

Date of SCN: 09.10.2018

Date of decision: 07.02.2019

Subject: Action against the promoter M/s Sahara India Corporation Ltd. on account of non-registration of the project in contravention of the provisions of Section 3(1) the Real Estate (Regulation and Development) Act, 2016.

Present:-

1. Mr. Jaibir Sharma, Assistant Town Planner, HARERA
2. Mr. Nitish Chinnia, Planning Executive, HARERA

ORDER

1. This matter relates to show cause notice issued to M/s Sahara India Corporation Ltd., for not making an application for registration in the specified time period and for non-registration of ongoing project under proviso to section 3(1) of the Real Estate (Regulation & Development) Act, 2016.

As per the information available on website of DTCP, Haryana regarding list of licenses issued so far, it has been observed that license number 28 of 1999 dated 26.4.1999 on an area measuring 10.98 acres for the development of residential in group housing project titled Sahara Gur-28RGH situated in Sector 28 in village Chakkarpur was issued in favour of Sahara India Commercial Corporation Ltd., by DTCP, Haryana. It has further been noticed from the information available on website of DTCP Haryana that the promoter has not obtained completion

certificate for the above residential group housing project in accordance with the terms and conditions of the license. Therefore, as on now the licensee and the promoter of the project ibid does not have completion certificate for the project.

2. Section 3(1) of the Haryana Real Estate (Regulation and Development) Act, 2016 provides as under :

"Provided that projects that are ongoing on the date of commencement of this Act and for which the completion certificate has not been issued, the promoter shall make an application to the Authority for registration of the said project within a period of three months from the date of commencement of this Act"

The completion certificate of the project has not been issued so far by the Director, Town and Country Planning as per the information available on the web site and the promoters have also admitted the same fact that Town and Country Planning Department Haryana has not issued the completion certificate to Sahara India Commercial Corporation Limited for this project. Accordingly as per proviso to section 3(1) application for registration of the project was to be made to the authority within a period of three months from the date of commencement of this Act. As per record available with the authority so far no such application has been made.

3. It is pertinent to mention here that for the projects where completion certificate has not been issued it is mandatory for the promoter to apply for registration within a period of three months from the date of



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हरियाणा भू-संपदा विनियामक प्राधिकरण गुरुग्राम

New PWD Rest House, Civil Lines, Gurugram, Haryana

नया पी.डब्ल्यू.डी. विश्राम गृह, सिविल लाईंस, गुरुग्राम, हरियाणा

- commencement of the Act i.e by 31st July, 2017 as this Act came into being on 1st of May 2017. It is further to be noted that the word used in section 3(1) is "completion certificate" not the "occupation certificate".
4. Section 3(2) of the Haryana Real Estate (Regulation and Development) Act, 2017 provides the categories of the projects where no registration of the real estate project shall be required. Here also the project where the promoter has received the completion certificate for a real estate project **prior to the commencement of this Act have been exempted not the projects where** completion certificate has not been received but only application has been made to the Director Town and Country Planning Department Haryana. Accordingly, strictly as per the provisions of the Act this project is not saved from registration under section 3(2) of the Act *ibid*. It is pertinent to mention here that although M/s Sahara India Commercial Corporation Ltd., has applied for completion certificate on 30.12.2008 for the project Sahara Gur-28RGH measuring 10.98 acres with license no. 28 of 1999 dated 30.12.99. Only making an application is not exempted from registration but projects where completion certificate has been received prior to the commencement of this Act are only exempted apart from two other categories mentioned therein in section 3(2)(a) and 3(2)(c).

The fact of the matter is that Town and Country Planning department has not issued completion certificate so far for the reasons not explained by the promoter during hearing, the authority is of the

Email : hareragurugram@gmail.com, reragurugram@gmail.com, **Website :** www.harera.in
An Authority constituted under section 20 the Real Estate (Regulation and Development) Act, 2016
Act No. 16 of 2016 Passed by the Parliament

भू-संपदा (विनियमन और विकास) अधिनियम, 2016 की धारा 20 के अर्तगत गठित प्राधिकरण
भारत की संसद द्वारा पारित 2016 का अधिनियम संख्यांक 16

view that project is registrable going strictly by the provisions of this Act. Section 3(2)(b) reads as under :

"Notwithstanding anything contained in sub-section (1) no registration of the real estate project shall be required -

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Where the promoter has received completion certificate for a real estate project prior to commencement of this Act"

