



HARERA
GURUGRAM

HARYANA REAL ESTATE REGULATORY AUTHORITY
GURUGRAM

हरियाणा भू-संपदा विनियामक प्राधिकरण, गुरुग्राम

New PWD Rest House, Civil Lines, Gurugram, Haryana नया पी. डब्ल्यू. डी. विश्राम गृह, सिविल लाईन, गुरुग्राम, हरियाणा

PROCEEDINGS OF THE DAY		12
Day and Date	Tuesday and 20.02.2024	
Complaint No.	MA NO. 35/2024 in CR/1277/2018 Case titled as TATVAM RESIDENTS WELFARE ASSOCIATION VS VIPUL LIMITED	
Complainant	TATVAM RESIDENTS WELFARE ASSOCIATION	
Represented through	Shri Atul Aggarwal, Advocate (filed POA)	
Respondent	1. Vipul Ltd. 2. Senior Town Planner, Gurugram 3. Executive Engineer, DHEVN 4. Executive Engineer, HSVP, Division III, Gurugram 5. Commissioner, Municipal Corporation, Gurugram 6. Mr. Punit Beriwal, Managing Director, Vipul Ltd. Ms. Guninder Singh, CEO	
Respondent Represented through	Shri Ashish Chopra, Senior Advocate with Ms Roopa Pathania, Advocate for R-1 and R 2	
Last date of hearing	Application for restoration	
Proceeding Recorded by	Naresh Kumari and HR Mehta	
Proceedings The counsel for the respondent draws attention of the Authority towards facts of the case and stated that the above-mentioned matter was heard and disposed of vide order dated 02.05.2019 wherein the Authority had advised to both the parties to wait till final decision of the Hon'ble High Court, till then the status quo shall prevail and the provisions of law shall come into force immediately after the decision of the Hon'ble High Court. Further it was observed that RWA is authorized to take care about their essential issues w.r.t.		



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नया पी. डब्ल्यू. डी. विश्राम गृह, सिविल लाईन्स, गुरुग्राम, हरियाणा

security, horticulture, power back-up and garbage collection and the costs shall have to be borne by the RWA.

The applicant/complainant and respondent filed appeal before the Hon'ble Appellate Tribunal, Chandigarh vide appeal no. 238/2019 and 1317/2019 and the same were disposed by the Hon'ble tribunal vide order dated 23.12.2020 observing as under:

"Vide our separate detailed judgment of the even date, the appeal is allowed, and the impugned order dated 02.05.2019 passed by the Id. Authority is hereby set aside. The case is remanded to the Id. Authority for re-trial and fresh decision. However, TRWA is allowed to take care of the essential services mentioned in the impugned order as interim arrangement at its own costs till the decision of the complaint by the Id. Authority. Copy of the detailed judgment be communicated to learned counsel for the parties/parties and the learned Authority. File be consigned to the records."

Against the order dated 23.12.2020 passed by the hon'ble appellate tribunal, both the parties preferred appeals before the Hon'ble High Court of Punjab & Haryana, Chandigarh vide appeal no. 1/2021 and appeal no. 36/2021 and 37/2021 filed by the RWA were decided on 27.09.2022 with the directions as under:

"While remitting the matter back to the Authority constituted under the Real Estate (Regulation and Development) Act, 2016, the Appellate Tribunal has made the following observations: -

"42. Before parting with this order, it is pertinent to mention that TRWA have taken over the aforesaid essential services without any execution of the impugned order. This Tribunal has directed the TRWA to file the affidavit of its president vide order dated 10.07.2019. As per the affidavit dated 30.08.2019 filed by Sh. Somesh Jawarani, the president of the TRWA, it is alleged that the essential services were taken over in terms of the impugned order dated 02.05.2019, in consultation with the ground's officials of the promoter. In the affidavit, the particulars of those ground officials are not disclosed. There is also no material on record to show that the said ground officials were competent and authorized by the promoter to hand over the



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MANO - 55/2024/15 CR/12/2018

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services to TRWA. It is an admitted case that the TRWA has not filed any execution petition before the Id. Authority to execute the impugned order dated 02.05.2019 and to take over the aforesaid services. Thus, taking over of the services by the office bearers of TRWA is not in accordance with the law. Rather, they have taken the law in their hands. For this act of the then office bearers/members of executive of TRWA whose names and particulars have been disclosed in the affidavit dated 23.11.2020 filed by Sh. Mukesh Mittal, the Vice - President of the TRWA, the promoter shall be at liberty to initiate the appropriate civil or criminal proceedings before the appropriate forum in accordance with law, if so advised.

43. It is further the admitted fact that now the TRWA is taking care of the essential maintenance services mentioned above for the last more than one and half years, it will not be desirable to put the clock back, rather it will cause the disruption of the maintenance services which will result in utter inconvenience and hardship to the residents of Tatvam Villas. So, the TRWA is allowed to carry on with these maintenance services as interim arrangement at its own costs as directed Id. Authority in the impugned order dated 02.05.2019, however, it will be subject to the decision of the complaint by the Id. Authority." The promoter as well as the Resident Welfare Association have filed these three appeals. It is not in dispute that pursuant to the order passed by the Appellate Tribunal, the Competent Authority i.e. Real Estate Regulatory Authority has started examining the matter. The grievance of the promoter is that the Resident Welfare Association has taken over the possession of the four categories of essential services without following the due procedure laid down in the law, although the Association was not entitled thereto.

On the other hand, the grievance of the Welfare Association is that the Appellate Tribunal has exceeded its jurisdiction while observing that the promoter shall be at the liberty to initiate the appropriate civil and criminal proceedings before the appropriate forum in accordance with law.

He submits that when the matter was being remitted back to the Competent Real Estate Regulatory Authority, therefore, the Appellate Tribunal should not have made the aforesaid observations.



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It is not in dispute that for the time being, the Welfare Association is managing the affairs of the four essential services. It is also not in dispute that the matter is pending before the Real Estate Regulatory Authority. After having addressed the arguments at some length, the learned counsel representing the parties has come to a consensus. They pray for the disposal of these appeals with the direction of the Real Estate Regulatory Authority to conclude the proceedings within a period of six months. Till then, the observations made in paras reproduced above will be kept in abeyance and the Real Estate Regulatory Authority will take a final call while deciding the matter. It shall be open to the promoter to file an application for passing the interim orders, if prayed for."

Now, the complainant has moved an application dated 16.01.2024 praying that the present complaint be restored and heard again in view of order dated 27.09.2022 passed by Hon'ble High Court of Punjab and Haryana. The Authority observes that the above orders passed by Hon'ble High Court has been brought to the notice of Authority by the complainant Association on 16.1.2024.

In view of the above, application moved by the counsel for the complainant is allowed and the present case is restored at its original number.

Matter to come up on 09.04.2024 for further proceedings.

Ashok Sangwan
Member

Arun Kumar
Chairman
20.02.2024

Vijay Kumar Goyal
Member