



Complaint No. 582 of 2018 & Ors.

HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

1. COMPLAINT NO. 582 OF 2018

Hemant Narula & Pooja Narula

....COMPLAINANTS

VERSUS

M/s Dhingra Jardine Infrastructure Pvt. Ltd.

....RESPONDENTS

& M/s B. V. M. Projects Pvt. Ltd.

M/s H. S. Oberoi – VSPL JV

Mr. Sanjeev Dhingra

2. COMPLAINT NO. 1073 OF 2018

Inder Pal Singh

....COMPLAINANT

VERSUS

M/s Dhingra Jardine Infrastructure Pvt. Ltd.

....RESPONDENTS

& M/s B. V. M. Projects Pvt. Ltd.

3. COMPLAINT NO. 552 OF 2019

Arvind Pandey

....COMPLAINANT

VERSUS

M/s B. V. M. Projects Pvt. Ltd.

....RESPONDENTS

& M/s Dhingra Jardine Infrastructure Pvt. Ltd.

4. COMPLAINT NO. 553 OF 2019

Nirmal Kumar

....COMPLAINANT

VERSUS

BVM Projects Pvt. Ltd.

....RESPONDENTS

& Dhingra Jardine Infrastructure Pvt. Ltd.

5. COMPLAINT NO. 600 OF 2019

Gurpreet Kaur

....COMPLAINANT

VERSUS

Dhingra Jardine Infrastructure Pvt. Ltd.

....RESPONDENTS

& BVM Projects Pvt. Ltd

6. COMPLAINT NO. 590 OF 2019

Rakesh Kumar & Kiran

....COMPLAINANTS

VERSUS

Dhingra Jardine Infrastructure Pvt. Ltd.

....RESPONDENTS

& BVM Projects Pvt. Ltd.

7. COMPLAINT NO. 614 OF 2019



Leela Kanoi and Parmeswar L. Kanoi

....COMPLAINANTS

VERSUS

Dhingra Jardine Infrastructure Pvt. Ltd.
& BVM Projects Pvt. Ltd.

....RESPONDENTS

8. COMPLAINT NO. 926 OF 2019

Rinku Kumari

....COMPLAINANT

VERSUS

Dhingra Jardine Infrastructure Pvt. Ltd.
& BVM Projects Pvt. Ltd.

....RESPONDENTS

9. COMPLAINT NO. 1530 OF 2019

Vidhi Desai

....COMPLAINANT

VERSUS

Dhingra Jardine Infrastructure Pvt. Ltd.

....RESPONDENT

10.COMPLAINT NO. 1543 OF 2019

Ashok Kumar

....COMPLAINANT

VERSUS

Dhingra Jardine Infrastructure Pvt. Ltd.
& BVM Projects Pvt. Ltd.

....RESPONDENT

11. COMPLAINT NO. 2236 OF 2019

Vinay Panwar

....COMPLAINANT

VERSUS

Dhingra Jardine Infrastructure Pvt. Ltd.

....RESPONDENT

12. COMPLAINT NO. 2361 OF 2019

Vineet Kumar

....COMPLAINANT

VERSUS

Dhingra Jardine Infrastructure Pvt. Ltd.

....RESPONDENT

CORAM: Rajan Gupta
Anil Kumar Panwar
Dilbag Singh Sihag

Chairman
Member
Member

Date of Hearing: 01.10.2019

Hearing: : 1st in COMPLAINT NO. 2236 OF 2019

1st in COMPLAINT NO. 2361 OF 2019

2nd in COMPLAINT NO. 1530 OF 2019

2nd in COMPLAINT NO. 1543 OF 2019



2nd in COMPLAINT NO. 926 OF 2019

2nd in COMPLAINT NO. 614 OF 2019,

3rd in COMPLAINT NO. 553, 590, 600 OF 2019,

4th in COMPLAINT NO. 552 OF 2019,

6th in COMPLAINT NO. 1073 OF 2018,

7th COMPLAINT NO. 582 OF 2018.

