

**BEFORE THE HARYANA REAL ESTATE APPELLATE
TRIBUNAL**

Appeal No. 534 of 2021
Date of Decision: 01.12.2022

Eldeco Infrastructure and Properties Ltd. 201-202, Splendor Forum, 2nd Floor, Jasola District Centre, New Delhi-110025.

...Appellant

Versus

1. Mr. Manmohan Raj S/o Sh. R.S. Pandit, R/o Reflection India, Binjhol Road, near Sondhapurchowk on Jatal Road, Panipat-132103. **IInd Address:** Villa No. E4/4 ELDECO Estate Oone, G.T. Karnal Road, Panipat-132103.

2. Mrs. Rekha Mahajan W/o Mr. Manmohan Raj, R/o Reflection India, Binjhol Road, near Sondhapurchowk on Jatal Road, Panipat-132103. **IInd Address:** Villa No. E4/4 ELDECO Estate Oone, G.T. Karnal Road, Panipat-132103.

3. Haryana Real Estate Regulatory Authority, Panchkula, Mini Secretaria, New Office Block, 2nd and 3rd Floor, Sector-1, Panchkula 134114.

...Respondents

CORAM:

**Shri Inderjeet Mehta,
Shri Anil Kumar Gupta,**

**Member (Judicial)
Member (Technical)**

Argued by: Shri Anuj Kohli, Advocate,
Ld. counsel for appellants.

Both the respondents in person
with Shri Rishab Jain, Advocate,
Ld. counsel for respondents.

ORDER:

Anil Kumar Gupta, Member (Technical):

The present appeal has been preferred under Section 44(2) of the Real Estate (Regulation and Development)

Act, 2016 (hereinafter called the Act) against order dated 10.03.2022 passed by the Ld. Haryana Real Estate Regulatory Authority, Panchkula (hereinafter called 'the Authority'), whereby complaint No. 2859 of 2019 filed by the Respondents was disposed of with the following directions:

"Today, none is present on behalf of the respondents. The Authority is convinced with case of the complainants that according to the agreement executed between the complainants and the respondents, the area of the plot should have been 356 sq. metres. However, if the actual area of the plot is 356 sq. yards, then the complainants be charged accordingly and the amount taken in excess by the respondents for additional area be refunded back to the complainants, along with interest on the excess amount from date of payment of the said amount by complainants till date of this order, to be calculated as per Rule 15 of HREERA Rules, 2017. Possession of the agreed plot be delivered to the complainants within 30 days of uploading of the order on website of the Authority."

2. Respondents-allottees had booked a plot bearing no. HI/12A in the project of the respondent namely 'Eldeco Estate One', Panipat, Haryana. It was pleaded in the complaint that at the time of booking of plot, the appellant had specifically told the respondents-allottees that the plot measures 356 sq. meters and on conversion in sq. yards, the area of the plot roughly comes out between 430 to 450 sq.

yards. The sale consideration of the plot measuring 356 sq. meters is Rs. 56,08,000/- (inclusive of everything) and the respondents-allottees have already paid an amount of Rs. 60,90,736/- as per demands raised by appellant between the period 08.03.2014 to 15.04.2015. The respondents-allottees further pleaded that at the time of booking they were issued an allotment letter dated 21.04.2014 which clearly shows that the size of their plot is 356 sq. meters. However, subsequently they received some documents dated 08.05.2014 from the appellant in which the plot area was mentioned as 356 sq. yards and not 356 sq. meters. The respondents-allottees wrote various mails to the appellant from 2016 to 2019 complaining about reduction in the allotted plot area and fabrication of the documents dated 08.05.2014. It was pleaded that the appellant is duty bound to offer possession by 15.04.2015 in terms of the agreement executed between the parties. The possession has yet not been delivered and rather a demand notice dated 26.11.2019 for payment of Rs. 14,28,273/- has been raised. Thus, the respondents-allottees filed the complaint seeking the following reliefs:-

“A. To direct the respondent to give peaceful possession of the plot no. HI/12A with the agreed upon size that is 356 sq. meters immediately.

B. To direct the respondent to pay the compensation for the rent @ Rs. 10000/- per

month to the complainant from the date of scheduled possession i.e 15.04.15.

