

**BEFORE THE HARYANA REAL ESTATE APPELLATE TRIBUNAL,
SCO NO.50-51, 3rd FLOOR, SECTOR: 17-A, CHANDIGARH**

Appeal No.144 of 2019
Date of Decision: 19.07.2019

Vikas Bansal son of Shri B.M. Bansal, 406, Krishan Kunj, Plot No.14, Sector-7, Dwarka, Delhi.

Appellant

Versus

1. M/s Ramprastha Sare Realty Pvt. Ltd. (now known as Sare Gurugram Pvt. Ltd.) Registered Office E-7/12, LGF, Malviya Nagar, New Delhi, Corporate Office Plot No.46, Udyog Vihar, Phase-IV, Gurgaon.
2. Mr. Vivek Arora, G-Vector Realty, 27 Floor, MGF Megacity Mall, M.G. Road, Gurgaon.

Respondents

CORAM:

Justice Darshan Singh (Retd.)	Chairman
Shri Inderjeet Mehta	Member (Judicial)
Shri Anil Kumar Gupta	Member (Technical)

Argued by: Shri Rohit Kaushik, Advocate, learned counsel for the appellant.
Shri Sangram S. Saron, Advocate learned counsel for the respondents.

ORDER:

1. The present appeal has been preferred against the order dated October 30th, 2018 passed by the learned Haryana Real Estate Regulatory Authority, Gurugram (hereinafter referred to as the Ld. Authority) seeking refund of the entire amount deposited by him with the respondent alongwith the interest @ 18% and cost of litigation.

2. The appellant-complainant has filed complaint with the Ld. Authority under Section 31 of the Real Estate (Regulation and Development) Act, 2016 read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 on account of violation of Clause 3.3 of Flat Buyer Agreement executed on March

01st, 2013 for not handing over possession of the apartment on the due date i.e. September 11th, 2016 and has sought refund of the entire amount of Rs.45,55,191/- (Rupees Forty Five Lacs, Fifty Five Thousands, One Hundred and Ninety One only) alongwith interest @ 24% per annum from the Respondent-Promoter from the date of booking till the date of realisation.

3. Ld. Authority vide order dated October 30th, 2018 has given decision and directions to the respondent that as per the provisions of Section 18(1) of the Real Estate (Regulation and Development) Act, 2016, the respondents are duty bound to pay the interest at the prescribed rate i.e. 10.45% for every month of delay from the due date of possession i.e. 11.09.2016 till the actual date of offer of possession.

4. Aggrieved with the aforesaid order dated October 30th, 2018 the present appeal has been preferred by the appellant/complainant allottee.

5. The appellant/complainant allottee had sought refund of the entire amount in the complaint before the Ld. Authority. The same relief has been sought by him in the present Appeal before this Tribunal alongwith cost of litigation. So, the complaint filed by the appellant was for grant of relief of refund/return of the entire amount deposited by him with the Respondent-Promoter alongwith interest on account of delay in the delivery of possession of the flat/apartment.

6. We have heard Shri Rohit Kaushik, Advocate, Ld. counsel for the appellant and Shri Sangram S. Saron, Advocate Ld. counsel for the respondents and have gone carefully through the case file.

7. The question as to whether the Ld. Authority was competent to entertain and deal with the complaint wherein the complainant/allottee claims the relief of refund alongwith interest and compensation 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 Section 31, 71(1) read with rule 29 of the Rules as only the adjudicating officer is competent to deal with the relief of compensation.”

8. In view of our aforesaid findings the Ld. Authority had no jurisdiction to entertain the complaint filed by the appellant-allottee wherein he has claimed the relief of refund alongwith

interest. The Adjudicating Officer, who is the only forum to entertain the complaint, will decide this question afresh, in accordance with law.

9. Thus, keeping in view of our aforesaid discussions, the present appeal is hereby allowed. The impugned order dated October 30th, 2018 is hereby set aside. The complaint filed by the appellant/allottee stands transferred to Adjudicating Officer, Gurugram for adjudication in accordance with law. The Adjudicating Officer will allow the appellant/allottee to amend his complaint in order to bring it within the parameters of Form "CAO" as provided in rule 29 of the Rules.

10. This order passed by this Tribunal and observation of the Ld. Authority in the impugned order will not prejudice the mind of the Ld. Adjudicating Officer qua the rights of the parties on merits of the case.

11. The parties are directed to appear before the Learned Adjudicating Officer, Gurugram for further proceedings. Copy of this order be communicated to the Ld. Real Estate Regulatory Authority, Gurugram and the Ld. Adjudicating Officer, Gurugram for compliance.

12. File be consigned to records.

Justice Darshan Singh (Retd.)
Chairman,
Haryana Real Estate Appellate Tribunal,
Chandigarh
19.07.2019

Inderjeet Mehta
Member (Judicial)
19.07.2019

Anil Kumar Gupta
Member (Technical)
19.07.2019

Judgment - Haryana Real Estate Appellate Tribunal