Present: - Mr. Siddharth Banthia, Counsel for Complainants
(in Complaint No.582 of 2018)

Mr. Rajan Kumar Hans, Counsel for Complainants
(in Complaint No. 552 of 2019 and 553 of 2019)

Complainants in Person
(in Complaint No.600, 614, 926, 1073, 1530, 1543, 2236 &
2361 of 2019)

None for Complainant
(in Complaint No.590 of 2019)

Mr. Vivek Sethi & Mr. Karan Kamal on behalf of Sh. Sanjeev
Dhingra.

Mr. Manvir Rathi & Mr. Piyush Mittal on Memo filed on behalf
of M/s H. S Oberoi VSPL JV.



ORDER **(RAJAN GUPTA-CHAIRMAN)**

1. All the complaints were heard together because they all pertain to the same project of the respondent and nature of their grievance is similar. At the time of the hearing of the matter no one was present on behalf of the respondents. After conclusion of the day's proceedings, at the time of rising of the court, a mention was made by Shri Vivek Sethi, who appeared on behalf of Shri Sanjeev Dhingra. His presence was taken on record.
2. In the orders dated 14.08.2019 the Authority had decided to issue a public notice in the newspapers for affording an opportunity to all the allottees of the project to appear before this Authority for addressing their grievances. In the public notice it was, inter-alia, written that the Authority, in exercise of the powers conferred upon it by Section-8 of the RERA Act, proposes to hand over project to the Association of allottees for completing the remaining construction work. Certain other offers were made in the public notice for protecting the interests of the allottees. Objections from the promoters or other interested persons were invited to the proposed course of action.
3. In response to the public notice, complainants, their counsels, and large number of non-complainant allottees appeared before the Authority. A gist of the submissions made by all of them is as follows:

- (i) Whole of the project is comprised of six towers i.e. tower-C, tower-D, tower-E, Sub Urban Floors, Gemini Grove Duplex, and Gloria High Rise.
- (ii) Some of the towers are almost complete i.e. tower-B, Sub Urban floors and Gemini Grove Duplex. Sizes of the apartments in different towers are different. It was stated that in case the allottees of one tower which is incomplete is shifted to another tower which is complete will result into difference in the payments to be made as compared with the agreements executed by them. This should be taken care fairly and justly.
- (iii) While one group of the allottees stated that the Authority at its own level should work out some way and means for getting the project completed; the other group of allottees stated that they are ready to form associations for completion of different towers.
- (iv) In unison it was stated that tower-wise associations may be allowed to be constituted. Such allottees of a tower who are able to form an association successfully may be allowed to undertake the work themselves.
- (v) Large number of allottees stated that they have paid more than 80% of consideration amount and their towers are not even 20% complete. They alleged that their money has been invested for completion of other towers. They however insisted that their towers should be

completed and possession handed over to them because the relief of refund will in all probability be a paper relief keeping in view the facts and circumstances of this case and financial position of the promoters.

(vi) In response to the public notice issued by the Authority, objections have been received through an authorised signatory/ GPA holder for a firm M/s H.S. Oberoi – VSPL JV. In the objections it has been stated that an agreement dated 20th February 2018 was executed by Respondent company with Mr. H.S. Oberoi whereby M/s H.S. Oberoi was appointed as contractor of the project to complete the balance works in the said project. Further, they have been granted all the rights including the right to dispose of the land and inventories of the project. In the objections it has also been stated that an appeal against an order dated 18.03.2019 passed by this Authority has also been filled before the Appellate Tribunal which now has been listed for 10.10.2019.

In nutshell it has been stated that in view of these facts irrevocable and non-terminable rights in favour of their firm has been created by virtue of the agreement dated 20.02.2018, which effectively makes them the new promoter of the project.

(vii) Almost all the allottees requested for the relief of handing over of the possession of the apartments to them. Most of them resisted the claims made by M/s H.S. Oberoi.

4. The Authority has considered this matter in detail. It observes and orders as follows:-

(i) First to deal with the objections filed by M/s H.S. Oberoi-VSPL-JV, this Authority had passed a detailed speaking order dated 18.02.2019 and 18.03.2019 vide Agenda Items No.42.8 and 45.8. Most of the issues raised in the objections have been dealt with in detail in those orders. Detailed reasons have also been given as to why the Authority is unable to recognise Shri H.S.Oberoi & Co. as promoters of the project.

