



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

PROCEEDINGS OF THE DAY

Day and Date	Thursday and 16.01.2020
Complaint No.	E115/225/2018 of 2019 Case titled as Greenopolis Welfare Association Versus Orris Infrastructure Pvt. Ltd. & another.
Complainant	Greenopolis Welfare Association
Represented through	Sh. Vijay Buddhiraja, Member of Association in person with Shri Venket Rao, Advocate.
Respondent	Orris Infrastructure Pvt. Ltd. & Another
Respondent Represented through	Sh. J.K.Dang, Advocate for R-1 Orris Infrastructure Pvt. Ltd. Shri Dhananjai Jain and Bhoop Singh Advocates on behalf of Three C Shelter Pvt. Ltd. Mr. Sanjeev Anand, Advocate for applicants M/s Delhi Brass and Metal Works (Pvt.P Ltd. and Ors. With Mr. B.Parameswaran, Chief Legal Officer. Shri Anchit Oswal, Advocate on behalf of VISTRA ITCL (India) Limited applicant.
Last date of hearing	14.01.2020
Proceedings Recorded by	Ms. Naresh Kumari
Present	
Dr. K.K. Khandelwal	Chairman
Sh. Samir Kumar	Member
Sh. Subhash Chander Kush	Member

- At the very outset, the Authority has asked the Counsel for the respondents/promoters whether the directions contained in the Authority's order dated 23.1.2019 have been complied with or not?
Their immediate response/answer to this query is "No"
- The Authority, after reading the order dated 23.1.2019, has further clarified from them as to whether "any of the single directions" contained in that order dated 23.1.2019 have or have not been complied with"?
Their answer remains the same i.e. "No".
- The counsel for the respondents/promoters have agreed that the order dated 23.1.2019 passed by this Authority has been confirmed by the Haryana Real Estate



Appellate Tribunal, Chandigarh in Appeal No. 158 of 2019 vide order dated 23.12.2019. Hence no dispute remains so far as the directions contained in the order dated 23.1.2019 passed by this Authority and the compliance of these directions is concerned.

4. Therefore, the Authority proceeds to deal with the matter. Vide orders dated 23.01.2019 passed by the Authority and confirmed by the Hon'ble Appellate Tribunal, the following directions were issued to both the Promoters/Developers i.e. M/s Orris Infrastructure Pvt. Ltd. and M/s Three C Shelters Pvt. Ltd.

- (a) M/s Orris Infrastructure Pvt. Ltd. shall disclose 35% of built up units allocated to them under the development agreement and 35% saleable area in the Greenopolis project within one month to the authority so that these are put in public domain.
- (b) The details of land and license cost actually incurred by M/s Orris Infrastructure Pvt Ltd. along with all supporting documents be provided to the authority so that this could be put in public domain as per requirement of law.
- (c) The matter regarding completion of the project, execution modalities, payment schedule, availability of funds have already been deliberated by the authority in this order, accordingly, action is to be taken by the promoters.
- (d) Regarding audit and investigation by an independent agency, M/s Currie & Brown and M/s Quantum Project Infra have already done the audit and on the finding of the financial auditor, action plan for completion of the project has been drawn.
- (e) As per affidavit submitted by the promoter Three C Shelters Pvt Ltd., following schedule for completion of the project has been given:

(i) Phase I	Tower No. 15 to 31	31.07.2019
(ii) Phase II	Tower No. 1 to 12	31.03.2020
(iii) Phase II	Tower No. 12A, 14, 22 to 29	31.12.2020

Accordingly, they are directed to complete the project in compliance with the above schedule.