C. To direct the respondent to pay compensation/interest at the rate of interest of 24% per annum, which they are charging on default payment.

D. To direct the respondent to refund the payment of 59.05 sq. meters (Area short as per the allotment letter) in case of delivery of 356 sq. yards plot, along with interest and the compensation for delay in possession and harassment.

E. To Award the cost of proceedings and/or pass any other order which this Honourable Authority deems fit and proper in the facts and circumstances of the present case.

F. To direct the forged signature to be got examined/verified by some competent handwriting expert to establish the case of forgery against the Respondents and may please issue directions for appropriate action against them for Fraud, Forgery, Cheating, Falsification of Documents and Breach of Trust.

G. To issue appropriate directions to prompt such frauds in future.”

3. The complaint was resisted by the appellant on the grounds that the appellant has always been allotting plots in

the colony being developed by them in sq. yards and not in sq. meters to all the allottees and can produce agreements executed during the period when the said plot was applied and allotted to the respondents-allottees. The appellant referred to the allotment letter dated 21.04.2014 in which size of the plot has been shown and pleaded that the blank containing words 'sq. metres' has been struck off. Further, it was pleaded that the documents, which the respondents-allottees have claimed to be forged by the appellant, were actually filed in the presence of Mr. Manmohan Raj only and thereafter, he signed the same. It was also pleaded that the appellant had offered the possession of the said plot to the respondents-allottees on 23.01.2015 subject to payment of balance dues in terms of the agreement. However, the respondents-allottees are making lame excuses and are not making the balance dues.

4. After hearing the parties, the ld. Authority passed the order. The relevant part of which has already been reproduced in the upper part of this appeal. Aggrieved with the findings of the impugned order, the present appeal has been preferred by the appellant.

5. We have heard Shri Anuj Kohli, Advocate, Ld. counsel for the appellant and both the Respondents in person with Shri Rishab Jain, Advocate, and have carefully gone through the record of the case.

6. Opening the arguments, Shri Anuj Kohli, Advocate, ld. counsel for the appellant contended that the respondent no. 1 approached the appellant for the purpose of purchasing a plot admeasuring 356 sq. yards in the project of the appellant and displayed his intention to purchase the said plot in his and his wife's names and duly signed the application form dated 04.03.2014 for the same. Pursuance to the said application form, plot No. H-I/12A, S-I Block, Inner Circle, admeasuring 356 sq. yards (hereinafter "Plot") was allotted in favour of respondent no. 1 and 2 vide allotment certificate and agreement dated 21.04.2014 (hereinafter "Allotment Agreement"). It was contended that the area of the Plot being clearly mentioned in the document dated 08.05.2014 as 356 sq. yards. It was further contended that the respondents did not dispute the area at the time of signing of the application form nor at the time of signing of the allotment agreement.

7. It was further contended that the respondent no. 1 & 2 were under contractual obligation to make timely payments as per the allotment agreement. Respondents did not make the timely payments, consequently, initially demand letters were issued and thereafter, respondents were served with a pre-cancellation notice dated 02.08.2014.

8. It was further pleaded that a final demand notice (hereinafter "FDN")/ offer of possession dated 23.01.2015 was issued to the respondents but they deliberately did not make

the due payment and get the conveyance deed executed in their favour owing to their own reasons as nothing qua the alleged incorrect reduction in area of the Plot was ever raised by the respondents for all this in the meanwhile. The said issue was raised for the first time vide e-mail dated 11th July 2017, which clearly establishes that the said issue has been created by the Respondent No. 1 and 2 as an afterthought with a view to gain undue advantage and unjust enrichment at the cost of appellant.

9. It was further contended that in all the communication/correspondences with the respondents, the unit applied to the area of the Plot has been mentioned as square yards in accordance with the provisions of Indian Metrology Act. The Respondent No. 1 and 2 had no grievance at any stage even at the time of issuance of FDN and as per their own averments the first communication from their side in this regard was made on 11.07.2017 i.e. (after issuance of FDN) which shows the falsity of the claims of the respondents.

