

**BEFORE THE HARYANA REAL ESTATE APPELLATE
TRIBUNAL**

**Appeal No.423 of 2021
Date of Decision: 15.12.2022**

1. M/s T.G. Buildwell Private Limited, through its authorised representative.
2. Shri Rohit Gupta, Director
3. Shri Punit Gupta, Director
4. Shri Mahesh Chandra

Office: Tivoli Garden Hotel, Chattarpur Mandir Road,
New Delhi-110030.

Appellants

Versus

1. M/s Agarwal Agencies Private Limited through its Director Shri Rakesh Agarwal, D-16/2-3, Okhla Industrial Area, Phase-1, New Delhi-110020.

Respondent

2. M/s Wellworth Homes Private Limited, through its Directors, Office at 1497, Bhardwaj Bhawan, Wazirpur Nagar, Kotla Mubarakpur, New Delhi.

Performa Respondent

CORAM:

Shri Inderjeet Mehta,
Shri Anil Kumar Gupta,

Member (Judicial)
Member (Technical)

Argued by: Shri Akshat Mittal, Advocate, 1d. Counsel for the appellants.

Shri Anand Dubey, Advocate, 1d. Counsel for respondent no.1.

Respondent no.2 (Performa respondent)

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ORDER:

INDERJEET MEHTA, MEMBER (JUDICIAL):

Feeling aggrieved by the order dated 31.03.2021, handed down by the learned Adjudicating Officer of Haryana Real Estate Regulatory Authority, Panchkula, in Complaint No.3043 of 2019, titled 'Agarwal Agencies Pvt. Ltd. vs. T.G. Buildwell Pvt. Ltd.', vide which complaint preferred by respondent no.1/allottee seeking compensation was allowed, the appellants/promoters have chosen to prefer the present appeal.

2. As back as in the year 2007, in a project namely 'Tivoli Holiday Village' launched by the appellants/promoters, the respondent no.1/allottee had booked a residential flat on 13.12.2007 by making payment of Rs.11,00,000/-. Thereafter, an 'Apartment Buyer's Agreement' (hereinafter called the 'buyer's agreement') dated 10.03.2008, was executed between the parties. The respondent no.1/allottee also paid an amount of Rs.5,00,000/- on 19.04.2008 and in this way, out of the total sale consideration of Rs.62,00,000/- of the residential flat, the respondent no.1/allottee had made the payment of Rs.16,00,000/-. Since, even after passing of 12 years, no construction work was carried out by the

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appellants in the tower, in which the allotted floor of respondent no.1 was situated, so, the respondent no.1 /allottee instituted the complaint before the learned Adjudicating Officer and it prayed for the following compensation:-

- 1). *Interest on the amount paid to the respondents, which is amounting Rs.1,47,92,484/-.*
- 2). *The complainant also claim equal amount of damages, resulting total claim of complainant is Rs.29,584,964/-.*

3. Upon notice, the appellants/promoters have resisted the complaint by taking the stand that earlier the resident no.1/allottee had approached the learned Haryana Real Estate Regulatory Authority, Panchkula (hereinafter called 'the Authority'), vide complaint no.51/2019, seeking the relief of refund and the same was allowed vide order dated 13.02.2019. The appellants/promoters to challenge that order dated 13.02.2019, preferred appeal no.224/2019 before the Appellate Tribunal and the said order dated 13.02.2019 was set aside and the case was remanded to the learned Adjudicating Officer, Panchkula, as the cases pertaining to refund could not be decided by the learned Authority. During

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the pendency of the said complaint of refund before the learned Adjudicating Officer, the respondent no.1/allottee filed another complaint no.3043/2019 praying for the compensation. Further, it has been alleged that as the relief of refund along with interest has already been granted to the respondent no.1/allottee, so, the complaint preferred by the respondent no.1/allottee claiming the same relief by way of compensation on the same facts and circumstances, is not maintainable. While denying the other allegations, the dismissal of the complaint was prayed for.

4. Learned Adjudicating Officer after thoroughly going through the pleadings of the parties, evidence and other material available on the record, partly allowed the complaint with the following observations:-

“23.A sum of Rs.16,00,000/- has been received by the respondent from the complainant (Rs.11,00,000/- in the year 2007 and Rs.5,00,000/- in the year 2008) and has been using the same for last 13/14 years, which can be said to be disproportionate gain to the respondent and loss to the complainant as a result of default committed by the respondent. Without start of construction, in the year 2011 and 2013 also respondent is demanding the remaining amount out of total sale

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consideration. It would be in the interest of justice if the compensation to be paid to the complainant is determined after taking into account the default for a number of years i.e. 10 years and 22 days taking from 10.03.2011 and utilization of the amount paid by the complainant to the respondent starting from 2007/2008 till 2021. The compensation is quantifiable and it would be appropriate if the amount of compensation is calculated at the rate of 6%.

