

**BEFORE THE HARYANA REAL ESTATE APPELLATE
TRIBUNAL**

**Appeal No.1318 of 2019
Date of Decision: 12.02.2020**

Haryana Urban Development Authority (now Haryana Shehri Vikas Pradhikaran), Kurukshetra through its Estate Officer.

Appellant

Versus

Vijay Kumar s/o Shri Roshan Lal Garg, House No.172, HUDA Part-1, Sector-1, Shahabad, District Kurukshetra (Haryana).

Respondent

CORAM:

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

Present: Shri Arvind Seth, Advocate, Ld. counsel for the appellant.
Shri Satyavir Singh Advocate, Ld. counsel for the respondent.

ORDER:

JUSTICE DARSHAN SINGH (Retd.) CHAIRMAN:

The present appeal has been preferred under Section 44 of the Real Estate (Regulation & Development) Act, 2016 (hereinafter called 'the Act') against the order dated 13.12.2018 passed by the learned Adjudicating Officer, Haryana Real Estate Regulatory Authority, Panchkula whereby complaint filed by the respondent/allottee-Vijay Kumar, for grant of compensation was allowed and the respondent/allottee was awarded compensation equivalent to the amount of interest payable on the sale consideration i.e.

Rs.1,02,50,000/- from 29.04.2015 to 21.06.2018 at the rate prescribed in Rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter called 'the Rules').

2. The background giving rise to this litigation can be summed up as under: -

The respondent purchased a commercial plot bearing SCO No.88, Sector-1, Part-1, Shahabad, from the appellant in the public auction held on 15.01.2015 for a sale consideration of Rs.1,02,50,000/-. The said amount was paid by the respondent/allottee by 29.04.2015. The appellant had also delivered the possession of the plot but when respondent/allottee started construction, the owner of the adjoining property produced the stay order issued by the Civil Court. As per the claim set up by the owner of the adjoining property, the said land belongs to him and was encroached upon by the respondent/allottee. The officers of the appellant realised their mistake in carving out the plots put on auction. Thereafter, a fresh demarcation was carried out and the zoning plan was revised. Respondent/allottee was, however, not delivered the possession of the purchased property on the basis of the revised plan and he had to file the complaint before the Haryana Real Estate Regulatory Authority, Panchkula. During the pendency of the said

complaint, the possession was delivered to the respondent/allottee on 21.06.2018. Hence the complaint.

3. The appellant tried to escape the liability on the grounds inter alia that there was no intentional delay on the part of the appellant and revision of the zoning plan took a considerable time as the process involved approvals of various authorities and file was moving from one department to another.

4. After appreciating the pleas raised by both the parties, the learned Adjudicating Officer, Panchkula allowed the complaint filed by the respondent/allottee and awarded the compensation as mentioned in para No. 1 of this judgement.

5. Aggrieved with the aforesaid order, the present appeal has been preferred.

6. We have heard Shri Arvind Seth, learned counsel for the appellant, Shri Satyavir Singh, learned counsel for the respondent and have carefully gone through the record of the case.

7. Learned counsel for the appellant vehemently contended that the project was already complete in the month of January, 2015 when the advertisement was issued for the auction of the plots. He contended that the provisions of the

Act have become applicable in May, 2017. So, the provisions of the Act were not applicable to the project floated by the appellant. He has drawn our attention to the letter dated 16.08.2019 issued by the Sub Divisional Engineer, HSVP Sub Division No.2, Kurukshetra, wherein it is mentioned that the final date of completion was 28.05.1998, 20.01.1998 and 28.09.1999 with respect to the development work in this shopping centre. He has also drawn our attention to page no.57 of the paper-book i.e. the letter dated 14.08.2019 issued by the Sub Divisional Engineer, Electrical Sub Division, HSVP, Kurukshetra to show that the electrification work was completed prior to 2006.

