

**BEFORE THE HARYANA REAL ESTATE APPELLATE
TRIBUNAL**

Appeal No. 622 of 2022
Date of Decision: 19.05.2023

Landmark Apartments Private Limited, Registered office
at Plot No. 65, Sector 44, Gurugram, Haryana.

Appellant

Versus

Mr. Inderpal Sharma, Residence of CS-91/311, VPO,
Rajokri, New Delhi-110038.

Respondent

CORAM:

Justice Rajan Gupta
Shri Inderjeet Mehta
Shri Anil Kumar Gupta

Chairman
Member (Judicial)
Member (Technical)

Present: Mr. Venket Rao, Advocate
for the appellant.

Mr. Saksham Arora, Advocate,
for the respondent.

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 (further called as 'the Act') by the appellant/promoter against impugned order dated 27.05.2022 passed by the Haryana Real Estate Regulatory

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Authority, Gurguram (for short 'the Authority') whereby Complaint No.1560 of 2021 filed by the respondent/allottee was disposed of with the following directions:

"27. Hence, the Authority hereby passes this order and issue the following directions under Section 37 of the Act to ensure compliance of obligations case upon the promoter as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016.

(i) The respondent/promoter is directed to refund the amount received by it from the complainant after deducting 10% of the basic sale price of the unit along with interest at the rate of 9.50% p.a. as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules 2017 from the date of cancellation till the date of actual realization of amount.

(ii) A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.

28. Complaint stands disposed of.

29. File be consigned to the registry."

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2. As per averments in the complaint, the respondent/allottee had booked non-PLC 2 BHK unit, middle floor, (5th, 6th, 7th, 8th floor), 1350 sq. ft. in the project of the appellant-promoter, namely, "Landmark-The Residency", Sector-103, Gurugram, by paying booking amount of Rs. 4,32,000/- on 25.01.2011. Thereafter, respondent-allottee again made a payment of Rs. 6,48,000/-. Respondent-allottee made more payment on the demands raised by the appellant-promoter and had paid an amount of Rs. 19,49,000/- till the year 2013 against the total sale consideration of Rs.43,20,000/-. The appellant in its reply to the complaint had supplied the application/provisional allotment letter dated 25.01.2011, as per clause 16 of which the possession of the unit was to be handed over within 36 months from the date of execution of buyers agreement (hereinafter called as 'Agreement'). There is also a provision of grace period of 90 days in the said application/provisional allotment letter. Project of the appellant was not complete, therefore, the respondent-allottee filed a complaint before Permanent Lok Adalat at Gurugram (herein afterwards called as 'PLA Gurugram') vide an application under Section 22C of the Legal Service Act, 1987, for refund of the amount paid by him along with interest and compensation on 30.07.2018.

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As per the respondent-allottee, the appellant refused to settle the matter before the PLA Gurugram and therefore, the respondent-allottee, filed the complaint on 16.03.2021 before the Authority seeking following relief.

- “i. Direct the respondent to refund of amount of Rs. 19,49,000/- being the principal amount paid by the complainant against the sale consideration of the subject unit alongwith interest @ 24% p.a. to an extent of Rs. 43,01,012/- calculated from the date of respective payments till 15.03.2021.*
- ii. Direct the respondent to pay Rs. 1,00,000/- to the complainant as cost towards litigation charges and to pay the compensation of Rs. 1,00,000/- for the mental agony and financial loss suffered by him.*
- iii. Direct the respondent to compensate the complainant with Rs. 5,00,000/- due to inflammation in property market proportionate size of flat in the past 5 years.”*

3 The complaint was resisted by the appellant-promoter on the ground that the respondent-allottee did not make the payments as per the demand notices issued from time to time which were as per the terms of provisional allotment/application dated 25.01.2011, vide

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which the unit was booked/allotted and therefore, the agreement also could not be executed. It was further pleaded that since the respondent-allottee did not make payments as per the demand letters issued by it and therefore, the appellant issued a reminder cum cancellation letter on 03.03.2012. The respondent-allottee visited the office of the appellant and requested it not to cancel the unit as he was going through some financial difficulty. The appellant acceded to his request and elected not to cancel his unit. Thereafter, the appellant vide its letter dated 12.09.2012 raised further demands of the amount due. However, respondent-allottee again requested to the appellant for some more time to clear the outstanding dues as he was in financial difficulty. Ultimately, due to default of the part of respondent-allottee on account of the non-payment of the dues, the appellant was constrained to issue last and final reminder whereby the appellant accorded final opportunity to the respondent-allottee to clear the outstanding dues and informed that in case of no receipt of the payment within the prescribed time, the said letter be treated as a cancellation letter. The respondent- allottee failed to pay the outstanding dues and accordingly, the booking of the respondent-allottee is deemed to have been cancelled. It

was further pleaded that the tower in which the unit of the respondent-allottee is situated is fully developed and complete. The Occupation Certificate was received on 25.09.2020. With the above said pleadings, it was pleaded that the complaint filed by the respondent- allottee may be dismissed being without any merit.