Amount Paid (in Rs.)	Time Period	Rate	Compensation Amount (in Rs.)
11,00,000/-	10.03.2011 to 31.03.2021	6%	6,63,978/-
5,00,000/-	10.03.2011 to 31.03.2021	6%	3,01,808/-
Total=16,00,000/-			9,65,786/-

24. Sequel to aforesaid discussion, this complaint is allowed. The complainant is also awarded Rs.20,000/- as litigation cost. Respondent is directed to pay an amount of Rs.9,85,786/- [Rs.9,65,786/- + Rs.20,000/-] (Rs.Nine lakhs eighty five thousand seven hundred and eighty six only) to the complainant in lieu of compensation. The amount shall be paid in two instalments, first instalment of 50% of amount shall be paid within 45 days of uploading of this order and remaining amount to be paid as second instalment within next 45 days.

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25. In these terms, the present complaint stands disposed of. File be consigned to record room, after uploading order on website of Authority.”

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

6. Learned counsel for the appellants has submitted that since the relief of refund along with interest at the prescribed rate has already been granted to the respondent no.1/allottee, so, the complaint preferred by the respondent no.1/allottee seeking compensation on the basis of same facts and circumstances is not maintainable. Further, it is submitted that the learned Adjudicating Officer while allowing the compensation to the respondent no.1/allottee has not, at all, adhered to the facts enumerated in Section 72 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter called 'the Act'). Lastly, it has been submitted that the impugned order suffers from material irregularity and illegality and deserves to be set aside.

7. Per contra, learned counsel for the respondent no.1/allottee has submitted that first relief of compensation, seeking interest on the amount as mentioned in the complaint, has been withdrawn by the respondent no.1/allottee on 29.10.2020 during the pendency of the complaint. Further, it

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has been submitted that as the appellants/promoters had been using the amount of Rs.16,00,000/- paid by the respondent no.1/allottee in the year 2007-2008, so, the same amounted to disproportionate gain and unfair disadvantage specifically when the allotted floor was neither constructed nor the possession of the same was delivered within the stipulated period. Further, it has been submitted that there is no illegality and irregularity in the impugned order handed down by the learned Adjudicating Officer and the appeal preferred by the appellants deserves to be dismissed.

8. We have duly considered the submissions of learned counsel for the parties.

9. First of all, let the admitted facts of the case be taken note of. Admittedly, in a project namely 'Tivoli Holiday Village' launched by the appellants/promoters, the respondent no.1/allottee had booked a residential flat on 13.12.2007 and had paid an amount of Rs.11,00,000/- at that time. Subsequently, an amount of Rs.5,00,000/- was paid on 19.04.2008, and in this way, out of the total sale consideration of Rs.62,00,000/- of the said floor, the respondent no.1/allottee had deposited an amount of Rs.16,00,000/- in the year 2007-2008. It is also an admitted fact that the complaint filed by the respondent no.1/allottee seeking refund

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of the deposited amount along with prescribed rate of interest has already been allowed by the learned Authority and the respondent no.1/allottee has received that amount. In view of that relief of refund already granted to the respondent no.1/allottee, as mentioned in the impugned order dated 31.03.2021, the respondent no.1/allottee during the pendency of the complaint before the learned Adjudicating Officer had withdrawn the aforesaid relief no.(1) of the compensation and had also stated that the respondent no.1/allottee would pursue the aforesaid relief no.(2) of the compensation, as mentioned in the complaint.

10. Though, the respondent no.1/allottee has claimed damages to the tune of Rs.2,95,84,964/-, but, learned Adjudicating Officer granted the compensation to the tune of Rs.9,85,786/-, as has been mentioned above.

11. The appellants/promoters had received an amount of Rs.11,00,000/- from the respondent no.1/allottee in the year 2007, and another amount of Rs.5,00,000/- in 2008. Undisputedly, the tower in which the allotted floor of the respondent no.1/allottee is situated, that was not constructed within the stipulated period and on this score, the relief of refund was granted to the respondent no.1/allottee. Since, the appellants/promoters have been using the amount of

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Rs.16,00,000/- for the last 13-14 years, so, the same can definitely be termed as disproportionate gain or unfair advantage, as enumerated in Section 72(a) of the Act. The learned Adjudicating Officer, in the impugned order has rightly observed that using the amount of Rs.16,00,000/- for the last 13-14 years amounts to disproportionate gain to the appellants/promoters and loss to the respondent no.1/allottee as a result of default. The learned Adjudicating Officer has also rightly calculated the compensation on the amount of Rs.11,00,000/- as well as on the amount of Rs.5,00,000/- @ 6% per annum, as mentioned in para no.23 of the impugned order. The award of compensation to the tune of Rs.20,000/- as litigation costs, in the facts and circumstances of the case is also justified.

12. Resultantly, as a consequence to the aforesaid discussion, we are of the view that there is no illegality or irregularity in the impugned order dated 31.03.2021 handed down by the learned Adjudicating Officer. Accordingly, the present appeal is hereby dismissed.

13. The amount deposited by the appellants-promoters i.e. Rs.9,85,786/- with this Tribunal to comply with the provisions of proviso to Section 43(5) of the Act, along with interest accrued thereon, be sent to the learned Authority for

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disbursement to the respondent no.1/allottee, subject to tax liability, if any, as per law and rules.

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

15. File be consigned to the record.

Announced:
December 15, 2022

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

Anil Kumar Gupta
Member (Technical)

CL