

**BEFORE THE HARYANA REAL ESTATE APPELLATE
TRIBUNAL**

**Appeal Nos. 321/2020, 322/2020, 323/2020, 326/2020,
327/2020, 329/2020, 15/2021, 16/2021,
17/2021, 24/2021, 310/2021, 311/2021,
312/2021, 313/2021, 314/2021, 315/2021
and 316/2021**

Date of Decision: 31.10.2022

(1) Appeal No.321 of 2020

Parsvnath Developers Limited, Parsvnath Tower, Near
Shahdara Metro Station, Shahdara, Delhi-110032.

Appellant

Versus

Shyam Sunder Bajaj, L-88, Kirti Nagar, Delhi-110015.

Respondent

(2) Appeal No.322 of 2020

Parsvnath Developers Limited, Parsvnath Tower, Near
Shahdara Metro Station, Shahdara, Delhi-110032.

Appellant

Versus

Dinesh Kumar Manyal, BJ-99, 2nd Floor, East Shalimar Bagh,
New Delhi-110088.

Respondent

(3) Appeal No.323 of 2020

Parsvnath Developers Limited, Parsvnath Tower, Near
Shahdara Metro Station, Shahdara, Delhi-110032.

Appellant

Versus

Amit Bajaj, L-88, Kirti Nagar, Delhi-110015.

Respondent

Appeal Nos.321/2020, 322/2020, 323/2020, 326/2020, 327/2020, 329/2020, 15/2021, 16/2021, 17/2021, 24/2021, 310/2021, 311/2021, 312/2021, 313/2021, 314/2021, 315/2021 and 316/2021

(4) Appeal No.326 of 2020

Parsvnath Developers Limited, Parsvnath Tower, Near Shahdara Metro Station, Shahdara, Delhi-110032.

Appellant

Versus

Rekha Talwar, House No.1/11101, Subhash Park, Gali No.8, Shahdara, Delhi-110032.

Respondent

(5) Appeal No.327 of 2020

Parsvnath Developers Limited, Parsvnath Tower, Near Shahdara Metro Station, Shahdara, Delhi-110032.

Appellant

Versus

Nishant Bansal, # 197, Rajdhani Enclave, Pitampura, Delhi-110034.

Respondent

(6) Appeal No.329 of 2020

Parsvnath Developers Limited, Parsvnath Tower, Near Shahdara Metro Station, Shahdara, Delhi-110032.

Appellant

Versus

Suman Bajaj, A-26, Kirti Nagar, Delhi.

Respondent

(7) Appeal No.15 of 2021

Nishant Bansal, # 197, Rajdhani Enclave, Pitampura, Delhi-110034.

Appellant

Versus

Parsvnath Developers Limited, Parsvnath Tower, Near Shahdara Metro Station, Shahdara, Delhi-110032.

Respondent

Appeal Nos.321/2020, 322/2020, 323/2020, 326/2020, 327/2020, 329/2020, 15/2021, 16/2021, 17/2021, 24/2021, 310/2021, 311/2021, 312/2021, 313/2021, 314/2021, 315/2021 and 316/2021

(8) Appeal No.16 of 2021

Suman Bajaj, A-26, Kirti Nagar, Delhi-110015.

Appellant

Versus

Parsvnath Developers Limited, Parsvnath Tower, Near Shahdara Metro Station, Shahdara, Delhi-110032.

Respondent

(9) Appeal No.17 of 2021

Shyam Sunder Bajaj, L-88, Kirti Nagar, Delhi-110015.

Appellant

Versus

Parsvnath Developers Limited, Parsvnath Tower, Near Shahdara Metro Station, Shahdara, Delhi-110032.

Respondent

(10) Appeal No.24 of 2021

Amit Bajaj, L-88, Kirti Nagar, Delhi-110015.

Appellant

Versus

Parsvnath Developers Limited, Parsvnath Tower, Near Shahdara Metro Station, Shahdara, Delhi-110032.

Respondent

(11) Appeal No.310 of 2021

Parsvnath Developers Limited, Parsvnath Tower, Near Shahdara Metro Station, Shahdara, Delhi-110032.

