

Indian Bank
Vs.
Kailash Sharma

Appeal No. 263 of 2020

Present: Shri Gaurav Goel, Advocate,
for the appellant.

None for respondent no. 1.

Respondent no. 2 Ex- parte.

Shri Angad Deep Singh, Advocate
for respondent no. 3.

The present appeal has been preferred by the Indian Bank through its Authorised Representative. It is aggrieved by the order dated 29.10.2019 passed by the Haryana Real Estate Regulatory Authority, Panchkula. The operative part of the order dated 29.10.2019 is reproduced below for ready reference:

“8. In the light of the foregoing discussions and findings, this Authority is of the confirmed view that the owner in possession of the Plot M/s Saera Auto India Pvt. Ltd. shall be liable jointly and severally with the promoters of the project who was authorised by them to sell and develop the apartments. For achieving their objective, both parties executed several documents including an MoU and an agreement. For active participation or for the passive ignorance of the facts happening on the ground, both respondent No.1 & respondent No.2 are answerable and liable towards the complainants jointly and severally.

9. Now this project is stuck. Sale of the apartments has been done in violation of the conditions of allotment of the land, as such, valid allotment of the apartments cannot be made in favour of the complainants. Legally and practically speaking there is no likelihood that the respondents will be able to complete the project. Accordingly, as provided under Section 18 of the RERA Act, all the complainants are entitled to get refund of the money paid by them along with interest calculated in accordance with Rule 15 of the RERA Rules which is SBI MCLR+2%. This order shall be

executable against both the respondents No.1 and No.2 jointly and severally. All the complainants shall calculate the interest payable as per Rule on each instalment paid from the date of payment upto the date of passing this order. A table of those calculation shall be sent to the respondent within 30 days with a copy of this Authority. If the respondent agrees with the calculations, the amount shall be refunded to the complainant. If they, do not agree, then respondent may file an application with this Authority for settling the dispute regarding calculations. A copy of the said application shall be sent to the complainant also.

10. The respondents are directed to refund the amounts as per this order to the complainants within a period of 90 days failing which the complainant shall be free to file petitions for execution of these orders. The complainants are free to get these orders executed both against respondent No.1 & respondent No.2 or against any of their bank accounts or properties.

11. Dispose of in above terms. Order be uploaded on the website of the Authority and file be consigned to the record room.”

2. Learned counsel for the Bank has primarily contended that the authority below lost sight to the effect that there has been tripartite agreement between the bank, allottee and the builder/promoter. Thus, while directing that the amount be refunded to the complainant. The interest of the Bank should have been protected and amount should have been directly refunded to the Bank. On specific query, being put to Learned counsel for the appellant that whether the had any *locus standi* to independently invoke the provisions of the Real Estate (Regulation and Development) Act, 2016, here, the answer is in negative. Besides, he has clearly admitted that the bank has already preferred the Original Application (OA no.1825/2019) before the Debt Recovery Tribunal-II at Chandigarh for recovery of the loan amount from respondent No.1.

3. In view of the above, we find no ground to interfere our appellate jurisdiction. Nor we find any legal infirmity with the impugned order, which is subject matter of challenge.

4. In these circumstances, the appeal is hereby dismissed with no order to costs.

Justice Rajan Gupta
Chairman,
Haryana Real Estate Appellate Tribunal,
Chandigarh

Inderjeet Mehta
Member (Judicial)

Anil Kumar Gupta
Member (Technical)

15.02.2023
Manoj Rana