

**HARYANA REAL ESTATE APPELLATE TRIBUNAL  
S.C.O. No.50-51, 3<sup>rd</sup> FLOOR, SECTOR 17A,  
CHANDIGARH**

**Appeal No.110/2019  
Date of decision 18.07.2019.**

Desh Raj Mangal, resident of house no.4, Professor Colony, Yamuna Nagar-135001

...Appellant.

Versus

M/s Aerens Jai Realty Pvt. Ltd., registered office at Gulab Nagar, Jai City Colony, Jagadhari-135003

Ind Address: Kailash Chand son of Late Shri Jai Narain Gupta, Managing Director of Lotus Villa Aerens Estate, Behind Post Office Mali Road D-3, Vasant Kunj New Delhi-110070.

....Respondent.

**Coram: Justice Darshan Singh (Retd), Chairman  
Sh Inderjeet Mehta, Member(Judicial)  
Sh Anil Kumar Gupta, Member(Technical)**

Present: Shri Shiv Kumar Gupta, Ld counsel for the appellant.

None for the respondent.

**ORDER**

1. Feeling aggrieved by the order dated 06.12.2018 handed down by the Ld Adjudicating Officer, Real Estate Regulatory Authority, Panchkula (Haryana) in complaint no. RERA-PKL 777 of 2018 titled as Desh Raj Mangla Vs. M/s Aerens Jai Realty Pvt. Ltd., vide which the complaint preferred by the appellant/complainant seeking compensation from the respondent/builder was dismissed, he has chosen to prefer the present appeal.

2. As back as in the year 2006 the respondent/builder launched a project under the name and style "Jai City" to develop a plotted colony at Yamuna Nagar after obtaining licence from the Town & Country Planning Department, Haryana. One plot was purchased by the complainant from its original allottee. The sale consideration of the plot was Rs.11,01,750/- and the original allottee

had paid a sum of Rs.3,85,686/-. The said purchase of the plot by the appellant was ratified by the respondent in favour of the complainant in January, 2007. Thereafter an undated allotment letter was issued in favour of the appellant in respect of plot no. F-13 in December 2007. The appellant/complainant had deposited an amount of Rs.5,45,844/- i.e. more than 50% of the total sale consideration with the respondent but no initiative was taken by the respondent to deliver the possession of the plot. Rather the respondent forged a cancellation letter regarding the said plot and allotted the same to someone else. When the appellant confronted the respondent in this regard, he was offered an alternative plot no. J-16. However, inspite of the readiness of the appellant to accept the same the respondent did not honour the said allotment. In this regard the appellant had also lodged an FIR in the year 2012 against the respondent. The appellant had also filed a complaint before Consumer Redressal Forum, in the year 2012 for the redressal of his grievance, however the said complaint was dismissed on 29.09.2017. Thereafter the appellant was constrained to file a complaint before the Haryana Real Estate Regulatory Authority, Panchkula with prayer to refund the amount already paid alongwith interest at the rate of 18% per annum and also for awarding the compensation.

3. The said complaint was resisted by the respondent by taking the stand that despite issuance of various letters, as the appellant had not paid the outstanding instalment, so his allotment was cancelled and the amount paid by him was forfeited. As regard to making of an alternative offer of plot no. J-16 the stand of the respondent has been that the said plot was bigger in size and the appellant/complainant had refused to make the payment toward the

increased area. So, the said plot J-16 was also allotted to some other person. The dismissal of complaint was also prayed for.

4. After hearing the Ld counsel for the appellant as well as Ld counsel for the respondent and perusing the record, Ld Adjudicating Officer, Panchkula did not find any merit in the complaint preferred by the appellant regarding compensation and the same was dismissed. Hence the present appeal.

5. We have heard Ld counsel for the appellant and thoroughly perused the pleadings, documents and other material available on the record and are of the considered view that the present appeal preferred by the appellant deserves acceptance for the reasons stated hereinafter.

6. First of all let the admitted facts be taken note of. On the basis of the aforesaid same allegations the appellant had preferred a complaint no. RERA-PKL 75 of 2018 seeking the refund of the amount of Rs.5,45,844/- against the respondent and the said complaint was allowed by Ld Haryana Real Estate Regulatory Authority, Panchkula vide order dated 26.09.2018 (Annexure-B).

7. The relief of the compensation on account of mental agony and harassment caused by the respondent due to non allotment of booked plot was dismissed by the Ld. Adjudicating Officer with the observations as mentioned in paras no.5 & 6 of the impugned order, which are as follows :-

*“5. The other relief claimed is for compensation due to mental agony and harassment caused by the respondent. The record manifests that the complainant has committed default in payment of instalment of Rs.2,07,400/- demanded vide letter dated 31.10.2007. So, the respondent issued him a final notice dated*

*09.05.2008 informing that he shall pay the outstanding amount within 10 days or else his allotment will be cancelled. The complainant did not pay the amount even thereafter and the respondent then allotted the said plot to someone else. The complainant thereafter kept sleeping over his rights without contacting the respondent and making any correspondence. He awakened from sleep in the year 2012 when he filed a complaint with the police and a petition before the Consumer Redressal Forum.*

*6. The background of the case thus clearly shows that the complainant himself was guilty for creating the circumstances due to which the respondent could not deliver him possession of the plot and allotted it to someone else. So, the respondent cannot be held guilty of causing any such mental agony and hardship to the complainant as may warrant compensation and complaint deserves dismissal.”*

8. A through look at the aforesaid observations shows that the relief of compensation was refused by the Ld. Adjudicating Officer on the ground that as the appellant had committed default in payment of instalment of Rs.2,07,400/- demanded vide letter dated 31.10.2007, so the respondent had issued him a final notice dated 09.05.2008 apprising that if the said amount is not paid within ten days his allotment would be cancelled. The Ld Adjudicating Officer also observed that the complainant did not pay the amount even thereafter and the respondent allotted the said plot to someone else.

