

Uttar Pradesh Real Estate Regulatory Authority

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

3058
No. /UPRERAPRJ3863/PMD/P.R./NCR/2021-22

Date: 14/02/2022

Order under section 8 / 7 / 6 read with section 11 and 37 of the RERA Act

1. The project 'Spring View Heights' Reg. No. UPRERAPRJ3863 (herein referred as 'Project') is a group housing project located at Plot No. 2, Saga Crescent ParC Integrated Township, Village Shapur Bamheta, district Ghaziabad being developed by M/s Sare Saamag Realty Pvt. Ltd. (herein referred as 'Promoter'). The development work of the Project, comprising 6 towers having 660 units, commenced in December 2013.
2. The completion date of the Project, as declared at the time of registration of the project with U.P. RERA, hereafter called as "Authority", is valid up to 29th April 2022.
3. The Promoter failed to adhere to the timelines declared by it for the completion of the project and the progress of the project is only about 70 percent whereas the date of completion i.e., 29th April 2022 is already approaching. It does not appear that the Promoter would be able to complete the project within the period of registration of the project. The Promoter, along with the association of allottees, has expressed its intent to complete the project under the appropriate provisions of RERA Act and has approached the Authority for guidance and appropriate directions in the matter.
4. Since it is not permissible for the Promoter to get further extension of registration of the project under Section 6 of the RERA Act, the only course available to facilitate the completion of this project is under Section 8 of the RERA Act, wherein it has been provided that upon lapse of the registration or on revocation of the registration under this Act, the Authority may consult the appropriate Government to take such action as it may deem fit including the carrying out the remaining development work through the competent authority or the association of the allottees or in any other manner as may be determined by the Authority.
5. Taking into account all the relevant facts and circumstances, the Authority directed the Promoter to submit the completion plan of the project with the written consent of majority of the allottees of the project through their association before it could consider the request of authorizing it for undertaking the remaining development work of the Project as per relevant provisions of the Act.
6. The allottees of the Project have formed an association under the name "Sare Spring View Heights Buyers Welfare Association" (herein after called as Association) and got the same registered under

the Societies Registration Act, 1860 on 13th August 2020 at Reg. No. GBN/02020/2020-2021. The Association also approached the Authority requesting it to intervene and facilitate the completion of the Project so that allottees of the Project could get the possession of the units allotted to them.

7. Subsequently, a series of meetings were held with the Promoter and the Association to understand the issues and to arrive at a completion plan for the balance development work in the Project. During the meeting of committee, constituted as per G.O. dated 26th June 2020 under the chairmanship of Hon'ble Member Sh. Balvinder Kumar and attended by the Promoter and the Association, held on 22nd October 2021, a consensus was reached between the parties on the proposal submitted by the promoter to complete the remaining development work in the project under the provisions of Section 8 of the RERA Act and under the orders and supervision of the Authority. The Promoter also submitted the written consent of more than 50 percent of the allottees in support of its proposal.
8. In the abovesaid meeting, the committee discussed the merits of the proposal submitted by the Promoter and the AoA and took note of the consensus reached between them for carrying out the remaining development work in the project. Keeping in view the interests of the allottees of the project, the committee also decided to seek a legal opinion in this matter before placing the proposal before the Authority for according approval for taking up the project under Section 8 of the RERA Act.
9. It is relevant to mention that the Promoter has entered into a Development Management Agreement with M/s Urbanbriq Development Management Pvt. Ltd., represented by Sh. Vineet Relia, for completing the project and providing possession to the allottees. The Promoter has also submitted a detailed note describing the shareholding structure of the Promoter company and the reasons for delay in construction. Following are the key points of the note submitted by the Promoter: –
 - a. M/s Sare Saamag Realty Private Limited (formerly known as Saamag Realtors Private Limited) is a company registered under Companies Act, 1956 and engaged in the business of development and sale of residential and commercial properties. The Promoter company was established as joint venture between M/s SARE Realty Projects Pvt. Ltd. (60%) and Samaag Group (~24%), for developing an integrated township 'Crescent ParC' in Ghaziabad. The Project is largely funded through Foreign Direct Investment (FDI).
 - b. M/s SARE Realty Projects Pvt. Ltd. is a Chennai-based company which is 95 percent owned by Singapore based SARE Realty Singapore Pte, which in turn is wholly owned by Cyprus based



SARE Public Company Limited. M/s SARE Realty Projects Pvt. Ltd. is under CIRP vide NCLT order dt. 5th March 2021.