- (f) M/s Orris Infrastructure Pvt. Ltd., being the licensee, shall get the license renewed as and when due within reasonable time and obtain other necessary statutory approvals for which statutory payment shall be made from the escrow amount.
- (g) Escrow Account No. 558011059169 of the project has already been opened with Kotak Mahindra Bank, NOIDA in which sale proceeds of assets dedicated by way of an affidavit dated 08.01.2019 and 23.01.2019 by Three C Shelter Pvt. Ltd. for the project and also future collections from all sold and unsold inventories will be deposited by the promoters. The money from the said

account can only be drawn for payment of construction purposes of the project and payment of EDC/IDC and other statutory dues. Money from the said account shall be drawn **under the signature of both promoters or their authorised signatory** following the due procedure as prescribed in the Act, rules and regulations made thereunder and after obtaining permission from the Monitoring officer.

- (h) Promoters are directed to cover the 'nalla' (chemical effluent drain) flowing through the Greenopolis project at the earliest preferably before the completion of Phase-II and certainly before the completion of the project after taking due approval from the competent authority.
- (i) The promoters are also directed to submit detail of EDC/IDC collected from the allottees in case it has been charged separately from them.
- (j) The parties shall be at liberty to approach the authority for any clarification.
5. The directions passed in this regard by the Authority were not complied with. So the Authority vide different orders and lastly vide order dated 8.11.2019 directed taking of coercive steps to get these directions complied with and ordered as follow:
- Account No.38164449254, maintained at SBI, Nehru Place, New Delhi by M/s Three-C Shelters Pvt. Limited maintained by the respondent No.2 is hereby ordered to be freezed.*
 - M/s Three-C Shelters Pvt. Limited is directed to disclose the details of its accounts and it is directed not to withdraw any amount from those accounts till proper disclosures is made to this authority.*
 - Since M/s Three-C Shelters Pvt. Limited i.e. respondent No.2 has not disclosed its account till now, so forensic audit of its account as well as its other associated accounts or any other account in which either there is an apprehension or possibility of syphoning of funds is ordered to be audited by way of **Forensic Audit** by a Chartered Accountant firm, the name of which would be given in writing by the complainant out of the approved list of such auditors within a period of 7 days.*
 - 10 acres of land, a part of the project being additional land in Sector 89, Gurugram which had been attached during the course of complaint proceedings vide orders dated 12.07.2018 to protect the interest of the home buyers has been lying at the spot. So, the same be put to auction and warrants for sale of that property be issued to District Collector, Gurugram.*
Secondly, four plots mentioned in affidavit dated 08.01.2019 given by Mr. Ravi Bhargav, an authorised signatory of M/s Three C Shelter Pvt. Ltd. were also attached by this Authority vide orders dated 03.10.2019. Except the property mentioned in the earlier part of the order and situated at Nehru Place, New Delhi, other properties situated i.e. Plot No. Sc-01/C9, measuring 8000 sq mtrs., Plot No. Sc-01/C5, measuring 20,000 sq mtrs and Plot No. Sc-01/C1/A, measuring 16408.50 sq mtrs all situated in Sector 79, NOIDA within the revenue district of Gautam Budh Nagar, (Uttar Pradesh) be put to sale in order to raise

- funds to the tune of Rs.334.05 crores for the completion of the entire project and handing over possession of the units to the respective allottees. Warrants for sale of the above-mentioned properties be sent to the District Magistrate/Collector of Gautam Budh Nagar as well as Chief Executive Officer, NOIDA, Uttar Pradesh.
- v. The respondents are also given a period of one month from the date of this order to comply with the directions issued by this Authority vide orders dated 23.01.2019 failing which the Directors as well as Promoters/Developers of both the companies shall appear in person on 10.12.2019 to show cause as to why they be not committed to civil imprisonment as provided under Order XXI Rule 37 Code of Civil Procedure.
- vi. Directors, promoters and developers of both the respective companies mentioned above are also directed to disclose their moveable as well as immoveable assets of their respective companies as well as their personal one on an affidavit as provided under Order XXI, rule 41 CPC on or before the date fixed.
6. Now the immediate concern of the Authority is to get the construction work commenced which is stand still from the year 2016. The attention of the Authority was drawn by the counsel of the complainant as well as counsel of the respondents towards para 71 of the order of the Haryana Real Estate Appellate Tribunal in the Appeal No. 158 of 2019 which is reproduced below:

