



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 27.01.2020.

Item No. 84.13

Item No. 84.13 (iv to viii) were considered together.

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

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

AND

(v) **Promoter : Zion Promoters & Developers Pvt. Ltd.**

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

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.

AND

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

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

AND

(viii) **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.



**Present: i. Shri Sanjay S. Chhabra & Shri Deepak Aggarwal, Counsels
for M/s Maximal Infrastructure Pvt. Ltd.**

**ii. Shri Narinder Hooda, Counsel for M/s Zion Promoters &
Developers Pvt. Ltd.**

**iii. Shri Jitin Gupta, Counsel for M/s ORS Infrastructure Pvt.
Ltd.**

**iv. Shri Praveen Khurana, Director of M/s Heritage Cottage
Pvt. Ltd.**

1. The Authority had last heard this bunch matter on 30.09.2019 when a detailed order running into 22 pages was passed, the operative portion of which is reproduced below:-

"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."

For the reasons given in the order, this matter thereafter was adjourned sine-die. Since no further information about these projects came for about 3



months, the Authority in its 79th meeting, decided to again list all the matters to know their latest position. Accordingly, all six matters are listed for hearing today.

2. Shri Sanjay S. Chhabra, learned counsel for M/s Maximal Infrastructure Pvt. Ltd. along with other counsels drew the attention of this Authority towards Appeal No. 1461 of 2019 titled "Director General, Town and Country Planning Versus HRERA and others" filed by Director General, Town & Country Planning Department before the Hon'ble Appellate Tribunal. The said matter is listed for hearing before the Hon'ble Tribunal on 28.01.2020.

3. Learned counsels further drew the attention of the Authority towards pleadings of Director General, Town & Country Planning Department in the above mentioned appeal that this Authority does not have powers under the RERA Act to issue directions to the appellant department to bifurcate the licenses. The Director General, Town and Country Planning Department has submitted before the Hon'ble Tribunal that the Authority under the Act of 2016 has only powers to give directions to the promoters, allottees and the real estate agents but has no power to give any direction to the department.

4. After hearing detailed arguments of all the parties, the Authority observes as follows:-

- i) The Preamble of the RERA Act inter-alia reads that "the Act has been enacted to establish the Real Estate Regulatory Authority for regulations and promotions of Real Estate Sector.....to protect the interest of the consumers in the real estate sector..."

Further sub Section (a) of Section 34 mandates the Authority to register and regulate real estate projects....; and Sub Section (f) of Section 34 mandates the Authority to ensure compliance of the obligations cast upon the promoters, the allottees under this Act and the Rules and Regulations framed thereunder. Further, Section 37 of the Act empowers the Authority to issue binding directions to "all concerned".

- ii) The expression "Regulate" pre-supposes regulations of real estate projects for achieving the end objective which the project is supposed to



achieve, i.e. ensuring that the projects are completed in time and lawful interests of all stakeholders, especially the allottees, are protected. The expression "Regulate" also includes taking all such incidental and consequential actions as are necessary to achieve the end objectives. The Authority is of the considered view that if a project is facing any obstacle in its timely completion which in turn is adversely affecting the interests of the Allottees, the Authority not only will have the power to order removal of those obstacles, but is duty bound to do so.

In the instant matters, for the detailed reasons given in orders dated 30.09.2019, the projects are not possible to be completed without Town & Country Planning Department bifurcating the licenses, therefore, as a part of its duties and functions the Authority is fully competent to issue necessary directions to the department concerned of the State Government.

- iii) The current process of development of real estate projects in the State of Haryana is that prospective promoters first have to arrange requisite land for the project on the basis of which they could apply for grant of a license. The Town and Country Planning Department after due examination grants the license and approves various plans of the project. The department also collects External Development Charges (EDC) from the developers for financing external infrastructure, including Water Supply System, Sewerage System, Storm Water Drainage, access roads, and Power Supply System. Entire EDC is eventually paid by the allottees of the projects, though collected through the promoters.

The license, inter-alia, stipulates that Town & Country Planning Department would monitor the progress of the project from time to time. Promoters of the projects are supposed to file periodic returns including submission of information regarding sale of plots/apartments as well as progress of construction and development of the project. The purpose of filing periodic returns by the promoters with the Town and Country Planning Department is that the project is developed in accordance with approved plans and other conditions of the license. District Level



officials of the department are supposed to inspect the site also of the project periodically. Such periodic inspection are absolutely necessary to stop violations of any kind by the promoter. In the face of the facts captured by the Authority in its order dated 30.09.2019, it is quite evident that the officials of the department either never inspected the project or completely ignored the violations being committed by the promoters. It is inconceivable that the department officials were not aware of the facts that the licensee company has sub-divided the project into five sub promoters. It is to be resumed that the department officials were fully aware of the facts situations on the ground.

iv) This Authority has repeatedly ruled that the act of granting a license for development of real estate project is a sovereign guarantee to the prospective investors and allottees of the project that their money is safe and secure and they will get their houses/apartments in a timely manner in accordance with the approved plans. Allottees of the projects invests their life's savings on the basis of this sovereign assurance given by the State. The conditions of the license as well as the provisions of the State laws specifically stipulates that in case a licensee/promoter does not develop the colony in accordance with the law/rules/directions/conditions of the license, the said license will be revoked and the department is empowered to take over the said colony and complete its development at its own level.

