

**BEFORE THE HARYANA REAL ESTATE APPELLATE
TRIBUNAL**

Appeal No.577 OF 2021
Date of Decision: 16.05.2023

1. Indira Mahlawat;
2. Rajvir Mahlawat;

Both are residents of 84/7, Sector 8, HIG Flat, Pratap Nagar, Sanganer, Jaipur Rajasthan 302033: presently residing at RZF, 908, First Floor, Mahatma Gandhi Marg, Near vijay Medicos, Raj Nagar Part-II, Palam Colony, New Delhi 110077

Appellants

Versus

1. Ashiana Husing Ltd. registered office at Tower-I, 8th Floor, Vatika Business Park, Sector 49, Sohna Road, Gurugram 122 001;
2. Universe Heights (India) Pvt. Ltd., registered office at 5G/1, Everest 46/C, Chowringhee Road, Kolkata West Bengal 700 071.

Respondents

CORAM:

**Justice Rajan Gupta
Shri Inderjeet Mehta
Shri Anil Kumar Gupta**

**Chairman
Member (Judicial)
Member (Technical)**

Present: Ms. Rupali Shekhar Verma, Advocate,
for the appellants.

Mr. Sukhvir Yadav, Advocate,
for the respondents.

O R D E R:

Rajan Gupta, Chairman (Oral):

The appellants have posed a challenge to order dated 20.07.2021 passed in complaint No.2792/2020 by the Haryana Real Estate Regulatory Authority, Gurugram

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(for short, the Authority). Operative part thereof reads as under:-

“37. Hence, the authority hereby passes this order and issues the following directions under Section 37 of the Act to ensure compliance of obligations cast upon the allottees as per the function entrusted to the authority under Section 34(f):-

- i. The respondents/allottees shall be charged interest at the prescribed rate of interest that is a at the rate 9.30 % per annum by the complainants/promoters which is the same as is being granted to the complainants/promoters in case of delayed possession.*
- ii. The respondents/allottees are directed to take the possession of the allotted unit as offered by the complainants.*
- iii. The respondents/allottees shall make the requisite payments as per the provisions of Section 19(6) and (7) of the Act, within a period of 30 days.*
- iv. The complainants/promoters shall not charge anything which is not mentioned in the flat buyer agreement.*

- 1. Complaint stands disposed of.*
- 2. File be consigned to the registry.”*

2. During the course of hearing, learned counsel representing the appellants raised a plea that proper opportunity of hearing was not afforded to the appellants before decision was rendered by the Authority. She has referred to a notice dated 15.07.2021 issued under relevant provision of the Real Estate (Regulation and

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Development) Act, 2016 (for short, 'the Act')whereby the appellants were informed about the pendency of the case before the Authority, there were asked to submit written reply with softcopy within ten days of the receipt of the notice.

3. The relevant part of the notice is reproduced hereunder:-

*“2. You are hereby directed to submit your written reply (in two copies) with soft copy as per the prescribed proforma available on the website **haryanarera.gov.in** of this Authority duly supported by all the relevant documents in your defense within 10 days from the date of receipt of this notice the registry of the HARERA, Gurugram.”*

4. Admittedly, the aforesaid notice was issued on 15.07.2021 in the presence of the appellants before the Authority. Stand of the appellants is that before expiry of 10 days as given in the notice above, the Authority proceeded to decide the matter. Thus, the appellants were deprived of the opportunity to file any reply.

5. Learned counsel representing the respondents, however, submits that he has nothing to say as regards the proceedings of the Authority.

6. We find substance in the plea of the appellants, it is inexplicable why the Authority

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proceeded to decide the matter without waiting for the 10 days period commencing 15.07.2021. On expiry thereof, the matter could have been decided on merits.

7. Thus, we have no option but to conclude that the matter was decided post-haste without affording the proper opportunity to the appellants to file reply. This approach of the Authority would be against the principle of natural justice. Law is also settled on the issue that principles of natural justice are to be read in every statute. The Hon'ble Supreme Court of India in case of *"Dharmpal Satyapal Ltd. versus Deputy Commissioner of Central Escise Gauhati and others"* (2015) 8 SCC 519=2015 SCC Online SC 489 has held that:

"21. In Common Law, the concept and doctrine of natural justice, particularly which is made applicable in the decision making by judicial and quasi-judicial bodies, has assumed different connotation. It is developed with this fundamental in mind that those whose duty is to decide, must act judicially. They must deal with the question referred both without bias and they must given (sic an opportunity) to each of the parties to adequately present the case made. It is perceived that the practice of aforesaid attributes in mind only would lead to doing justice. Since these attributes are treated as natural or fundamental, it is known as 'natural justice'. The principles of natural justice

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developed over a period of time and which is still in vogue and valid even today were: (i) rule against bias, i.e. nemo debet esse judex in propria sua causa; and (ii) opportunity of being heard to the concerned party, i.e. audi alteram partem. These are known as principles of natural justice. To these principles a third principle is added, which is of recent origin. It is duty to give reasons in support of decision, namely, passing of a 'reasoned order'.

27. It, thus, cannot be denied that principles of natural justice are grounded in procedural fairness which ensures taking of correct decision and procedural fairness is fundamentally an instrumental good, in the sense that procedure should be designed to ensure accurate or appropriate outcomes. In fact, procedural fairness is valuable in both instrumental and non-instrumental terms.

28. It is on the aforesaid jurisprudential premise that the fundamental principles of natural justice, including audi alteram partem, have developed. It is for this reason that the courts have consistently insisted that such procedural fairness has to be adhered to before a decision is made and infraction thereof has led to the quashing of decisions taken. In many statutes, provisions are made ensuring that a notice is given to a person against whom an order is likely to be passed before a decision is made, but there may be instances where though an

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authority is vested with the powers to pass such orders, which affect the liberty or property of an individual but the statute may not contain a provision for prior hearing. But what is important to be noted is that the applicability of principles of natural justice is not dependent upon any statutory provision. The principle has to be mandatorily applied irrespective of the fact as to whether there is any such statutory provision or not.

8. The legislature in its wisdom incorporated Section 38(2) in the Act. The said provision of Section 38(2) is reproduced hereunder for ready reference:

“38(2). The Authority shall be guided by the principles of natural justice and, subject to the other provisions of this Act and the rules made thereunder, the Authority shall have powers to regulate its own procedure.”

9. It is, thus, clear that the order passed by the Authority is in violation of Section 38(2) of the Act and *Dharmpal Satyapal Ltd. case supra.*

10. We are left with no option but to set aside the order. Matter is remitted to the same Authority for decision afresh after affording opportunity of hearing to both the parties.

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11. As the matter has been considerably delayed, we expect the Authority to take a decision in the matter expeditiously, in any case, not later than two months.
12. Parties to appear before the Authority on 31.05.2023.
13. Copy of this order be communicated to the parties/learned counsel for the parties and the Authority, Gurugram.
14. File be consigned to the record.

Justice Rajan Gupta
Chairman
Haryana Real Estate Appellate Tribunal

Inderjeet Mehta
Member (Judicial)

Anil Kumar Gupta
Member (Technical)

16.05.2023
Manoj Rana