"It is further pertinent to mention that during the pendency of the appeal both the appellant as well as respondent No. 2 had filed their proposal for completion of the project. But it has been informed that the learned Authority is already monitoring the project. So, they can submit their proposals to the learned Authority for consideration. However, it is made clear that the proposal so submitted will not debar the learned Authority to take steps already being taken by it for the completion of the project. During the pendency of this appeal, a sum of Rs. 52.5 cores has come to the EXCROW account of this project. It is directed that this amount shall be exclusively used to meet out the construction and labour expenses and for no other purpose."

7. Keeping in view the orders dated 23.1.2019 in complaint No. 225/2018 titled as Greenopolis Welfare Association Versus M/s Orris Infrastructure Pvt. Ltd. & others Orders dated 3.10.2019 and 8.11.2019 in Execution Petition No. E115/225/2018 of 2019 Case titled as Greenopolis Welfare Association Versus M/s Orris Infrastructure Pvt. Ltd. & another, the following directions are issued:

- I As Respondents had filed their proposal for completion of the project before the Haryana Real Estate Regulatory Tribunal Chandigarh, they are at liberty to file the same before this Authority on or before 24.01.2020 along with a copy of the same to the complainant. The complainant may submit their observations on the proposal by 31.01.2020. The matter will be heard on 03.02.2020 by the Authority to consider the completion plan of the project.

- II As per directions of the Haryana Real Estate Appellate Tribunal Chandigarh, a sum of Rs. 52.5 crores in the separate account of this project shall be exclusively used to meet out the construction and labour expenses and for no other purpose.
- III The promoters have failed to complete construction of Phase-I, II and III of the project as per their commitment as has been recorded in the order dated 23.01.2019 of this Authority as reproduced below:
 As per affidavit submitted by the promoter Three C. Shelters Pvt. Ltd., the following schedule for completion of the project has been given:
- | | |
|--|------------|
| (i) Phase I Tower No. 15 to 31 | 31.07.2019 |
| (ii) Phase II Tower No. 1 to 12 | 31.03.2020 |
| (iii) Phase II Tower No. 12A, 14, 22 to 29 | 31.12.2020 |
8. The legal action for failure of the promoter to complete the project in compliance of the above schedule and action as initiated in the Execution petition shall continue as per law.
9. M/s Three C. Shelter Pvt. Ltd. through their authorized signatory filed an application for change of contractor. The Authority perused the request dated 10th September, 2019 of M/s Three C. Shelters Pvt. Ltd. signed by the authorized signatory regarding termination letter for the existing contract at site as under:
- I Termination of contract of the existing contractor at site – Zavista Realtors LLP
- II Change of the Bank Signatory from Mr. Ravi Bhargav to Surpreet Singh Suri;
- III Appointment of new contractor M/s Rapti Developers & Promoters(I) Pvt. Ltd.
- Following documents have also been submitted:
- (i) Termination letter for the existing contractor at site – Zavista Realtors LLP
- (ii) Authorization request to change the Bank Signatory from Mr. Ravi Bhargav to Surpreet Singh Suri;
- (iii) Board Resolution of M/s Three C Shelters Private Limited authorizing the above change.
- (iv) Board resolution of M/s Three C Shelters Private Limited authorizing Mr. Surpreet Singh Suri to represent the company & to execute the development.
- (v) Contract Documents of the New Contractor M/s Rapti Developers & Promoters (I) Pvt. Ltd.
- (vi) Copies of the documents submitted to the Bank for the change of Bank signatory.

