

Magic Info Solutions Pvt. Ltd. V/s Avtar Singh
Appeal No.341 of 2019.

Present: Sh Amandeep Singh, Advocate, Ld counsel for the appellants.

Sh Sanjeev Sharma, Advocate, Ld counsel for the respondent.

1. Ld counsel for the respondent states that he does not want to file any written reply to the application moved by the appellants for waiver of the condition of pre deposit.

2. The appellants had moved an application for the complete waiver of the pre deposit for entertaining the appeal primarily on the ground that the Ld Real Estate Regulatory Authority, Gurugram (hereinafter called the Authority) had no jurisdiction to entertain the complaint filed by the respondent allottee and the complaint was required to be filed before the Adjudicating Officer as per the provisions of section 71 of the Real Estate (Development & Regulation) Act, 2016 (hereinafter called the Act). The appellants have stated that they have a good prima facie case in their favour and no prejudice is going to be caused to the respondent. Hence the application.

3. Ld counsel for the appellants company contended that the respondent allottee had sought the relief of refund of the entire amount alongwith interest and compensation. Ld Authority vide impugned order dated 14.03.2019 had directed the respondent that if he wants to retain the unit he shall deposit the balance amount within 30 days failing which the respondent is competent to forfeit

10% of the total sale consideration and refund the balance amount within 90 days. He contended that the Ld Authority had no jurisdiction to pass the order for refund of the amount. So the impugned order passed by the Ld Authority is a nullity. Hence, the appellants have a strong prima facie case in their favour and are entitled for the complete waiver of the deposit of the amount.

4. Shri Sanjeev Sharma, Ld counsel for the respondent contended that the provisions of the proviso to section 43(5) of the Act are mandatory. The appellant cannot seek the waiver of the deposit of the amount required to be deposited as per aforesaid provisions of the Act to get its appeal entertained.

5. We have duly considered the aforesaid contentions.

6. It is a settled principle of law that the appellate Tribunal/Court has got inherent powers to completely or partially waive the condition of pre deposit for entertainment of the appeal if the appellant has a strong prima facie case. To support this view, reference can be made to the cases **Maruti Suzuki India V/s Union of India & others CWP No.12922/14 decided by the division bench of Hon'ble High Court on October 27, 2016; Punjab State Power Corporation Ltd V/s State of Punjab and others 2016 (2) RCR(Civil) 559 and M/s Mahesh Kumar Singla & others V/s Union of India & others CWP No.23368/15 decided on March 27, 2017.**

7. In the present case, the basic contention raised by the appellants is that the Ld Authority had no jurisdiction to order the refund of the amount deposited by the allottee.

8. This Tribunal while disposing of a bunch of 19 appeals, the leading appeal being appeal No.06/2018 titled as Sameer Mahawar V/s M.G. Housing (P) Ltd in its order dated 2.5.2019, by taking into consideration the relevant provisions of the Act i.e. sections 11(4), 12, 14, 18, 19, 31, 34(f), 37, 38 & 71 of the Act read with rules 28 & 29 of the Rules concluded as under:-

“(i) That violations and causes of actions arising out of the same bundle of facts/rights giving rise to the multiple reliefs shall be placed before one and the same forum for adjudication in order to avoid the conflicting findings.

(ii) The complaints for the grant of relief of compensation can only be adjudicated by the Adjudicating Officer as per the provisions of section 71 of the Act and rule 29 of the Rules.

(iii) Similarly, if compensation is provided as a part of the multiple reliefs alongwith refund/return of investment with interest flowing from the same violation(s) and causes of action, the complaints have to be placed before the Adjudicating Officer exercising the powers under sections 31, 71(1) read with rule 29 of the Rules as only the Adjudicating Officer is competent to deal with the relief of compensation.

9. In view of aforesaid order, the complaints dealing with the relief of refund alongwith interest can only be entertained and adjudicated by the Adjudicating Officer and the Ld Authority has no jurisdiction to grant the relief of refund.

10. Consequently, the impugned orders of refund passed by the Ld. Authority in this case are without jurisdiction.

11. As the impugned orders are without jurisdiction, so the appellants have a strong prima facie case in their favour. This Tribunal is satisfied that the entire purpose of filing the present appeal shall be frustrated by ordering the appellants to first deposit the awarded amount as a pre condition for the entertainment of the present appeal. The case in hand is a deserving case where the appellants are entitled for the complete waiver of the condition of pre deposit as the impugned order being prima facie without jurisdiction.

12. Thus, keeping in view our aforesaid discussion, the application moved by the appellants for waiver of the condition of pre-deposit is hereby allowed.

(Justice Darshan Singh (Retd))
Chairman, HREAT
2.7.2019

(Inderjeet Mehta)
Member(Judicial)
2.7.2019

(Anil Kumar Gupta)
Member(Technical)
2.7.2019

HARYANA REAL ESTATE APPELLATE TRIBUNAL
S.C.O. No.50-51, 3rd FLOOR, SECTOR 17A, CHANDIGARH

Appeal No.341/2019
Date of decision 02.07.2019.

Magic Info Solutions Pvt. Ltd. & Ors., registered office at D-13, Defence Colony, New Delhi.

...Appellants.

Versus

Avtar Singh, resident of 11C, Tower 6, Bellevue, Central Park-2, Sector-48, Sohna Road, Gurugram.

....Respondent.

