

Uttar Pradesh Real Estate Regulatory Authority

Regional Office, H-169, Chitvan Estate, Sector Gamma – 2
Greater Noida City, Gautam buddha Nagar - 201310

No. 450/U.P. RERA/Project/Rehabilitation /NCR/2020-21

Date: 29/07/2020

Order

1. M/s Jaiprakash Associates Ltd (herein after referred as "Promoter") registered its project "Jaypee Kalypso Court" (Phase II) (herein after referred as "Project") with the RERA at the registration number UPRERAPRJ4695. It is a multi-tower group housing development project located in Sector 128, Noida, Gautam Buddha Nagar. The development commenced in January 2008 and comprised of 15 towers. Out of the 15 towers, 7 towers (Towers - 1,2,3,4,14,15,16) had been completed and handed over to allottees before the commencement of the RERA Act and the remaining 8 towers (Towers - 5,6,7,8,9,10,11,12) were registered with U.P. RERA at the above mentioned registration id. Out of the 8 towers in this project, tower nos. 5,6,9,10 have been completed and handed over to allottees, while remaining four towers - 7,8,11,12 are yet to be completed.
2. The completion date of the Project, as given during registration with Uttar Pradesh Real Estate Regulatory Authority, hereafter called as "Authority" has lapsed on 1st July 2018 and the period of extension of one year permissible under Section 6 of the RERA Act would have also ended on 1st July, 2019 had the promoter sought the extension.
3. The promoter M/s Jaiprakash Associates Ltd, failed to complete the project, within the specified period i.e. 1st July, 2018.
4. Progressive Welfare Society, an association of allottees /society bearing registration number GBN/09607/2019-20 registered under the Societies Registration Act on 3rd February 2020, and currently having a membership of 152 members (herein after referred as "AoA") of the tower nos. 7,8,11,12, approached the Authority with request to facilitate the remaining development and construction work so that the allottees would get the possession of their allotted units. It was also stated by the promoter and the AoA that there are 304 units in the project, out of which 152 units have been sold out and in this manner the AoA has the consent of the majority of the allottees of the incomplete towers of the project.
5. The matter was thoroughly considered at the level of the Authority. Keeping in view the need for consensus between the two parties, the Authority nominated Sh. R.D. Paliwal, Consultant Conciliation to reconcile the dispute between the promoter and the association of allottees and suggest appropriate ways and means, in accordance with the provisions of the RERA Act and U.P. RERA Rules, for completion of the project.



6. The Conciliation Consultant held two rounds of meetings respectively on 26th February 2020 and 4th March 2020 to formalize a mechanism for the completion of the development of the project as per understanding between the AoA and the Promoter.
7. The Promoter, vide its letter dated 28th May 2020, agreed to complete the balance work of the concerned towers of the project with the cooperation of the allottees and under the conditions stipulated by the Authority. The text of the promoter's letter dated 28-05-2020 is given below-

"In reference to the meetings held at your office on 20-02-2020 and 04-03-2020, we have agreed to complete the balance works in these four towers of Kalypso Court with the co-operation of the flat buyers under the guidance of UP RERA.

Considering the current scenario arising due to Covid-19 Pandemic, about 3 months time is required for mobilization of resources, namely workers, awarding contracts, procurement of raw material etc. from the date of full opening of Lockdown and signing off on agreeable terms and conditions of association, whichever is later.

JAL will complete the project in about 12-15 months from the date of starting work in these four towers in line with the Pert Chart submitted to your goodself vide letter dated 04-03-2020, wherein, the date of start would stand corrected to be in line with the above mentioned situation arised due to Covid-19.

In the email sent by your good office on the 15-05-2020 there were a two set of document including following –

- 1. Copy of General Body Resolution from Progressive Welfare Society.*
- 2. Observations submitted by Progressive Welfare Society.*

With regard to the above documents, we appreciate consent given by project Kalypso Phase II buyers association society and we two as a company look up to complete the pending project.

Meanwhile, we shall shortly submit our comments to the observations submitted by Progressive Welfare Society provided for, by your good office through your email dated 15-05-2020.

We again reiterate that it will be our continuous Endeavour to complete these balance four towers of project Kalypso Court with due contribution and co-operation of our esteemed flat buyers as enunciated by RERA under your guidance."

The promoter had also submitted details of project financials along with a plan for completion of the Project which is reflected in the minutes of the meeting dated 04-03-2020.

8. There after, AoA submitted a copy of the General Body Resolution of the society dated 8th March 2020 authorizing Sh. Jayesh Patel, the President of AOA and Shri Arvind T Jena to act on behalf of society to make any application/representation/complaint before the Authority and to finalize and approve the draft plan for the completion of the towers 7,8,11 and 12 in the



project Jaypee Kalypso Court and any other party/developer/contractor. AoA made its detailed submissions /observations on the information and completion plan submitted by the Promoter.

