

Shailash Gupta and another
Vs.
M/s Puri Construction Pvt. Ltd.
IA No.80 of 2022
In Appeal No.378 of 2019

Argued by: Mr. Gaurav Gupta, Advocate,
for the applicants-appellants.

Mr. Himanshu Juneja, Authorised Representative
for the respondent.

This order will dispose of bunch of 10 applications
filed by the applicants-appellants for revival of appeals.

2. On notice of the applications being issued,
respondent filed reply in Appeal No.378 of 2019 and stated
before this Tribunal that the reply filed in the present case
may also be read in connected cases.

3. Prayer in the present application is for restoration
of the appeal, which was withdrawn by the applicants-
appellants, on 29.01.2021. Operative part of the order
passed on 29.01.2021 reads as under:

*“Present: Shri Gaurav Gupta, Advocate,
Ld. counsel for the appellant.
Shri Himanshu Juneja,
Legal Head/Authorised
Representative for the respondent.*

*{The aforesaid presence is being recorded through
video conferencing since the proceedings are being
conducted in virtual Court}*

*We have received the email sent by the Sh.
Himanshu Juneja, Ld. Authorised Representative*

of the respondent company that the respondent company has no objection in hearing and deciding the present appeal on merit.

However, Ld. Counsel for the appellant Sh. Gaurav Gupta, Advocate, has stated at bar that due to complex legal position, the present appeal may be dismissed as withdrawn with liberty to avail the appropriate legal remedy before the appropriate forum.

Ordered accordingly.

File be consigned to the records.

Copy of this order be communicated to ld. counsel for the parties/parties and Ld. Authority.

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

*Inderjeet Mehta
Member (Judicial)*

*Anil Kumar Gupta
Member (Technical)"*

4. A detailed reply has been filed by the respondent (M/s Puri Construction Pvt. Ltd.), wherein it has vehemently opposed the prayer for restoration of the appeal. According to learned Authorised Representative representing the respondent, at the time the applicants-appellants decided to withdraw the appeal pending before this Tribunal, they had already approached Hon'ble National Consumer Disputes Redressal Commission (NCDRC), for necessary relief.

However, their complaint before the said Forum having been dismissed vide order dated 23.05.2022, they have chosen to file the present application for seeking revival of proceedings before this Tribunal, which have already attained finality.

5. During the course of hearing, learned counsel for the applicants-appellants laid emphasis on the operative part of the judgment in SLP (C) No.13005 of 2020 titled as “*Sana Realtors Pvt. Ltd. v. Union of India and others*” to contend that the appeal can be revived in view of the observations made in *Sana Realtors’ case*. Operative para of the said judgment is reproduced hereunder for ready reference:

“Learned Advocate appearing in support of these petitions have fairly accepted that the instant matters are covered by the decision of this Court in M/s Newtech Promoters and Developers Pvt. Ltd. v. State of U.P. and others as well as by the order passed by this Court after hearing Mr. Siddharth Bhatnagar, learned Senior Advocate in Part I of this order. The petitions are accordingly disposed of.

Learned advocate appearing in support of application for impleadmet, submits that the orders passed by the authority as well as by the appellate authority under the Act, ought to be read in the light of the decision of the High Court which has now been affirmed by this Court. It goes without saying that the rights of the allottees shall

governed by the decision of High Court as affirmed by this Court. In case any contrary view was taken by any of the authorities, the applicants shall be entitled to approach the concerned authorities afresh or seek revival of the old proceeding or appeal instituted earlier. Such prayer, if made, shall be disposed of within two weeks of the filing.”

6. He submits that the allottees are entitled to revival of the appeal which was withdrawn on his statement made before this Tribunal.

7. We are not convinced with the plea raised by learned counsel for the applicants-appellants.

8. On due consideration of the orders passed by the Hon'ble Supreme Court, it is clear that the liberty to seek revival of old proceedings have been given in those cases in which any contrary view to that taken by the Hon'ble Supreme Court in *M/s Newtech Promoters and Developers Pvt. Ltd. v. State of UP & others 2021 SCC Online SC 104* is taken by any Authority.

9. This liberty was probably granted in view of the fact that on number of pending issues there was clear enunciation of law in *M/s Newtech's* judgment (*supra*). As contrary view existed at some time in view of the orders passed by various authorities/tribunals, the applicants-appellants could approach the concerned Forum and seek

revival of the old proceedings. The facts of the instant case are, however, on totally different footing. The observations of the Hon'ble Supreme Court in *Sana Realtors'* case (*supra*) cannot help the case of the applicants-appellants. As would be clear from the order reproduced in para No.3 above, the applicants-appellants themselves chose to withdraw the appeal pending before this Tribunal. Consequently, the order dated 29.01.2021 was passed. The present application is, thus, wholly misconceived and deserves outright rejection. It is pertinent here to refer to the judgment of the Hon'ble Supreme Court in *Dr. Subramanian Swamy v. Board of Control for Cricket in India and others* 2016(4) R.C.R. (Civil) 957. In the said case, it was held that withdrawal of application for leave to appeal would amount to allowing the impugned order to attain finality and constitute a bar to filing of subsequent appeal against the same order. Taking a cue from the said judgment, we have no option but to hold that after withdrawal of appeal pending before this Tribunal, vide order dated 29.01.2021, the impugned order passed by the Authority attained finality.

10. Though in exceptional circumstances, the apex court allowed revival of the appeal in *Sana Realtors'* case (*supra*), however, similar circumstances do not exist in the instant case.

11. Before parting with the order, we may also refer the order passed by the NCDRC on 23.05.2022 in complaint No.561 of 2020 titled as “*Shailesh Gupta and another v. Puri Construction Pvt. Ltd.*” Operative para of the said judgment is reproduced hereunder:

“10. In view of the principle enunciated by the Hon’ble Supreme Court, once the Complainant has exercised his option withdrawing his complaint from this Commission and filing Complaint before RERA Authority, the Complainant has already exercised his option under Doctrine of Election. Having exercised the option once, he cannot again come back to this Commission seeking redressal of his grievance. In this case, it is noticed, he has been going to various Tribunals and Courts and the allegation of forum shopping is not correct.”

12. It is evident that the applicants-appellants are continuing with the same effort i.e. invoking the jurisdiction of one Forum or the other as per their convenience. This practice needs to be deprecated. Accordingly, we hereby reject the same pleas. No other arguments have been addressed in support of prayer for revival.

13. We, thus, hereby dismiss the application for revival of the appeal.

14. Copy of this order be placed on each file of the appeal i.e. Appeals No.379, 380, 381, 385, 386, 400, 401, 403 and 666 of 2019.

15. Copy of this order be sent to the parties/learned counsel for the parties and the Authority, Panchkula.
16. File be consigned to the record.

Justice Rajan Gupta
Chairman
Haryana Real Estate Appellate Tribunal

Inderjeet Mehta
Member (Judicial)

Anil Kumar Gupta
Member (Technical)

May 19, 2023
Manoj Rana