



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

1. COMPLAINT NO. 559 OF 2018

GLM Buyers Welfare AssociationCOMPLAINANT(S)

VERSUS

Global Land Masters Pvt. Ltd. erstwhile M/s Bhoomi Infrastructure Company
.....RESPONDENT(S)

2. COMPLAINT NO. 1373 OF 2018

Rajesh SoodCOMPLAINANT(S)

VERSUS

Global Land Masters Pvt. Ltd. erstwhile M/s Bhoomi Infrastructure Company
.....RESPONDENT(S)

3. COMPLAINT NO. 603 OF 2019

Narinder Kumar GuptaCOMPLAINANT(S)

VERSUS

Global Land Masters Pvt. Ltd.RESPONDENT(S)

4. COMPLAINT NO. 613 OF 2019

Madhu AggarwalCOMPLAINANT(S)

VERSUS

Global Land Masters Pvt. Ltd.RESPONDENT(S)

CORAM:	Rajan Gupta	Chairman
	Anil Kumar Panwar	Member
	Dilbag Singh Sihag	Member

Date of Hearing: 10.11.2020

Hearing: 15th (in complaint no. 559 of 2018)
12th (in complaint no. 1373 of 2018)
10th (in complaint nos. 603,613 of 2019)

Present: - Ms. Rupali S. Verma, Counsel for the complainant through
video conference
(in complaint no. 559 of 2018)

Mr. Kashmir Singh, Mr. Ajay Chandel, Mr. Arun
Aggarwal, Representatives of complainant association in
person
(in complaint no. 559 of 2018)

Mr. Rajiv Malhotra, Counsel for the complainants through
video conference
(in complaint nos. 603, 613 of 2019)

None for complainant
(in complaint no. 1373 of 2018)

Mr. Surjeet Bhadu, Counsel for the respondent through
video conference



ORDER (RAJAN GUPTA - CHAIRMAN)

1. On the last date of hearing i.e.15.09.2020 an application of the respondent promoter was adjudicated upon in which it was requested by the respondent that the project should not be and cannot be handed over to the association of allottees. The request of the respondent was declined and detailed reasoning thereof was given in the said order.

2. Today, first of all, Ms. Rupali Verma, Advocate, ld. counsel for the complainant association in complaint No.559 of 2018 stated that she may no longer to be treated as counsel for the complainant association because the association has entered into a Memorandum of Understanding (MoU) with the respondents for getting the project completed through the respondent itself. She stated that in her view this course of action is not in the interest of the complainant association, therefore, she is disassociating herself from the process.

3. An application has been filed by one Sh. Virender Gandhi requesting for impleading him as complainant in this matter. The said application was filed under order 1 Rule 10 of the Civil Procedure Code read with section 37 and section 38(2) of the RERA Act.

The argument put forward by Sh. Kamal Dahiya, Advocate, ld. counsel for the applicant is that the instant applicant had booked 64 flats in respondent's project against lawful consideration and by operation of law.

Accordingly, he has become an allottee of the project. Further, argument put forwarded by Sh. Kamal Dahiya is that the complainant association has not put forwarded all relevant facts before this Authority. Those facts are in the knowledge of the applicant Sh. Virender Gandhi, therefore, he should be allowed to be impleaded as a party. Further, the applicant has substantial interest in the outcome of the adjudication of the instant case and he would like to place on record certain important documents, decrees, final orders and judgments etc. passed by various courts having civil and criminal jurisdiction. Also, arbitration proceedings headed by Hon'ble Justice R.C. Lahoti were going on between the applicant and the respondent. An arbitration award has been announced in favour of the applicant Sh. Virender Gandhi. Sh. Kamal Dahiya further stated that the applicant has filed 23 cheque bounce cases against the respondent company as well as its Director, Sh. S. S. Deswal and his son who is Director in the company. They have been convicted by the court of learned District Judge and they have undergone imprisonment for a short term. Now Sh. Deswal is on bail. He has been granted last opportunity by the court of Ld. ADJ to settle this matter amicably otherwise he would again be sent to jail on the next date of hearing i.e. 07.11.2020.

Sh. Kamal Dahiya further stated that an MoU was executed between Sh. Virender Gandhi and Deswal in 2013 under which 23 flats at that time were allotted to them. For that reason, Sh. Virender Gandhi is an allottee of

the project. It has been prayed by Sh. Virender Gandhi applicant that he should be allowed to be impleaded as a party in the present complaint no. 559 of 2018.

4. An application dated 09.10.2020 has been filed by Sh. Surjit Bhadu, Advocate, learned counsel for the respondent. He stated that this application is being filed jointly by the complainant association as well as the respondent builder after reaching an amicable settlement. A meeting of the complainant association and the respondent took place 27.09.2020 where in the association unanimously decided that remaining construction of four towers may be done by the company itself in a transparent manner with the funds collected from the allottees under the order/guidelines of RERA, Panchkula. Shri Bhadu stated that all the allottees have given consent to this proposal. The said joint proposal has been annexed as Annexure-A with the application.

In brief, as per the joint proposal, ₹68 crores are outstanding to be collected from the allottees and about ₹43 crores are required for completion of four towers of the project. Further, construction work shall take-place in accordance with guidelines issued by RERA, Panchkula from time to time. All the money collected from the allottees shall be put into an escrow account to be utilised for completion of the project. Several other terms and conditions have been highlighted including that the respondent-promoters will get the license renewed from the Director, Town & Country Planning Department.

In the end it has been prayed that this Authority may get the project completed in accordance with the terms of the MoU.

