

**BEFORE THE HARYANA REAL ESTATE APPELLATE
TRIBUNAL**

**Appeal No.278 of 2019
Date of Decision: 05.08.2020**

Badan Singh Chauhan, Resident of D-884, Mohalla-Moosaaka,
Village-Allika, Tehsil & District Palwal, Haryana-121102.

Appellant

Versus

M/s Imperia Wishfield Private Limited through authorised
representative, A-25, Mohan Co-operating Industrial Estate,
New Delhi-110044.

Respondent

CORAM:

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

Argued by: Shri Satish Mishra, Advocate, Ld. Counsel for
the appellant.
Shri Vaibhav Narang, Advocate, Ld. Counsel for
the respondent.

ORDER:

JUSTICE DARSHAN SINGH (Retd.) CHAIRMAN:

The present appeal has been preferred by the
appellant/allottee against the order dated 12.03.2019 passed by
the learned Haryana Real Estate Regulatory Authority,
Gurugram (hereinafter called 'the Authority'), under Section 44
of the Real Estate (Regulation and Development) Act, 2016
(hereinafter called 'the Act'), whereby the complaint filed by the
appellant/allottee was disposed of with the following directions:-

- “ I. *The respondent is directed to pay the interest at the prescribed rate i.e. 10.75% per annum for every month of delay on the amount paid by the complainant from due date of possession till the actual offer of possession.*
- II. *The respondent is directed to pay interest accrued from 21.03.2018 (due date of possession) to 12.03.2019 (date of this order) on account of delay in handing over of possession to the complainant within 90 days from the date of issuance of this order.*
- III. *Thereafter, the monthly payment of interest till the offer of possession shall be paid on or before 10th of each subsequent month.*
- IV. *Since the project is not registered, notice under section 59 of the Real Estate (Regulation and Development) Act, 2016 for violation of section 3(1) of the said Act be issued to the respondent. Registration branch is directed to do the needful.”*

2. The appellant/allottee has filed the complaint before the learned Authority on the grounds inter alia that on 21.03.2012 he booked a studio apartment admeasuring 825 sq. ft. in Tower ‘Rubix’ in the project named ‘Esfera Elvedor’ by paying an advance amount of Rs.4.00 lacs. He was allotted a unit bearing No.2_S14 on second floor in Tower ‘B’ vide letter dated 21.03.2013. Vide letter dated 31.07.2012, the area of the unit was increased to 900 sq. ft. The appellant had paid a total sum of Rs.11,53,384/- out of the total basic price of Rs.58,01,108/-. It is further pleaded that the

respondent/developer has changed the allotted unit four times after the first allotment, without the consent of the appellant. He sent the repeated e-mails/letters and even on telephone requested for refund of the deposited amount but of no avail. Hence, the complaint.

3. In spite of adequate opportunities, the respondent/developer did not file any reply to the complaint.

4. After hearing learned counsel for the complainant/appellant, the Assistant Legal Manager on behalf of the respondent/developer and appreciating the documents on record, the learned Authority disposed of the complaint filed by the appellant by issuing the directions as reproduced in the upper part of this judgment.

5. Aggrieved with the aforesaid order dated 12.03.2019, the present appeal has been preferred by the appellant/allottee.

6. We have heard Shri Satish Mishra, Advocate, learned counsel for the appellant, Shri Vaibhav Narang, Advocate, learned counsel for the respondent and have meticulously examined the record of the case.

7. Learned counsel for the appellant contended that the appellant has filed the complaint for refund of the amount deposited by him primarily on the ground that the unit has been changed five times by the respondent/promoter without any consent of the appellant, which was violative of the terms and conditions of the allotment. He further contended that the

appellant sent various letters/emails for refund of the amount as he was not interested to have the changed unit. He contended that this point has not been dealt with at all by the learned Authority in the impugned order and the relief of refund has been wrongly declined.