Appellant

Versus

Rajiv Chhabra, House No.98, Block-A/1, Ist Floor, Paschim Vihar, New Delhi-110063.

Respondent

Appeal Nos.321/2020, 322/2020, 323/2020, 326/2020, 327/2020, 329/2020, 15/2021, 16/2021, 17/2021, 24/2021, 310/2021, 311/2021, 312/2021, 313/2021, 314/2021, 315/2021 and 316/2021

(12) Appeal No.311 of 2021

Parsvnath Developers Limited, Parsvnath Tower, Near Shahdara Metro Station, Shahdara, Delhi-110032.

Appellant

Versus

Rajiv Chhabra, House No.98, Block-A/1, Ist Floor, Paschim Vihar, New Delhi-110063.

Respondent

(13) Appeal No.312 of 2021

Parsvnath Developers Limited, Parsvnath Tower, Near Shahdara Metro Station, Shahdara, Delhi-110032.

Appellant

Versus

Sushil Kumar Singhal, House No.79, Sector 12-A, Dwarka-110078.

Respondent

(14) Appeal No.313 of 2021

Parsvnath Developers Limited, Parsvnath Tower, Near Shahdara Metro Station, Shahdara, Delhi-110032.

Appellant

Versus

Pawan Kumar, BQ-124, Shalimar Bagh, Delhi-110088.

Respondent

(15) Appeal No.314 of 2021

Parsvnath Developers Limited, Parsvnath Tower, Near Shahdara Metro Station, Shahdara, Delhi-110032.

Appellant

Versus

Meghraj Gurnani, UU-62, Pitampura, Delhi-110034.

Respondent

Appeal Nos.321/2020, 322/2020, 323/2020, 326/2020, 327/2020, 329/2020, 15/2021, 16/2021, 17/2021, 24/2021, 310/2021, 311/2021, 312/2021, 313/2021, 314/2021, 315/2021 and 316/2021

(16) Appeal No.315 of 2021

Parsvnath Developers Limited, Parsvnath Tower, Near Shahdara Metro Station, Shahdara, Delhi-110032.

Appellant

Versus

Pinaki Trade Link Private Limited, H-16/332, Bapa Nagar, Karol Bagh, New Delhi-110005.

Respondent

(17) Appeal No.316 of 2021

Parsvnath Developers Limited, Parsvnath Tower, Near Shahdara Metro Station, Shahdara, Delhi-110032.

Appellant

Versus

Inderjeet Garg, 62, Neelgiri Apartment, New Delhi.

Respondent

CORAM:

Shri Inderjeet Mehta,	Member (Judicial)
Shri Anil Kumar Gupta,	Member (Technical)

Argued by: Ms. Rupali Shekhar Verma, Advocate, learned counsel for Parsvnath Developers Ltd.

Shri Yashish Chandra, Advocate, with Shri Harsh Bansal and Shri Yash Agarwal, Advocates, (for respondent in appeal no.321/2020,323/2020, 327/2020, 329/2020 and appellant in appeal no.15/2021, 16/2021, 17/2021, 24/2021)

Ms. Pankhi Harmilapi, Advocate, Id. Counsel for respondent (appeal no.310/2021, 311/2021)

Shri Dinesh Kumar Manyal-respondent in person (appeal no.322/2020)

Appeal Nos.321/2020, 322/2020, 323/2020, 326/2020, 327/2020, 329/2020, 15/2021, 16/2021, 17/2021, 24/2021, 310/2021, 311/2021, 312/2021, 313/2021, 314/2021, 315/2021 and 316/2021

Shri Arjun Kundra, Advocate, Id. Counsel for respondent (appeal no.326/2020)

Sh. Shubham Jain, Advocate, Id. Counsel for respondent (through WhatsApp, appeal no.312/2021)

Mr. Mohd. Sartaj, Advocate, Id. Counsel for respondent (appeal no.313/2021, 314/2021)

Shri Vinay Goyal, Advocate, Id. Counsel for respondent (appeal no.315/2021)

Ms. Vandana Aggarwal, Advocate, Id. Counsel for respondent (through WhatsApp, appeal no.316/2021)

ORDER:

INDERJEET MEHTA, MEMBER (JUDICIAL):

By virtue of the present order being handed down in appeal no.327 of 2020 titled as 'Parsvnath Developers Limited vs. Nishant Bansal' all the afore captioned appeals, containing same questions of law and facts, shall be disposed of.