9. The conciliation consultant made a reference to the Authority on 02-06-2020 detailing the points of understanding between the parties as arrived at during the meetings held at his level on 26-02-2020 and 04-03-2020.
10. The documents/proposal submitted by the promoter and AoA were examined in the Project Management Division of the Authority. The report of the Project Management Division is as follows:
 - a. In all 274 units out of the total 304 sanctioned units in the towers 7,8, 11, 12 have been sold (as per the details shared by the Promoter) and 30 units are yet to be sold. However, 11 units of the towers are said to have been earmarked towards settlement with allottees of other projects of the Promoter in compliance of the orders of the Authority.
 - b. As per the Promoter the sum of remaining receivables from the sold units to the allottees of these towers is Rs. 90.09 cr and expected receivables from 19 unsold units is about Rs. 25.06 cr at a rate of Rs. 5,800 per sq. ft (launch price of the project).
 - c. As per the Promoter the total net cost of completion of the remaining development work of the project is Rs. 103.03 cr. This includes an amount of Rs. 96.06 towards completing the remaining 4 towers, an amount of Rs. 5.71 cr towards cluster development works and an amount of Rs. 1.01 cr towards the IDC of the master plan. Additional expenditure towards the completion of infrastructure and project related works is estimated to be Rs. 31.12 cr.
 - d. Prima facie, the project has net negative cash flow of about Rs. 19 cr (excluding any other liabilities of the promoter towards the allottees). As per the details shared by JAL and submissions made by AoA, the Promoter owes a sum of Rs.60 cr (approx.) towards the payment of penalty for delay in handing over possession to the allottees as per the terms and conditions of the agreement between the parties.
 - e. The Promoter agreed to contribute a sum of Rs. 45 cr for the development of the project out of which the sum of Rs. 12 cr will be deposited upfront into the separate account of the project to be opened in compliance of the orders of the Authority.
 - f. After taking into account the sum of Rs. 45 cr to be contributed by the Promoter (which also includes the proceeds of unsold units) the project has a positive cash flow of about Rs. 26 cr.
 - g. As per the Promoter the project can be completed within 18 months, including 3 months for resource mobilization.
11. The submissions/proposal of the promoter and the AoA were carefully considered by the Authority in its meeting dated 25/06/2020. The Authority, after careful and thorough deliberation of the proposal submitted by the Promoter and consented to by the AoA and perusal of the reports and the recommendations of consultant conciliation and the Project



Management Division, concluded that the proposal of the Promoter consented to by the AoA is, prima facie, worth accepting in the interest of the allottees of the Project.

12. Therefore, with a view to facilitate the completion of the project in a time bound manner, to protect the interests of the allottees, the Authority, using the powers conferred on it under section 8 of the RERA Act read with section 37 of the Act, other enabling provisions of the Act, the Rules and the Regulations made there under, as per the principle laid down by the Hon'ble Bombay High Court in the Neelkamal Realtors and others vs the Union of India and the Others and in conformity with the Government order dated 26-06-2020 stipulating the guidelines to be followed in such matters, does hereby authorize the promoter, with consent of AoA, to undertake the completion of the remaining development and the construction work of the project, subject to the following terms and conditions:

- a. The AoA shall submit, by 16-08-2020, a general body resolution of the AoA consented by more than 50 percent of the allottees of the towers 7,8,11,12 giving their explicit consent to authorize the promoter to undertake the remaining development and construction work of the project.
- b. A notarized affidavit duly sworn by the promoter for undertaking to complete the balance development work within 18 months including 3 months for resource mobilization. The Promoter shall contribute to the shortfalls in cash flows, if any, during the course of development and construction of the Project and also arising from the project, for completion of the Project within the timelines as contemplated herein.
- c. The promoter shall complete the towers 7,8,11 and 12 as per the completion plan submitted by it and agreed to by the AoA.
- d. The Authority hereby constitutes a project advisory and monitoring committee under chairmanship of Shri Balvinder Kumar hon'ble member UP RERA with CEO Noida, Finance Controller UP RERA, Technical Advisor UP RERA, Consultant Project Management Division UP RERA, Auditor appointed by the Authority, concerned Bank/Financial Institution and the AoA as members for monthly monitoring of the project.
- e. The Authority will review the progress of the project on quarterly basis.
- f. The Authority, on its website, will shift the project to the special category of projects under Rehabilitation as per the provisions of Section 8 of RERA Act. The promoter shall continue to update the details of the project, including the quarterly progress report of the project, at stipulated time or as directed by the Authority.
- g. The promoter shall open a separate account for the project in a scheduled bank which shall be updated on the webpage of the project under the relevant category. The promoter shall deposit all its contribution towards the project, as agreed with the AoA and as per this order, and also all the money received from the allottees as per builder buyer agreements, existing and prospective, or any other funds from any other source, from time to time, in this separate account and the same shall be utilized only for the work relating to the construction and



development of the project and/or any other expenditure directly related to the development, construction and completion of the project.