8. On the other hand, Shri Vaibhav Narang, learned counsel for the respondent contended that the unit was changed in terms of the conditions of the allotment letter. The appellant/allottee has not signed the Builder Buyer Agreement. The change in the unit was affected with due consent of the appellant.

9. He further contended that the learned Authority has no jurisdiction to deal with the complaint filed by the appellant/allottee for grant of the relief of refund in view of the detailed judgment of this Tribunal in **Appeal No.06 of 2018 "Sameer Mahawar Versus MG Housing Pvt. Ltd."** decided on 02.05.2019.

10. We have duly considered the aforesaid contentions. The copy of the complaint filed by the appellant/allottee is available on the paper book as Annexure A/3. The perusal of the complaint shows that the appellant has sought the relief of refund of Rs.11,53,384/- alongwith interest as per rules, and withdrawal from the project and cancellation of the allotment. The appellant has further alleged that he has to pay the rent for the rented house @ Rs.16,000/- per month since April, 2015

and he is entitled to receive that amount due to default of the respondent/promoter.

11. In para no.8 of the complaint, the appellant/allottee has pleaded unauthorised change of the unit, which reads as under:-

“8) *That the Developer has changed booked unit and project four times after first allotment without the consent of the buyer (Complainant).*

a) First time-allotment was unit no.2_S14 2nd floor in Tower B Rubix on 21/03/2013 one year after booking. (as annexed Page-44)

b) Second time-allotment was unit no.6_A14 6th floor in Tower Evita on 02/02/2015 after 2 years of the first allotment. (as annexed Page-47)

c) Third time-vide letter/dated 06/10/2016 again unit no.5 S05 was allotted in project 37th Avenue and saying that additional charges will be Rs.11,00,858/- (additional charges Rs.8,76,600+90,000+1,34,258), after 5½ months of third allotment. (as annexed Page-52)

d) Fourth time-allotment was on 23/01/2017 that changed the nature of the unit and project, is saying as...(illegible)...37th Avenue that is now a Hotel named 'SVENSKA HOTEL'(illegible)....

e) Fifth time-In Developer's letter dated 05/06/2018 the said unit is written as Unit No.5_S05 in 37th Avenue' at Sector 37C, Gurugram. (as annexed Page-64)

12. From the averments raised by the appellant in the complaint, it comes out that the unit allotted to the appellant has been changed five times. It is alleged that said change was without the consent of the appellant. Though, it has been argued before us by the learned counsel for the respondent that the said change was with the consent of the appellant/allottee, yet that is a question of evidence. Moreover, the respondent/developer has not filed any reply to the complaint filed by the appellant.

13. Thus, as per the pleas raised by the appellant in the complaint, the refund of the amount deposited alongwith interest was sought primarily on the ground of unauthorised change of the unit.

14. We have perused the impugned order. The learned Authority has not discussed at all the issue raised by the appellant/allottee with respect to the unauthorised change of the unit, and straightway ordered for payment of interest for delayed possession. The issue raised by the appellant with respect to the arbitrary change of the unit should have been dealt with in accordance with law and the learned Authority should have returned its findings on appreciation of the material on record.

15. Thus, the learned Authority has not properly adjudicated upon the *lis* between the parties and proceeded to award interest for delayed possession without dealing with the

issue of un-authorized change of the unit, raised by the appellant/allottee in the complaint. Such type of order which does not decide the rights of the parties in a proper perspective, cannot be sustained in the eyes of law. Learned counsel for the respondent/promoter has also raised the issue that the learned Authority had no jurisdiction to entertain the complaint for the relief of refund.

16. Thus, keeping in view our aforesaid discussions, the present appeal is hereby allowed, the impugned order dated 12.03.2019 passed by the learned Authority is hereby set aside. The case is remanded for fresh decision in accordance with law.

17. The copy of this order be communicated to learned counsel for the parties/parties and the learned Authority for compliance.

18. File be consigned to the records.

Announced:
August 05th, 2020

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

Inderjeet Mehta
Member (Judicial)

Anil Kumar Gupta
Member (Technical)