10. Further vide their letter dated 28.11.2019 M/s Three C. Shelters Pvt. Ltd. through their authorized signatory submitted proposal for the development plan for completion of Phase-I of Greenopolis project as under:

- I Target date of commencement of the work for the Phase I: 6th Dec., 2019
While we intended to commence the construction before 6th Dec., 2019, the complete ban on any sort of construction activities as imposed by the Hon'ble National Green Tribunal is an impediment. The construction at full pace will be initiated after the ban is over. Copy of the NGT order is enclosed herewith as Annexure A
 - II During the construction period, we would ensure the continuation of the construction at full pace, in this regard, please find attached the following:
 - (i) The schedule of civil and interior work – Annexure B
 - (ii) Services work Schedule – Annexure C
 - (iii) Services Order status – Annexure D.
 - III To commence the construction at site, we have to release the payments to the service providers/vendors, so that they can start mobilizing their resources with immediate effect. We request you to please approve the release of an amount of Rs. 50.99 lacs approx. as 10% advance to these service providers/vendors. Details attached as per Annexure D.
 - IV The terms of the contract with Zavitsa Realtors LLP for Civil and Interior work for Phase-1 have already been approved by your good office. Considering the interest of the homebuyers and stringent timelines, we would continue the construction for phase 1 under the same contract as the contractor is abreast of the site conditions and requirements and worked on the site till August, 2019.
 - V Target date for the completion of Phase 1 by end of March, 2020.
- Timeline for completion of Ph-2 and Ph-3 shall be submitted in due course."

11. Thereafter, the minutes of the meeting under the chairmanship of Chief Investigation and Monitoring Officer dated 27.12.2019 (which was attended by Mr. Surpreet Singh Suri, Authorized Signatory for M/s Three C Shelters Pvt. Ltd. and Sh. Vijay Budhiraja, Member, Buyers Association) was placed before the Authority and the Authority with the consent of promoters during proceedings decided to allow change of contractor subject to justification to be given to CIMO. In pursuance of the above meeting, the Authorized Signatory of M/s Three C Shelters Pvt. Ltd. filed an affidavit dated 31.12.2019. The contents of affidavit are reproduced below:

1. "On behalf of the Three C Shelters Private Limited I will submit the comparative cost structure/contract price of both the contractors for

phase-1 of the project to justify the change. He will also get all pending dues of existing contractor cleared and submit no dues certificate from the contractor along with affidavit. Change of Contractor will follow thereafter.

2. On behalf of the Three C Shelters Private Limited I will take into confidence all his fellow promoters/director of 3 C Shelters Pvt. Ltd. and wherever required coordinate with Orris Infrastructure Pvt. Ltd. while taking any significant decision relating to different phases of the project to the best of my ability.
3. On behalf of the Three C Shelters Private Limited I will ensure compliance of necessary statutory approvals needed for the smooth execution of the project.
4. On behalf of the Three C Shelters Private Limited I will arrange to provide suitable working space for office at site to M/s Orris Infrastructure Pvt. Ltd. as per JDA between 3 C and Orris for appropriate use by the latter.
5. Mr. Surpreet Singh Suri shall represent M/s 3C Shelters Pvt. Ltd. in the Monitoring Committee headed by the CIMO and shall actively work in coordination with other Members including two representatives of GWA and a member from M/s Orris Infrastructure Pvt. Ltd. i.e. Mr. Vijay Gupta, CMD or his nominee.
6. In case of any issue of compliance of the above or other matters it will be brought to the attention of CIMO and the committee for further review or action"

12. The work of phase 1 was to be commenced from 6th December, 2019 and was to be completed by 31st March, 2020 and the commencement of construction is already delayed. Now, in view of these facts that have come to the notice of the Authority in the preceding para, the Authority directs the promoters to start work of Phase 1 by 1st of February, 2020. If work is not commenced on or before 1st February, 2020, the promoters shall be liable for a penalty of Rs. 1 Crore per day individually, which may go up to 5 percent of the cost of the real estate project as determined by the Authority. The Authority further directs that the promoters shall complete the construction work of phase 1 on or before 30th April, 2020. In case work is not completed by 30th April 2020 the promoters shall also be liable for a penalty of Rs. 1 crore for each day of delay individually which may go up to 5 percent of the cost of the real estate project as determined by the Authority. The request of the Three C. Shelters Pvt. Ltd. Dated 28.11.2019 and further affidavit dated 31.12.2019 was concurred by the Authority subject to the time schedule as mentioned above and further request for change of contractor including balance work of phase 1. Both the counsels of respondents have agreed to this during course of hearing. As per the due diligence report the cost of balance work in Phase 1 has been