2. In appeal nos. 321/2020, 322/2020, 323/2020, 326/2020, 327/2020, 329/2020, 15/2021, 16/2021, 17/2021 and 24/2021, order dated 11.03.2020 handed down by the Haryana Real Estate Regulatory Authority, Panchkula (hereinafter called 'the Authority'), has been impugned. Appeal no.321/2020, 322/2020, 323/2020, 326/2020, 327/2020 and 329/2020, have been preferred by Parsvnath Developers Limited – Promoter, to impugn the said order dated

Appeal Nos.321/2020, 322/2020, 323/2020, 326/2020, 327/2020, 329/2020, 15/2021, 16/2021, 17/2021, 24/2021, 310/2021, 311/2021, 312/2021, 313/2021, 314/2021, 315/2021 and 316/2021

11.03.2020, whereas appeal nos.15/2021, 16/2021, 17/2021 and 24/2021, have been preferred by the allottees to impugn the same order dated 11.03.2020, for modification of the impugned order dated 11.03.2020 to the extent that the appellants/allottees be granted interest on delayed possession at the prescribed rate.

3. In appeal no.310/2021, 311/2021, 312/2021, 313/2021, 314/2021, 315/2021 and 316/2021, the appellant/promoter has impugned order dated 04.03.2021 handed down by the learned Authority. Here, it is pertinent to mention that the order dated 04.03.2021 has been handed down by the learned Authority in different complaints, while relying on its earlier order dated 11.03.2020 handed down in lead case bearing complaint no.723/2019 titled as 'Nishant Bansal vs. Parsvnath Developers Limited'.

4. For the purpose of adjudication of all these appeals, the factual matrix as well as documents as contained in appeal no.327/2020 titled as 'Parsvnath Developers Limited vs. Nishant Bansal' would be discussed.

5. One Santosh Bansal, predecessor-in-interest of the allottee-Nishant Bansal, had booked a plot measuring 400 sq. yards in a township named 'Parsvnath City' under 'Present and Future Scheme' launched by promoter- Parsvnath

Appeal Nos.321/2020, 322/2020, 323/2020, 326/2020, 327/2020, 329/2020, 15/2021, 16/2021, 17/2021, 24/2021, 310/2021, 311/2021, 312/2021, 313/2021, 314/2021, 315/2021 and 316/2021

Developers Limited, at Sonipat, Haryana. At that time, said Santosh Bansal had paid advance money of Rs.2,25,000/- to the promoter on 25.08.2004 for allotment of the plot @ Rs.3,600/- per sq. yard. Said Santosh Bansal sold his booking rights in the said plot to one Gopi Chand and subsequently Nishant Bansal purchased the booking rights from said Gopi Chand. The promoter endorsed the transfer of the booking rights in favour of the allottee Nishant Bansal on 06.04.2010. The allottee Nishant Bansal as well as his predecessor-in-interest had already paid Rs.07,90,000/- out of the total sale consideration of Rs.14,40,000/- and the allottee Nishant Bansal is ready to pay the balance sale consideration. The allottee Nishant Bansal in his complaint has alleged that the respondent-promoter was obliged to pass on him the title as well as the possession of the booked plot on receipt of the payment of the remaining sale consideration. Since, the promoter neither allotted the plot nor offered possession, so the allottee Nishant Bansal having no other option had instituted the complaint before the learned Authority at Panchkula, to seek relief of possession along with interest for delayed possession.

