

**BEFORE THE HARYANA REAL ESTATE APPELLATE
TRIBUNAL**

**Appeal No.319 of 2022
Date of Decision: 09.09.2022**

Avon Properties Private Limited through authorised representative Mr. Anup Pandey, F-11, Basement, Green Park Extension, New Delhi-110016.

2nd Address:

E-337, East of Kailash, New Delhi-110065.

Appellant

Versus

1. IREO Private Limited, C-4, Ist Floor, Malviya Nagar, New Delhi-110017.
2. Commander Realtors Private Limited, C-4, Ist Floor, Malviya Nagar, New Delhi-110017.

Respondents

CORAM:

Shri Inderjeet Mehta,
Shri Anil Kumar Gupta,

Member (Judicial)
Member (Technical)

Present: Shri Kanwal Goel, Advocate, learned counsel for the appellant.

Ms. Rupali Shekhar Verma, Advocate, learned counsel for the respondents.

ORDER:

INDERJEET MEHTA, MEMBER (JUDICIAL):

The present appeal has been preferred against the orders dated 12.11.2020, 09.02.2021 and 11.01.2022 passed

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by the learned Haryana Real Estate Regulatory Authority, Gurugram (hereinafter called 'the Authority') in Complaint No.CR/2508/2020.

2. Vide order dated 12.11.2020, the learned Authority dismissed the complaint in default due to non-appearance on behalf of the appellant. Thereafter, an application was filed for restoration of the captioned complaint stating therein that non-appearance was neither intentional nor willful but due to technical glitch in the software and that the reasons for non-appearance were beyond the control of the appellant. Thereafter, the appellant preferred another application dated 23.11.2021 for restoration of the captioned complaint and the same was also rejected by the learned Authority vide order dated 11.01.2022 without affording any opportunity of hearing to the appellant-complainant.

3. Hence, the present appeal.

4. We have heard learned counsel for the parties and have meticulously examined the record of the case.

5. Learned counsel for the appellant has contended that on 12.11.2020 when the complaint was fixed for hearing, the appellant or its counsel could not put appearance before the learned Authority as the hearing was fixed online and the

software installed by the learned Authority was new to the appellant. It is further contended that the appellant tried to login for the hearing but on account of a technical glitch, the appellant or its counsel could not put up appearance before the learned Authority and thus the absence of the appellant was neither intentional nor wilful but due to the reasons beyond the control of the appellant. It is further contended by the learned counsel for the appellant that both the applications filed by the appellant for restoration of the complaint were rejected/dismissed by the learned Authority without affording any opportunity of being heard and more so on both the occasions, i.e. 09.02.2021 and 06.01.2022 when the applications for restoration of the complaint were rejected/dismissed, the case was not listed for hearing. Thus, it is prayed that the appeal be allowed and the complaint be restored.

6. Per contra, learned counsel for the respondents has submitted that no plausible explanation has been rendered by the appellant for its non-appearance through its duly authorised person or advocate and the learned Authority had rightly dismissed the complaint.

7. We have considered the contentions of learned counsel for the parties.

8. The perusal of the record shows that the impugned order dated 12.11.2020 dismissing the complaint was passed at 11.30 AM. Indisputably, in those days the proceedings of the cases were being conducted through video conferencing in virtual court. It is the version of the appellant that non-appearance was neither intentional nor willful but due to technical glitch in the software. In our view, the ground taken by the appellant is justifiable to restore the complaint, coupled with the fact that the lis between the parties should be adjudicated on merits and not on technicalities.

9. So far as the dismissal of both the applications for restoration of the complaint is concerned, the same were rejected/dismissed without listing the same for hearing. More so, on both the occasions i.e. 09.02.2021 and 06.01.2022, the applications were not decided in judicious manner and the same were rejected/dismissed on the basis of the opinion given by the Legal Officer which reads as under:-

“The above mentioned matter was heard and disposed of vide order dated 12.11.2020 wherein the Authority has dismissed the matter in default.

The applicant/respondent has submitted that the applicant or his counsel could not put appearance before the authority on the date of hearing as the hearing was fixed online and the software installed

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by the authority was new to the applicant, perhaps the applicant tried to login for the hearing but on account of a technical glitch the applicant or his counsel could not put up appearance before the authority. The applicant further submitted that the absence of the applicant was neither intentional nor wilful, but for the good and sufficient reason stated above. The applicant has requested for the restoration of complaint to its original position.

In fact, the authority has continued with the physical hearing also and if desired the applicant might appear through any representative physically in the court. Moreover, the use of word perhaps shows the intention of the applicant for appearing in hearing and the reason for non-appearance given by him is vague and without proof.

In view of the above, the application filed by the respondent/applicant may be rejected as it may set a precedence for those who are reluctant to appear on the date of hearing and afterwards file application to linger on the matter.

Submitted for appropriate orders please.

X no valid ground for absence. Hence be rejected.

*Sd/-
09.02.2021
Legal Officer*

Hon'ble Member Sd/-9.2.21

Hon'ble Chairman Sd/-"

10. Similarly, the second application was rejected/dismissed by the learned Authority while passing the order dated 11.01.2022 in a non-judicious manner on the same pattern reproduced above.

11. It is well settled law that the judicial or quasi-judicial tribunals or administrative bodies exercising quasi-judicial powers should not exceed their statutory jurisdiction and correctly administer the law laid down by the statute under which they act. They should pass speaking orders. Where there is a right vested in an authority created by statute, be it administrative or quasi-judicial, it becomes its duty to hear judicially, that is to say, in an objective manner, impartially and after giving reasonable opportunity to the parties concerned in the dispute, to place their respective cases before it. They must deal with the question referred to them without bias, and they must give to each of the parties the opportunity of adequately presenting the case made.

12. As the appellant-complainant wants to pursue its complaint, so it should not be deprived of the rights. For the inconvenience caused to the respondents and the delay likely to be caused in the disposal of the complaint, the respondents can be well compensated with costs.

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13. Thus, keeping in view our aforesaid discussion, in order to afford fair opportunity of being heard to the appellant and to enable it to pursue the complaint, the present appeal is hereby allowed. The impugned orders dated 12.11.2020, 09.02.2021 and 11.01.2022 passed by the learned Authority are set aside and the complaint is restored at its original number subject to payment of Rs.10,000/- as costs to be paid to the respondents.

14. Both the parties/their counsel are directed to appear before the learned Authority on 30.09.2022.

15. Copy of this order be communicated to the parties/learned counsel for the parties and the learned Authority for compliance.

16. File be consigned to the record.

Announced:
09.09.2022

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

Anil Kumar Gupta
Member (Technical)