Coram: Justice Darshan Singh (Retd), Chairman
Sh Inderjeet Mehta, Member(Judicial)
Sh Anil Kumar Gupta, Member(Technical)

Present: Shri Amandeep Singh, Ld. counsel for the appellants.
Sh Sanjeev Sharma, Advocate, Ld. counsel for the respondent.

ORDER

1. The Present appeal has been preferred against the order dated 14.03.2019 passed by the Ld Real Estate Regulatory Authority, Gurugram (hereinafter called the Authority) whereby the complaint filed by the allottees for refund of the total amount paid by the complainants to Rs.38,12,046/- alongwith interest at the rate of 15% was decided. The Ld. Authority decided the complaint by giving following directions:-

- “i. As per section 19(6) of the Real Estate (Regulation and Development) Act 2016, the complainants are duty bound to abide by the terms and conditions of the agreement.*
- ii. Now option is being given to the complainants that if complainants wants to retain the unit he shall deposit the balance amount within 30 days failing which respondent is competent to forfeit 10% of the total sale consideration and refund the balance amount within 90 days.”*

2. Ld counsel for the appellant has vehemently contended that the Ld Authority had no jurisdiction to entertain the complaint filed by the appellant claiming the relief of refund alongwith interest. Such complaint should only have been entertained by the Adjudicating Officer as per the provisions of section 71 of the Act and rules 28 & 29 of the Haryana Real Estate (Development & Regulation) Rules, 2017 (hereinafter called the Rules). Thus, he contended that the impugned order passed by the Ld Authority is a nullity. To support his contention he relied upon case Harshad Chiman Lal Modi V/s DLF Universal & Another AIR 2005 SC 4446.

3. Sh Sanjeev Sharma, Ld counsel for the respondent has contended that the impugned order has rightly been passed by the Ld Authority as it has the jurisdiction to entertain the complaint and issue directions regarding refund and interest.

4. We have duly considered the aforesaid contentions. This fact is not disputed that applicants in the complaint filed before the Ld Authority had claimed the refund of the amount deposited by him alongwith interest. Ld Authority vide impugned order dated 14.03.2019 held that as per section 19(6) of the Real Estate (Regulation and Development) Act 2016, the complainants are duty bound to abide by the terms and conditions of the agreement. Further, they were given the option that if complainants want to retain the unit they should deposit the balance amount within 30 days failing which the appellants is competent to forfeit 10% of the total sale consideration and refund the balance amount within 90 days of the order. So, the only question to be considered in the present appeal is as to whether the Ld Authority was competent to entertain the complaint filed by the respondent allottee wherein he had claimed the relief of refund

alongwith interest & compensation and conditional relief of refund with forfeiture of 10% of the total sale price was granted.

5. This question is not *res-integra* as we have already answered this question in a bunch of 19 appeals the lead appeal being appeal no. 6/2018 titled as Sameer Mahawar Vs. MG Housing Pvt. Ltd. vide our detailed order dated 02.05.2019. In that order after taking into consideration the provisions of Sections 11(4),12,14,18,19,31,34(f), 37,38 and 71 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter called the Act) and rule 28 & 29 of Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter called the rules). We have laid down as under:

“48. Thus, as a result of our aforesaid discussions, we conclude and sum up our considered view in following manner :-

(i) That violations and causes of actions arising out of the same bundle of facts/rights giving rise to the multiple reliefs shall be placed before one and the same forum for adjudication in order to avoid the conflicting findings.

(ii) The complaints for the grant of relief of compensation can only be adjudicated by the adjudicating officer as per the provisions of section 71 of the Act and rule 29 of the Rules.

(iii) Similarly, if compensation is provided as a part of the multiple reliefs alongwith refund/return of investment with interest flowing from the same violation/violations and causes of action, the complaints have to be placed before the adjudicating officer exercising the powers under Sections 31, 71(1) read with rule 29 of the Rules as only the adjudicating officer is competent to deal with the relief of compensation.”

6. In view of the legal position reproduced above the impugned order being without jurisdiction cannot be sustained in the eye of law. Consequently, the present appeal is hereby allowed. The impugned order dated 14.03.2019 is hereby set aside.

7. The complaint filed by the respondent allottee stands transferred to the Adjudicating Officer, Gurugram for adjudication in accordance with law. The Adjudicating Officer will allow the allottee to amend his complaint in order to bring it within the parameters of Form "CAO" as provided in rule 29 of the Rules, if required.

8. The parties are directed to appear before the Adjudicating Officer, Gurugram. Ld. Adjudicating Officer will make every endeavour for the expeditious disposal of the complaint.

9. Copy of the order be communicated to the Ld Real Estate Regulatory Authority, Gurugram and the Ld. Adjudicating Officer, Gurugram for compliance.

10. File be consigned to record.

**(Justice Darshan Singh (Retd)
Chairman, HREAT
2.7.2019**

**(Inderjeet Mehta)
Member(Judicial)
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**(Anil Kumar Gupta)
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Sh Sanjeev Sharma, Advocate, Ld counsel for the respondent.

The appeal is allowed. Impugned order dated 14.03.2019 has been set aside and the complaint filed by the allottee stands transferred to the Adjudication Officer, Gurugram for adjudication in accordance with law vide our separate order of even date. The parties have been directed to appear before the Ld. Adjudicating Officer, Gurugram, who will make every endeavour for the expeditious disposal of the complaint.

(Justice Darshan Singh (Retd)
Chairman,HREAT
2.7.2019

(Inderjeet Mehta)
Memnber(Judicial)
2.7.2019

(Anil Kumar Gupta)
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