

**BEFORE THE HARYANA REAL ESTATE APPELLATE
TRIBUNAL**

**Appeal No.110 of 2019
Date of Decision: 15.09.2022**

Desh Raj Mangal, Resident of House no.4, Professor Colony,
Yamuna Nagar-135001

Appellant

Versus

M/s Aerens Jai Realty Private Limited, Registered Office at
Gulab Nagar, Jai City Colony, Jagadhri-135003

2nd Address:

Kailash Chand son of Late Shri Jai Narain Gupta, Managing
Director, Lotus Villa Aerens Estate, Behind Post Office Mali
Road D-3, Vasant Kunj, New Delhi-110070.

Respondent

CORAM:

Shri Inderjeet Mehta,

Member (Judicial)

Shri Anil Kumar Gupta,

Member (Technical)

Argued by: Shri Shiv Kumar Gupta, Advocate, learned
counsel for the appellant.

Shri Sourabh Goel, Advocate, learned counsel
for the respondent.

ORDER:

INDERJEET MEHTA, MEMBER (JUDICIAL):

Feeling aggrieved by the order dated 06.12.2018
handed down by the learned Adjudicating Officer, Real Estate
Regulatory Authority, Panchkula (Haryana) in Complaint No.
RERA-PKL 777 of 2018 titled as "Desh Raj Mangla vs. M/s

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Aerens Jai Realty Pvt. Ltd.”, vide which the complaint preferred by the appellant/complainant seeking compensation from the respondent/builder was dismissed, he had chosen to prefer the present appeal.

2. Vide order dated 18.07.2019 handed down by this Tribunal in the present appeal, the impugned order dated 06.12.2018 was set aside and the appeal preferred by the appellant/complainant was accepted.

3. The respondent/promoter to assail the aforesaid order dated 18.07.2019, knocked the door of the Hon'ble Punjab and Haryana High Court, Chandigarh, by way of preferring RERA-APPEAL NO.33 of 2021 and the same was disposed of by the Hon'ble High Court vide order dated 03.08.2022 with the following observations:-

“ For the reasons stated in the application which is supported by an affidavit, the delay in filing the appeal is condoned, as the Courts were working in a restricted manner due to the outbreak of Covid-19 pandemic.

After having argued at some length, the learned counsel representing the parties have come to consensus. In the present case, the appellant claims that the impugned order has been passed by the Appellate Tribunal without giving him proper opportunity of hearing. He submits that as per the information uploaded on the website, the status of

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the appeal was depicted to have been dismissed, though it was taken up for hearing on 18.07.2019 and was accepted.

The learned counsel representing the parties jointly pray that let the appeal be redecided by the Tribunal afresh after hearing both the parties within a period of a month.

Keeping in view of the aforesaid agreement between the parties, the order under challenge passed by the Appellate Tribunal on 18.07.2019 is set aside while requesting the Tribunal to decide the appeal within a period of one month, from the next date of hearing.

The parties through their counsel are directed to appear before the Appellate Tribunal on 18.08.2022, at 10.00 a.m.

All the pending miscellaneous applications, if any, are also disposed of.”

4. Regarding the aforesaid submission of the learned counsel for the respondent before the Hon'ble High Court that as per the information uploaded on the website, the status of the appeal was depicted to have been dismissed, though it was taken up for hearing on 18.07.2019 and was accepted, the report of the concerned official had been sought. It has been reported that due to inadvertence, in the website of the Tribunal, the status of the appeal was shown to be dismissed, whereas, actually on 12.07.2019 the arguments were heard in

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the present appeal and the order was reserved. The said lapse on the part of the official of this Tribunal was due to inadvertence and inexperience as this Tribunal was in its inception at that time and there were natural teething problems.

5. Regarding the other submission of the learned counsel for the respondent before the Hon'ble High Court that the order dated 18.07.2019 has been passed by this Tribunal without giving him proper opportunity of hearing, it is pertinent to mention that after the present appeal had been preferred, the notice was issued on 18.03.2019 to the respondent/promoter for 22.04.2019. On the said date i.e. 22.04.2019, one Shri Nishchay Verma, Advocate, had appeared as proxy for Shri Sourabh Goel, Advocate, learned counsel for the respondent and thereafter the present appeal was adjourned to 17.05.2019 for filing Power of Attorney by Shri Sourabh Goel, Advocate, on behalf of the respondent. On 17.05.2019 one Shri Akash Goel, Advocate, had appeared as proxy counsel for Shri Sourabh Goel, Advocate, learned counsel for the respondent and he requested a date to file Power of Attorney on behalf of the respondent along with Board Resolution and the appeal was ordered to be listed for 12.06.2019. On the said date i.e. 12.06.2019, none appeared on behalf of the respondent and in the interest of justice, the