6. Upon notice, the promoter did not dispute the booking of plot measuring 400 sq. yards by the original

Appeal Nos.321/2020, 322/2020, 323/2020, 326/2020, 327/2020, 329/2020, 15/2021, 16/2021, 17/2021, 24/2021, 310/2021, 311/2021, 312/2021, 313/2021, 314/2021, 315/2021 and 316/2021

applicant Santosh Bansal at the rate of Rs.3600/- per sq. yard and subsequent transfer of the booking rights, firstly, to one Gopi Chand and then to the complainant/allottee Nishant Bansal. The factum of endorsement of the booking rights in favour of complainant Nishant Bansal on 06.04.2010 and receipt of the amount of Rs.7,90,000/- from the complainant/allottee and his predecessor-in-interest was also admitted. However, the respondent/promoter disputed the rights of the complainant to have the plot alleging that booking by the original applicant was merely an advance registration to avail inaugural discount and the original applicant, as per the stipulation made in his application form, had agreed that in case the promoter failed to allot plot for any reason whatsoever, he would not raise any other claim except for refund of the amount along with 10% interest. Further, it was also alleged that the present complainant was bound by the above referred condition because he had also executed document in the form of an 'affidavit-cum-undertaking and indemnity' at the time of seeking transfer of booking rights in his favour. Further, the respondent/promoter had also alleged that township in Sonipat was planned to be developed upon various pieces of land which was required to be acquired from various farmers. Since, the land admeasuring 200 acres

Appeal Nos.321/2020, 322/2020, 323/2020, 326/2020, 327/2020, 329/2020, 15/2021, 16/2021, 17/2021, 24/2021, 310/2021, 311/2021, 312/2021, 313/2021, 314/2021, 315/2021 and 316/2021

had been acquired by the government out of those pieces of land, so, the development of township at Sonipat in the planned manner received a big jolt and in a way it was ruined. The respondent/promoter litigated the matter with the government for withdrawal of the acquisition, but in vain. The respondent/promoter had pleaded that it could offer allotment to the complainant in other townships being developed in cities Panipat, Rajpura and Indore. The dismissal of the complaint was also prayed for.

7. After hearing the learned counsel for the parties and going through the material and documents available on the record, the learned Authority disposed of the said complaint as well as other complaints with the following observations:-

“15. For the reasons recorded above, the complaints are allowed and the respondent is directed to allot and deliver the possession of booked plots to the complainants in the project Parsvnath City, Sonipat on payment of balance sale consideration recoverable from them. The respondent shall comply with these directions within 90 days from the date of uploading of this order. In case the respondent due to non-availability of plots is not able to allot and offer its possession to the complainant concerned, he will be liable to make available to him a plot of the size, as booked, by purchasing it from the

Appeal Nos.321/2020, 322/2020, 323/2020, 326/2020, 327/2020, 329/2020, 15/2021, 16/2021, 17/2021, 24/2021, 310/2021, 311/2021, 312/2021, 313/2021, 314/2021, 315/2021 and 316/2021

open market at his own cost. The respondent however will be entitled to recover from the complainants the balance amount payable by them as per the rate agreed by the parties at the time of booking of plots.

16. *With these directions, the captioned cases are disposed of. Files be consigned to record room after uploading of the order on the website of the Authority.”*

8. We have heard learned counsel for the parties and have also thoroughly perused the entire record of the case.

9. Initiating the arguments, learned counsel for the appellant has contended that the respondent is not covered under the definition of ‘allottee’ as defined under Section 2(d) of the Act, and thus, the respondent is not entitled to any relief. Further, it has been submitted that as per the clauses stipulated in the ‘Application Form’ submitted by the original applicant and the ‘Affidavit-cum-Indemnity’ furnished by the respondent himself, the respondent is only entitled to refund of the entire deposited amount along with interest and he cannot be held entitled for allotment and possession of the alleged booked plot. Further, it has been submitted that the respondent/allottee has knocked the door of the learned Authority after inordinate delay of 14 years as the plot had been booked prior to the year 2006 and complaint had been

Appeal Nos.321/2020, 322/2020, 323/2020, 326/2020, 327/2020, 329/2020, 15/2021, 16/2021, 17/2021, 24/2021, 310/2021, 311/2021, 312/2021, 313/2021, 314/2021, 315/2021 and 316/2021

preferred in the year 2019 and thus, the claim put forward by the respondent/allottee is time barred. Lastly, it has been submitted that the directions given by the learned Authority in the impugned order that the appellant is liable to make available to the respondent a plot of the size, as booked, by purchasing it from the open market at its own cost, are not only infeasible, but the learned Authority has travelled beyond its powers/competence to issue such direction.