Both the orders of the Authority are reproduced below:

Order dated 18.02.2019

“Chief Town Planner drew attention of the Authority towards its proceedings of the previous meeting dated 11.02.2019, when this application for registration of the project was considered. Various papers submitted by the applicant and the information placed on record was perused. Verbal submissions made by Shri Manveer Singh Oberoi and several other persons who called themselves allottees or members of an association formed by the allottees were heard.

2. After the hearing, before the Authority could announce its decision, a commotion and indiscipline was created by certain individuals who tried to disrupt the functioning of the Authority, therefore, it was decided to lodge an FIR against those individuals for disrupting the lawful functioning of the Court.

3. On consideration of the application for registration of the project, the Authority observes as follows: -

i) That a license was granted by the Town and Country Planning Department, Haryana to M/s BVM Projects Private Limited for development of a Group Housing Colony on land measuring 10.38 acres in Sector-80, Faridabad. Said license was granted on 13.04.2007.

ii) That the licensee M/s BVM Projects Pvt. Ltd. entered into a collaboration agreement with M/s Echo Estates (P) Ltd. for undertaking development works with the conditions that the developer will incur all the expenditure and in lieu of land and license, 10% of the built up area shall be allotted to the land owner/licensee.

iii) Later on, M/s Echo (P) Ltd. was re-named as Dhingra Jardine Infrastructure Pvt. Ltd. One Shri Varinder Dhingra was Director and major share holder of the company, who as per the statements made by some allottees, ran affairs of the company single handedly. Shri Varinder Dhingra unfortunately expired in April, 2018. No information has been submitted regarding succession of the shares of the Sh. Virender Dhingra. An information has been submitted on the side of the complaint jurisdiction of this Authority that his children are following the matter for succeeding to the share holding of Shri Varinder Dhingra Deceased Director.

iv) That the total project is comprised of 687 No. of apartments out of which 656 No. have been sold/booked. Reportedly about 60 % of construction work has been carried out. Different towers are at different stages of construction.

v) Most of the allottees were allotted apartments by the year 2006-2007 against which the possession was to be delivered mostly by the year 2011-2012.

vi) The construction work of the project is at stand still for the last about six years. Many allottees have filed complaints before the Authority against the said project and their promoters but a concrete outcome could not be worked out because of death of the main promoter Shri Varinder Dhingra. A perusal of the record of certain complaints, more specifically complaint No.431 of 2018 reveals that a reply on behalf of the respondent has been filed but it is not clear who has filed the reply. The name of the signatory of the reply has not been revealed. A comparison of the signatures, however, reveals that it is not by the same person who had filed the application on behalf of M/S Dhingra Jardine Infrastructure Pvt. Ltd. A further fact has come to the notice that the signature of the Director Shri Binod Kumar Jha who is supposed to have signed the application for registration are totally different on his PAN Card. Interestingly all other documents have been filed by under similar signatures but without revealing the name of the signatory. Apparently, some mischievous person is forging the signatures of the Director Binod Kumar Jha.

vii) This application for registration of the project has been filed by one of the Directors of the company namely Shri Binod Kumar Jha. There is a second Director in the company named Shri Ashok Kumar Trishal. As per record and as per the information available on the web-portal of Ministry of Company Affairs, (MCA) currently there are two Directors in the company. This application for registration of the project on 14.11.2018 is supposed to have been filed by Director Binod Kumar Jha. His signatures on the application however do not tally with the signatures on his PAN Card. Interestingly vide an undated letter placed at page-42 of the correspondence file states that the person signing as Shri Binod Jha is having two signatures. It is not understood how can a person can have two valid signatures. This fact too reveals that there is something wrong with the application.

The information available on the site of MCA reveals that 50% of the shareholders is one Shri Sanjeev Dhingra, 20% Smt. Rajni Dhingra and remaining 30% share are with Shri Virender Dhingra, deceased. There is no information available regarding re-constitution of the Board of Directors after the death of Shri Virender Dhingra. No filing of any kind is available on the site of the MCA since 2015. In these circumstances how was Mr. Binod Jha authorized by the Board of Directors to file this application is not clear. Furthermore, he is not coming forward to pursue this matter.

viii) This application was filed in the office of the Authority on 14.11.2018. the matter there-after has been considered by the Authority on five different dates i.e. 26.11.2018, 2.1.2019, 21.1.2019, 11.2.2019 and 18.2.2019. Supposed signatory Director or any other Directors have chosen not to come before the Authority for perusing this application for registration of the project. This also gives rise to suspicion that this application has been filed by some unauthorized person in order to wrongfully take over the project. Without presence of both the Directors of the Company before the Authority this matter may not get clarified. The authority has given its detailed observations during each of the hearings. The speaking orders on each of the earlier hearings shall be read as a part of this order.