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case was adjourned to 12.07.2019 for arguments, and it was also ordered that the next date of hearing be informed to Shri Sourabh Goel, Advocate, learned counsel for the respondent. Even on 12.07.2019, Shri Sourabh Goel, Advocate, did not put his appearance on behalf of the respondent/promoter and following order was handed down by this Tribunal:-

“Counsel for the respondent is not present. On the last date of hearing also none was present on behalf of the respondent. The next date of hearing was ordered to be informed to the counsel for the respondent. As per the report of the office, Sh. Sourbh Goel, Advocate ld. counsel for the respondent has been duly informed on the same date i.e. on 12.06.2019. Even then none has come present on behalf of the respondent, so, the respondent is preceded ex-parte.

Arguments heard.

Judgment reserved.”

6. As referred above, vide order dated 18.07.2019, the present appeal was accepted and the impugned order dated 06.12.2018 handed down by the learned Adjudicating Officer, Panchkula was set aside.

7. All said and done, now the learned counsel for the appellant as well as learned counsel for the respondent have been heard at length and sincere endeavour has been made by this Tribunal to comply with the directions of the Hon'ble High

Court to decide the present appeal within a period of one month, from the next date of hearing i.e. 18.08.2022.

8. As back as in the year 2006 the respondent/builder launched a project under the name and style "Jai City" to develop a plotted colony at Yamuna Nagar after obtaining licence from the Town & Country Planning Department, Haryana. One plot was purchased by the complainant from its original allottee. The sale consideration of the plot was Rs.11,01,750/- and the original allottee had paid a sum of Rs.3,85,686/-. The said purchase of the plot by the appellant was ratified by the respondent in favour of the complainant in January, 2007. Thereafter an undated allotment letter was issued in favour of the appellant in respect of plot no. F-13 in December 2007. The appellant/complainant had deposited an amount of Rs.5,45,844/- i.e. more than 50% of the total sale consideration with the respondent but no initiative was taken by the respondent to deliver the possession of the plot. Rather the respondent forged a cancellation letter regarding the said plot and allotted the same to someone else. When the appellant confronted the respondent in this regard, he was offered an alternative plot no. J-16. However, inspite of the readiness of the appellant to accept the same the respondent did not honour the said allotment. In this regard the appellant had also lodged an FIR in the year 2012 against the

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respondent. The appellant had also filed a complaint before Consumer Redressal Forum, in the year 2012 for the redressal of his grievance, however the said complaint was dismissed on 29.09.2017. Thereafter the appellant was constrained to file complaint no.75/2018 before the Haryana Real Estate Regulatory Authority, Panchkula (hereinafter called the 'Authority') with prayer to refund the amount already paid alongwith interest at the rate of 18% per annum and also for awarding the compensation for the fraud committed upon him by the respondent.

9. The said complaint no.75/2018 was disposed of by the learned Authority, Panchkula vide order dated 26.09.2018 and the respondent was ordered to refund the already paid amount of Rs.5,45,844/- to the appellant along with interest as envisaged under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 at the rate State Bank of India highest marginal cost lending rate plus 2%.

10. Since the appellant was not granted the relief of compensation as prayed for, so, he preferred another complaint no.777/2018 before the learned Adjudicating Officer, Real Estate Regulatory Authority, Panchkula, to claim the aforesaid relief of compensation.

11. The said complaint was resisted by the respondent by taking the stand that despite issuance of various letters, as the appellant had not paid the outstanding instalment, so his allotment was cancelled and the amount paid by him was forfeited. As regard to making of an alternative offer of plot no. J-16 the stand of the respondent has been that the said plot was bigger in size and the appellant/complainant had refused to make the payment toward the increased area. So, the said plot J-16 was also allotted to some other person. Further, the respondent has alleged that since earlier complaint no.75/2018 was filed by the appellant claiming the relief of refund and compensation, so, the subsequent complaint no.777/2018 claiming the same relief of refund and compensation is not maintainable. The dismissal of complaint was also prayed for.

12. After hearing the learned counsel for the appellant as well as learned counsel for the respondent and perusing the record, learned Adjudicating Officer, Panchkula did not find any merit in the complaint preferred by the appellant regarding compensation and the same was dismissed.