10. Countering this vehemently, learned counsel for the respondents have submitted that there is no illegality and infirmity in the impugned order handed down by the learned Authority. Further, it has been submitted that as per the facts and circumstances of the case, the respondents are proved and established to be the allottees and in spite of receipt of more than 50% of the sale consideration of the plots the appellant did not hand over the possession of the plots to the respondents/allottees, who have always been ready and willing to pay the balance sale consideration and to take the possession of the plots. The counsel for the respondents have also submitted that, in fact, the appellant has played a fraud with the respondents/allottees as it had sold the plots to other persons in view of escalation of the prices of the plots and had thus deprived the respondents/allottees to enjoy the fruits of

Appeal Nos.321/2020, 322/2020, 323/2020, 326/2020, 327/2020, 329/2020, 15/2021, 16/2021, 17/2021, 24/2021, 310/2021, 311/2021, 312/2021, 313/2021, 314/2021, 315/2021 and 316/2021

ownership of the plots. Lastly, it has been submitted that the direction given by the learned Authority to the appellant in the impugned order to purchase the plots from the open market and then to allot the same to the respondents/allottees, as per the facts and circumstances of the case, is within the competence of the learned Authority and it has ample power under Section 37 of the Act to issue such direction. With these submissions, the dismissal of the appeal was prayed for.

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

12. First of all, let the admitted facts be taken note of. The appellant/promoter has not disputed the booking of the plot measuring 400 sq. yards by the original applicant Santosh Bansal at the rate of Rs.3600/- per sq. yard and subsequent transfer of booking rights, firstly to one Gopi Chand and then to respondent/allottee Nishant Bansal. The factum of endorsement of the booking rights in favour of the respondent/allottee Nishant Bansal on 06.04.2010 and receipt of the amount of Rs.7,90,000/- from the respondent/allottee and his predecessor-in-interest, is also not disputed. However, the appellant/promoter disputed the right of the respondent/allottee to have the plot by taking the stand that booking by the original applicant was an advance registration

Appeal Nos.321/2020, 322/2020, 323/2020, 326/2020, 327/2020, 329/2020, 15/2021, 16/2021, 17/2021, 24/2021, 310/2021, 311/2021, 312/2021, 313/2021, 314/2021, 315/2021 and 316/2021

to avail inaugural discount and the original applicant, as per the stipulation made in his application form, had agreed that in case the promoter failed to allot plot for any reason whatsoever, then he would not raise any other claim except for refund of the amount along with 10% interest.

13. To appreciate the aforesaid submissions of the appellant/promoter, here this fact deserves special mention that the learned Authority vide order dated 19.09.2019 had directed the appellant/promoter to furnish certain information in the form of affidavit on the following points:-

- i) Category wise plots approved in the layout plan by the department of Town and Country Planning and revised layout plan, if any. Copy of the same be produced before the Authority.
- ii) Procedure and parameters adopted by the respondent in allotment of the plots to various allottees.
- iii) Year wise details of the allotments made by them and to whom the allotments are made in a tabular for mentioning his application date and allotment date.
- iv) Category wise complete details of plots in Block-A and Block-B of the project and

Appeal Nos.321/2020, 322/2020, 323/2020, 326/2020, 327/2020, 329/2020, 15/2021, 16/2021, 17/2021, 24/2021, 310/2021, 311/2021, 312/2021, 313/2021, 314/2021, 315/2021 and 316/2021

unallotted plots in these blocks by the time the complainant filed this complaint in the Authority.

- v) Plots affected by acquisition be shown distinctly on approved layout plan/demarcation plan and plots offered to any other allottee out of that area.
- vi) Whether services and infrastructure are provided in the project as per approved demarcation plan and service plan estimates.
- vii) Details of the plots allotted within last six months, if any, along with details of allottees and date of their applications received in the respondent's office.