(v) In the instant cases, detailed observations have been made by the Authority in its order dated 30.09.2019, as well as order dated 02.09.2019 passed in complaint No. 826 of 2018. In both these orders, which should be read as part of this order, the Authority has clearly pointed out several serious violations committed by the promoters including violation of building plans as well as division of development works amongst the sub developers. All those violations were in the notice of Town and Country Planning Department all the time. The department, however, chose not to exercise its power to stop those violations and to revoke the license to take over the project. The resultant



situation now is that, if the licenses are not bifurcated it will be impossible to develop the project. The main licensee company has already divided the projects into five sub promoters and has sold the entire project to the sub-developers. Even common areas of the project have been sold to the third parties. Each Sub-developer has independently launched and sold the apartments in their portion of the project. Two of those sub-developers in fact are facing liquidation proceedings. Now either the fact situation has to be realized by the department or this project involving nearly 2000 allottees and thousands of crores worth of investment will never be completed. This will be a colossal national waste. More importantly, by exercising a small executive discretion by division of licenses, the project can be saved. The department has been using its discretion in the past.

Alternatively, the Town and Country Planning Department should exercise its powers to cancel the license on account of various violations having been committed, and take over the project and complete the same itself.

- vi) The end objective behind granting the license for development of the real estate projects is to meet the requirement of housing for the public. The very logic, the purpose and spirit of both the RERA Act as well as the Haryana Development and Regulations of Urban Areas Act, 1975 are to meet the requirements of housing for the public. For mere technicalities, the allottees cannot be left to suffer massive losses, in fact loss of their life time savings. Housing is a dream for ordinary citizen in which usually savings of three generations are invested. The law is not a mere technicality to be followed by its executing agencies. The law has a purpose and unless that purpose is achieved the law will lose its meaning.
- vii) In the instant case, Town and Country Planning Department has preferred an appeal before the Hon'ble Tribunal citing the technicality that RERA Authority has not been specifically empowered by the Act to give directions to the State Government. The question, however, to be addressed is that if a project is impossible to be developed without



removing certain obstacles, then can RERA Authority ignore its responsibility by not issuing directions to the State Government? In the process of discharging its regulatory duties, the Authority is bound to issue all such directions as are necessary for protecting the interests of the projects and of the Allottees of those projects. The directions issued by the Authority does not offend any law of the land. The Town and Country Planning Department has been dividing the licenses in the past, and even in the case of one of the respondent companies in this instant case.

viii) It is noteworthy that in this case, the Town & Country Planning department had sanctioned the site plan/building plans of the project in such a manner that the entire licensed land could be viewed as five different independent projects. Further, the five sub-developers separately and independently have launched and marketed their projects. Each one has been developing and selling their portions of the project for the several years. Local official of the Town and Country Planning Department for nearly 10 years never objected to the same. For this reason, the State Government agencies should be deemed to have accepted the development of the project by five independent entities. Now at this late stage the Town and Country Planning Department cannot raise technical objections and refuse bifurcation of license for facilitating its completion. More importantly, even if the objections being raised by the department are accepted and their views are agreed that this Authority does not have powers to give binding directions to them, then what alternative the department would suggest to complete the project and to protect the interest of the allottees. Mere raising technical objection to the directions issued by the Authority, without suggesting any alternative for completion of the project will not achieve the purposes of law.

ix) The Authority has repeatedly given its findings that it will be impossible to complete this project without bifurcation of the licenses amongst the sub promoters. The only other option is that the department itself take



over the project and complete the same. If, however, they are not willing to do so, then the licenses must be bifurcated. The Authority re-iterates that the purpose of the law is to protect the interests of the Allottees; to regulate the real estate sector; and to protect the interest of the project. For achievement of these objectives, lawful directions can be given by the Authority to the department.

5. The objections of the department are also not acceptable for the reason that they have already divided the license in respect of the one company M/s TIDCO. How is it that the department is following the directions of the official liquidators of M/s TIDCO for division of license but refusing to bifurcate the license in respect of rest of the projects?

6. In view of the above observation, Director General, Town and Country Planning Department is directed to file his reply and submit his plan of action for completing the project. Chief Town Planner will send a copy of this order to the Principal Secretary, Town and Country Planning Department, Haryana also with a request to get this matter considered at the level of the State Government and send their considered views to this Authority before the next date of hearing.

7. Adjourned to 02.03.2020.

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.




4/2/20.

LA(Tarun)