13. Opening his side of arguments, learned counsel for the appellant has submitted that as the appellant has been deprived of his ownership of a plot after waiting for a period of

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more than twelve years, for no fault of his, the same amounts to mental agony and hardship. Further, he has submitted that though the appellant has been granted the relief of refund of the amount deposited by him along with interest, but the same cannot be a ground to deprive him compensation on account of mental agony specifically when during the wait of long period of twelve years there has been escalation in the prices of the plots, coupled with the fact an F.I.R. No.350 dated 10.09.2012, under Sections 420,406 and 120-B of the Indian Penal Code was registered with Police Station, City Jagadhri, against the Managing Director, Vice-President and Sales Manager of the respondent company for committing fraud with the appellant. Thus, it has been submitted that the appellant is entitled for the compensation as prayed for.

14. Countering this vehemently, learned counsel for the respondent has submitted that the appellant in the year 2012 had instituted a complaint before the District Consumer Disputes Redressal Forum, Yamuna Nagar, claiming the compensation and the same was dismissed vide order dated 29.09.20217. Further, it is submitted that to invoke the jurisdiction of the Adjudicating Officer under the provisions of the Real Estate (Regulation and Development) Act, 2016 (hereinafter called 'the Act'), no liberty was granted to the appellant to approach the Adjudicating Officer to file the

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complaint for compensation as per the provisions of Section 71 of the Act. Further, he has submitted that the present complaint for compensation preferred by the appellant before the Adjudicating Officer, Real Estate Regulatory Authority, Panchkula (Haryana), claiming relief of compensation is not maintainable because the complainant had earlier filed Complaint No. RERA-PKL 75 of 2018 titled as “Desh Raj Mangla vs. M/s Aerens Jai Realty Pvt. Ltd.”, seeking the relief of refund and compensation and the relief of compensation was denied to him by the learned Haryana Real Estate Regulatory Authority Panchkula. Lastly, it has been submitted that the appellant otherwise also has not spelled out any of factors as mentioned in Section 72 of the Act which the Adjudicating Officer would have taken into consideration to grant the relief of compensation to the appellant.

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

16. As is explicit from the perusal of the record, the appellant has preferred Complaint No.1112 of 2012 titled “Des Raj Mangal vs. M/s Aerens Jai Realty Pvt. Ltd. and Others” before the District Consumer Disputes Redressal Forum, Yamuna Nagar claiming the relief of compensation against the respondent-promoter and the said complaint was dismissed

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vide order dated 29.09.2017 with the observations that as the complicated and complex questions of law and facts are involved in the present case, so the complaint cannot be decided by this Forum in summary proceedings and the same was dismissed with no order as to costs.

17. To assail the said order dated 29.09.2017, the appellant preferred Appeal No.1267 of 2017 dated 25.10.2017 before the State Consumer Disputes Redressal Commission, Haryana, Panchkula. However, the said appeal was got dismissed as withdrawn on 18.02.2018 by the counsel of the appellant seeking liberty to file fresh complaint before the competent authority/Haryana Real Estate Regulatory Authority, under Section 71 of the Act. Thereafter, vide order dated 18.02.2018, the appeal was ordered to be dismissed as withdrawn with liberty to file fresh complaint before the competent authority. Thus, the plea raised by learned counsel for the respondent that no liberty was granted by the State Consumer Disputes Redressal Commission, Haryana, Panchkula, to the appellant to file the complaint for compensation before the Adjudicating Officer, Haryana Real Estate Regulatory Authority Panchkula, is without any substance.

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18. Now coming to the second submission that in view of the earlier complaint bearing No.75/2018, in which similar relief of refund and compensation had been sought, the subsequent complaint i.e. Complaint No.777/2018 seeking the same relief is not maintainable, this fact deserves special mention that the earlier complaint No.75/2018 seeking the relief of refund, interest and compensation was disposed of by the Haryana Real Estate Regulatory Authority Panchkula, vide order dated 26.09.2018 (Annexure 'B') and the appellant was only granted the relief of refund of the already paid amount of Rs.5,45,844/- along with interest as envisaged under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017. However, the relief of compensation as sought in the said complaint No.75/2018 was not specifically denied by the learned Authority, Panchkula.

