HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

1. COMPLAINT NO. 559 OF 2018

GLM Buyers Welfare Association ....COMPLAINANT(S)

VERSUS

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

2. COMPLAINT NO. 1373 OF 2018

Rajesh Sood ....COMPLAINANT(S)

VERSUS

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

3. COMPLAINT NO. 603 OF 2019

Narinder Kumar Gupta ....COMPLAINANT(S)

VERSUS

Global Land Masters Infratech Pvt. Ltd. ....RESPONDENT(S)

4. COMPLAINT NO. 613 OF 2019

Madhu Aggarwal ....COMPLAINANT(S)

VERSUS

Global Land Masters Infratech Pvt. Ltd. ....RESPONDENT(S)

5. COMPLAINT NO. 969 OF 2020

Just Build Infratech Pvt. Ltd. ....COMPLAINANT(S)

VERSUS

Global Land Masters Infratech Pvt. Ltd. ....RESPONDENT(S)

6. COMPLAINT NO. 1176 OF 2020

Tripta Sharma ....COMPLAINANT(S)

VERSUS

Global Land Masters Infratech Pvt. Ltd. ....RESPONDENT(S)

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

Date of Hearing: 29.09.2021

Hearing: 22st (in complaint no. 559 of 2018)
19th (in complaint no. 1373 of 2018)
17th (in complaint nos. 603,613 of 2019)
8th in complaint nos. 969, 1176 of 2020)

Present: - Mr. Ravi Sharma, counsel for the complainant association
(In complaint no. 559 of 2018)

Mr. Rajesh Sood, complainant in person
(in complaint no. 1373 of 2018)

Proxy counsel for the complainants through video conference
(in complaint nos. 603, 613 of 2019; 1176 of 2020)

Mr. Karan Gaba, counsel for the complainant through video conference
(in complaint no. 969 of 2020)

Mr. Surjit Bhadu, counsel for the respondent through video conference
(in all complaints)

Mr. Rajiv Garg, representative of respondent

<u>ORDER</u> (RAJAN GUPTA - CHAIRMAN)

1. This matter was last heard on 14.09.2021 when the complainant association filed an affidavit before the Authority, the gist of which was captured by Authority in its order dated 14.09.2021.

2. Today, reply to the aforesaid affidavit has been filed by respondents-promoter and a copy has been supplied to learned counsel for the complainant in Court.

3. In brief, case of respondents as put forth by Shri Surjit Bhadu, learned counsel for the respondent is that complainant association does not have requisite number of members with them to entitle them to take over the project for completion at their own level nor have they demonstrated any plan for mobilization of adequate funds for undertaking the task. Further, there are multiple Resident Welfare Associations and claims of rival associations have

not been considered by the Authority. It has been argued that respondent-promoter is landowner and developer of the project, therefore, they are vital stake holders in the towers under construction as well as in the towers which are yet to be taken up for construction. It is argued that interests of respondents should also be adequately protected. Further, it has not been demonstrated that representatives of complainant association are duly elected by General Body of the Association. Further, individual buyers have executed Builder Buyer Agreements with respondents, therefore, this authority is not competent to wipe out legal obligations of respective parties agreed upon under the agreements. It has been further argued that respondents are fully competent to complete the project. The project could not be completed because of non-payment of due amount by the complainants. Further ₹70 crores are recoverable from allottees of the project and if that money is paid by allottees then respondents can easily complete the project. A joint proposal has also been given by the respondents and an association of some of the allottees but same has not been considered by the Authority.

4. Shri Ravi Sharma, learned counsel for complainant association and Shri Rajesh Sood, office bearer of the complainant association argued that they already have 261 allottees who have become members of Association and if 50 untraceable allottees and 9 allottees who have applied for refund of their money and are not interested to take possession are taken out, the complainant association has also already achieved 2/3rd majority of remaining allotees and

thus they have adequate number for consideration for taking over the project as per the provisions of the RERA Act, 2016. It was reiterated that 220 allottees have already submitted their affidavits and more will submit their affidavits once they are assured that Authority will hand over project to the Association of the allottees for completion.

5. It was argued on behalf of complainant association that total cost of completion of project is about ₹62.5 crores, however, if finishing work of apartments belonging to partners of respondents is taken out then expenditure required for completion of project may be about ₹47.84 crores. Out of this ₹47.84 crores, ₹27.28 crores will be collected from members of the association. Further, whenever, Authority decides to handover the project to the complainants' association for completion, remaining allottees will also become members and an another ₹16 crores would be collected from them. In this way, only a gap of ₹ 3-4 crores will remain which can be bridged by several means including by way of sale of unsold inventories, additional contributions from allottees or any other lawful means approved by this Authority.

6. Learned counsel Shri Ravi Sharma and Shri Rajesh Sood argued that the association has been working hard. The association has already got estimates and bill of quantities prepared, it has adequate number of allottees with them to constitute 2/3rd majority, therefore, they are now matured enough to take over the project and go ahead.

