

**BEFORE THE HARYANA REAL ESTATE APPELLATE
TRIBUNAL**

Appeal No.171 of 2019
Date of Decision: 02.03.2023

1. Sadhna Gupta;
2. Rajeev Kumar Gupta;

Both residents of FC-87, Shivaji Enclave, Raja Garden, New Delhi 11 027

Appellants-Allottees

Versus

M/s Landmark Apartments Pvt. Ltd., A-8, CR Park, Landmark House, New Delhi 110 023

2nd address: #85, Sector 44, Gurugram (Haryana) 122 018

Respondent-Promoter

CORAM:

Shri Inderjeet Mehta
Shri Anil Kumar Gupta

Member (Judicial)
Member (Technical)

Argued by: Shri Rajeev Kumar Gupta-one of the appellants in person with Shri Ankit Gupta, Advocate, Ld. counsel for the appellants-allottees.

Shri Shobit Phutela, Advocate,
Ld. counsel for the respondent-promoter.

ORDER:

ANIL KUMAR GUPTA, MEMBER (TECHNICAL):

The present appeal has been preferred under Section 44(2) of the Real Estate (Regulation and Development) Act 2016

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(further called as, 'the Act') by the appellants-allottees against impugned order dated 05.12.2018 which was subsequently corrected on 12.08.2019 by the Haryana Real Estate Regulatory Authority, Gurugram (for short, 'the Ld. Authority') whereby the Complaint No.481 of 2018 filed by the appellants-allottees was disposed of with the following directions:

- i. "The respondent is directed to refund the balance amount i.e. Rs.14,61,301/- after forfeiting 10% of the consideration amount and the amount which the respondent-promoter had kept.*
- ii. The respondent is directed to give an interest @ 10.75% per annum amounting to Rs.5,44,778.38 from the date of cancellation to date of this order to the complainant."*

2. It was pleaded by the appellants-allottees in the complaint that M/s India Home 253, Platinum Heights, DDA Multi Storey, Sector 18B, Dwarka, New Delhi 110 078 agent of respondent-promoter approached the appellants-allottees for booking of flat of the respondent-promoter at Delhi. It was further pleaded that both the appellants-allottees jointly booked a 2BHK apartment of 1350 Sq. Ft. @ Rs.4200/- per sq. ft. with the respondent-promoter in the project "Landmark-The Residency, at Sector 103, Gurugram vide application dated 16.05.2012 by paying a sum of Rs.4,00,000/- through cheque No.13238 dated 16.05.2012.

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3. It was further pleaded that at the time of booking/receiving the amount, respondent-promoter confirmed that they had clear title, interest and right of the land on which the above mentioned project will be executed and also confirmed that respondent-promoter had already obtained the necessary license from the department of Town and Country Planning, Haryana and after some period proper Builder Buyers Agreement (for short, agreement) in this respect will be executed. It was further pleaded that the appellants-allottees made regular payments as per demands of the respondent-promoter and, till filing of complaint, appellants-allottees have paid Rs.14,61,301/- against above mentioned unit.

4. It was further pleaded that without consent of the various buyers including the present appellants-allottees, the respondent-promoter continued to change the schedule of payments to its advantage so as to extract more money from appellants-allottees without doing any construction, with the intention of deferring the allotment of unit on the pretext of raising money beyond 25% of the project cost and also threatened to cancel the booking if payments are not made on due date. It was further pleaded that the respondent-promoter has not entered into the agreement with appellants-allottees even after making payment of more than 25% of the cost of unit by misrepresenting that the matter is in court and

agreement cannot be entered until dispute with farmers is settled.

5. It was further pleaded that the appellants-allottees from time to time visited the respondent-promoter, e-mailed and requested the respondent-promoter to inform the actual position of the project. However, the respondent-promoter never replied.

6. It was further pleaded that the appellants-allottees have paid a total amount of Rs.14,61,301/- (including service tax) against the above mentioned unit from time to time as per the demand raised by the respondent-promoter.