19. Thereafter, the appellant preferred Complaint No.777/2018, claiming the relief of refund as well as compensation on account of mental agony and harassment. Said complaint was dismissed by the learned Adjudicating Officer vide impugned order dated 06.12.2018 with the observations that the relief for refund had already been granted to the appellant and he was not entitled to the compensation on account of mental agony and harassment.

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20. Though, as referred above, the appellant had again filed the complaint for relief of refund and compensation before the learned Adjudicating Officer, after in complaint No.75/2018, he was granted the relief of refund and interest but this Tribunal cannot lose sight of the fact that the earlier complaint No.75/2018, which was disposed of vide order dated 26.09.2018, no observation worth the name was made by the learned Authority denying the relief of compensation as claimed by the appellant.

21. As referred above, admittedly in Complaint No.75/2018 and Complaint No.777/2018 the appellant has claimed the relief of refund and compensation. However, simply on account of this fact, Complaint No.777/2018 claiming the same relief cannot be held to be not maintainable because the provisions of Code of Civil Procedure are not strictly applicable to the proceedings before the learned Authority or the Adjudicating Officer. Moreover, as the relief of refund had already been granted to the appellant, so in complaint no.777/2018, the intention of the appellant was to only seek compensation, which was not denied by the learned Authority vide order dated 26.09.2018 while adjudicating complaint no.75/2018. The appellant had preferred both the complaints no.75/2018 and 777/2018 through his present counsel Shri S.K. Gupta, Advocate. Since the complaint

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no.75/2018 had been adjudicated by the learned Authority vide order dated 26.09.2018 and the relief of refund of the amount had been granted to the appellant, so the counsel for the appellant should have been vigilant enough while drafting complaint no.777/2018 and he should have claimed the relief of compensation only, on behalf of the appellant, while drafting the said complaint. Moreover, the law is well settled that on account of lapses on the part of the advocates, the parties should not be allowed to suffer.

22. The submission of the learned counsel for the respondent that the appellant in his complaint has not spelled out any of the factors as mentioned in Section 72 of the Act, it is suffice to say that these factors have to be taken into consideration by the learned Adjudicating Officer while adjudicating the quantum of compensation. In the case in hand, the appellant has simply claimed compensation on account of mental agony and harassment as he has been deprived of the ownership of the allotted plot to him after waiting for a period of more than twelve years, for no fault on his part.

23. The relief of the compensation on account of mental agony and harassment caused by the respondent due to non-allotment of the booked plot was dismissed by the learned

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Adjudicating Officer with the observations as mentioned in paras no.5 & 6 of the impugned order, which are as follows :-

“5. The other relief claimed is for compensation due to mental agony and harassment caused by the respondent. The record manifests that the complainant has committed default in payment of instalment of Rs.2,07,400/- demanded vide letter dated 31.10.2007. So, the respondent issued him a final notice dated 09.05.2008 informing that he shall pay the outstanding amount within 10 days or else his allotment will be cancelled. The complainant did not pay the amount even thereafter and the respondent then allotted the said plot to someone else. The complainant thereafter kept sleeping over his rights without contacting the respondent and making any correspondence. He awakened from sleep in the year 2012 when he filed a complaint with the police and a petition before the Consumer Redressal Forum.

6. The background of the case thus clearly shows that the complainant himself was guilty for creating the circumstances due to which the respondent could not deliver him possession of the plot and allotted it to someone else. So, the respondent cannot be held guilty of causing any such mental agony and hardship to the complainant as may warrant compensation and complaint deserves dismissal.”

24. A thorough look at the aforesaid observations shows that the relief of compensation was refused by the learned

Adjudicating Officer on the ground that as the appellant had committed default in payment of instalment of Rs.2,07,400/- demanded vide letter dated 31.10.2007, so the respondent had issued him a final notice dated 09.05.2008 apprising that if the said amount was not paid within ten days, in that eventuality his allotment would be cancelled. The learned Adjudicating Officer also observed that the complainant did not pay the amount even thereafter and the respondent allotted the said plot to someone else.