4. Shri Manveer Singh Oberoi who is present before the Authority today requested for registration of the project. He presented the case of the applicants on the strength of being a holder of Power of Attorney. The said Power of Attorney was allegedly executed by Shri Varinder Dhingra who is now deceased. The Power of Attorney was perused by the Authority. It is nowhere stated that the said POA was executed on behalf of the company i.e. M/s Dhingra Jardine Infrastructure Pvt. Ltd. Even though Sh. Dhingra has recognized himself as a Director but it nowhere shows that he was acting on behalf of the company. From the said POA, it appears that it was executed in his personal capacity. Accordingly, as per law of the land after death of the executor of the POA, the document becomes invalid. Accordingly, Sh. Oberoi has no locus standi before this Authority to represent the applicant.

5. The Authority observes that as one of the Directors of the appellant's company has unfortunately expired, rest of the Directors should take charge and follow the prescribed procedure under the law and appoint a new management by holding General Body Meeting. Nothing of this sort has been done in the matter. If a duly appointed management of the company comes up before the Authority, their request can be considered in accordance with the provisions of the RERA Act, 2016.

6. It was stated by Shri Oberoi that majority of the allottees have entered into an agreement with him for completion of the remaining development work by paying additional amount of Rs.495/- per Sq.ft. Reportedly, under the arrangement Shri Manbir Singh

Oberoi will also be authorized to sell the unsold inventory in the project.

7. Now in the absence of an authorized representative or the Director who has signed the application for registration the registration of the project cannot be allowed otherwise it will amount to handing over the project in the hands of an unauthorized person. The Authority will not handover the project to an unauthorized person. Only duly elected management of the company is competent to file and peruse the application for registration.

8. Today, during the process of hearing, some allottees who called themselves Members of Association of the allottees were present before the Authority. They were being lead by one Shri Vineet Handa, who is probably a Sub Contractor engaged by Shri Manveer Singh Oberoi. While the allottees presented their case that they have invested their hard money in the project and are waiting for the delivery of possession for the last six years but they are being made to suffer mental agony as the developers is not developing the project and the Authority is not registering the project. They further stated that they have entered into an agreement with Mr. Manveer Singh Oberoi for completion of the project by paying an additional amount of Rs. 495/- per sq. ft to him. Accordingly, Mr. Oberoi seeks registration to complete the project on behalf of the purchasers, but practically it will amount to substituting Mr. Oberoi for the developer company i.e. M/s Dhingra Jardine Infrastructure Pvt. Ltd.

The Authority has no power to handover any project to any individual. The Authority however has power to handover the project to the association of the allottees by following the provisions of Section 8 of the RERA Act. The Authority is in the process to handing over certain projects to the Association, but before doing so, it has to ensure creditability and capability of the Association. Some interim orders in this regard have been passed in complaint case No. 388/2018, 386/2018, 389/2018 (Aditya Bhargava Versus M/s Piyush Buildwell Pvt. Ltd.). So that the interest of the allottees is eventually safeguarded, the allottees of this Project may invoke complaint jurisdiction of this Authority by forming an association of atleast 2/3rd of the allottees. The Authority thereafter will guide them through the process of taking over the project. The manner in which supposed POAs, Shri Manveer Singh Oberoi is wanting to take over the project cannot be permitted by this Authority because his request is not supported by any provision of RERA or even general principle of the law of the land.

9. In the circumstances the Authority observes as follows: -

(i) Only duly appointed Directors of the company are entitled to pursue this matter for registration of the project. Both the Directors should appear personally before the Authority to pursue this matter.

(ii) In so far as the agreement between the allottees and Shri Manbir Singh Oberoi is concerned this Authority will have nothing to do with it. They may however face difficulty in handing over the physical possession of the apartments to Shri Oberoi because they themselves may not be in a legal possession of the apartments. In the absence of legal possession having been handed over by the developer company to the allottees, they cannot pass on valid possession to Shri Oberoi.