7. It was further pleaded that neither any allotment of the unit was made nor any agreement executed, however, the appellants-allottees continued to pay to the respondent-promoter against various demand letters issued from time to time.

8. With the above said pleadings, the appellants-allottees sought following reliefs in the complaint:

- “i. Refund the amount of Rs.14,61,301 that was paid by the complainants to the respondent-promoter.*
- ii. Pay interest from the date of booking @ 18% compounded till realization.*

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- iii. *To pay compensation @ Rs.5 per sq. ft for every month amounting to Rs.27,000 as on date and further to be paid till its realization.*
- iv. *Cost of litigation charges of Rs.55,000 to the complainants;*
- v. *Any other relief that this Hon'ble Authority deem fit and proper."*

9. The complaint was contested by the respondent-promoter on the ground of jurisdiction of the Ld. Authority and on some other technical grounds. It was also pleaded that the unit was cancelled by the respondent-promoter (vide letter dated 05.04.2013) due to default in making payment by the appellants-allottees. After controverting all the pleas raised by the appellants-allottees, the respondent-promoter pleaded for dismissal of the complaint.

10. The Ld. authority after considering the pleadings of the parties passed the impugned order with direction which have already been reproduced in paragraph No.1 of this judgment.

11. We have heard, Ld. counsel for the parties and have carefully examined the record.

12. Initiating arguments, it was contended by Ld. counsel for the appellants-allottees that they had jointly

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booked a 2-BHK apartment having 1350 sq. ft. covered area for a sum of Rs.4200/- per sq. ft. with the respondent-promoter in their project named as "Landmark-The Residency" at Sector 103, Gurugram vide application dated 16.05.2012 and paid a sum of Rs.4,00,000/- vide cheque No.132328 dated 16.05.2012.

13. It was stated that the appellants-allottees had made regular payment to the respondent-promoter as and when demanded by it and have paid 25 % of total sale consideration to the respondent-promoter i.e. Rs.14,61,301/- till filing of the complaint.

14. It was also asserted that in spite of receiving 25% of the cost of the said flat, the respondent-promoter has not executed the agreement in favour of appellants-allottees. The appellants-allottees on numerous occasions visited the premises of the respondent-promoter as well as requested the respondent-promoter telephonically through e-mail for execution of the agreement but the same was not executed.

15. It was further contended that the appellants-allottees vide letter dated 07.02.2013 again requested the respondent-promoter for delivery of allotment letter and signing of agreement and other documents as both the appellants-allottees are from service class and were seeking Home Loan to

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pay the future installments of the said flat but in spite of receiving the request letter of the appellants-allottees, the respondent -promoter had not provided the said documents to the appellants-allottees and, therefore, they were unable to apply for Home Loan for payment of future installments to be paid to the respondent-promoter.

16. It was argued that as per the Clause 16 of the application form, respondent-promoter has to handover the physical possession of the flat to the appellants-allottees within 36 months from the date of execution of the agreement, but till date nothing has been done by the respondent-promoter. In fact, the appellants-allottees also filed a complaint dated 21.02.2013 against the respondent-promoter before the Economic Offences Wing, New Delhi for misconduct, cheating etc.

17. It was submitted that the appellants-allottees also issued legal notice dated 01.06.2015 to the respondent-promoter for refund of the amount deposited by the appellants-allottees along with interest which was duly received and acknowledged by the respondent-promoter, but till date nothing has been done by the respondent-promoter on the said legal notice.

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18. It was submitted that the appellants-allottees also filed a consumer complaint No.518 of 2015 dated 04.08.2015 against the respondent-promoter which was dismissed as withdrawn with a liberty to approach the appropriate forum for appropriate relief.

19. It was further stated that the appellants-allottees never received the letters dated 15.11.2012, 15.01.2013, 12.03.2013, 20.03.2013 and the cancellation letter dated 05.04.2013 and maintained that the courier receipts attached by the respondent-promoter are not authenticated and, therefore, cannot be relied upon.