25. These aforesaid observations of the learned Adjudicating Officer, in paras no.5 & 6 of the impugned order, appear to be contrary to the observations made by learned Haryana Real Estate Regulatory Authority, Panchkula, in para no.8 of the order dated 26.09.2018 (Annexure-B), vide which the complaint no.75/2018 preferred by the appellant for refund of the amount of Rs.5,45,844/- along with interest on the basis of same allegation was disposed of. The said para no.8 of the said order dated 26.09.2018 is as follows:-

“8. The complainant is claiming refund of the amount already paid and the respondent is seeking to defeat his claim on two grounds. Firstly, on the ground that the allotment in favour of the complainant was cancelled and the amount paid was forfeited on 09.05.2008. The respondent in order to succeed on this plea has to establish two things,

namely, (i) that he had served a letter of cancellation on the complainant; and (ii) he was permitted to forfeited the entire paid amount in terms of the agreement entered between the parties. What to talk of annexing some proof with the reply about dispatch and service of notice, the respondent has not even raised a bald plea to the effect that cancellation notice was sent and served on the complainant. That apart, the respondent has not even attached with his reply the cancellation letter. He has attached Annexure R-2 with his reply for proving the cancellation of allotment. Perusal of said document reveals that the respondent had thereby raised a final demand from the complainant to pay outstanding dues and had expressed his intention to cancel the allotment and forfeit the paid amount if the complainant fails to discharge his obligation to pay the outstanding amount. So, letter (annexure R-2), in essence, is only a notice informing the complainant that his allotment will be cancelled and already paid amount will be forfeited, if he fails to pay the outstanding dues. Thus, Annexure R-2 cannot be treated as a cancellation letter.”

26. Since the learned Authority while deciding the complaint of the appellant for refund on the basis of the same allegation had specifically opined that notice dated 09.05.2008 stating that the appellant shall pay the outstanding amount within 10 days or else his allotment would be cancelled, cannot be treated as a cancellation letter, so, it cannot be construed that the offer of possession of the plot was not made

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to the appellant/complainant on account of non-payment of the amount due to him. Thus, in these circumstances, this is fit and appropriate case where on account of non-allotment of the plot to the appellant by the respondent even after expiry of the period of more than twelve years after acceptance of more than 50% amount of the value of plot, the compensation should be awarded.

27. Admittedly, on the basis of the same allegations as per which the complaint no.777/2018 seeking compensation on account of mental agony and harassment has been filed, an F.I.R. No.350 dated 10.09.2012, under Sections 420, 406 and 120-B of the Indian Penal Code was registered with the Police Station, City Jagadhri, against Kailash Chand, K.K. Aggarwal and Bhupinder Aggarwal, Managing Director, Vice-President as well as Sales Manager respectively, of the respondent company for committing fraud on the appellant. After registration of the said case, the aforesaid responsible persons of the respondent company were released on bail vide order dated 29.09.2012 and thereafter vide order dated 16.04.2013 they were charge-sheeted for the commission of punishable under Sections 420, 406 and 120-B of the Indian Penal Code, handed down by Shri R.P. Singh, the then Additional Chief Judicial Magistrate, Yamuna Nagar at Jagadhri.

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28. The appellant-complainant in the present case has sought compensation to the tune of Rs.10 lakhs due to mental agony and hardship caused to him by the respondent on account of non-allotment of the plot. The hardship in simple words can be defined as an adversity, or something difficult or unpleasant that one has to endure or overcome. In the given facts and circumstances of the present case, the possession of the plot was not given to the appellant, for no fault of his, certainly amounts to mental agony and hardship, which the appellant had undergone for the last about more than twelve years. Moreover, this Tribunal also cannot lose site of the fact that there has been escalation in the prices of the plots and as the appellant has been deprived of the ownership of the plot after waiting for a period of more than twelve years, so he has undergone the mental agony and hardship by not enjoying the fruits of ownership of the plot. Thus, we deem it proper and appropriate to grant him compensation on account of mental agony and harassment to the tune of Rs.4,00,000/- along with interest as envisaged under Rule 15 of Haryana Real Estate Regulation and Development Rules at the rate State Bank of India highest marginal cost lending rate plus 2% from the date of filing of petition till realisation.

29. Thus, as a consequence to the aforesaid discussion this Tribunal is of the considered view that the impugned

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order dated 06.12.2018 handed down by the learned Adjudicating Officer, Panchkula, deserves to be set-aside and the same is accordingly set-aside. Consequently the appeal preferred by the appellant is hereby accepted. The complaint filed by the appellant is hereby allowed. The appellant is entitled to the compensation on account of mental agony and harassment to the tune of Rs. 4,00,000/- along with interest as envisaged under Rule 15 of Haryana Real Estate (Regulation and Development) Rules, 2017 at the rate State Bank of India highest marginal cost lending rate plus 2% from the date of filing of petition till realisation.

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

31. File be consigned to the record.

Announced:
September 15, 2022

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

Anil Kumar Gupta
Member (Technical)