8. On the other hand, learned counsel for the respondent contended that the appellant had earlier delivered the possession of some wrong plot to the respondent due to the sheer negligence of the officials of the appellant. He contended that in fact that land belonged to a private individual and when the respondent started construction, the said private person obtained restraint order from the Civil Court. He further contended that even the civil suit had to be defended single handedly by the respondent and he did not receive any support from the appellant, who were the wrong doers. The appellant did not even file any written statement in that suit. It shows their conduct. He further contended

that it is an admitted fact that lay out plan was revised in 2017 which was finally approved by the department of Town and Country Planning on 28.07.2017. By that time, the Act had already become applicable. Thus, he contended that the appellant cannot escape the rigors of the Act.

9. We have duly considered the aforesaid contentions.

10. We do not find any substance in the contentions raised by the learned counsel for the appellant. The only plea raised by the learned counsel for the appellant is that the provisions of the Act were not applicable to the present project as the development work was completed prior to the year 2015. In our view, the development works of the project will only be complete when the possession of the plot is rightly delivered to the allottee. In this case, though originally the possession of the plot was delivered to the respondent/allottee in May, 2015 but the officials of the appellant committed blunder and wrongly delivered the possession of the land even not belonging to it. It is an admitted fact that the neighbour of the said plot had filed a civil suit and obtained the restraint order due to which the respondent/allottee could not raise the construction over the plot, the possession of which was delivered to the respondent/allottee wrongly. The appellant got demarcated the plots as a result of which the lay out plan of this project

was revised which was finally approved on 28.07.2017 by the Town and Country Planning Department. Once it is found that the revised plan was sanctioned on 28.07.2017, then it does not lie in the mouth of the appellant to allege that the project was complete in the year 2015. The possession of the plot delivered to the respondent/allottee in the year 2015, was totally illegal and wrong and even that land did not belong to the appellant.

11. It is an admitted fact that the provisions of the Act have finally become applicable on 01.05.2017 i.e. before the approval of the revised site plan.

12. It is further an admitted fact that the respondent even had to knock the door of the learned Haryana Real Estate Regulatory Authority, Panchkula to obtain the possession of the re-demarcated plot as per the revised layout plan and during the pendency of the said complaint, the possession of the newly demarcated plot was delivered to the respondent on 21.06.2018. So, even the possession of the plot which completed the transaction, has been delivered to the respondent/allottee much after the provisions of the Act came into force. Thus, the plea raised by the learned counsel for the appellant that the provisions of the Act were not applicable to this project, deserves to be rejected being devoid of merits.

13. Learned counsel for the appellant has not been able to point out any defect in the manner of determination of quantum of compensation granted by the learned Adjudicating Officer.

14. Thus, keeping in view our aforesaid discussion, we do not find any illegality in the impugned order passed by the learned Adjudicating Officer. Consequently, the present appeal has no merit and the same is hereby dismissed.

15. The amount deposited by the appellant with this Tribunal in order to comply with the provisions of proviso to section 43(5) of the Act, be remitted to the learned Adjudicating Officer, Panchkula, being the Executing Court, for disbursement of the said amount to the respondent/allottee as per law, after the expiry of period of limitation for filing the appeal

16. File be consigned to records.

Announced:
February 12, 2020.

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

Inderjeet Mehta
Member (Judicial)

Anil Kumar Gupta
Member (Technical)

HUDA Vs. Vijay Kumar
Appeal No.1318 of 2019

Present: Shri Arvind Seth, Advocate, Ld. counsel for the appellant.
Shri Satyavir Singh Advocate, Ld. counsel for the respondent.

Arguments heard.

Vide our separate detailed judgment of the even date, the appeal is dismissed.

Copy of the detailed judgment be communicated to both the parties and the learned Adjudicating Officer, Panchkula.

File be consigned to records.

Justice Darshan Singh (Retd.)
Chairman,
Haryana Real Estate Appellate Tribunal,
Chandigarh
12.02.2020

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Member (Judicial)
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