20. With these contentions, it was asserted that the present appeal may be allowed and sought refund of whole of the amount paid by the appellants-allottees along with interest at the prescribed rate from the date of each payment till realization.

21. Per contra, Ld. counsel for the respondent-promoter had argued that the appellants-allottees made a total payments of Rs.14,61,301/- upto 08.10.2012 and thereafter, did not make any payment. Letter dated 15.11.2012 was issued by the respondent-promoter for payment of Rs.5,67,000/-. Another demand was raised on 15.01.2013 for a total payable amount of Rs.11,34,000/-. The amount of Rs.11,34,000/- was not

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paid by the appellants-allottees, thereafter, a demand notice-cum-reminder for payment of Rs.,11,34,000/- was issued on 12.03.2013. Consequently, a last and final reminder-cum-cancellation letter was issued on 20.03.2013 intimating therein to pay the demand of Rs.11,34,000/- within 10 days from the issuance of the said letter otherwise the respondent-promoter would be forced to cancel the booking and forfeit the booking amount. Since the appellants-allottees did pay the above said amount, therefore, vide letter dated 05.04.2013 the booking made by appellants-allottees was cancelled and the respondent-promoter rightly, forfeited the amount paid by the appellants-allottees as per the terms and conditions of the booking application form. It was further contended that the courier receipts which are on record show that the above letters have been posted by the respondent-promoter. It was further submitted that the appellants-allottees have sought refund in the appeal, however, the appellants-allottees have not sought interest on the refund amount, and, therefore, no interest is required to be given to the appellants-allottees as the scope of the appeal cannot be enlarged at this stage. To support his case, the respondent-promoter has relied upon the judgment dated 17.10.2017 passed in consumer case No.2790 of 2017 titled as "*Kavita Sikka vs. Oasis Landmark LLP and others*".

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22. With these submissions, it was contended that the appeal filed by the appellants-allottees is without any merits and the same deserves to be dismissed.

23. We have duly considered the aforesaid contentions of both the parties.

24. It is undisputedly, the appellants-allottees jointly booked an apartment with the respondent-promoter in the project "Landmark-The Residency, at Sector 103 vide application dated 16.05.2012 by making a payment of Rs.4,00,000/- vide cheque No.132328 dated 16.05.2012. A perusal of the said application form reveals that neither the unit number nor the area of the unit or the total sale consideration is mentioned therein. However, the basic sale price of super area including costs of car parking is mentioned as Rs.4,200/- per sq. ft. As per Clause 16 of the said booking application form dated 16.05.2012, the respondent-promoter is to handover the unit within 36 months with grace period of 90 days from the date of execution of agreement. However, the agreement was never executed. The appellants-allottees made a payment of Rs.4,00,000/- along with above said application form dated 16.05.2012 and subsequently made payments of Rs.1,80,500/-, Rs.8,37,000/- and Rs.43,801/- on 24.07.2012, 17.08.2012 and 08.10.2012 respectively to the respondent-promoter.

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25. The appellants-allottees wrote a letter dated 07.02.2013 to the respondent-promoter intimating therein that they have paid a total amount of Rs.14,61,301/-, as 25% of Rs.56,70,000/-, plus Rs.43,801/- as service tax and sought confirmed allotment of the unit and its number, and tower number in which the unit is to be allotted and asked for execution of the agreement. The respondent-promoter was further asked vide the above said letter that the agreement and other details of the flat are required for availing loan from the bank to pay the further installments.

26. On the contrary, the case of respondent is that the appellants-allottees after making a payment of Rs.14,61,301/- up to 08.10.2012 did not make any payment. The respondent-promoter vide letter dated 15.11.2012 asked for a payment of Rs.5,67,000/- from the appellants-allottees. Another letter was written by the respondent-promoter on 15.01.2013 for a total payable amount of Rs.11,34,000/-. The said amount of Rs.11,34,000/- was not paid by the appellants-allottees, therefore, a demand notice-cum-reminder for payment of Rs.11,34,000/- was issued on 12.03.2013. Thereafter, the last and final reminder-cum-cancellation letter was issued on 20.03.2013 for payment of Rs.11,34,000/- within 10 days. The appellants-allottees did not pay the above said amount, and,

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therefore, vide letter dated 05.04.2013, the booking made by appellants-allottees was cancelled.