14. After going through the said affidavit filed by the appellant/promoter, the learned Authority rightly observed that the appellant has not disclosed therein the précised criteria for allotment of the plots to those persons who had booked plots in Parsvnath City, Sonipat. The appellant also concealed the names of the persons to whom plots had been allotted in the said project and the dates on which bookings were made by the persons to whom plots have been so allotted. The appellant has also failed to disclose the number

Appeal Nos.321/2020, 322/2020, 323/2020, 326/2020, 327/2020, 329/2020, 15/2021, 16/2021, 17/2021, 24/2021, 310/2021, 311/2021, 312/2021, 313/2021, 314/2021, 315/2021 and 316/2021

of un-allotted plots available in Parsvnath City, Sonipat. The learned Authority also rightly observed that the concealment of such information calls for an adverse inference against the appellant and it can be safely assumed that the plots had been sold at premium by ignoring the legitimate rights of the complainants for allotment of plots and the appellant/promoter had earned premium by effecting illegal sales.

15. Further, to ascertain the fact as to whether the project with the name of Parsvnath City, Sonipat, was launched by the appellant or not, the learned Authority had enquired the matter from the Project Section Officer of the learned Authority and it was revealed that such project was launched by the appellant/promoter at Sonipat, bearing license no.878-894 of 2006 dated 25.04.2006.

16. During the pendency of the present appeal, this Tribunal vide interlocutory order dated 26.08.2021 had also sought information in the form of affidavit of the authorised representative of the appellant regarding following points:-

- (i) What was the name of the project for which the registration of allotment was made?

Appeal Nos.321/2020, 322/2020, 323/2020, 326/2020, 327/2020, 329/2020, 15/2021, 16/2021, 17/2021, 24/2021, 310/2021, 311/2021, 312/2021, 313/2021, 314/2021, 315/2021 and 316/2021

- (ii) When the layout plan and other approvals were granted by the Competent Authority for the project i.e. Parsvnath City, Sonipat?
- (iii) The date of allotment of all the plots in Block-A & Block-B of the project?
- (iv) How many persons have deposited the money with the appellant/promoter for registration of allotment of the plot after deposit of the money by the respondent with the appellant-promoter for the same purpose?
- (v) Whether any plot has been allotted to any person who had deposited the money for registration of allotment of the plot subsequent to the registration of allotment by the respondent?

17. In response to that the appellant/promoter filed the affidavit of one Madan Dogra, authorised representative of the appellant. In response to the information of point (i), the appellant stated that there is no registration of allotment in favour of the respondent or his predecessor-in-interest in any of the real estate projects being developed by the appellant/promoter. In response to the information at point (ii), it was stated that the real estate Parsvnath City, Sonipat,

Appeal Nos.321/2020, 322/2020, 323/2020, 326/2020, 327/2020, 329/2020, 15/2021, 16/2021, 17/2021, 24/2021, 310/2021, 311/2021, 312/2021, 313/2021, 314/2021, 315/2021 and 316/2021

where the respondent is claiming allotment, is plotted colony and it comprises of two blocks and he has given the details of the area of two plots in Block-A and Block-B. Regarding information at point no.(iii), it was stated that total 1088 plots in both the blocks falling in different categories and distinction in categories is based on size/dimension and “No Profit No Loss” (NPNL) plots. List of allotments with reference date of allotment has been annexed as Annexure-A. In response to the information sought at point no.(iv), it was stated that several persons applied for allotment. However, later, based on the availability of the plots at Sonipat, the appellant invited the persons for priority allotment, upon which 1270 persons had applied for registration of allotment after the respondent and they were issued letters for priority allotment including the respondent at Sonipat. Further, with regard to the information sought at point no.(v), it was stated that in pursuance to the letters for priority allotments sent to all such persons with reference to specific projects, persons who responded in terms of the said letters, were given formal allotment letters in the order of their response. Further, it was stated that in so far as the respondent is concerned, his claim for a plot of 400 sq. yards category plot at Sonipat, was not

Appeal Nos.321/2020, 322/2020, 323/2020, 326/2020, 327/2020, 329/2020, 15/2021, 16/2021, 17/2021, 24/2021, 310/2021, 311/2021, 312/2021, 313/2021, 314/2021, 315/2021 and 316/2021

considered as he did not respond by the due date mentioned in the letter.

18. The aforesaid information submitted by the appellant was countered by the respondent by way of filing reply by alleging that the appellant has given the evasive response by concealing the relevant information. It was also alleged that the appellant tried to give priority to 1270 subsequent persons over respondents and as such act of giving priority to subsequent persons is utterly arbitrary and illegal.

