

BEFORE THE HARYANA REAL ESTATE APPELLATE TRIBUNAL

Appeal No.195 of 2019
Date of Decision:16.09.2019

Gravite Knowledge Services Private Limited, Registered Office: D-2, Ground Floor, Kalindi Colony, New Delhi-110065 through its Director and Authorized representative Shri Sujoy Bhattacharya.

Appellant

Versus

1. M/s Ashiana Landcraft Realty Private Limited, Registered Office: 3H, Plaza M6, District Centre, Jasola, New Delhi-110025 through its Director.
2. Haryana Real Estate Regulatory Authority, New PWD Rest House, Civil Lines, Gurugram through its Chairman.

Respondents

CORAM:

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

Present: Shri Vipul Joshi, Advocate, Id. Counsel for the appellant.
Shri T.S. Khaira, Advocate, Id. Counsel for respondent no.1.
None for respondent no.2.

ORDER:

The present appeal has been preferred by the appellant/allottee against the order dated October 31st, 2018 passed by the Haryana Real Estate Regulatory Authority, Gurugram (hereinafter called ‘the Authority’) vide which the complaint filed by the appellant-allottee was dismissed with the following observations:

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“33. Thus, the authority, exercising powers vested in it under section 37 of the Haryana Real Estate (Regulation and Development) Act, 2016 hereby issue following directions to the respondent:

1. Since the MoU has been signed by both the parties the complainant and respondent are directed to sort out their contractual liabilities.”
2. Learned counsel for the appellant has contended that in fact it is not an adjudication of the rights of the parties. The learned Authority has directed the parties to resolve the dispute themselves as per the Memorandum of Undertaking. He further contended that the findings of the learned Authority are based on factually incorrect position with respect to the date of the agreement and Memorandum of Undertaking which is evident from para no.24 of the order. He further contended that later on this para was corrected by the authority on the application moved by the respondent-promoter but only the dates were corrected and other facts were not altered. He further contended that the appellant-allottee has not sought any relief for delay in the delivery of possession, rather the appellant-allottee has demanded refund of the amount as contemplated in Clause 3 and 5 of the Memorandum of Undertaking dated June 30th, 2015. Thus, he contended that the finding of the learned authority that the complaint was pre-mature, is erroneous.
3. Shri T.S. Khaira, learned counsel for the respondent for the respondent no.1 has not been able to dispute the basic factual error in the order.
4. As per the findings of the learned Authority in the impugned order the basic reason for dismissal of the complaint was that the Memorandum of Understanding, which was wrongly considered to be prior in time, was stated to have been superseded by the Apartment Buyer’s Agreement dated 30.06.2015. But in fact, both the documents were executed on the same day i.e. 30.06.2015.

Realising this mistake, even the learned Authority has corrected the original impugned order dated 31.10.2018 by passing the order dated 12.02.2019/21.02.2019. But in the order dated 12.02.2019/21.02.2019 which was uploaded on 01.03.2019 only the date of Memorandum of Understanding has been corrected and the effect of this correction has not been taken into consideration. Thus, the very basis for arriving at conclusion by the learned Authority is primarily based on the wrong factual position. Hence, the impugned orders cannot be sustained in the eyes of law.

5. Consequently, the present appeal is hereby allowed. The impugned order dated 31.10.2018 corrected vide order dated 12.02.2019/21.02.2019 are hereby set aside. The case is remitted to the learned Authority to pass fresh order in accordance with law after affording opportunity of being heard to both the parties. It is made clear that anything said in this order will not prejudice the mind of the learned Authority.

6. Copy of this order be communicated to the learned Real Estate Regulatory Authority, Gurugram for compliance.

7. The parties are directed to appear before the learned Real Estate Regulatory Authority, Gurugram on 03.10.2019.

8. File be consigned to records.

Justice Darshan Singh (Retd.)
Chairman,
Haryana Real Estate Appellate Tribunal,
Chandigarh
16.09.2019

Inderjeet Mehta
Member (Judicial)
16.09.2019

Anil Kumar Gupta
Member (Technical)
16.09.2019