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5. This project is not saved under section 3(2)(b) of the Real Estate (Regulation and Development) Act, 2016 and is covered under the definition of "on-going projects" as defined under rule 2(O) of the Haryana Real Estate (Regulation and Development) Rules, 2017 which provides as under :

"Ongoing project" means a project for which a license was issued for development under the Haryana Development and Regulation of Urban Area Act, 1975 on or before the 1st May, 2017 and where development works were yet to be completed on the said date, but does not include:

- (i) Any project for which after completion of development works, an application under rule 16 of the Haryana Development and Regulation of Urban Area Rules, 1976 or under sub code 4.10 of the Haryana Building Code 2017, as the case may be, is made to the competent authority on or before publication of these rules and*
- (ii) That part of any project for which part completion/completion, occupation certificate or part thereof has been granted on or before publication of these rules*

6. Reading section 3(1) and 3(2) jointly will make it amply clear that on going projects are those where completion certificate has not been issued as the conclusive proof of completion of a project is the issuance or receiving of the completion certificate. As admitted by the promoter

that completion certificate has not been received by them accordingly their project is an on going project.

7. In case of ongoing projects on the date of commencement of this Act and for which completion certificate has not been issued, the promoter shall have to make an application to the authority for registration of the said project within a period of three months from the date of commencement of this Act.
8. Here the words used are 'project for which completion certificate has not been issued'. It is not the occupation certificate but the completion certificate. This Act does not provide that completion certificate is same as the occupation certificate. Keeping in view the provision of the Haryana Real Estate (Regulation and Development) Rules, 2017 we may even take such projects out of registration where part completion/ completion, part occupation/ occupation issued prior to commencement of the rules i.e. before 28th July, 2017. For remaining ongoing projects, we may allow three months thereafter to make an application for registration.
9. If we look at the definition of completion certificate, it is corresponding to the certificate issued under rule 16 of the Haryana Development and Regulation of Urban Area Rules, 1976. If we look at the definition of occupancy certificate, it is corresponding to sub-code 4.10 of the Haryana Building Code, 2017. The definitions of completion certificate and occupancy certificate are different. The

intent and purpose of both are different and when the Act uses the word 'completion certificate' it has to be completion certificate and not the occupation certificate. Accordingly, exemption on the basis of occupancy certificate is not as per the provisions of the Act, but keeping in view the definition of ongoing projects given in rule 2(o), we may give benefit of exclusion from the definition of ongoing project to those part projects where part occupation/ occupation has been granted prior to publication of the Haryana Real Estate (Regulation and Development) Rules, 2016.

10. Difference between completion certificate and occupation certificate:

One has to understand the difference between completion certificate and occupation certificate. Both these terms have been defined in this Act i.e. the Real Estate (Regulation and Development) Act, 2016. Section 2(1)(q) defines completion certificate whereas section 2(1)(zf) defines occupancy certificate as under:-

"completion certificate" means the completion certificate, or such other certificate, by whatever name called, issued by the competent authority certifying that the real estate project has been developed according to the sanctioned plan, layout plan and specifications, as approved by the competent authority under the local laws.

"occupancy certificate" means the occupancy certificate, or such other certificate by whatever name called, issued by the competent authority permitting occupation of any building, as provided under local laws, which has provision for civic infrastructure such as water, sanitation and electricity.

11. It is clear from the definitions of occupancy certificate and completion certificate that these are two different certificates and

the purpose of issuing each of these certificates is different. These two certificates cannot be equated, and one cannot say that occupancy certificate is completion certificate and vice-versa. The Real Estate (Regulation and Development) Act, 2016 defines these two certificates viz. completion certificate and occupancy certificate separately. The use of the term 'completion certificate' makes clear the intention of the legislature that only those projects where completion certificate has been issued prior to coming into force of this Act have only been kept out of purview of registration under the Act in section 3(1) and 3(2)(b).

12. It is to be noted that the term completion certificate has been used and not the term occupancy certificate or both in section 3(1) as well as in section 3(2)(b). In the Haryana Development and Regulation of Urban Area Act, 1975 wherein licences are granted for the projects the term completion certificate has not been defined but in rule 16 of the Haryana Development and Regulation of Urban Area Rules, 1976 the following provision has been made under the heading completion certificate/part completion certificate: -

16 "Completion certificate/Part Completion Certificate [Section 24]. -

[(1) After the colony has been laid out according to approved layout plans and development works have been executed according to the approved designs and specifications, the coloniser shall make an application to the Director in Form LC-VIII alongwith a demand draft on account of Infrastructure Augmentation Charges as per the rates prescribed in the Schedule-B of these

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rules if not paid earlier in accordance with the provision of Section 3(7) of the Act."

