

**BEFORE THE HARYANA REAL ESTATE APPELLATE  
TRIBUNAL**

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**Appeal Nos.115, 126 & 128 of 2021**

**Date of Decision: 09.08.2022**

**(1) Appeal No.115 of 2021**

1. Mrs. Rashi Arora
2. Mr. Anil Arora

House No.53, First Floor, Sector-15A, Noida, U.P.

Appellants

Versus

M/s Neo Developers Private Limited,

Registered office at:  
32, Pusa Road, New Delhi.

Corporate Office:

1507, Tower-D, Global Business Park, M.G. Road, Gurgaon-  
122002, Haryana.

Respondent

**(2) Appeal No.126 of 2021**

1. Mr. Sunil Malik, House No.578, Model Town, Panipat-  
132103, Haryana.
2. Mrs. Navneet Malik, House No.578, Model Town, Panipat-  
132103, Haryana.

Appellants

Versus

M/s Neo Developers Private Limited, 1507, Tower-D, Global  
Business Park, M.G. Road, Gurgaon-122002, Haryana.

Respondent

**(3) Appeal No.128 of 2021**

Mr. Harish Parmeshwar, E-22, Greater Kailash-I, New Delhi-110048.

Appellant

Versus

M/s Neo Developers Private Limited, 1507, Tower-D, Global Business Park, M.G. Road, Gurgaon-122002, Haryana.

Respondent

**CORAM:**

Shri Inderjeet Mehta,  
Shri Anil Kumar Gupta,

Member (Judicial)  
Member (Technical)

**Argued by:** Shri Pranjal P. Chaudhary, Advocate with Shri Ashwarya Sinha, Advocate, learned counsel for the appellants.

Shri Yashvir S. Balhara, Advocate, proxy for Shri Venket Rao, Advocate, ld. Counsel for the respondents.

**ORDER****INDERJEET MEHTA, MEMBER (JUDICIAL):**

Vide this judgment we are going to dispose of the above mentioned three appeals bearing Nos. 115/2021, 126/2021 and 128/2021 filed by the appellants-allottees under Section 44 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter called 'the Act') which have arisen out of three separate orders dated 05.03.2021, in three separate complaints bearing Nos. 554/2019, 535/2019

and 534/2019, passed by the learned Haryana Real Estate Regulatory Authority, Gurugram (hereinafter called 'the Authority')

2. The facts of these three complaints filed by the appellants-allottees are almost similar and common questions of law and facts are involved in all these appeals. So, for the purpose of disposal of these appeals, we are referring the facts of Complaint No.554 of 2019 titled as "Mrs. Rashi Arora and another vs. M/s Neo Developers Private Limited" (Appeal No.115 of 2021) taking it as a lead case.

3. The respondent-promoter had filed complaint under Section 31 of the Act against the appellants-allottees alleging therein that in the year 2011, both the appellants jointly moved an application for booking of an office/retail space in the project namely M/s Neo Developers Private Limited launched by the respondent-promoter. The total basic sale price of the said unit was Rs.1,21,78,800/-. At the time of booking, the appellants made a payment of Rs.4,00,000/- and in this regard an acknowledgment receipt dated 08.09.2011 was issued and the appellants were provisionally allotted unit No.623 admeasuring super area 2004 sq.ft. Thereafter the respondent-promoter received a payment of Rs.5,00,000/- vide

cheque dated 05.10.2011, whereas, in fact the appellants had to pay an amount of Rs.12,93,144.98.

4. Subsequent thereto, the respondent-promoter received the payment of Rs.11,00,000/- from the appellants vide cheque dated 22.12.2011, though the appellants-allottees were required to pay a sum of Rs.12,55,512.49. The respondent-promoter issued allotment letter dated 21.05.2012 and the appellants-allottees were allotted unit No.601-A, 602-B in the said project.