estimated to be Rs. 17.23 crore and the Authority here by puts a ceiling to withdraw amount out of the separate account of this project to this extent and for any expenditure over and above this amount excluding the amount required for development of common facilities necessary for operationalization of Phase 1 for which an amount as authorized by CIMO may be withdrawn. An affidavit in this regard would be filed by the contractor on or before 24.01.2020 so that the timeline for completion of the Phase 1 of the project is adhered to.

13. For payment of bills, the authorized signatories will sign the cheques/RTGS and payment shall be released only after the bill is verified by the Engineer appointed by the Authority. This process of payment shall be completed within a period of one week after the bill/s is/are submitted. It has been noticed that the authorized signatory of M/s Orris Infrastructure Pvt. Ltd. has been withholding the payments without any justification. In such an event the same will be put up before the Commissioner Investigation and Monitoring Officer for decision. Before releasing any payment, permission of CIMO shall be obtained to ensure compliance of the Haryana Real Estate Regulate Tribunal directions. The reasonability of rates and payment shall be verified by the Superintendent Engineer, to be appointed by the Authority.
14. The promoters are directed to submit a completion plan and schedule for completion of Phase 2 and Phase 3 on or before 24.01.2020 along with a copy to the complainant.
15. The license holder is duty bound to get his license renewed, registration of the project done and clear all dues in respect of EDC and IDC. Despite various directions of this authority M/s Orris Infrastructure Pvt. Ltd. as promoter has failed to do the needful for which separate action is being taken. But for the completion of the project and for issuing of OC, these formalities are necessarily required, which may be done by 29th February, 2020, otherwise penal proceedings shall be initiated against the concerned promoters.
16. With regard to failure to comply with the directions issued from time to time in complaint No. 225/2018 Case titled as Greenopolis Welfare Association Versus Orris Infrastructure Pvt. Ltd. & another. and Petition No. E115/225/2018 of 2019 Case titled as Greenopolis Welfare Association Versus Orris Infrastructure Pvt. Ltd. & another, proceedings will be taken up on 03.02.2020.
17. There is a decree passed by this Authority for compliance of specific directions which have not been complied with by the promoter respondents. The authority proposes to enforce that decree by way of attachment of the property and detention

in civil prison of the directors and including those with whose connivance, noncompliance took place and also to those persons on whose part the noncompliance attributed or who were negligent in complying with the directions of the Authority. The order of the Authority duly falls within the ambit of order 21 rule 32 CPC as well.

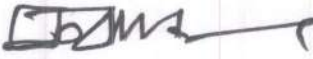
18. Since the respondent promoters, developers as well as directors have also failed to disclose their movable as well as immovable assets of their respective companies as well as their personal one on affidavits as provided under order 21 rule 41, so they are liable to be proceeded for this default under order 21 rule 41(3) CPC. Therefore, the Authority directs all the directors and other officers of respondent companies who were looking after day to day affairs business at the time of execution of the agreements to sell of different residential units in the Greenopolis project with the complainants, receipt of payments from them and also the present directors as well as promoters/developers shall appear in person without any fail or excuse of whatsoever on the next date of hearing i.e. 03.02.2020. The counsel for the respondents committed their presence on the next date of hearing.
19. A direction was also given to M/s Three C. Shelters to disclose the details of its accounts and not to withdraw any amount from those accounts till proper disclosures are made to this Authority. However, that order was not complied with. So the directors of the company in connivance with other officers shall be deemed to be guilty and are liable to be proceeded against under order 21 rule 41(3) CPC.
20. Confronted with this legal position, the counsel for respondents have given an oral undertaking at the bar that the present directors of both the promotor/developer companies shall furnish the details of their bank accounts along with the details of their movable and immovable properties, their personal accounts and also a detail with regard to the erstwhile directors, persons responsible for day to day business of the companies and other officers, changes in the names of the directors with effect from the date of agreements to sell with the complainants of the Greenopolis project on the affidavits duly signed by them and attested as per the law by 24.01.2020 in sealed covers.
21. The promoters are directed to furnish the following information on affidavits on or before 24.01.2020 as per the commitment of their respective counsels:
 - (i) M/s Orris Infrastructure Pvt. Ltd. shall disclose 35% of built up units allocated to them under the development agreement and 35% saleable area in the Greenopolis project.
 - (ii) The details of land and licence cost actually incurred by M/s Orris Infrastructure Pvt. Ltd. along with all supporting documents to be provided to the Authority.

