

**BEFORE THE HARYANA REAL ESTATE APPELLATE
TRIBUNAL**

Appeal No. 445 of 2021

1. Kuldeep Kumar Chabbra;
2. Mrs. Seema Rani Chabbra

Both are residents of 42 SF, Starwood, Malibo Town,
Gurgaon 122 018

Appellants

Versus

Spelndor Landbase Ltd. Corporate Office: Unit No.501-511,
5th Floor, Splendor Forum, Plot No.03, Jasola, District
Centre, Delhi 110 025

2nd Address/Registered Office:

F 38/2, Okhla Industrial Area, Phase-II, New Delhi 110 020

Respondent

CORAM:

Justice Rajan Gupta
Shri Inderjeet Mehta
Shri Anil Kumar Gupta

Chairman
Member (Judicial)
Member (Technical)

Present: Shri Sanjeev Sharma, Advocate,
for the appellant.

Shri Sachin Sharma, Advocate,
for the respondent.

ORDER:

RAJAN GUPTA, CHAIRMAN:

Appellant is aggrieved by the order dated 29.07.2021 passed by the Haryana Real Estate Regulatory Authority, Gurugram (hereinafter called, 'the Authority') in complaint No.CR/2350/2021 filed by the appellant-allottee. The same is reproduced as under for ready reference:-

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“The complainant has booked the unit on 06.02.2012 and paid Rs.3,47,434/- and Rs.5,00,00/- through two cheques (Rs.8,47,434/-) against a basic sale consideration of Rs.55,08,00/-. The promoter has cancelled the booked unit vide letter dated 01.08.2019 due to non-payment of Rs.37,73,363/-.

The matter has been heard comprehensively. It has been brought on record that the promoter had been issuing request for payment/instalments as per construction linked plan and they have been requesting for signing of BBA but nothing tangible has happened on the part of the complainant of length, as such, the promoter has no choice but to cancel the unit. Since no Builder Buyer Agreement has been signed inter se both the parties, as such, the respondent be directed to refund the balance amount after deducting 10% of the paid up amount, as per the provisions of RERA, Regulation No.11/RERA GGM Regulations 2018 dated 5th December, 2018. As such, the matter stands disposed of. File be consigned to the Registry.”

2. At the outset, learned counsel for the appellant has assailed the order on the ground that his plea for execution of Builder Buyer’s Agreement (hereinafter called, ‘the BBA’) and for revocation of the unilateral cancellation of the allotment has not been considered by the Authority. He submits that he had also made prayer for possession of the unit in his complaint before the Authority, but there is no reference of the same in the impugned order.

3. Learned counsel for the respondent reiterates his stand taken before the learned Authority.

4. On perusal of the order under challenge, we find that the impugned order passed by the learned Authority does

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not deal with the issues raised before it, besides the same is short and cryptic.

5. In our considered view, in case the prayer of the appellant is for execution of BBA and grant of possession, the reasoned order ought to have been passed. On the other hand, learned Authority has simply directed that since no BBA has been signed between the parties, direction needs to be given to the respondent to refund the balance amount after deducting 10% of the paid up amount. Even, in the eventuality of such direction, there is no mention of interest, if any, which was required to be paid as the amount was retained by the respondent-builder for a considerable period.

6. Under these circumstances, we find that the impugned order under challenge is unsustainable. Thus, the appeal is allowed and the impugned order is hereby set aside. The matter is remitted to the same Authority for decision afresh after giving due consideration to all the issues and affording opportunity of being heard to both the parties.

7. Parties shall appear before the Authority on 28.03.2023.

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

Inderjeet Mehta
Member (Judicial)

Anil Kumar Gupta
Member (Technical)