- (2) *After such scrutiny, as may be necessary, the Director may issue a 2-completion certificate/part completion certificate in form LC-IX or refuse to issue such certificate stating the reasons for such refusal: Provided that the colonizer shall be afforded an opportunity of being heard before such refusal.*

13. From Rule 16 of the Haryana Development and Regulation of Urban Area Rules, 1976 as quoted above it is clear that whenever colony has been laid out i.e. project has been completed according to approved layout plans and development works have been completed according to approved designs and specification, completion certificate/ part completion certificate is issued by the competent authority. In these rules there is no mention of occupation certificate as completion certificate is in respect of a colony/ project whereas occupation certificate is in respect of a building. The purpose of occupation certificate is entirely different from the purpose of the completion certificate.
14. In the Haryana Building Code, 2017 provisions of occupancy in clause 1.2(1)(xi) and occupation certificate in code 4.10 are as under:

"Occupancy" means the main purpose for which a building or a part of building is used or intended to be used;

4.10 Occupation Certificate

"The provision of occupation certificate is provided in clause 4.10 of the Haryana Building Code, 2017 as under:

- (1) "Every person who intends to occupy such a building or part thereof shall apply for the occupation certificate in Form BR-IV(A) or BR-IV(B), which shall be accompanied by certificates in relevant Form BR-V(1) or BR-V(2) duly signed by the Architect and/ or the Engineer and along with following documents:
- (i) Detail of sanctionable violations from the approved building plans, if any in the building, jointly signed by the owner, Architect and Engineer.
 - (ii) Complete Completion drawings or as-built drawings along with completion certificate from Architect as per Form BR-VI.
 - (iii) Photographs of front, side, rear setbacks, front and rear elevation of the building shall be submitted along with photographs of essential areas like cut outs and shafts from the roof top. An un-editable compact disc/ DVD/ any other electronic media containing all photographs shall also be submitted.
 - (iv) Completion certificate from Bureau of Energy Efficiency (BEE) Certified Energy Auditor for installation of Rooftop Solar Photo Voltaic Power Plant in accordance to orders/ policies issued by the Renewable Energy Department from time to time.
 - (v) Completion Certificate from HAREDA or Bureau of Energy Efficiency (BEE) Certified Energy Auditor for constructing building in accordance to the provision of ECBC, wherever applicable.
 - (vi) No Objection Certificate (NOC) of fire safety of building from concerned Chief Fire Officer or an officer authorized for the purpose.
- (2) No owner/ applicant shall occupy or allow any other person to occupy new building or part of a new building or any portion whatsoever, until such building or part thereof has been certified by the Competent Authority or by any officer authorized by him in this behalf as having been completed in accordance with the permission granted and an 'Occupation Certificate' has been issued in Form BRVII. However, Competent Authority may also seek composition charges of compoundable violations which are compoundable before issuance of Form BRVII. Further, the water, sewer and electricity connection be released only after issuance of said occupation certificate by the Competent Authority.
- (3) The 'Occupation Certificate' shall be issued on the basis of parameters mentioned below: -
- (i) Minimum 25% of total permissible ground coverage, excluding ancillary zone, shall be essential for issue of occupation certificate (except for industrial buildings) for the first time or as specified by the Government: Provided, in case of residential plotted, minimum 50% of the total permissible ground coverage shall be essential to be constructed to obtain occupation certificate,



where one habitable room, a kitchen and a toilet forming a part of submitted building is completed.

- (ii) The debris and rubbish consequent upon the construction has been cleared from the site and its surroundings.
- (4) After receipt of application, the Competent Authority shall communicate in writing within 60 days, his decision for grant/ refusal of such permission for occupation of the building in Form BR-VII. The E-register shall be maintained as specified in Code-4.8 for maintaining record in respect of Occupation Certificate.
- (5) If no communication is received from the Competent Authority within 60 days of submitting the application for "Occupation Certificate", the owner is permitted to occupy building, considering deemed issuance of "Occupation certificate" and the application Form BR-IV (A) or BR-IV(B) shall act as "Occupation Certificate". However, the competent authority may check the violations made by the owner and take suitable action.
- (6) If the owner or Architect or Engineer or Consultant as mentioned in Code 4.10(1) (i), (iv) and (v) as the case may be, submits a wrong report while making application under this Code or if any additional construction or violation is reported to exist at site or has concealed any fact or mis-represented regarding completion of construction of building along with its eligibility for seeking occupation certificate or before the completion of such report, he shall be jointly and severally held responsible for such omission and complaint against the Architect for suspension of his registration and the owner shall be liable to pay for the penalty as may be decided by the competent authority after giving an opportunity of hearing. Further, if it is emerged that the information is concealed by Engineer/Consultant/ Owner, necessary penal proceedings will be initiated along with debarring Engineer/ Consultant/ Architect from practicing in the State of Haryana."