7. The Authority after consideration observes and decides as follows:-

i) In regard to claim of respondent company that they are capable of completing the project, the Authority refers to its various orders, more particularly the order dated 03.09.2019 in which it has been clearly observed that respondent company has severally defaulted in completing the project in the past, nor have they been able to demonstrate their capability of completing the project in future. Some observations made by the Authority in this regard are reproduced below:

a) Order dated 24.07.2019:

> "2. Mr. Abhimanyu Deswal, Director of the respondent company, during the course of earlier hearings of this case had projected that the company was in the process of arranging funds for carrying out the remaining development works, so that the possession can be delivered to the allottees. The case thereafter remained adjourned for two dates and today, Mr. Jaswant Singh, Ld. Counsel for the respondent company, has informed the Authority that the company has not been able to arrange funds. So, the Authority needs to examine the prayer of the Resident Welfare Association (RWA) of complaint case no. 559 of 2018 for allowing it to take over the project."

b) Order dated 03.09.2019:

> "6. The Authority observes as follows:-
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> (i) Today is 10th hearing of this matter. First set of complaint against the respondent company was

filed in September, 2018. Complaint No. 559, 1373 of 2018 and 603, 613 of 2019 During 7-8 hearings spanning over a period of about one year the respondent developer has been taking the plea that he is negotiating with various financers for arranging funds for completion of the project. As is evident, after a lapse of such a long period of time that the respondents have been making false statements about making arrangements for funds. Apparently, they do not have sufficient credibility in the market to be able to arrange finances for the project."

c) Order dated 10.11.2020:

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

d) Order dated 15.12.2020:

"7. After careful examination of the respective submissions made by the rival parties, the Authority observes and order as follows:

.....(iv) A perusal of the last few orders and the statements recorded in this order would lead to an unmistakeable conclusion that at present neither the promoter has financial wherewithal to complete the project nor are allottees presenting themselves as a unified association for taking over of the project. Two rival associations have been formed each claiming membership of 40-50% of allottees. The Authority will not be able to hand over the project to any association unless it demonstrates that at least two third allottees of the project are its members. While one association M/S Amazon Allottees Association is willing to get the project executed through the promoter the other association being representated by Shri Shekhar Verma is vehemently opposing to such a solution. In the face of such rivalry between the associations, the project does not seem to be heading in any direction.

(v) In the face of the fact that neither the promoter is in a position to complete the project nor the alottees are able to come together to form one association of at least two third allottees, the project is in doll drums. If no solution is found, the Authority will dispose of the matter by passing appropriate orders in which eventuality the only option that will remain will be to initiate liquidation proceedings under Insolvency & Bankruptcy Code, 2016. Needless to mention that this will be a loose loose situation for all."

e) Order dated 28.06.2021 in project hearing:

"Nobody is present on behalf of the promoter applicant nor any information has been received in respect of the observations made by the Authority in its orders dated 12.04.2021. It appears that the

> promoters are neither interested in developing the project nor they are in a position to do so. The Authority is aware that from its complaint jurisdiction, that a process is going on for handing over the project to the Association of Allottees.
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> 2. In view of the observations made by the Authority this project is not possible to be registered in the present form. This matter is adjourned sine-die to be revived later at an appropriate stage. In the meantime, the outcome of the proceedings on the complaint side regarding handing over of project to the Association of Allottees will be awaited."

Despite getting numerous opportunities from this Authority to arrange funds and commence construction works of the project, respondents have not taken any step forward. The respondents have not even been able to clear cheques which were issued by them to some of the complainants. The cheques have bounced because respondents do not have adequate balance in the bank to satisfy claims of the complainants. Keeping in view conduct of respondents and their utter inability to demonstrate their financial capacity to complete the project, Authority considers claim of respondents to be able to complete the project themselves totally unfounded and baseless. Therefore, Authority is unable to accept argument of the respondent that they have capability to complete the project.

ii) Regarding objection of the respondents regarding inadequacy of number of members in complainant association for taking over the project, it is observed that before handing over the project to complainant association, the Authority will ensure that the Association has adequate number of members as well as sufficient resources and other infrastructures to take over the project and to complete the same. It is only when the Authority feels fully satisfied at its own level that the project will be handed over.

However, Authority observes that on the basis of the fact that 220 affidavits have already been submitted before the Authority, and there is possibility of more members joining the association, the Authority observes that the Association has adequately demonstrated that they have either already or will be able to gather support of requisite number of allottees for taking over the project. On this account, there appears no problem in considering the claim of the complainant for taking over the project.

iii) In view of repeated failure of respondent company to fulfill various assurances given before this Authority as well as to the allottees, and in view of adequate mobilization of number of members by the complainant association, Authority considers that there appears to be no other option but to get the project completed through complainant association. The Authority, accordingly, decides in principle to handover the project to the complainant association. On the strength on this finding of the Authority, complainant association may start the process of increasing their membership and generating resources.

iv) It is understood that complainant association has got bills of quantities prepared from technical experts. The said bill of quantities has to be converted into tender notice/notices for inviting prospective bidders for undertaking construction works of the project. After inviting tenders, lowest bidders will be to be awarded contract/contracts. Authority advises the association to prepare proper tender documents in consultation with experts on the subject. The tender documents should be prepared in two parts, first part being technical bid, and second part financial bid. Financial bid of only those bidders should opened who qualifies in the technical bid. Such tender notices and documents should be approved in the General Body Meeting of the allottees. Tenders should be opened and evaluated also before General Body of the allottees. Thereafter, request should be made to this Authority for allowing the Association to finally take over the project with a permission to award contracts for construction to suitable bidders.

v) Authority clarifies that before actually awarding tenders atleast 25% of the total funds required for completion of the project should be collected and put into a dedicated account of the association. This is to ensure that once construction works begins, the same should go on smoothly.

vi) Authority clarifies that respondents at any stage prior to awarding contracts of construction to successful bidders will be free to arrange funds and demonstrate before this Authority its capability to complete the project. The Authority will consider such a request and an opportunity will be given to the respondent's company to deposit requisite funds in a dedicated account for completion of the project.

9. Adjourned to **17.11.2021**. Respondent is also directed to pay ₹1,87,288/- to the Authority as expenses incurred for conducting forensic audit on or before the next date of hearing.

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RAJAN GUPTA
[CHAIRMAN]

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ANIL KUMAR PANWAR
[MEMBER]

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DILBAG SINGH SIHAG
[MEMBER]