5. On 21.05.2012, the respondent-promoter raised the demand to clear the outstanding dues of first three instalments of Rs.17,66,537/- on or before 11.06.2012. The appellants-allottees paid the outstanding dues of Rs.17,66,537/- on 26.05.2012. Ultimately, the Builder Buyer's Agreement (hereinafter called the 'agreement') was executed between the appellants/allottees and the respondent-promoter on 22.02.2013. Subsequent thereto, on 27.02.2016, the respondent-promoter raised the demand of Rs.10,08,197/- on start of Third Basement Roof. The respondent-promoter also raised the demand to clear the outstanding dues of Rs.22,83,019/- on 15.03.2016.

6. A reminder dated 03.05.2016 to clear the aforesaid amount was also issued. Second reminder in this regard was

issued on 25.05.2016. As the appellants-allottees failed to make payment against the aforesaid demand raised by the respondent-promoter, so a final notice dated 03.06.2016 asking them to clear the dues of Rs.22,83,019/- on or before 10.06.2016, was issued. Since the appellants-allottees failed to make payment of due instalments, the cancellation letter dated 08.07.2016, regarding the allotted unit was issued to the appellants-allottees. However, the appellants-allottees vide letter dated 11.08.2016 requested the respondent-promoter to change the payment schedule. Thereafter, on 03.10.2016, the respondent-promoter received payment of Rs.30,12,045/- from the appellants-allottees through cheque and the respondent-promoter issued acknowledgment receipt dated 13.10.2016.

7. On 27.05.2017, the respondent-promoter raised demand to clear dues of Rs.13,16,561/- on or before 20.06.2017 according to the payment schedule. Since the appellants-allottees did not make payment of the said amount, so a reminder dated 28.06.2017 was issued. In this regard, second reminder dated 17.07.2017 was also issued. On 02.08.2017, the respondent-promoter issued the final notice to the appellants-allottees to clear the outstanding dues of Rs.13,16,561/- on or before 12.08.2017, failing which the respondent-promoter would be constrained to

terminate/cancel the allotment. On 31.10.2017, the respondent-promoter raised the demand to clear the total outstanding dues amounting to Rs.54,67,204/- on or before 20.11.2017, towards the total consideration of the apartment. Since, despite repeated requests the appellants-allottees did not deposit the aforesaid amount, so the respondent-promoter knocked the door of the Authority seeking direction to the appellants-allottees to pay the amount due towards them or in the alternative to allow the respondent-promoter to cancel the allotment and forfeit the amount paid by the appellants-allottees.

8. Upon notice, the appellants-allottees, while filing their joint reply resisted the complaint filed by the respondent-promoter on the ground of maintainability and suppression of material facts. On merits, they have taken the stand that qua the unit allotted to them, they have paid the amount of Rs.4,00,000/- on 03.09.2011; Rs.5,00,000/- on 11.10.2011; Rs.11,00,000/- on 26.12.2011; Rs.17,66,535/- on 24.05.2012, another amount of Rs.30,12,045/- on 03.10.2016 and Rs.30,121/- towards TDS deposits also on 03.10.2016 and in this way, the appellants-allottees had paid the total amount of Rs.62,03,029/- to the respondent-promoter regarding allotted unit. The appellants-allottees have vehemently denied that

they had not paid the amount as asked for by the respondent-promoter, in time. The appellants-allottees have alleged that in fact the respondent-promoter has cheated the innocent buyers including the appellants-allottees of their hard earned money. They have also alleged that the respondent-promoter despite not having the valid licence kept on raising the demands from the appellants-allottees and continued with the construction of the project. They further alleged that as per the own admission of the respondent-promoter, the licence no.1 of 2008 was valid till 14.05.2010 and was renewed only on 08.05.2017. The dismissal of the complaint was also prayed for.

9. After hearing learned counsel for the parties and appreciating the material on record, the learned Authority disposed of the complaint vide impugned order as under:-

*“ Arguments heard.*

*Reply has already been filed by the respondent.*

*The counsel for the complainant has submitted that due to non-payment of due instalments, they have cancelled the unit of the respondent vide cancellation letter dated 8.7.2016.*

*The respondent is directed to make the due payment to the complainant within a period of*

*three weeks failing which the unit shall be treated as cancelled.*

*Matter stands disposed of. File be consigned to the registry.”*

10. Aggrieved with the aforesaid order of the learned Authority, the present appeal has been preferred by the appellants-complainants.