9. These aforesaid observations of the Ld Adjudicating Officer in paras no.5 & 6 of the impugned order appear to be contrary to the observations as made by Ld. Haryana Real Estate Regulatory Authority, Panchkula, in para no.8 of the order dated 26.09.2018 (Annexure-B), vide which the complaint preferred by the appellant for refund of the amount of Rs.5,45,844/- alongwith interest on the

basis of same allegation was disposed of. The said para no.8 of the said order dated 26.09.2018 is as follows:-

*“8. The complainant is claiming refund of the amount already paid and the respondent is seeking to defeat his claim on two grounds. Firstly, on the ground that the allotment in favour of the complainant was cancelled and the amount paid was forfeited on 09.05.2008. The respondent in order to succeed on this plea has to establish two things, namely, (i) that he had served a letter of cancellation on the complainant; and (ii) he was permitted to forfeit the entire paid amount in terms of the agreement entered between the parties. What to talk of annexing some proof with the reply about dispatch and service of notice, the respondent has not even raised a bald plea to the effect that cancellation notice was sent and served on the complainant. That apart, the respondent has not even attached with his reply the cancellation letter. He has attached Annexure R-2 with his reply for proving the cancellation letter. He has attached Annexure R-2 with his reply for proving the cancellation of allotment. Perusal of said document reveals that the respondent had thereby raised a final demand from the complainant to pay outstanding dues and had expressed his intention to cancel the allotment and forfeit the paid amount if the complainant fails to discharge his obligation to pay the outstanding amount. So, letter (annexure R-2), in essence, is only a notice informing the complainant that his allotment will be cancelled and already paid amount will be forfeited, if he fails to pay the outstanding dues. Thus, Annexure R-2 cannot be treated as a cancellation letter.”*

10. Since the Ld Authority while deciding the application of the appellant for refund on the basis of the same allegation had specifically opined that notice dated 09.05.2008 stating that the appellant shall pay the outstanding amount within 10 days or else his allotment would be cancelled, cannot be treated as a cancellation

letter, so, it cannot be construed that the allotment of the plot was not made to the appellant/complainant on account of non-payment of the amount due to him. Thus, in these circumstances, this is fit and appropriate case where on account of non-allotment of the plot to the appellant by the respondent within a span of more than 12 years after acceptance of more than 50% amount of the value of plot, the compensation should be awarded.

11. The appellant/complainant in the present case has sought compensation to the tune of Rs.10 lakh due to mental agony and hardship caused to him by the respondent for non-allotment of the plot. The hardship in simple words can be defined as an adversity, or something difficult or unpleasant that one has to endure or overcome. In the given facts and circumstances of the present case the non-allotment of the plot to the appellant, for no fault of his, certainly amounts to mental agony and hardship, which the appellant had undergone for the last about more than twelve years. Moreover, this Tribunal also cannot lose site of the fact that there has been escalation in the prices of the plots and as the appellant has been deprived of the ownership of the plots for a period of more than 12 years and he has also undergone the mental agony and hardship by not enjoying the fruit of ownership of the plot, this Tribunal deems it fit proper and appropriate to grant him compensation to the tune of Rs.4,00,000/- alongwith interest as envisaged under Rule 15 of Haryana Real Estate Regulation and Development Rules @ State Bank of India highest marginal cost landing rate plus 2% from the date of filing of petition till realisation.

12. Thus, as a consequence to the aforesaid discussion this Tribunal is of the considered view that the impugned order dated 06.12.2018 handed down by the Ld Adjudicating Officer, Panchkula

deserves to be set-aside and the same is accordingly set-aside. Consequently the appeal preferred by the appellant is hereby accepted. The complaint filed by the appellant is hereby allowed. The appellant is entitled to the compensation to the tune of Rs. 4,00,000/- alongwith interest as envisaged under Rule 15 of Haryana Real Estate (Regulation and Development) Rules, 2017 @ State Bank of India highest marginal cost landing rate plus 2% from the date of filing of petition till realisation.

13. File be consigned to record.

**(Justice Darshan Singh (Retd)  
Chairman, HREAT  
18.7.2019**

**(Inderjeet Mehta)  
Member(Judicial)  
18.7.2019**

**(Anil Kumar Gupta)  
Member(Technical)  
18.7.2019**

ORDER-HARYANA REAL ESTATE APPELLATE TRIBUNAL

Desh Raj Mangla Vs. Acrens Jai Realty Pvt. Ltd.  
Appeal No.110 of 2019.

Present: Shri Shiv Kumar Gupta, Ld counsel for the appellant.  
None for the respondent.

Today the case was fixed for pronouncement of judgment.

The present appeal stands allowed. The impugned order dated 06.12.2018 has been set-aside. The complaint filed by the appellant stands allowed. The appellant is entitled to the compensation to the tune of Rs. 4,00,000/- alongwith interest as envisaged under Rule 15 of Haryana Real Estate (Regulation and Development) Rules, 2017 @ State Bank of India highest marginal cost landing rate plus 2% from the date of filing of petition till realisation.

File be consigned to record.

**(Justice Darshan Singh (Retd))**  
**Chairman, HREAT**  
**18.7.2019**

**(Inderjeet Mehta)**  
**Member(Judicial)**  
**18.7.2019**

**(Anil Kumar Gupta)**  
**Member(Technical)**  
**18.7.2019**