With these contentions, it was contended that the present appeal may be allowed and the area of the plot allotted to the respondents may be considered as 356 sq. yards and not in 356 sq. meters.

10. Per contra, it was contended by the respondents that at the time of booking of the plot, the appellant has

specifically told that their plot will be measuring 356 sq. meters. Also, the agreement dated 21.04.2014 is for a plot measuring 356 sq. meters against sale consideration of Rs. 56,08,000/- (inclusive of everything). It was further contended that as per the agreement dated 21.04.2014, the size of the plot clearly indicates 356 sq. meters. The document dated 08.05.2014 indicating the plot area of 356 sq. yards is the fabricated document which was never executed or signed by them.

With these pleas, it was contended that the order of the Id. Authority is correct. There is no merit in the appeal and is liable to be dismissed.

11. We have duly considered the aforesaid contentions of the parties.

12. The respondents-allottees had booked a plot bearing no. H-I/12A, S-I Block, Inner Circle, in the project of the appellant "Eldeco Estate One", Panipat, Haryana. The issue before us is that whether the said plot allotted to the respondents-allottees is 356 sq. meters or 356 sq. yards.

13. The appellant has relied on document dated 08.05.2014 placed at page no. 57 of the paper book, wherein, the details of plot mentioned are plot no. 12-A, Block H-I area 356 sq. mtrs/sq. yds, Basic price Rs..... It is noted here that in this document the basic price space has been left blank. In this document, on the unit sq. yds a tick with pen

has been marked. The appellant is relying on this document and has stated that the plot is 356 sq. yards and not 356 sq. mtrs. This form is a pre-printed form in which both the units sq. mtrs/sq. yds have been mentioned and unit sq. yds has been tick marked with pen. This document is supplied by the appellant and there are signatures of the respondent no. 1 which the respondent says are forged. All the signatures of this document do not match with each other and all these signatures do not match with the signature of the respondent no. 1 as these are on the agreement dated 21.04.2014. Now firstly, the sq. yds have been tick marked with pen, secondly, no basic price is mentioned, so, this document creates a doubt and is not reliable. In the agreement executed between the parties on 21.04.2014, in the space where plot details are mentioned, it is clearly mentioned plot no. H-I/12A, S-I Block, Inner Circle, admeasuring 356 sq. mtrs, basic price Rs. 56,08,000/- (fifty six lac and eight thousand only). First of all the agreement is binding for both the parties and has been duly executed on non-judicial stamp paper signed by both the parties and secondly there is a clear mentioning of the area of plot as 356 sq. mtrs and thus leaves no doubt that the plot size is 356 sq. mtrs. In addition to the above, the appellant has placed on file drawing no. DGTCP 4047 dated 13.08.2013, regarding the demarcation and layout plan and land area under licence no. LIC No. 407-412 of 206 and LIC No. 36 of 2008 and another drawing no. DGTCP 4048 dated

13.08.2013. A perusal of these drawings show that all the dimensions are in meters and the plot sizes have been shown in sq. meters. Thus, this fact also goes against the contention of appellant as all the plots are in sq. meters and not in sq. yards. This further fortifies that the agreement between the parties is for a plot measuring 356 sq. mtrs.

14. The arguments of the appellant that the respondent no. 1 & respondent no. 2 had no grievance at any stage and even at the time of the issuance of FDN as the first communication was made on 11.07.2019 has no force as the respondents can always raise any issue concerning their rights during the currency/operation of the contract.

15. No other point was argued before us.

16. In view of the aforesaid findings there is no merit in the present appeal and is therefore dismissed.

17. The amount deposited by the appellant-promoter i.e. Rs. 15,17,150/- with this Tribunal to comply with Section 43(5) of the Act be remitted to the Id. Authority along with interest accrued thereon for disbursement to the respondents-allottees as per their entitlement as per our above said observations, in accordance with law/rules and of course subject to tax liability.

18. No order to cost.

19. Copy of this order be sent to the parties/Ld.

counsel for the parties and Ld. Haryana Real Estate Regulatory Authority, Panchkula.

20. File be consigned to the record.

Announced:
December 01, 2022

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

Anil Kumar Gupta
Member (Technical)

Rajni Thakur

Judgment-HREAT