19. A perusal of the information submitted by the appellant by way of affidavit of authorised representative of the appellant shows that in response to point nos.(iv) and (v), the appellant has categorically stated that 1270 persons who had applied for registration of the allotment after the respondents, were issued letters for priority allotment including the respondents, and as the respondents did not respond by due date mentioned in the letter, thus, they were not considered for allotment. However, no document worth the name has been placed on the file by the appellant to show that the respondents/allottees were ever issued letter by the appellant and after receipt of the same, the respondents/allottees did

Appeal Nos.321/2020, 322/2020, 323/2020, 326/2020, 327/2020, 329/2020, 15/2021, 16/2021, 17/2021, 24/2021, 310/2021, 311/2021, 312/2021, 313/2021, 314/2021, 315/2021 and 316/2021

not respond to the same. Thus, the aforesaid stand taken by the appellant cannot be attached any credence.

20. To appreciate the contention of the appellant that the respondent/allottee as per the clauses set out in the 'Application Form' submitted by the original applicant and the 'Affidavit-cum-Indemnity' furnished by the respondent himself, is only entitled to refund of the paid amount along with interest, let us have a look at the said clause which is as follows:-

“Though the company shall try to make an allotment but in case it fails to for any reason whatsoever, no claim of any nature, monetary or other would be raised by me/us except that the advance money paid by me/us shall be refunded to me/us with 10% simple interest per annum.”

21. A bare reading of this aforesaid clause shows that the words 'the company shall try to make an allotment' in fact, cast a duty on the appellant to make sincere efforts for allotting plot to the respondent and as has been referred above, the appellant has failed to prove and establish this fact that the respondent after receipt of the formal allotment letter, did not respond to the appellant for allotment of the plot. Thus, the referred clause can only be helpful to the appellant if it had made the sincere efforts to allot plot to the

Appeal Nos.321/2020, 322/2020, 323/2020, 326/2020, 327/2020, 329/2020, 15/2021, 16/2021, 17/2021, 24/2021, 310/2021, 311/2021, 312/2021, 313/2021, 314/2021, 315/2021 and 316/2021

respondent, and he failed to perform his part in this regard. In the information supplied by the appellant to the Authority, the appellant did not disclose as to what criteria was adopted for allotment of the plot and the appellant even failed to place the documents before the Authority to prove that a fair criteria was adopted for allotment of the plots to all the eligible applicants. This Tribunal also cannot lose sight of the fact that the appellant had already endorsed the transfer rights in favour of the respondent/allottee and if the appellant was keen to refund the amount and was not in a position to allot the plot, it could have exercised such option of refunding the already paid amount along with interest to the respondent/allottee when he had applied for transfer of booking rights. The appellant did not exercise such an option and continued to withhold the already paid amount. Thus, the necessary implication would be that the appellant had agreed to allot plot to the respondents/allottees instead of acting upon the clause which entitled it to refund the money along with interest. Furthermore, the appellant in its reply before the Authority has also taken a categorical stand that if the allottee wishes to get the allotment of the plot in other project, the appellant may allot the plot in other project subject to availability. By taking the stand in its reply, the

Appeal Nos.321/2020, 322/2020, 323/2020, 326/2020, 327/2020, 329/2020, 15/2021, 16/2021, 17/2021, 24/2021, 310/2021, 311/2021, 312/2021, 313/2021, 314/2021, 315/2021 and 316/2021

appellant in a way, has admitted the status of the respondents, as allottees, otherwise, there could have been no occasion for the appellant to offer the plot to the respondents in some other project. The learned Authority in para no.6 of the impugned order has observed that during the course of arguments, the respondents had declined the offer for taking allotment in other cities, which implies that even at the stage of arguments before the learned Authority, the appellant had admitted the respondent to be an allottee. Thus, in view of the aforesaid facts and circumstances, the inevitable conclusion is that the respondents are proved and established to be the allottees and they are covered with the ambit of the definition of 'allottee' as contained in Section 2(d) of the Act.