- c. Presently, Sh. Anoop Singh and Sh. Rajesh Raja hold the position of directors in the Promoter company.
- d. The Promoter company vide board resolution dated 29th December 2020 authorized Sh. Vineet Relia to negotiate and mediate to arrive at a settlement with the homebuyers of the company and to deal with all matters and deeds incidental thereto. Subsequently, vide agreement dated 1st February 2021, the Promoter company appointed M/s Urbanbriq Development Management Pvt. Ltd. as "Manager" for overseeing all matters relating to the Project. A Power of Attorney (PoA) dated 1st February 2021 was executed between the Promoter company and M/s Urbanbriq Development Management Pvt. Ltd authorizing M/s Urbanbriq Development Management Pvt. Ltd to represent the Promoter company in all matters related to Project.
- e. The Promoter has informed that the two major shareholders in the Promoter company were unable to infuse any capital for the development of the Project which, in turn, led to delays in completing the Project. Further, the Cyprus based SARE Public Company Limited, the holding company of M/s SARE Realty Projects Pvt. Ltd., is embroiled in a separate legal dispute with its creditors in the Supreme Court of New York, USA. Hon'ble High Court of Delhi has also passed an order on 12th October 2018 prohibiting the company from selling of its assets in India.
- f. Edelweiss and its subsidiaries extended credit (NCD and term loan) to the tune of Rs. 150 cr to the Promoter company, which, along with interest, has increased to around Rs. 190 cr. Edelweiss transferred the debt to Assets Care & Reconstruction Enterprise Ltd (ACRE) on 30th March 2020. Hon'ble Delhi High Court under its order dated 12th October 2018, passed in the suit filed by the creditors of M/s SARE Public Limited Company, restrained M/s Sare Saamag Realty Pvt. Ltd. from creating any encumbrance, charge, lien or mortgage on any of its assets, shares or properties. This hampered the ability of the Promoter company to raise further funds from the lenders.
- g. Subsequently, the Hon'ble Delhi Court vide order dated 8th January 2020, modified the interim order dated 12th October 2018 and allowed the company to mortgage, charge or create a lien on their movable / immovable assets subject to filing an undertaking in the court by way of an affidavit that the same is being done bonafidely for the purpose of completion of the pending real estate projects or for its day-to-day operations.



10- In pursuance of the decision of the committee, a legal opinion was sought from Sh. Venkat Rao of Intygrat Law Offices LLP. Sh. Venkat Rao provided his legal opinion on 9th December 2021. Important conclusions and recommendations under the legal opinion by Sh. Venkat Rao are as follows: -

- (i) The Promoter Company, in order to raise additional funds required for the Project as they are in financial distress and need to raise funds to complete their Projects, can sell, mortgage, charge or create a lien on the assets of the Promoter company, subject to undertaking by way of an affidavit in the Hon'ble Delhi High Court that the same is being done for the purpose of completion of the pending real estate Project or for its day-to-day operations.
- (ii) There is no bar by the Hon'ble Delhi High Court on execution of any development management agreement with any party for the purposes of development of the Project, the Promoter Company can validly enter into a development management agreement. However, the executed Development Management Agreement read with clauses 12 -16 of the Power of Attorney, reflect the Development Manager to be a "Promoter" in terms of section 2 (zk)(v) of the Real Estate (Regulation & Development) Act, 2016. Further, a strict and literal interpretation of Section 15 of RERA 2016, would also give the Development Manager the colour of a "Promoter" in terms of the said section. Therefore, the Development Manager may fall within the meaning and category of a Promoter, it should be cast with all the obligations of the said Project towards allottees like that of a Promoter.
- (iii) Since there is no per se stay or bar on the proceedings under Section 8 pending before U.P. RERA, the Authority may suitably decide whether to allow the Development Manager to complete the development, subject to final outcome of the suit pending before the Hon'ble High Court of Delhi. However, in these circumstances, it is advisable that adequate safeguards and monitoring be done on the full accounts of the funds in respect of:
 - utilization of funds by the Development Manager;
 - collection of funds by the Development Manager;
 - monitoring of the Project with respect to the sale of unsold inventory of assets;
 - collection of funds by selling unsold inventory should be allowed only to the extent of funds required for completion of the Project by the Development Manager. The balance unsold inventory maybe left with the Promoter Company for the purpose of the eventual outcome of the pending Suit before the Hon'ble High Court of Delhi;