6. The Authority has gone through the aforesaid submissions. It observes and orders as follows:

- (i) The information furnished by Ms. Rupali Verma, Advocate, is taken on record. It is noted that she had advised the complainant association that the terms of the MoU are not in the interest of the members of the complainant association.
- (ii) Regarding the application filed by Shri Virender Gandhi, the Authority observes that the argument of Shri Gandhi is that he should be treated as an allottee in the project by virtue of various MoUs executed by him with the respondent. The Authority observes that keeping in view the facts of the relationship between the applicant Shri Varinder Gandhi and the respondent, Shri Gandhi can only be treated as a partner or a co-promoter of the project. His position cannot be equated with rest of the allottees including the allottees who are members of the complainant-association. As per facts contained in the application of Shri Gandhi, 64 flats were to be allotted to him. An arbitration award passed by the arbitrator Hon'ble Justice R.C. Lahoti has been announced under which in lieu of 41 flats Shri Gandhi will be entitled to recover ₹20.30 crores as principal

and the interest thereon at 12% per annum from the year 2014-2015. It was verbally stated by the learned counsel for Shri Gandhi that this amount will work out to about ₹37.00 crores.

The argument of Shri Gandhi is that in respect of remaining 23 apartments (64-41) he continues to be an allottee of the project therefore his application should be allowed and he should be allowed to join the present proceedings initiated by the association.

- (iii) The Authority is not inclined to agree with the contentions of Shri Gandhi. The present proceedings are going on for handing over the project to the association of allottees in exercise of the powers conferred upon the Authority by Section 8 of the Act. To become a party to these proceedings, a person/allottee should become a member of the association at his own level. Keeping in view the stated historical background of the applicant and the respondent, the applicant cannot be treated equivalent to the rest of the allottees. Prime facie the applicant can only be treated as a partner or a co-promoter of the project. Shri Gandhi however, is at liberty to file his own independent complaint to prove his status as an allottee of the project and claim his rights in accordance with the provisions of the RERA Act. The Authority cannot order

his inclusion as an allottee in the complainant association. The application filed by Shri Gandhi is therefore rejected.

- (iv) Regarding the application filed by the respondent through Shri Surjeet Bhadu, Advocate, learned counsel for the respondent, the Authority observes that strictly in terms of the provisions of Section 8 of the 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."
- (v) The Authority observes that ₹43 crores as stated by respondent are to be invested in the project for completion of four towers. A letter dated 14.10.2020 has been received from Punjab & Sind Bank, the lending institution, in which it has been stated that ₹102.14 crores are recoverable by the bank from the respondent. Also, respondent has to pay EDC charges to Town and Country Planning Department running into crores. In addition to these liabilities, in accordance with the award of the Hon'ble arbitrator, another about Rs.37.00 crores are to be paid to Mr. Virender Gandhi. Accordingly, the liabilities of the project far exceed the total amount collectable from all the allottees.

- (vi) Accordingly, if the project remains in hands of the respondent-promoter, above liabilities are unlikely to be discharged by any reasonable imagination. How will funds be generated to discharge above liabilities has not been disclosed. There are several other lacunae in the MoU executed between the association and the respondent. No specific time frame has been specified in regard to renewal of license, payment of overdue EDC and discharging other liabilities towards banks and financial institutions. The Authority fails to understand that without discharging these liabilities how the promoter will go ahead for completion of the project.
- (vii) The Authority, therefore, considers that it will not be appropriate for it to participate in the process as suggested in the MoU executed between the complainant association and the respondent company. The Authority decides to strictly follow the provisions of the Section 8 of the Act. The Authority has repeatedly ruled that the rights of the allottees of a project shall be held superior to the rights of any other person or institution including the rights of the lending institutions. In complaint No. 381 of 2018 titled Chetan Verma & Anr. versus M/s ABW Infrastructure Pvt. Ltd. & Ors., the Authority had laid down detailed principles in this regard.

(viii) The Authority therefore rejects the route suggested in the MoU between the complainant and the respondent. It would continue to follow the process of handing over of project to the association of allottees.

7. The complainant association once again is directed to take action as follows:

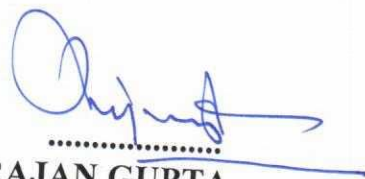
(i) Obtain an affidavit from each of the members showing therein the cost agreed to be paid, the amount already paid, and the remaining amount to be paid. Further, a commitment should be made that entire outstanding amount due to be paid to the developer shall be paid to the allottee. Also, a commitment should be given that estimated cost of the project for its completion shall be shared, proportionately by all the allottees first by paying the overdue amount and then making proportionate contribution towards the additional cost, if any.

(ii) The allottee association should open an escrow account to be jointly operated by two persons. All the allottees should be asked to deposit an amount of one lakh as expression of their seriousness for participation in the process.

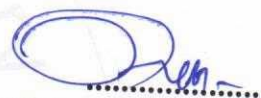
(iii) The association has already estimated the expenditure to be incurred for completion of four towers of the project. The association shall decide the modalities for awarding various

contracts for completion of the project with the help of some expert agency. Detailed information in this regard should be placed before the Authority.

8. Complainant association in the first instance should comply above directions. Further directions will be given on the next date of hearing.
9. Case is adjourned to 15.12.2020.



RAJAN GUPTA
[CHAIRMAN]



ANIL KUMAR PANWAR
[MEMBER]



DILBAG SINGH SIHAG
[MEMBER]