15. From the above provisions it is clear that occupation certificate is given to a person who intends to occupy a building or part thereof, who applies for the occupation certificate in the prescribed form to be accompanied by necessary certificates as mentioned and duly signed by the architect and/or engineer alongwith certain documents as mentioned above. The purpose of occupancy certificate is to allow a person to occupy a building or a part of new

building or any portion after being certified by the competent authority.

16. From the above discussions it is clear that occupation certificate is not completion certificate. Accordingly, in those cases where completion certificate/part completion certificate has not been issued those projects are to be registered under the Real Estate (Regulation and Development) Act, 2016. At the most that part of the project may be exempted from registration where part completion has been obtained. The occupation certificate is granted under the Haryana Building Code, 2017 and is certainly not part completion certificate / completion certificate of the project. Because these certificates are granted by competent authorities for different purposes under different Acts/Rules/Codes.
17. Keeping in view rule 2(0) of the Haryana Real Estate (Regulation and Development) Rules, 2017, the defence raised by the promoter that their project does not come under the definition of ongoing project as defined in rule 2(0) of the Rules ibid needs to be examined in detail. If one goes through the proviso to section 3(1) of the Act and 3(2)(b) it will come out that projects where completion certificates have been issued prior to commencement of this Act have only to be exempted from registration. Accordingly, all projects where completion certificate has not been issued which

is the conclusive proof of the completion comes under the ambit of ongoing projects and are, therefore, registrable.

18. Now let us examine as which projects are registrable under section 3(1). The main part of section 3(1) provides for prior registration of all projects and puts a bar on the promoter not to advertise, market, book, sell or offer for sale etc. Accordingly, all new projects shall have to be registered by the promoter as well as projects where completion certificate has not been issued are to be registered. The proviso of section 3(1) reads as under :-

"No promoter shall advertise, market, book, sell or offer for sale, or invite persons to purchase in any manner any plot, apartment or building, as the case may be, in any real estate project or part of it, in any planning area, without registering the real estate project with the Real Estate Regulatory Authority established under this Act.

Provided that projects that are ongoing on the date of commencement of this Act and for which the completion certificate has not been issued, the promoter shall make an application to the authority for registration of the said project within a period of three months from the date of commencement of this Act.

Provided further that if the Authority thinks necessary, in the interest of allottees, for projects which are developed beyond the planning area but with the requisite permission of the local authority, it may, by order, direct the promoter of such project to register with the Authority, and the provisions of this Act or the rules and regulations made thereunder, shall apply to such projects from that stage of registration"

If we analyse this proviso it says that

- i) **"projects that are ongoing on the date of commencement of this Act" and**
- ii) **for which completion certificate has not been issued are to be registered.**

Here it is not that both the conditions are different i.e. ongoing projects are different than the projects where completion certificate has not been issued and the word 'and' in this proviso is superfluous as the intention of the legislature is where-ever completion certificate has not been issued they are the ongoing projects as the projects exempted from registration are only those projects where completion certificate has been issued prior to the commencement of this Act. Accordingly, the project in question i.e. Sahara Gur-28RGH is an ongoing project as per the provision of the Act and it is not exempted from registration under section 3(2)(b). Section 3(2)(b) exempts only the projects where completion certificate has been issued. Hence rest of the projects where completion certificate has not been issued are to be registered.

19. Examination of rule 2(O) whether it provides any relief to the promoter :

Definition of Ongoing Projects:

20. Although, no definition of the ongoing project has been given in the RERA Act, 2016, but in the Haryana Real Estate (Regulation and Development) Rules, 2017 in rule 2(1)(o) ongoing project has been defined as under: -

"on-going project" means a project for which a license was issued for the development under the Haryana Development and Regulation of Urban Area Act, 1975 on or before the 1st May, 2017 and where development works were yet to be completed on the said date, but does not include:

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- (i) any project for which after completion of development works, an application under Rule 16 of the Haryana Development and Regulation of Urban Area Rules, 1976 or under sub code 4.10 of the Haryana Building Code 2017, as the case may be, is made to the Competent Authority on or before publication of these rules; and
- (ii) that part of any project for which part completion/completion, occupation certificate or part thereof has been granted on or before publication of these rules.