22. Regarding the submission of learned counsel for the appellant that the respondent-allottee has approached the authority after inordinate delay of 14 years as the plot had been booked prior to 2006 and complaint has been preferred in the year 2019, it is suffice to say that there is absolutely nothing on the record to show that it had offered possession of the plots to the respondent/allottee at any point of time and the latter had refused or failed to accept such offer and to deposit the balance 50% amount which was payable at the time of such offer of possession. Thus, the aforesaid plea

Appeal Nos.321/2020, 322/2020, 323/2020, 326/2020, 327/2020, 329/2020, 15/2021, 16/2021, 17/2021, 24/2021, 310/2021, 311/2021, 312/2021, 313/2021, 314/2021, 315/2021 and 316/2021

taken by the appellant is without any substance and cannot be attached any credence.

23. The submission of the learned counsel for the appellant that the directions given by the learned Authority in the impugned order that the appellant is liable to make available to the respondents/allottees plots of the size, as booked, by purchasing the same from the open market at its own costs are not feasible, is also without any substance because it is established on the record that the appellant had sold the plots which were meant for the respondents/allottees, at premium by ignoring the legitimate rights of the respondents/allottees for allotment of the plots and the appellant/promoter had earned premium by effecting the illegal sales. Once this fact has been established that the appellant/promoter by ignoring the legitimate and legal claim of the respondents/allottees, had sold the plots meant for them on premium to other persons, the learned Authority under Section 37 of the Act, is competent to issue directions as it may consider necessary.

24. Though, the learned Authority by way of impugned order had directed the appellant to allot and deliver the possession of the booked plots to the respondents/allottees in

Appeal Nos.321/2020, 322/2020, 323/2020, 326/2020, 327/2020, 329/2020, 15/2021, 16/2021, 17/2021, 24/2021, 310/2021, 311/2021, 312/2021, 313/2021, 314/2021, 315/2021 and 316/2021

the project Parsvnath City, Sonipat, but did not award the interest at the prescribed rate, as stipulated in the proviso to Section 18(1) of the Act, which lays down that where an allottee does not intend to withdraw from the project, he/she shall be paid, by promoter, interest for every month of delay till the handing over of the possession, as such rate as may be prescribed. Accordingly, the respondents/allottees are entitled to the prescribed rate of interest i.e. at the SBI highest marginal cost of lending rate (MCLR) +2% i.e. 10.25% after a period of three years from the date of deposit of the amount which is a reasonable period for completion of the contract, till the handing over the possession.

25. Alternatively, if the allottees wish to purchase equivalent size plots of their own in resale of the colony of the promoter, or equivalent plots in any other project of the appellant in District Sonipat, they are at liberty to take refund of the amount paid along with prescribed rate of interest i.e. SBI highest marginal cost of lending rate (MCLR) +2% i.e. 10.25% per annum from the date of deposits till realisation and seek compensation of the excess amount paid in such purchase of plots, along with compensation for mental agony, harassment and legal expenses by way of filing separate complaints before the learned Adjudicating Officer.

Appeal Nos.321/2020, 322/2020, 323/2020, 326/2020, 327/2020, 329/2020, 15/2021, 16/2021, 17/2021, 24/2021, 310/2021, 311/2021, 312/2021, 313/2021, 314/2021, 315/2021 and 316/2021

26. Thus, as a consequence to the aforesaid discussion, appeal nos. 321/2020, 322/2020, 323/2020, 326/2020, 327/2020, 329/2020, 310/2021, 311/2021, 312/2021, 313/2021, 314/2021, 315/2021 and 316/2021 preferred by the appellant/promoter are hereby dismissed, whereas, appeal nos. 15/2021, 16/2021, 17/2021 and 24/2021 preferred by the allottees are hereby allowed. Resultantly, the impugned orders dated 11.03.2020 and 04.03.2021 passed by the learned Authority are hereby modified in the manner indicated above.

27. This original order be placed with appeal no.327 of 2020 and certified copy be of the same be placed with each of the remaining appeals.

28. The copy of this order be communicated to parties/Ld. counsel for the parties, the learned Haryana Real Estate Regulatory Authority, Panchkula, for compliance.

29. File be consigned to the record.

Announced:
October 31, 2022

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

Anil Kumar Gupta
Member (Technical)