Provided that the promoter shall deposit an upfront amount of Rs. 12 cr, as agreed, in the separate account, before collecting the balance receivables from the allottees.

Provided further that the any withdrawal from the separate account will be as per the provisions of the Act, only after it is certified by an engineer, an architect and a chartered accountant in practice that the withdrawal is in proportion to the percentage completion of the balance work of project. The Promoter shall upload the three certificates on the website of the Authority while filing the quarterly progress report of the project.

Provided further that the promoter shall get the separate account of the project audited at the end of the financial year and annual audit report shall be uploaded on the website of the Authority.

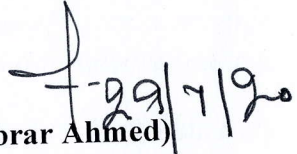
- h. The AoA and the Promoter should suitably settle the issue of delay penalties and charging of additional area (other than area as mentioned in builder buyer agreements) to be charged as per the builder buyer agreement at the time of possession after the balance development work of the project is completed and the occupancy certificate has been applied for along with all required/statutory certificates and NOCs. Any dispute between the AoA and the Promoter shall be amicably settled through the good offices of the project advisory and monitoring committee constituted by the Authority in this behalf.
- i. The promoter shall approach the concerned competent regulatory / statutory authorities for seeking / renewing such permissions / approvals for completion of balance development work and for handing over possession of units to allottees as may be required.
- j. The promoter may appoint/engage such contractors, vendors or suppliers as may be necessary for the completion of the project, by following transparent method of tendering etc., as the case may be. The same will, however, be audited by the concurrent auditor appointed by the Authority for this project.
- k. The Authority shall appoint a Chartered Accountant for the concurrent audit till the completion of the project. The cost thereof shall be met from the receipts of the project.
- l. The promoter shall be bound by the terms and conditions of the existing and future agreements for sale and shall be responsible for completion of the project as per the specifications and within the stipulated time.
- m. The promoter shall be responsible for all relevant statutory compliances in order to complete the balance development work and handover the possession of the units to the allottees.
- n. The AoA, the promoter, the allottees and all others connected with the development and completion of the project shall be bound by these orders and all other orders as may be issued by the Authority in this behalf from time to time.



o. The promoter shall ensure that the proposed sale price is not lower than the floor price quoted by the promoter in their cash inflow. The promoter, however, shall not have any discretion to offer new rebates / discounts to any of the buyers, existing or prospective. All the matters relating to the sale price of the unsold units will be audited by the Concurrent Auditor who shall submit its report to the Authority at the end of every quarter.

p. The promoter, after completion of the project, shall apply to the competent authority for occupancy certificate as provided under local laws and offer possession to the allottees.

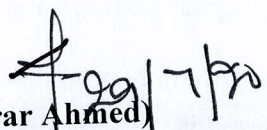
This order is being issued with the approval of the Authority.


 (Abrar Ahmed)
 Secretary

Number and date as above.

Copy: To the following for information and necessary action at their end:

- 1- Hon'ble Chairman, Uttar Pradesh Real Estate Regulatory Authority.
- 2- Shri Balvinder Kumar, Hon'ble Member, Uttar Pradesh Real Estate Regulatory Authority.
- 3- Hon'ble Members, Uttar Pradesh Real Estate Regulatory Authority.
- 4- Additional Chief Secretary, Industrial Development, Govt. of Uttar Pradesh.
- 5- Principal Secretary, Department of Housing & Urban Planning, Govt. of Uttar Pradesh.
- 6- Chief Executive Officer, New Okhla Industrial Development Authority.
- 7- Finance Controller, Uttar Pradesh Real Estate Regulatory Authority.
- 8- Technical Advisor, Uttar Pradesh Real Estate Regulatory Authority.
- 9- Consultant, Project Management Division, Uttar Pradesh Real Estate Regulatory Authority.
- 10- Assistant Director (Systems), Uttar Pradesh Real Estate Regulatory Authority.
- 11- Manager, Concerned Bank/Financial Institution.
- 12- M/s Jaiprakash Associates Pvt. Ltd.
- 13- Progressive Welfare Society, Jaypee Kalypso Court (Phase II), towers – 7,8,11,12
- 14- Shri R.D. Paliwal, Conciliation Consultant, Uttar Pradesh Real Estate Regulatory Authority.


 (Abrar Ahmed)
 Secretary