



HARYANA REAL ESTATE REGULATORY AUTHORITY, PANCHKULA.

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Subject: Extract of the resolution passed by the Haryana Real Estate Regulatory Authority, Panchkula in its meeting held on 09.12.2019.

Item No. 77.8

(ix) Promoter : Umang Realtech Pvt. Ltd.

Project : “Summer Palms Bahadurgarh” – Group Housing Colony on land measuring 12.126 acres situated in Sector 4A, Village Kasar, Bahadurgarh, Jhajjar.

Present: Shri Abhayveer Sharma, Advocate on behalf of the Promoter.

This matter was earlier listed for hearing on 19.08.2019 and later on 14.10.2019. In the order of August, 2019, deficiencies were conveyed to the promoter, without removing of which, the project cannot be registered. During the proceedings on 14.10.2019, it was verbally stated by the promoter's counsel that corporate insolvency proceedings under the Insolvency Bankruptcy Code (IBC) had been initiated against the company before the National Company Law Tribunal (NCLT). The Authority had asked the promoter to place before the Authority the orders passed by the Hon'ble NCLT.

2. Today, learned counsel for the respondent-promoter Shri Abhayveer Sharma appeared before the Authority and submitted an order dated 22.08.2019 passed by Hon'ble NCLT in which, inter alia moratorium under Section 14 of the IBC Code has been declared. He further stated that proceedings before NCLT have been initiated on account of complaints filed by two allottees of a project of the promoter located in district Gurugram. No such proceeding has been initiated in respect of the project of the respondent located in Bahadurgarh, District Jhajjar which falls within the jurisdiction of this Authority. He stated that as per existing



position of law, since insolvency proceedings have been initiated against the company, entire Board of Directors (BODs) stand superseded and in their place Resolution Professional (RP) shall function as the Board of Directors. Due to this reason, the respondent's Board of Directors is not in a position to pursue the present application for registration of the project.

4. This project is a Group Housing being developed over the land measuring 12.126 acres with 175 FAR. 856 number of apartments are proposed to be constructed in the project out of which 109 apartments have already been sold. Accordingly, 3rd party interests stand created in respect of 109 allottees. This Authority is duty bound to protect the interest of all the allottees of the project which falls within its jurisdiction. It is note-worthy that none of the allottees of the project of Bahadurgarh has approached the Hon'ble NCLT for initiating insolvency proceedings. In the above context, provisions of Section 79 and 89 of the RERA Act, 2016 are reproduced below: -

"79. No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Authority or the adjudicating officer or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act."

"89. The provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force."

Further, Section-8 of the RERA Act, 2016 is also reproduced below:

"8. Upon lapse of the registration or on revocation of the registration under this Act, the Authority, may consult the appropriate Government to take such action as it may deem fit including the carrying out of the remaining development works by competent authority or by the association of allottees or in any other manner, as may be determined by the Authority:



Provided that no direction, decision or order of the Authority under this section shall take effect until the expiry of the period of appeal provided under the provisions of this Act:

Provided further that in case of revocation of registration of a project under this Act, the association of allottees shall have the first right of refusal for carrying out of the remaining development works."

5. The cumulative effects of the above quoted provisions of the RERA Act, in the considered view of the Authority, are as follows: -

- i) A very important right has been granted to the allottees of a project by Section-8 of the Act that if a promoter is not able to complete the project, the allottees have a right to take over the project for its completion. Further, even the Authority has been empowered to get the project completed through any other agency of the State Government. In the considered view of the Authority, this right of the allottees of the project in question cannot be adversely affected for the reasons of rights of the allottees of another project of the promoter having not been granted. The liabilities in respect of the project located in gurugram cannot and should not affect the rights of the allottees of the project located in Bahadurgarh;
- ii) This Authority has repeatedly ruled that after payment of substantial amount of money, the allottees of the project becomes deemed owners of the project. To the extent, payments have been made by the allottees, the project is deemed to have been transferred to the allottees because after completion of whole of the project, it is meant to be handed over to the association of the allottees;
- iii) By virtue of Sections 79 and 89 of the Act, the proceedings before the RERA shall take precedence over the proceedings before any other Court of Law. The provision of RERA Act shall prevail over the provisions of any other law of the land. At the same time, however under Section 7 of the IBC Code, the provisions of the code shall also



take precedence over any other law of the land. In view of the above position, a balance has to be struck between the conflicting law.

iv) Apparently, only two allottees of the project located at Gurugram have approached the Hon'ble NCLT, their rights can be protected by any other means and without affecting the rights of the allottees of the project in question located at Bahadurgarh in District Jhajjar. Therefore, the Authority directs the promoter of the project to place this order before NCLT and seek exemption of the assets of the project allocated at Bahadurgarh from the proceedings pending before the Hon'ble Tribunal.

7. Simultaneously, a notice may also be also issued to the Resolution Professional stating as to why he should not be called upon to pursue the application for registration of the project before this Authority since he has substituted the Board of Directors of the respondent company.

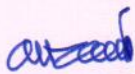
8. Adjourned to 10.02.2020 for further proceedings.

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.



16/12/19

LA(Neha)