

SUNRISE GREENS RESIDENTS WELFARE ASSOCIATION (SGRWA)

12-A, Ahinsa Khand, Indirapuram, Ghaziabad-201014, U.P. (Regd No: 379/2013-14)



To,
The Vice Chairman,
Ghaziabad Development Authority,

Dated: November 30, 2015

Sub: (i) Representation regarding defective Deed of Declaration dated December 22, 2014 submitted by Jaipuria Infrastructure Developers Ltd. in relation to Sunrise Greens group housing located at Plot 12A, Ahinsa Khand, Indirapuram, Ghaziabad-201014.

&

(ii) Order dated November 2, 2015 passed by the Hon'ble High Court of Judicature in Writ C No. 60983 of 2015 [Sunrise Green Residents Welfare Association v Ghaziabad Development Authority & 2 Ors. CERTIFIED COPY ATTACHED.]

Respected Sir,

This is with reference to the captioned subject matters.

A. Background

We are the registered association of apartment owners of the Jaipuria Sunrise Greens, Plot 12A, Ahinsa Khand, Indirapuram, Ghaziabad – 201014 (“Society”). The promoters/builders of the Society i.e. Jaipuria Infrastructure Developers Pvt. Ltd. (“Promoter”) has submitted the Deed of Declaration dated December 22, 2014 (“Deed of Declaration”) in relation to the Society, which is unregistered, incomplete and does not confirm to the prescribed format under the applicable law.

Pursuant to filing objections with the Ghaziabad Development Authority (“GDA”) in relation to the defective Deed of Declaration and requesting the Promoter on several occasions to rectify the defects therein, we were constrained to file a writ petition (bearing no Writ C No. 60983 of 2015) in the Hon'ble High Court of Judicature at Allahabad for redressing our grievances. Accordingly, the Hon'ble High Court was pleased to pass the following order dated November 2, 2015:

‘We accordingly, dispose of the petition with a direction that in the event the petitioner files objection before the Vice-Chairman of the Development Authority regarding the declaration submitted by respondent no.3, the same shall be examined in accordance with the provisions of the Act and the Rules framed thereunder, after hearing the parties concerned, including respondent no.3



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expeditiously and preferably within a period of six weeks from the date of filing of the objections with a certified copy of this order before the Vice-Chairman of the Development Authority.

A certified copy of the order dated November 2, 2015 is annexed herewith and marked as **Annexure A.**

B. Submissions:

In this regard, we would like to make the following submissions:

1. Deed of Declaration is in violation of the Apartment Law

In terms of Section 10 of the U.P. Apartment (Promotion of Construction, Ownership and Maintenance) Act, 2010, ("Apartment Act"), the promoter is under an obligation to file a deed of declaration in the prescribed format and time period. Rule 3 of the U.P. Apartment (Promotion of Construction, Ownership and Maintenance) Rules, 2011 ("Apartment Rules") prescribes the format and the period within which the deed of declaration is required to be submitted by the promoter/builder. In terms of Rule 3:

'The declaration shall be submitted by a promoter under sub-section (1) of section 12 in Form 'A' which shall be submitted by the promoter within a period of 12 months from the date of approval of the plans. Where the building has been constructed or is under construction prior to the commencement of these rules, the declaration shall be submitted within 90 days from the date of such commencement.'

In the instant case, the Promoter not only failed to file the deed of declaration in the prescribed format, but also failed to submit it within the stipulated period of 90 days from the date of commencement of the Apartment Rules (i.e. November 16, 2011).

2. Deed of Declaration is in contempt of the Judgment of the Hon'ble High Court in Writ No. 33826 of 2012

The submission of the defective Deed of Declaration is also in contempt of the judgment dated November 14, 2013 of the Hon'ble High Court in a batch of petitions including Writ No. 33826 of 2012 (*Designarch Infrastructure Pvt. Ltd. v Vice Chairman, Ghaziabad Development Authority & Ors*)(*"November 14, 2013 Judgment"*). Relevant portions of the November



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14, 2013 Judgment in relation to the deed of declaration are extracted below for ease of reference:

'39. The U.P. Apartment Rules, 2011 provide for a form of declaration under Rule 3 to be submitted on Form-A giving all the requirements, which are necessary to be provided under the Act for the benefit of the promoter and the apartment owners regarding common areas and facilities, under Section 3 (1) of the Act, limited common areas and facilities under Section 3 (s) of the Act and independent areas as defined in Section 3 (p) of the Act.....'

.....(41) The U.P. Apartment Act, 2010 and the Rules of 2011 have taken care of every detail for providing ownership of an individual apartment, undivided interest in the common areas and facilities, the delineation of common areas and facilities to be provided in the declaration, formation of association and the rights, duties and liabilities of the promoter and apartment owners. Rule 3 of the U.P. Apartment Rules, 2011 provides for formation of declaration under sub-section (1) of Section 12. The declaration shall be submitted by the promoter under sub-section (1) of Section 12 in Form-A appended to the Rules within a period of 12 months from the date of approval of the plans. Where the building has been constructed or is under construction prior to the commencement of these Rules declaration shall be submitted within 90 days.'

.....

66. ...Considering the number of writ petitions pending and the issues, which are likely to arise, we direct that in view of the provisions of Rule 3 of the U.P. Apartment Rules, 2011 the declaration will be submitted by the promoter under sub-section (1) of Section 12 in Form-A appended to the Rule with its Annexures 'A' to 'F' and Schedule 'A', by all the promoters in the State of U.P., who have completed or partly completed constructions of the buildings with more than three allotted or occupied apartments, with the Competent Authority within one month from the date of approval of the plans and where the building has been constructed or is under construction prior to the commencement of the Act and Rules, within 90 days...

