

**BEFORE THE HARYANA REAL ESTATE APPELLATE
TRIBUNAL**

Appeal No. 496 of 2021

Date of Decision: 02.03.2023

Aarcity Regency Park Apartment Buyer Welfare Association having its registered office at 2904, Sector 9-11, Hisar.

Appellant

Versus

1. Aarcity Builders Private Limited having its registered office at Regency Park, Sector 11A-17, Hisar.
2. Hisar Real Estate Private Limited having its registered office at CGB 053, DLF Moti Nagar, New Delhi.

Respondents

CORAM:

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

Present: Shri Nithin Thatai , Advocate,
for the appellant.

Shri Shekhar Verma, Advocate,
for respondent no. 1.

Shri Hemant Saini, Advocate,
for respondent no. 2.

ORDER:

JUSTICE RAJAN GUPTA, CHAIRMAN:

The appellant has approached this Tribunal against the order dated 07.09.2021 passed by learned Haryana Real Estate Regulatory Authority, Panchkula, (hereinafter called 'the Authority').

The operative part thereof is reproduced as under:-

“6. The Authority after hearing all the parties arrived at following conclusions:

(i) Regarding suspected diversion of funds by respondent company, the explanation submitted by respondents through learned counsel Shri Shekhar

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Verma appears to be satisfactory. Since more funds have been invested than collected from the complainants, there appears to be no diversion of funds received by the respondents from the allottees of the project.

- (ii) The Authority directs the respondents to submit some sample agreements of each type of villas to see whether differential pricing of different types of villas is justified. The sample agreements should be submitted before the authority within 10 days of the uploading of the orders and also copy supplied to the opposite side.*
- (iii) Primary objective of the Authority is to get the project completed through the respondents. On account of suspicion of diversion of funds, Authority had once thought of commencing a process of handing over of project to the Association of Allottees. However, now the promoters are showing progress and first phase of the project is likely to be completed in a few months. Accordingly the Authority is inclined to review the suspicion expressed by it regarding diversion of funds. The report of the auditor appears to be based on certain incorrect assumptions on the basis of which the said suspicion were expressed.*
- (iv) Authority vide order dated 23.12.2020 had decided to appoint a forensic auditor to conduct an audit of the investment made by the promoter in last one year. Report of the forensic audit has been*

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submitted and placed before the Authority. Respondent is directed to deposit the fee amounting to Rs.41,300/- of the forensic auditor with the Authority.

(v) Accepting the request of Shri Saini, learned counsel for HREP, the Authority will monitor progress of the project on two monthly basis. The respondent shall report on every date of hearing the amount received in the account of the project and the amount invested on the project. Promoter shall not withdraw any money from the account except for the purpose of completing construction works. They will report physical progress achieved on every date to the Authority.

(vi) On request made by Shri Himanshu Raj, that complainant in Complaint No.315 of 2018 is insisting on refund of the money paid, Authority decides not to hear this matter for the time being awaiting orders of the Hon'ble Supreme Court of India relating to jurisdiction of the Authority for adjudicating upon the complaints in which relief of fund is sought.”

2. During the course of arguments, learned counsel for the appellant submits that his limited grievance is to certain observations made by the learned Authority in para nos. 6(i) and 6 (iii) of the impugned order dated 07.09.2021 reproduced above. According to him, such observations are likely to influence the investigation pending in FIR No.0133 dated 22.05.2019, Police

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Station Urban Estate, Hisar, registered at the behest of the complainant (appellant herein).

3. A query has been put to learned counsel for the appellant as to how the observations in the impugned order passed by the learned Authority would affect the proceedings before the investigating agency. However, no clear answer is forthcoming. So, we feel that the apprehension of the appellant is misplaced as parameters governing the investigation are totally different. Yet, in order to allay any apprehension of the appellant, we make it clear that the observations made by the learned Authority are only for the purpose of deciding the matter pending before it. We have no doubt that the investigating agency would proceed according to its own procedure and as per law.

4. In view of the above observations, both the parties have expressed their satisfaction. The appeal is, thus, disposed of.

Justice Rajan Gupta
Chairman
Haryana Real Estate Appellate Tribunal
Chandigarh

Inderjeet Mehta
Member (Judicial)

Anil Kumar Gupta
Member (Technical)

02.03.2023
CL