

**BEFORE THE HARYANA REAL ESTATE APPELLATE TRIBUNAL,
SCO NO.50-51, 3rd FLOOR, SECTOR: 17-A, CHANDIGARH**

Appeal No.459 of 2019
Date of Decision: 22.07.2019

1. Vijay Pal Singh s/o Sh. Dharam Pal Singh
2. Ms. Manju Singh w/o Sh. Vijay Pal Singh
Resident of 1677, Sector 7, Urban Estate, Karnal.

Appellants

Versus

M/s Ansal Housing and Construction Limited, Registered Office: 15, UGF Indraprakash, Barakhamba Road, New Delhi through Managing Director/Authorised Person.

Respondent

CORAM:

Justice Darshan Singh (Retd.)	Chairman
Shri Inderjeet Mehta	Member (Judicial)
Shri Anil Kumar Gupta	Member (Technical)

Argued by: Shri Surjeet Bhadu, Advocate, counsel for the appellants.
Shri Ashok Kumar Khubbar, Advocate, counsel for the respondent.

ORDER:

1. The present appeal has been preferred by the appellants-complainants against the order dated February 14th, 2019 passed by the learned Haryana Real Estate Regulatory Authority, Gurugram (hereinafter referred to as the Ld. Authority) seeking refund of the entire amount deposited by them with the respondent alongwith the interest @ 24% per annum on compound rate from the date of booking till realisation.

2. The appellants-complainants have filed complaint with the Ld. Authority for not handing over possession of the apartment on the due date and for refund of the amount of Rs.89,06, 654/- (Rupees Eighty-Nine Lacs, Six Thousand, Six Hundred and Fifty Four Only) alongwith interest @ 24% per annum on compound rate

from the Respondent-Promoter from the date of booking till the date of realisation.

3. Ld. Authority vide order dated February 14th, 2019 has given decision and directions to the respondent to pay delay interest at the prescribed rate i.e. @ 10.75% for every month of delay from the due date of possession i.e. 18.01.2018 till offer of possession.

4. Aggrieved with the aforesaid order dated February 14th, 2019 the present appeal has been preferred by the appellants/complainants allottees.

5. The appellants/complainants allottees had sought refund of the entire amount in the complaint before the Ld. Authority. The same relief has been sought by him in the present Appeal before this Tribunal. So, the complaint filed by the appellants was for grant of relief of refund/return of the entire amount deposited by them with the Respondent-Promoter alongwith interest on account of delay in the delivery of possession of the flat/apartment.

6. We have heard Shri Surjeet Bhadu, Advocate, Ld. counsel for the appellants and Shri Ashok Kumar Khubbar, Advocate Ld. counsel for the respondent and have gone carefully through the case file.

7. The question as to whether the Ld. Authority was competent to entertain and deal with the complaint wherein the complainants/allottees claim the relief of refund alongwith interest and compensation is not res-integra, as we have already answered this question in a bunch of 19 appeals the lead appeal being appeal No.6/2018 titled as Sameer Mahawar Vs. MG Housing Pvt. Ltd. Vide our detailed order dated 02.05.2019. In that order after taking into

consideration the provisions of Sections 11(4), 12, 14, 18, 19, 31, 34(f), 37, 38 and 71 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter called the Act) and rule 28 & 29 of Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter called the rules), we have laid down as under:-

“48. Thus, as a result of our aforesaid discussions, we conclude and sum up our considered view in following manner: -

- (i) That violations and causes of actions arising out of the same bundle of facts/rights giving rise to the multiple reliefs shall be placed before one and the same forum for adjudication in order to avoid the conflicting findings.*
- (ii) The complaints for the grant of relief of compensation can only be adjudicated by the adjudicating officer as per the provisions of section 71 of the Act and rule 29 of the Rules.*
- (iii) Similarly, if compensation is provided as a part of the multiple reliefs alongwith refund/return of investment with interest flowing from the same violation/violations and causes of action, the complaints have to be placed before the adjudicating officer exercising the powers under Section 31, 71(1) read with rule 29 of the Rules as only the adjudicating officer is competent to deal with the relief of compensation.”*

8. In view of our aforesaid findings the Ld. Authority had no jurisdiction to entertain the complaint filed by the appellants-allottees wherein they have claimed the relief of refund alongwith interest. The Adjudicating Officer, who is the only forum to entertain the complaint, will decide this question afresh, in accordance with law.

9. Thus, keeping in view of our aforesaid discussions, the present appeal is hereby allowed. The impugned order dated February 14th, 2019 is hereby set aside. The complaint filed by the appellants/allottees stands transferred to Adjudicating Officer,

Gurugram for adjudication in accordance with law. The Adjudicating Officer will allow the appellants/allottees to amend their complaint in order to bring it within the parameters of Form "CAO" as provided in rule 29 of the Rules.

10. This order passed by this Tribunal and observation of the Ld. Authority in the impugned order will not prejudice the mind of the Ld. Adjudicating Officer qua the rights of the parties on merits of the case.

11. The parties are directed to appear before the Learned Adjudicating Officer, Gurugram on August 06th, 2019 for further proceedings. Copy of this order be communicated to the Ld. Real Estate Regulatory Authority, Gurugram and the Ld. Adjudicating Officer, Gurugram for compliance.

12. File be consigned to records.

Justice Darshan Singh (Retd.)
Chairman,
Haryana Real Estate Appellate Tribunal,
Chandigarh
22.07.2019

Inderjeet Mehta
Member (Judicial)
22.07.2019

Anil Kumar Gupta
Member (Technical)
22.07.2019