

M/s Neo Developers Private Limited

Vs.

Mr. Mohit Malhotra

Appeal No. 190 of 2020

Present: Shri Venket Rao, Advocate, Ld. counsel for the appellant.
Shri Varun Luthra, Advocate, ld. counsel for the respondent.

{The aforesaid presence is being recorded through video conferencing}

1. Ld. counsel for the appellant states that the amicable settlement between the parties is not possible.

2. After addressing the arguments for some time, ld. counsel for the parties have come to the terms. Ld. counsel for the appellant has contended that the Ld. Authority has dismissed the application moved by the respondent/allottee for reconsideration of the matter vide order dated 10.01.2019 but on the same day the entire order was reviewed, which is not permissible under law. The order dated 10.01.2019 vide which the previous order dated 12.07.2018 has been reviewed/altered and totally new relief has been awarded in favour of the respondent/allottee is not sustainable in the eyes of law. The case should be remanded to the ld. Authority to decide the complaint filed by the respondent/allottee afresh on merits.

3. Sh. Varun Luthra, Advocate, ld. counsel for the respondent/allottee has very fairly conceded that he cannot support the subsequent order dated 10.01.2019 uploaded on the website of the Ld. Authority on 12.02.2019. Once, the application for reconsideration of the order dated 12.07.2018 was dismissed. Ld. Authority could not have passed the subsequent order dated 10.01.2019. However, he contended that the appellant is suffering since long. He should be at least paid the admitted amount by the appellant without any prejudice to the rights of the

respondent/allottee and the case may be remitted to the Id. Authority for fresh decision on the complaint filed by the respondent/allottee.

4. We have duly considered the aforesaid contentions, respondent Mr. Mohit Malhotra, has filed the complaint no. 246 of 2018 before the Id. Authority. In the said complaint, Id. Authority has passed the order on 12.07.2018 reads as under:

“The counsel for the complainant made a statement that he is not appearing before the authority for compensation but for fulfilment of the obligations by the promoter as per the Real Estate (Regulation & Development) Act, 2016.

Arguments advanced by the learned counsel for both the parties have been heard. The learned counsel for the respondent has stated that the respondent is ready to refund the amount to the complainant. He has also ready to hand over the Cheque of Rs. 5,90,075.26 to the complainant. The learned counsel for the respondent is directed to send the cheque of the aforesaid amount to the complainant within a week. Therefore, the complaint is disposed of. Detail order will follow. File be consigned to the Registry.”

Ld. counsel for both the parties have stated in one voice that the said detailed order dated 12.07.2018 was never passed by the Id. Authority.

5. Thereafter, the respondent/allottee moved an application (Copy available at page no. 167 of the paper book) for reconsideration of the order dated 12.07.2018 mentioning therein that the amount of Rs. 5,90,075.26/- offered by the promoter was

not acceptable to him as he has paid total amount of Rs. 15,72,678/-.

6. This application was contested by the appellant and was dismissed by the Id. Authority vide order dated 10.01.2019 which reads as under:

“Project is registered with the authority.

Since there is no provision under the Real Estate (Regulation and Development) Act, 2016, for filing review application and the authority has no power to review application and the authority has no power to review its own orders, as such, review application dated 24.07.2017 for review of order dated 12.07.2018 filed by the complainant does not lie. However, the complainant is advised to file an appeal against the order of the authority.”

7. It is very surprising that after dismissing the application filed by the respondent/allottee for review of the order dated 12.07.2018, the Ld. Authority has passed another order on the same date totally reviewing the previous order dated 12.07.2018. In order dated 10.01.2019 reproduced above Ld. Authority has categorically mentioned that the review application does not lie and the complainant was advised to file the appeal against the order of the Id. Authority. So, the Id. Authority was fully alive to the legal position but even then it has chosen to review the order dated 12.07.2018 and has passed the impugned order dated 10.01.2019 in detail, wherein, the Ld. Authority has given the following directions.

- (i) *The respondent is directed to refund Rs. 9,76,696/- which comes after deducting 10% of the sale consideration towards earnest money.*

(ii) *The respondent is also liable to pay interest at prescribed rate of 10.75% p.a. on the said amount of Rs. 9,67,696/- from the date of cancellation i.e. 08.07.2016 till actual date of payment.”*

8. In subsequent order dated 10.01.2019, the amount which is to be refunded has been changed. The interest has been awarded on the said amount. It shows that the order dated 12.07.2018, wherein, the appellant was awarded only a sum of Rs. 5,90,075.26 has been totally altered/reviewed, which is not permissible under law and is totally beyond the purview of Section 39 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter called the “Act”).

9. Faced with this legal position, ld. counsel for the respondent/allottee has very fairly conceded that the subsequent order dated 10.01.2019 may be set aside and the case may be remitted to the ld. Authority for fresh decision of the complaint on merits.

10. Sh. Venket Rao, Advocate, ld. counsel for the appellant/promoter has also very fairly agreed that the sum of Rs. 5,90,075.26/- may be paid to the respondent/allottee out of the amount deposited by the appellant/promoter to comply with the provisions of proviso to section 43(5) of the Act.

11. Thus, in view of the consensus arrived at between ld. counsel for the parties and in view of our observations above, the present appeal is hereby allowed. The impugned order dated 10.01.2019 as well as the previous order 12.07.2018 are set aside. The case is remitted to the Ld. Authority for fresh decisions on the complaint filed by the respondent/allottee afresh in accordance with law. The appellant/promoter has deposited a sum of Rs.

13,97,527.75/- with this Tribunal to comply with the provisions of proviso to Section 43(5) of the Act. Out of that a sum of Rs. 5,90,075.26/- be paid to the respondent/allottee, Mr. Mohit Malhotra without any prejudice to his rights on merits of the case and the remaining amount be refunded to the appellant/promoter in accordance with rules.

12. The parties are directed to appear before the Ld. Authority on 20.05.2021.

13. Copy of this order be communicated to ld. counsel for the parties/parties and the Ld. Authority.

14. File be consigned to the records.

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

Inderjeet Mehta
Member (Judicial)

Anil Kumar Gupta
Member (Technical)

28.04.2021
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