21. Accordingly, a project is an ongoing project if the following two requirements are met: -

- (i) A project for which licence was issued for the development under the Haryana Development and Regulation of Urban Area Act, 1975 on or before 01.05.2017; and
- (ii) Where the development works were yet to be completed on the said date.

22. If we look at the definition of ongoing projects, it is in two parts. The first part provides for the definition of ongoing project and the second part provides two categories of projects which have been taken out of the ambit of the ongoing projects. As far as the part first of the definition is concerned there is no discrepancy and contradiction with the provisions of the RERA Act, 2016. Here, it is to be noted that ongoing projects are those where development works were yet to be completed on the said date i.e. 01.05.2017.

The development works have been defined in the Act in section 2(t) as under:

2(t) . . . "development works" means the external development works and internal development works on immovable property;

23. The conclusive proof of completion of development works for a licensed colony is grant of completion certificate. Accordingly, where development works were yet to be completed i.e. both external development works as well as internal development works on an immovable property till then the project will come under the category of ongoing project.

Exclusions from 'ongoing projects':

24. Now, let us look at the exclusion of projects from the definition of ongoing projects:

(A) First category: Projects where an application for completion or occupation certificate is applied before publication of rules and where development works are completed.

In this category all projects which have been excluded from the definition of ongoing projects the following are the requirement for exclusions:

- (a) Any project for which after completion of development works, an application under Rule 16 of the Haryana Development and

Regulation of Urban Area Rules, 1976 is made to the competent authority on or before publication of these rules; or

- (b) Any project for which after completion of development works, an application under sub code 4.10 of the Haryana Building Code 2017, is made to the competent authority on or before publication of these rules;

25. In most of the cases without completion of development works and completion of other prerequisites applications have been made to the competent authority and merely by making an application to the competent authority for completion certificate/ occupation certificate, these projects have been taken out of the purview of the ongoing project. No time limit has been prescribed to decide such applications. If an application has been made which may be defective or incomplete or it has not been made as per the requirements for issuing of completion certificate/ occupancy certificate, then these projects cannot be kept out of the purview of the ongoing projects.
26. In this particular case the application for completion certificate has been made long back but it was not meeting with the pre-requisites for issuing of completion certificate hence Director, Town and Country Planning Department has not issued the completion certificate and this is an incomplete application. Incomplete application is not an application in the eyes of law. Accordingly,

benefit of this definition can not be given to the promoter. It is also pertinent to mention here that this part of definition also excludes where for the full projects completion certificate has been applied and received by the promoter. As is evident the part occupation certificate granted to the applicant is covered under section 3(1) of the Act. If we examine this section it will be clear that part of the project where part occupation certificate has been received at the most that part could have been excluded but for the remaining, may it be small the registration was to be applied.


27. The exclusion given in the ongoing project are contrary to the provisions of the Act as exemption from registration is where completion certificate has been issued prior to the commencement of this Act not to those where part completion has been granted. The promoter has obtained part occupation certificate and as per the claim made by them after part occupation of the project they applied for completion certificate which has not been granted to them. So neither their project in totality is complete keeping in view the completion certificate has not been issued for the whole project nor the occupation certificate has been issued for the project but for part of the project occupation certificate issued. Hence, at least that part of the project for which neither the part occupation certificate has been issued nor completion certificate


has been issued are liable to be registered how-so-ever it may be small.

28. The promoter has failed to submit any document in support of their reply to the show cause notice. For want of necessary documents, the authority has deliberated the issue on the basis of information available on the website of the Town and Country Planning department and the reply submitted by the promoter without any documentary proof. So, keeping in view the above discussion the authority decides that the project is registrable and the promoter has failed to make an application for registration of the same as per requirement of proviso to section 3(1) of the Real Estate (Regulation and Development) Act, 2016.
29. The orders regarding registration of application was pronounced that project is registrable and promoter has failed to submit an application for registration as per proviso to section 3(1) and liable to be proceeded against as per the provisions of the Real Estate (Regulation and Development) Act, 2016 on 29.10.18 with the remarks that detailed order shall follow.

Dated: 7.2.2019

Place: Gurugram


Samir Kumar
Member, HARERA


Subhash Chander Kush
Member, HARERA