11. We have heard Shri Pranjal P. Chaudhary, Advocate with Shri Ashwarya Sinha, Advocate, learned counsel for appellants, Shri Yashvir S. Balhara, Advocate, proxy for Shri Venket Rao, Advocate, learned counsel for the respondents and have meticulously examined the record of the case.

12. Learned counsel for the appellants has submitted that the impugned order handed down by the learned Authority is a non-speaking and non-reasoned order and even the pleadings as put forth by the parties as well as the submissions of the learned counsel for the parties are not recorded. Further, it has been submitted that the pleas as raised in the respective pleadings of the parties have not been adjudicated upon. Lastly, it is submitted that since



the impugned order is cryptic, non-reasoned and non-speaking order, so the matter be remitted to the learned Authority to adjudicate the controversy between the parties on the basis of the pleadings of the parties as well as respective submissions of the learned counsel for the parties.

13. Per contra, learned counsel for the respondent has submitted that though in the impugned order, pleadings as well as submissions of learned counsel for the parties have not been mentioned, but the learned Authority has rightly concluded that the appellants-allottees should make the due payment to the complainant-promoter if they intend to continue with the project, failing which, the units allotted to them shall be treated as cancelled.

14. After thoroughly going through the pleadings, submissions made by learned counsel for the parties and the other material available on the record, we are of the opinion that there is merit in the arguments advanced by learned counsel for the appellants.

15. Admittedly, as is explicit from the perusal of the impugned order, neither the pleadings of the parties nor the respective submissions of learned counsel for the parties

have been recorded. Even the pleas as raised by the respondent-promoter in the complaints preferred on its behalf, have not been adjudicated upon properly. Though, in the impugned order, the learned Authority has observed that as per the submissions made by the counsel for the respondent-promoter, on account of non-payment of due installments, the units allotted to the appellants-allottees have been cancelled, but a thorough perusal of the pleadings of the respondent-promoter shows that after the unit was cancelled by the respondent-promoter on 08.07.2016, the appellants-allottees vide letter dated 11.08.2016 had requested to change the payment schedule and subsequent to that on 03.10.2016, the appellants-allottees paid a sum of Rs.30,12,045/-, which was received by the respondent-promoter. On account of acceptance of this subsequent payment of the amount on 03.10.2016, by implication, the cancellation letter dated 08.07.2016 stands nullified. Thus, the learned Authority by way of the impugned order has not dealt with this aspect at all in view of the pleadings of the parties, which is of utmost importance for the proper adjudication of the controversy between the parties. Even the plea raised by the appellants-allottees that they have been making the

payment of the due amount in time, and the respondent-promoter despite not having the valid licence kept on raising the demand from the appellants-allottees and continued with the construction of the project, has not at all been dealt with.

16. As the impugned order handed down by the learned Authority is non-speaking, non-reasoned and even the pleadings and submissions on behalf of the parties are not recorded, the impugned order handed down by the learned Authority disposing the complaint is unsustainable in the eyes of law and deserves to be set aside.

17. During the course of arguments, learned counsel for the appellants-allottees has apprised that the appellants-allottees have already filed three separate fresh complaints for refund before the learned Authority, wherein the next date of hearing is 21.09.2022.

18. Thus, in view of the aforesaid discussion, all the three appeals are accepted. The impugned orders passed by the learned Authority are set aside and all the three cases are remitted to the learned Authority to decide and dispose of the complaints preferred by the respondent-promoter afresh in accordance with law on its own merits. Needless

to say, the learned Authority would pass speaking order referring to the pleadings of the parties and recording the submissions made on behalf of the respective parties without being prejudice to any observation made in this order.

19. Both the parties/their respective counsel are hereby directed to appear before the learned Authority on 21.09.2022.

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

21. This original order be attached with Appeal No.115 of 2021 and certified copies be attached with remaining two appeals bearing No.126 and 128 of 2021.

22. File be consigned to the record.

Announced:  
August 09, 2022

Inderjeet Mehta  
Member (Judicial)  
Haryana Real Estate Appellate Tribunal,  
Chandigarh

Anil Kumar Gupta  
Member (Technical)