(iii) Apparently, Shri Manbir Singh Oberoi has no locus standi to present himself before this Authority. Even the allottees may not have any Authority to press for registration of the project along with granting the rights of development to Mr. Oberoi.

(iv) This Authority however, is duty bound to protect the interest of the allottees, therefore, two third allottees may form registered association and file a separate application by invoking the complaint jurisdiction of this Authority for taking action under Section 8 for handing over the project to the association of allottees. It is made clear that even after handing over of project to the allottees, they will have all the rights to complete the project but they cannot at their own level sell the unsold inventory.

(v) As per agreement 10% of the built up space has to be allotted to the land owner licensee. As per statement 656 apartments out of 687 have already been sold/booked. Whether 10% of the inventory has already been allotted to the land owner licensee has not been clarified. In fact, then the remaining inventory is not sufficient to fulfil this requirement of the agreement. In these circumstances it is also necessary to hear the land owner licensee.

10. In the above circumstances this application, does not appear to be good enough for grant of registration of the project with the Authority. It is accordingly liable to be rejected with a liberty to file a better application by the duly appointed management of the company. Now in exercise of the provisions of Section 5 of the RERA Act Shri Binod Jha the applicant and the second Director Shri Ashok Kumar Trishal are directed to appear before this Authority on 18.03.2019. The Land owner/ licensee M/s BVM Project Pvt. Ltd. is also directed to appear to clarify certain issues listed above. If they fail to appear this application will be rejected and 5% of the fees deposited by them shall be forfeited."

Order dated 18.03.2019:

"This case was discussed in detail by the Authority in its 42nd Meeting held on 18.02.2019 when the Authority passed a detailed order. The said order may be read as part of this order. In the said order dated 18.02.2019, the Authority had inter-alia made the following observations: -

(i) That only the duly appointed Directors of the company were entitled to pursue this matter for registration of the project. Therefore, both the Directors of the applicant company should be personally present before the Authority on the next date of hearing i.e. on 18.03.2019. It was also made clear that in case they failed to appear before the Authority, this application would be rejected and 5% of the fee deposited by them shall be forfeited.

(ii) That Shri Manbir Singh Oberoi, Power of Attorney Holder of the deceased Director of the applicant company had no locus standi to present the case for registration of the project.

(iii) That as per agreement 10% of the built-up space had to be allotted to the land owner licensee. The land owner i.e. M/s BVM Projects Pvt. Ltd. be also directed to clarify the various issues relating to the project.

Today, none of the Directors of the applicant company and the land owner company i.e. M/s Dhingra Jardine Infrastructure Pvt. Ltd. and BVM Projects Pvt. Ltd. appeared before the Authority. Sh. Manbir Singh Oberoi stated that Sh. Ashok Trishal, Director of the applicant company is behind the bars and the other Director namely; Sh. Binod Jha has been absconding due to threat of his arrest. These Directors are facing charges for non-delivery of this project namely; California Country.

Sh. Manbir Singh also stated that the said project has been struck up and they have entered into an MOU/ Power of Attorney to complete the balance construction work of the project. He also stated that they have entered into separate tripartite agreement with majority of the allottees for completion of the project and therefore pursuing this application for registration of the project under the provisions of RERA Act, 2016.

Sh. Manbir Singh also submitted a representation dated 18.03.2019 along with a copy of the agreement dated 20.02.2018 and a copy of Power of Attorney executed by Sh. Virender Dhingra, deceased Director of Dhingra Jardine Infrastructure Pvt. Ltd. and stated that he is competent to pursue the matter with the Authority for registration of the project and complete the balance construction work and to handover the dwelling units to the allottees of the project.

After going through the submission made by Sh. Manbir Singh vide his letter dated 18.03.2019 as well as agreement dated 20.03.2019, the Authority observes that this agreement is not merely an agreement to complete the construction of the project in fact, it is a sale agreement giving full rights to the Contractors (Second Party) which is represented by Sh. Manbir Singh and Sh. Vineet Handa. The Second Party (Contractors) have taken over all the assets of the project with all benefits/ revenue to be accrued in future by sale of the assets of the

project without any liabilities which is against the provision of Section-15 of the Act. The relevant portion of Section-15 is reproduced as under:

“(1) The promoter shall not transfer or assign his majority rights and liabilities in respect of a real estate project to a third party without obtaining prior written consent from two-third allottees, except the promoter, and without the prior written approval of the Authority.”