- Additionally, Development Manager should also be adequately bound with such restrictions and obligations for eventually concluding its commitment to the allottees.

11. The Project has been got inspected by the Technical Division of the Authority in October 2021, wherein it has been stated that the overall physical progress of the Project is around 70 percent. Structure, brick work and internal plastering has been completed in Towers A, C, D, F, but internal works are pending. Structure work, brick work and internal plastering has been completed till 11th floor in towers B and F.
12. The proposal of the Promoter and the Association was considered by the Authority, along with other relevant facts and documents available at its level, in its meeting held on 24th January 2022. The Authority, after careful and thorough deliberation on the proposal submitted by the Promoter and consented to by the Association and perusal of the recommendations of its Project Advisory & Monitoring Committee and the legal opinion given by Sh. Venkat Rao of Intygrat Law Offices LLP, arrived at the considered view that the proposal of the Promoter consented to by the Association is, prima facie, convincing, and can be accepted in fulfillment of its mandate to facilitate the completion of the project under present conditions i.e. where the project could not be completed before the lapse of the registration and the Authority needs to facilitate the remaining development work in order to protect the interests of the allottees of the project.
13. Therefore, with a view to facilitate the completion of the project in a time bound manner and to protect the interests of the allottees, the Authority, using the powers conferred upon 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 thereunder, and 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 State Government order dated 26th June 2020 stipulating the guidelines to be followed in such matters, resolved to authorize the Promoter, with consent of Association, to undertake the completion of the remaining development and the construction work of the Project, subject to the following terms and conditions:
 - a. M/s Urbanbriq Development Management Pvt. Ltd., the Development Manager of the Project, shall register itself as a Promoter of the Project along with the existing Promoter within 15 days from the date of the order. This order shall come into effect only subsequent on M/s Urbanbriq Development Management Pvt. Ltd. registering itself as Promoter alongside the existing Promoter on the website of the Authority.



- b. The AoA shall submit, within 30 days of the order, a general body resolution of the AoA giving their explicit consent to authorize the Promoter(s) to undertake the remaining development and construction work of the Project.
- c. A notarized affidavit duly sworn by the Promoter(s) for undertaking to complete the balance development work in the Project by December 2022. The Promoter shall contribute to the shortfalls in cash flows, if any, during the course of development and construction of the Project within the timelines as contemplated herein.
- d. The Promoter(s) shall complete 6 towers in the Project as per the completion plan submitted by it and agreed to by the Association.
- e. The Promoter(s) 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(s) shall deposit all its contribution towards the project, as agreed with the AoA 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 including the existing accounts of the project, in the 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, subject to the exceptions provided under this order.

Provided that the Promoter shall deposit an upfront amount of Rs. 8 cr within 30 days from the date of issue of this order, as agreed, in the separate account, before collecting the balance receivables from the allottees.

Provided further that any withdrawal from the separate account shall be as per the provisions of the Act, i.e., 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. Additionally, the expenses incurred by the Promoter(s) as per the three certificates shall be verified / certified by the Construction Consultant appointed by the Authority before the same is submitted to the bank for withdrawal of the amount from the separate account of the 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(s) 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.



- f. The Authority shall appoint a Construction Consultant for the concurrent audit of the project till its completion. The cost thereof shall be met from the receipts of the project.
- g. The Construction Consultant appointed by the Authority shall be responsible for overseeing the transactions under the project with a view to ensure that the funds collected and utilized under the project are for the purposes only of the construction and development work under the project.