3. Promoter failed to adhere to the GDA public notice dated December 17, 2013

To give effect to the aforesaid legal/judicial developments, the GDA, issued a public notification on December 17, 2013 ("2013 DoD Public Notice"), which notified all the builders about the submission of deed of declaration





under the Apartment Act within 90 days as per the directions contained in the November 14, 2013 Judgment.

4. *Failure to submit the Deed of Declaration within stipulated period disentitles the promoter from the independent and limited common areas and facilities*

- (i) In terms of paragraph 65(8) of the November 14, 2013 Judgment, *the failure to submit the declaration and its enclosure with the deed of transfer and its non registration will disentitle the promoter from claiming common areas and facilities in the property in which the apartments are built to be limited common areas and facilities or independent areas.*
- (ii) Similarly, in terms of public notice dated March 29, 2015, the GDA directed all the promoters within its territorial jurisdiction who have failed to submit the deed of declaration within the stipulated period of 90 days to withdraw themselves from the group housing plot as they stand disentitled from the independent and limited common areas and facilities.
- (iii) Accordingly, we have by our application dated August 26, 2015 submitted to the GDA, prayed for the handover of the Sunrise Jaipuria Plaza located at Plot no.12A, Ahinsa Khand, Indirapuram to our association on the ground that since the Promoter failed to submit the Deed of Declaration within the stipulated period of 90 days, it stood disentitled from claiming common areas and facilities in the property in which the apartments are built to be limited common areas and facilities or independent areas. Copy of the application dated August 26, 2015 is annexed herewith and marked as **Annexure B.**

5. *Main defects in the Deed of Declaration submitted by the promoter*

Contrary to the aforesaid legal/regulatory framework, the Promoter filed an unregistered, incomplete and defective Deed of Declaration dated December 22, 2014 by claiming independent area which shall have adverse effect on the rights of the members in case of redevelopment in future. Set out below are some of the major defects in the Deed of Declaration dated December 22, 2014 submitted by the Promoter:

- (i) Failure to show the commercial area in the declaration, which now stands transferred to the Society pursuant to public notices dated December 17, 2013 and March 29, 2015 issued by the Ghaziabad



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- Development Authority since the Deed of Declaration was not submitted within the prescribed time.
- (ii) Failure to disclose details of the Jaipuria Sunrise Plaza, which is located in the same plot as the Society in order to avoid handing over of the Jaipuria Sunrise Plaza to the Society.
 - (iii) Non-registration of the Deed of Declaration with the competent authority and accordingly it has no legal sanctity. It is also not supported by any affidavit.
 - (iv) The Deed of Declaration has not been certified by an architect.
 - (v) The value of the apartments has not been shown and voting share shown is incorrect.
 - (vi) Residential and commercial areas are mixed and misleading in the Deed of Declaration.
 - (vii) Super area and covered area are not matching.
 - (viii) Electrical and fire fighting assets are not declared.
 - (ix) Plumbing and electrical drawing are not attached.
 - (x) Certain areas which have been declared as independent area in the complex are not correct.
 - (xi) Land boundaries and wall information is wrong.
 - (xii) Most of the unit area mentioned is wrong.
 - (xiii) Proportionate voting share of all flat owner including shop owner declared as one vote, which is incorrect as per the Apartment Act
 - (xiv) Power backup inventory (generator) is missing.
 - (xv) Intercom, gas pipeline, 3 tier security (CCTV) have not provided by the builder.
 - (xvi) Permanent finishing (plaster and paint) has been declared wrongly as the same is incomplete in reality. The painting and plaster in Blocks P, D & E is incomplete

6. Inaction on the part of the Promoter to rectify the defects inspite of several requests

- (i) In spite of all the aforesaid violations, the Promoter has completely ignored our requests to to rectify the defects in the Deed of Declaration Upon coming to know about the Deed of Declaration being uploaded by the GDA on their website, we by way of our letter dated April 9, 2015 raised our objections before the GDA. Accordingly, the GDA by way of its letter dated May 15, 2015 directed the Promoter to appear at its office with relevant documents.
- (ii) However, having received no response from the Promoter in relation to the rectification of the aforesaid defects, we have by our letter dated August 26, 2015 again requested the GDA to direct the Promoter to



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correct the Deed of Declaration and hand over the building to the Petitioner within 15 days. Copies of the aforesaid correspondence dated April 9, 2015, May 15, 2015 and August 26, 2015 is annexed herewith and is marked as **Annexure C (Colly)**. However, the Promoter has not yet initiated any process for rectification of the Deed of the Declaration.

C. Prayer:

In light of the aforesaid submission and in compliance with the order dated November 2, 2015 passed by the Hon'ble High Court in Writ C No. 60983 of 2015, we request you to decide our representation/objections and pass the following directions:

1. Direct the Promoter to file the correct deed of declaration within 6 weeks for Group Housing at plot No.12A, Ahinsa Khand, Indirapuram, Ghaziabad as per original plan dated October 28, 2006 with all correct details as per the prescribed format under the Apartment Act and under Form-A appended to the Apartment Rules duly certified by an architect certified by GDA. .
2. Disentitle the Promoter from common areas and independent areas of the Society comprising Jaipuria Sunrise Shopping Plaza at Plot No.12A, Ahinsa Khand, Indirapuram, Ghaziabad pursuant to your public notice dated March 29, 2015 and further restrain the Promoter from claiming any independent area or putting any building to its own use over plot 12A.

We assure you our full co-operation in resolving the aforesaid issues.


Yours sincerely,

Thanking you,


President

RAVINDRA SAINI




Secretary

SHRI PAL SINGH