M/s Pal Infrastructure. No credit deserves to be given to M/s TIDCO because that company is in liquidation before the NCLT. The amounts of EDC/IDC due from TIDCO may be claimed from the Resolution Professional and the Official Liquidator as the case may be.

- (d) The amounts already received by the department from the licensee should also be appropriately credited into the accounts of each of the developer companies. Alternatively, the amount which the developer company proves to have paid to the department or to the licensee should be credited into their account. After crediting such amounts, remaining liabilities should be determined separately in respect of each developer company for division of the license.*
- (e) Each of the developer companies thereafter should be asked to submit their plans for development of the colonies after duly recognizing the development work already carried out. The revised plans then should be approved by the department in accordance with law and policy.*
- (f) After completing the above process, five applications for registration of project with RERA will be examined and the projects will be registered with appropriate conditions and stipulations with an overall objective of protecting the interests of the current and future Allottees.*
- (g) Regarding disputes between various developer companies in respect of any amount receivable/ payable, they may continue to prosecute their cases before the appropriate courts of law. This order will essentially be aimed at completing the project and protecting the interest of thousands of Allottees. This order shall be without prejudice to the claims and counter claims of the opposite parties towards each other to be prosecuted before appropriate court of law.*

3. In the light of the above facts brought to the knowledge of the Authority by various parties from time to time, it is abundantly clear that the projects should have been registered so that the interests of the existing allottees could be protected and for facilitating sale of un-sold inventory of the project which in-turn would help to generate liquidity for investment in the projects. This Authority, however, cannot allow registration of projects and sale of unsold inventory without clear legal title being established over the land of the projects. All the promoters are also defaulting in the payment of EDC due towards the



Government. The license of the project as a whole has expired. Service plan estimates of individual projects have not been sanctioned, in some cases not even submitted.

In light of the aforementioned facts, the first step to be taken for resolution of dispute is that State Government in Town & Country Planning Department should realize the fact situation and it should resolve to protect the interests of over 2000 allottees who are awaiting possession of their houses for the last nearly 10 years. Accordingly, the Department should divide the license in five parts and grant separate licenses to each of the developer company subject to fulfilment of requisite conditions.

4. The department thereafter should determine the liabilities of each developer for payment of EDC etc. The EDC already paid should be duly credit. Each of the developer company have to sever their relationship with the original license company completely. Fresh license needs to be granted on the basis of facts as are available at the ground level.

5. Simultaneously, the Department should send its technical team for visiting the sites of the each of the project and independently determine whether any violations of the terms and conditions of the licenses or of the approved building plans have been caused by any of the developer. If any violation is noticed by them suitable action should be taken as per law.

This Authority had appointed a local commissioner for visiting the site and pointing out deficiencies in the development of the project. Several serious deficiencies have been pointed by the local commissioner which have been discussed by this Authority while disposing off complaint case No. 826 of 2018 and other related matters. A copy of the said order should be sent to the Department for appropriate action.

6. At this stage the Authority would neither register the project nor would it reject the applications. It would await decision of the Town & Country Planning Department in accordance with the guidelines given as above.



7. All the applicants are hereby directed to file applications in the Town & Country Planning Department for grant of a license in respect of the project being developed by them. They should disclose all the information relating to the project, the quantum of EDC paid, the quantum of EDC still to be paid etc. The application complete in all respects should be filed by the developer company within thirty days. It is expected from the Town & Country Planning Department to expedite decisions on these applications and dispose them off within a period of 60 days thereafter.

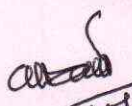
8. Learned CTP shall send a copy of these proceedings to the Principal Secretary and the Director, Town & Country Planning Department, Haryana with a request to deal with this matter expeditiously in the interest of over 2000 allottees of the projects. A copy of the orders passed by the Authority while dealing with bunch of cases No.826/2018 be also annexed.

True copy




Executive Director,
HRERA, Panchkula

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


15/11/19
LA (Tarun)