Further that the Construction Consultant shall be required to monitor that the Promoter(s) undertakes the sale of unsold inventory only to the extent required for raising capital towards completion of remaining development work of the project.

Further that any balance unsold inventory which may not be required for purposes of completion of the project, shall be left with the Promoter company for the purposes of eventual outcome of the pending suit before Hon'ble Delhi High Court.

- h. Withdrawal of an amount of Rs. 25 lakhs per month from the separate account would be permissible for payment of Development Manager fee.
- i. The Promoter(s) shall ensure that proposed sale price cannot be lower than the floor price considered by the Promoter(s) in their cash inflow. The Promoter(s), 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 Construction Consultant who shall submit its report to the Authority at the end of every quarter.
- j. The Authority hereby constitutes a Project Advisory and Monitoring Committee under the chairmanship of one of its Hon'ble Members with Vice Chairman, Ghaziabad Development Authority, Finance Controller U.P. RERA, Technical Advisor U.P. RERA, Conciliation Consultant U.P. RERA, Consultant Project Management Division U.P. RERA, concerned Bank / Financial Institution, the Association and the Construction Consultant appointed by the Authority as members for monitoring of the project on monthly basis.
- k. The Authority will review the progress of the project on quarterly basis.
- l. 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(s) shall continue to update the details of the project, including the quarterly progress report of, in stipulated time or as directed by the Authority.
- m. The Association and the Promoter(s) should suitably settle the issues of payment of interest for delay and charging in lieu of additional area, if any (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 completion certificate has been applied for along with all required/statutory certificates and NOCs. Any dispute between the AoA and the Promoter(s) shall be amicably settled through the good offices of the Project Advisory and Monitoring Committee constituted by the Authority in this behalf.

- n. The Promoter(s) 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.
- o. The Promoter(s) 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 Construction Consultant appointed by the Authority for this project.
- p. The Promoter(s) 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.
- q. The Promoter(s) 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.
- r. The AoA, the Promoter(s), 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 regard from time to time.
- s. Since the project is being rehabilitated under Section 8 of the RERA Act by the Promoter(s) with the consent of the majority of the allottees and the Association, it is understood that no allottee of the project shall withdraw from it during the course of the development of the remaining work of the project. However, if under extraordinary circumstances, some allottee of the project withdraws from it, the amount due to be returned to such allottee shall not be returned from the separate account of this project, rather the same may be returned from the other sources of the Promoter(s), or alternately the amount due to such allottees would continue to be a charge on the project and will be returned after the completion of the project along with interest admissible as per the orders of the Authority.

Similarly, the enforcement of the orders, passed by the Authority on the complaints of the allottees, shall be kept on hold and the complainant-allottees shall be advised to approach the Authority for the same after completion of the development work under the project.



- t. The Promoter(s), after completion of the Project, shall apply to the competent authority for completion certificate as provided under local laws and offer possession to the allottees.

This order is issued with the approval of the Authority.


(Rajesh Kumar Tyagi)

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- Sh. Balvinder Kumar, Hon'ble Member, Uttar Pradesh Real Estate Regulatory Authority.
- 3- Hon'ble Members, Uttar Pradesh Real Estate Regulatory Authority.
- 4- Principal Secretary, Department of Housing & Urban Planning, Govt. of Uttar Pradesh.
- 5- Vice Chairman, Ghaziabad Development Authority.
- 6- Sh. R. D. Paliwal, Conciliation Consultant, Uttar Pradesh Real Estate Regulatory Authority.
- 7- Principal Advisor, Uttar Pradesh Real Estate Regulatory Authority.
- 8- Finance Controller, Uttar Pradesh Real Estate Regulatory Authority.
- 9- Technical Advisor, Uttar Pradesh Real Estate Regulatory Authority.
- 10- Consultant, Project Management Division, Uttar Pradesh Real Estate Regulatory Authority.
- 11- Manager, Concerned Bank/Financial Institution.
- 12- M/s Sare Saamag Realty Pvt. Ltd.
- 13- Sare Spring View Heights Buyers Welfare Association


(Rajesh Kumar Tyagi)

Secretary