27. The appellants-allottees on the other hand have contended that the letters dated 15.11.2012, 15.01.2013, 12.03.2013 and 20.03.2013 alleged to have written by the respondent-promoter were not received by them. To substantiate this plea, Ld. counsel for the appellants-allottees has pointed out that the courier receipts attached with the letters dated 15.11.2012, 15.01.2013, 12.03.2013 and 20.03.2013 alleged to have been issued by the respondent-promoter reveals that only the name of one of the appellants-allottees is mentioned and incomplete date is written in ink by hand. All other places, such as address of the appellants-allottees and name and address of the sender, the amount of payment and tax charged have been left blank. During the course of hearing, when the Ld. counsel for the respondent-promoter was confronted with the above, no plausible explanation and justification could be rendered by him. We have carefully perused the courier receipts attached with letter dated 15.11.2012, 15.01.2013, 12.03.2013 and 20.03.2013 and are of affirmed view that only the name of one of the appellant-allottee viz. Sadhna Gupta is written and there is incomplete date written by hand in ink. All other places where the address of the appellants-allottees, name and address of sender, amount charged and taxes received are to be mentioned, have been left blank. Thus, in our opinion, these courier receipts cannot be relied upon as sufficient evidence to prove the case of the respondent-promoter that these letters have

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actually been issued by it. If the respondent-promoter had actually sent these letters and had genuinely issued these letters then the respondent-promoter should have supplied the confirmation slip/track consignment slip issued by the courier companies for the said letters. The courier receipts do not inspire confidence that the documents were indeed dispatched.

28. In addition to the above, the appellants-allottees required a confirmation of the flat number and tower number in which the flat is allotted to the appellants-allottees along with agreement for availing loan. It is well known that a bank would not sanction loan to the homebuyers unless an agreement is executed between the parties indicating details like flat number, the tower in which it is situated, etc. are mentioned in such agreement.

29. During the course of hearing, Ld. counsel for the respondent-promoter was asked to intimate the status of the project and also supply the copy of Occupation Certificate (OC), if the same has been issued. The copy of the OC issued on 25.09.2020 by the Town and Country Planning Department to the respondent-promoter was supplied to this Tribunal on 08.02.2023 by the respondent-promoter. Concededly, the appellants-allottees have booked the apartment in May 2012. The period of 36 months plus 3 months grace period as per Clause 16 of the application form dated 16.05.2012 for construction of the project elapsed on August 2015. Thus, it is clear that the construction of the project was getting delayed on account of some reasons attributable to the respondent-

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promoter, and, therefore, the respondent-promoter did not execute the agreement even after receiving the amount of Rs.14,61,301/-. Hence, the appellants-allottees cannot be penalized for no fault on their part.

30. No other issue was pressed before us.

31. Thus, keeping in view of our aforesaid discussions, the present appeal is allowed and the impugned order dated 12.08.2019 passed by the Ld, Authority is modified. It is ordered that the respondent-promoter will refund the entire amount of Rs,14,61,301/- paid by the appellants-allottees to the respondent-promoter along with interest as prescribed in Rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 i.e. SBI highest MCLR plus 2% which comes out 10.6% per annum from the date of each payment made by the appellants-allottees from time to time to the respondent-promoter till realization.

32. No order as to costs.

33. Copy of this judgment be communicated to both the parties/learned counsel for the parties and the learned Haryana Real Estate Regulatory Authority, Gurugram.

34. File be consigned to the record.

Announced:
March 02, 2023

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

Anil Kumar Gupta
Member (Technical)

Manoj Rana