After consideration, the Authority reiterated its stand that only the duly authorized directors are competent to pursue this application for registration of the project and Sh. Manbir Singh Oberoi has no locus standi to appear the Authority and press for the registration of the project.

The Authority also noted that there are a nos. of FIRs/ court cases which have been filed against the promoters of the project. This was pointed out by another registered association of the allottees of the dwelling units of the project. This association is apparently not in favour of handing over the project to Sh. Manbir Singh Oberoi. The Authority is of the view that the board of directors in the present case seems to have become defunct as one of the directors is behind the bars and the other director is absconding and the power of attorney alleged to have been executed by the deceased Director becomes infructuous after the death of the executor. This power of attorney is no longer a valid instrument. Otherwise also, in the circumstances Sh. Manbir Singh Oberoi has no locus standi to pursue this matter for registration of the project.

In view of the above, the Authority decided to reject the application and refund the registration fee after deducting 5% of the fee as per policy of the Authority. As regards allottees, they are free to form an association in accordance with Section-8 of the RERA Act and pursue the matter with the Authority for taking over the project for its completion.”

(ii) Almost all the complainants are seeking either handing over of the possession of the apartments or refund of their money. Since, in view of the facts of the case, an order of refund will be quite difficult to be executed, therefore, the complainants have asked for alternate relief of giving possession of the apartments to them.

(iii) Now the factual situation has to be realised that main promoter of the project Shri Dhingra is no more. His son Shri Sanjeev Dhingra is in jail. A duly constituted Board of Directors of the company is not in existence. At present virtually there is no body available who can legitimately be called as Managing Director, or full time director of the company. As is apparent from the above quoted order dated 18.02.2019 and 18.03.2019 certain persons are trying to take over the project without any proper legal authority. In the absence of entire management of the company, claims and counter claims are being laid to catch hold of the assets of the company including the assets of the project. This Authority cannot recognise the company like M/S H.S. Oberoi as legitimate promoters of the project. Mr. Oberoi may pursue the legal remedies available to him in case he insists that the GPA/Agreement is a legal, valid and enforceable document but this Authority holds a different view and does not consider him to have stepped into shoes of the promoter by virtue of the said GPA, especially when the executor of the GPA is no more.

(iv) No clear cut way forward for resolving the grievances of the allottees is in sight. The complainants as well as their counsels are also at loss to put-forward a plan of action for completion of the project.

5. The Authority after due consideration could decide to consider handing over the project as a whole or towerwise to the Associations of allottees provided two third of them could come together and prove their seriousness



before the Authority in accordance with the principles laid down in **Complaint case No. 89 of 2019 titled Piyush Heights Residents Towers J & K Welfare Association vs M/s Piyush Buildwell India Ltd.** in which the projects have been decided to be handed over to the Association of allottees. The allottees of this project as a whole or of individual towers will have to go through a similar process. Various associations may also have to coordinate with each other for completion of the infrastructural works. It surely will require lot of commitment.

6. Surely the allottees of this project have suffered delay and mental agony. They also deserve to be compensated. This issue regarding compensation however will come into picture only after the completion of the project and handing over the possession to the allottees. The compensation will remain legally enforceable claim of the complainants against the respondent company to be satisfied from the unsold inventory or any other assets of the respondent company. This matter, however, will be resolved once the principle issues regarding completion of apartments and handing over of possession to the allottees has been taken care of. On the next date of hearing, the allottees should come up with this proposed plan of action in accordance with the guidelines given above for taking over of the project in accordance with rule 8 of the RERA Act, tower-wise or the project as a whole.

7. Simultaneously, State Govt, in Town & Country Planning Department should also express their views for taking over of the project in

accordance with amended section 18 of the Haryana Development and Regulation of Urban Areas Act, 1975. Adjourned to 14.11.2019.



RAJAN GUPTA
[CHAIRMAN]



ANIL KUMAR PANWAR
[MEMBER]



DILBAG SINGH SIHAG
[MEMBER]

