



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 1414 & 1418 of 2018

HRERA, Panchkula

....COMPLAINANT(S)

VERSUS

SRS Real Estate

.....RESPONDENTS(S)

**CORAM: Rajan Gupta
Anil Kumar Panwar
Dilbag Singh Sihag**

**Chairman
Member
Member**

Date of Hearing: 11.07.2019

Hearing: 4th

Present: - None present on behalf of Respondent

ORDER (Rajan Gupta- Chairman)

1. Two license Nos. 49 of 2009 and 78 of 2011 were obtained by M/s. SRS for development of a Group Housing Colony over land area measuring

24.968 acres. Learned Chief Town Planner after examination of the facts of the matter stated before the Authority as follows:-

- i) That the colony comprises of 900 apartments plus 300 EWS apartments. The promoters had applied for grant of occupation certificate of which the date is not known, however, occupation certificate granted by Town and Country Planning Department in July, 2017. Later a complaint was received on the CM Window against grant of said occupation certificate to the project of the respondents/developers. The occupation certificate was revoked in October, 2018 for the reasons that the promoters had submitted certain forged documents for obtaining the occupation certificate.
- ii) Learned Chief Town Planner further submitted that proceedings under Insolvency and Bankruptcy Code (IBC) are going on against the promoters' company before NCLT. In their orders dated 21.08.2018, the Hon'ble NCLT has issued a Moratorium under Sub Section 1 of Section 14 of the Code. By virtue of the moratorium none of the asset of the respondent company including the assets of the project in question can be alienated. Further, by virtue of the moratorium, the institution of a suite or continuation of pending suite or proceedings against the corporate debtor are prohibited.

2. No information could be provided by the office with regard to the validity of License; if not valid whether an application for renewal has been filed; details of the plots/ apartments proposed to be made in the project; number of apartments booked/sold and whether possession of those apartments has been offered to the allottees or not; Status of occupation certificate/ Part occupation certificate/ Completion Certificate/ Part Completion Certificate. This Authority has been created to regulate the real estate projects and to protect interest of the allottees. Sections 79 and 89 of the Act grants primary to the RERA Act over any other law of the land in respect of the projects falling in its jurisdiction.

3. This Authority observes that while the proceedings under IBC Code could continue against the company and the promoters of the project at the same time, efforts have to be made to safeguard the interest of the allottees of the project in question as per provisions of the RERA Act. This Authority in lead case No. **383 of 2018** titled as **Gurbaksh Singh & Another versus ABW Infrastructure Pvt. Ltd.** had ruled as follows:-

“ Para 18- The directions issued in the foregoing Paras are summarized as follow:-

i) The allottees of the project in question shall be treated as deemed owners of the project. The promoters of the project and the lending financial institutions cannot alienate the ownership rights of the allottees at their own level without their consent. Therefore, the claim of the allottees against the assets of the project shall be treated superior to any

other right of any other person or entity including the financial institutions and/or other creditors.

ii) If claims of the allottees are not satisfied fully from the assets of the project in question, they shall be treated creditors of the promoters at par with other creditors for satisfaction of their claims from the assets of the promoters other than the assets of the project in question.

iii) The Director, Town & Country Planning Department, Haryana is duty bound to protect interest of the allottees and to ensure that the project on the licenced land is completed in accordance with sanctioned plans. The Director shall immediately take steps to take over the project and get it completed in the manner considered appropriate. The Director shall take over the project regardless of any other proceedings pending against the project assets including under the SARFAESI Act, 2002 or the "Haryana Protection of Interest of Depositors in the Financial Establishment Act, 2013".

iv) While all the captioned complaints are being disposed of by this final order, Executive Director shall file a suo-moto complaint against respondents No. 1 & 2 and also implead Director, Town & Country Planning Department, Haryana as a respondent for monitoring of follow up actions taken on these directions.

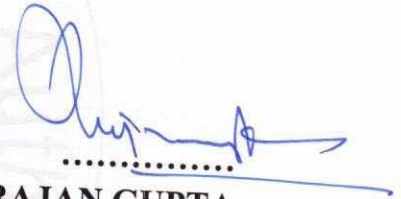
v) The complainants and other similarly placed allottees may present his order before any authority dealing with liquidation of assets of the Project, or the respondents and seek satisfaction of their claims on priority. It is, however made clear that the claims of the allottees shall be restricted to the refund of the money paid by them to the respondents along with

interest as provided for in rule 15 of the HRERA Rules, 2017."

4. This Authority is of the view that the provisions of IBC Code and the provisions of RERA Act should be harmoniously interpreted so as to give a full effect to the provisions of both the statutes.

5. Before proceeding further in this regard, all relevant facts about the project must be placed before the Authority. Learned Chief Town Planner is directed to obtain all relevant information about the project from the office of Director Town and Country Planning Department and District Town Planner, Faridabad or from any other agency.

6. Adjourned to 21.08.2019.



RAJAN GUPTA
(CHAIRMAN)



ANIL KUMAR PANWAR
[MEMBER]



DILBAG SINGH SIHAG
[MEMBER]