- (iii) M/s Orris Infrastructure Pvt. Ltd. to provide details of all statutory approvals.
 - (iv) The promoters are also directed to submit detail of EDC/IDC collected from the allottees.
 - (v) The promoters are also directed to give an affidavit w.r.t. to the status of statutory renewal/approvals.
 - (vi) M/s Three-C Shelters Pvt. Limited is directed to disclose the details of its accounts and details of money drawn after 08.11.2019.
22. Vide order dated 08.11.2019, respondents were given a period of one month from that date to comply with the directions issued by this Authority on 23.01.2019 as detailed in para 4 of this order. The directors/promoters/developers of both the companies were further directed to appear in person as to why they be not committed to civil imprisonment as provided under Order 21 Rule 37 CPC. They were also directed to disclose their movable as well immovable assets of their respective companies as well as their personal one on an affidavit as provided under Order 21 Rule 41 CPC. However, none of these directions have been complied with by them. Therefore, they are liable to be proceeded against under these provisions of CPC.
23. Order 21 Rule 32 CPC inter alia deals with a decree for specific performance. Vide order dated 23.01.2019 this Authority had issued specific directions to the respondents and they were legally bound to perform and obey those directions. However, they failed to comply with the same. Therefore, action is liable to be taken against them under Order 21 Rule 32 and the directors and other principal officers as detailed in para 18 are liable to be put in civil prison.
24. Order 21 Rule 37 CPC deals with issuing show cause notice to the judgement-debtor against detention in prison where he does not obey a money decree. Vide order dated 08.11.2019 this Authority had inter-alia directed Three C Shelters Pvt. Ltd. to disclose the details of its accounts and to not to withdraw any amount from those accounts till proper disclosure is made to this Authority. This direction, in the considered opinion of this Authority, amounts to a money decree and hence is actionable under Order 21 Rule 37 CPC.
25. Order 21 Rule 41 CPC deals with examination of judgement-debtor as to his property if he fails to comply with the directions issued under Order 21 Rule 41(1). The non-compliance is made actionable under Sub-Rule 3 of Rule 41 which inter alia provides that the person disobeying the order under Rule 41(1) may be detained in the civil prison for a term not exceeding three months unless before the expiry of such term the court directs his release. In the present case such a direction has already been issued to the directors of the respondents on

08.11.2019. Therefore, action under order 21 rule 41(3) CPC is liable to be initiated against them.

26. This order shall also be construed as notices issued under Order 21 Rule 32, Order 21 Rule 37(3) and Order 21 Rule 41(3) CPC by all the persons detailed in para 18 above.
27. Needless to say that the directors of both the companies along with other persons as detailed in para 18 above shall appear in person on the next date 03.02.2020 without any fail on which date they shall also file replies to the show cause notices issued under Order 21 Rule 32, Order 21 Rule 37(3) and Order 21 Rule 41(3) CPC.
28. Matter is adjourned to 03.02.2020.


(Subhash Chander Kush)
Member
16.01.2020


(Dr. K.K. Khandelwal)
Chairman
16.01.2020


(Samir Kumar)
Member
16.01.2020