4. The Authority after hearing the pleadings of both the parties passed the impugned order, the operative part of which has already been reproduced in paragraph No.1 of this order.

5. Aggrieved with the aforesaid order of the Authority, the appellant has preferred the present appeal.

6. We have heard, learned counsel for the parties and have carefully examined the record.

7. At the outset, it was contended by learned counsel for the appellant that as per provision of clause 7 of the application form dated 25.01.2011, the respondent-allottee was duty bound to make the payment of the respective instalment as demanded by the appellant. The respondent-allottee has delayed the payments as demanded by the appellant and therefore the appellant had served the demand notices dated 17.03.2011

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amounting to Rs. 6,48,000/-, another demand notice dated 15.02.2012 for an amount of Rs. 15,12,000/-. The reminder cum cancellation notice dated 03.03.2012 was issued asking for an amount of Rs. 4,32,000/-. Thereafter, demand notices dated 12.09.2012, 05.02.2013 & 12.03.2013 for an amount of Rs. 27,810/-, 3,45,000/-, 3,45,000/- respectively; were issued by the appellant but the same were not paid by the respondent-allottee. The appellant upon the request of the respondent-allottee withdrew the said cancellation notice dated 03.03.2012. However, the respondent-allottee failed to make any payment since the year 2013. Due to the constant default in making the payment, the appellant was compelled to issue a last reminder letter dated 15.10.2013, calling upon the respondent to make the outstanding payments towards basic sale price along with EDC and IDC charges failing which the allotment of unit shall stand terminate. The respondent-allottee till date has paid a total amount of Rs. 19,49,000/- towards the total agreed sale consideration of Rs. 57,17,900/- which is only 34% of the total sale consideration.

8. It was further contended that the respondent-allottee had filed the complaint on 30.07.2018 under Section 22C of the Legal Service Authority Act, 1987,

before the PLA Gurugram, seeking refund of the amount paid along with interest. In the meantime, the appellant had completed the unit allotted the respondent-allottee and have received the Occupation Certificate on 22.04.2019. During the pendency of the complaint for refund along with interest before the PLA Gurugram, the respondent-allottee on 16.03.2021 filed the present complaint before the Authority seeking the similar relief of refund of amount paid along with interest. The appellant on 18.05.2022, moved an application before the Authority for dismissal of the complaint on the ground that the similar complaint on similar grounds filed by the respondent-allottee on 30.07.2018 is pending adjudication before the PLA Gurugram. He contended that it is a well settled principle that two complaints on similar grounds cannot be adjudicated parallelly and thus, barred by the doctrine of *res subjudice*.

9. It was further contended that the complaint filed by the respondent-allottee is not maintainable as the same is barred by limitation. The unit allotted to the respondent-allottee was cancelled in the year 2013, whereas, the present complaint was filed by the respondent-allottee on 31.03.2021. Therefore, the complaint is barred by limitation.

10. With these contentions, it was contended by learned counsel for the appellant that the present appeal may be allowed and the impugned order dated 27.05.2022 may be set aside.

11. Per contra, learned counsel for the respondent/allottee contended that the cancellation letter dated 15.10.2013 as alleged by the appellant was never received by the respondent-allottee.

12. He further submitted that the pendency of the complaint before the PLA Gurugram would not affect the merits of the case in deciding the complaint filed by the respondent-allottee and therefore, the pendency of the complaint before the PLA Gurugram has no effect in the maintainability of the present complaint.

13. He stated that since the appellant after cancellation did not make any refund of the amount to the respondent-allottee, therefore, cause of action continued and therefore, the plea of limitation taken by the appellant is also not sustainable.

14. He contended that the order passed by the Authority is correct and is also as per the Act, Rules and Regulations and prayed for dismissal of the appeal.

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

16. The undisputed facts of case are that the respondent/allottee had booked a non-PLC 2-BHK unit, middle floor, (5th, 6th, 7th, 8th floor), 1350 sq. ft. in the project of the appellant-promoter, namely, "Landmark-The Residency", Sector-103, Gurugram, by paying booking amount of Rs. 4,32,000/- on 25.01.2011. No agreement between the parties have been executed. The respondent-allottee by the year 2013 had paid a total amount of Rs. 19,49,000/- against the total sale consideration of Rs 43,20,000/-. As per clause 16 of the application/provisional allotment letter, the appellant was to hand over the possession of the unit within 36 months from the date of the execution of the agreement. There is also a provision of grace period of 90 days over and above the said period of 36 months for applying and obtaining necessary approval of the project. The Occupation Certificate in respect of tower in which the unit of the respondent-allottee is situated has been issued to the appellant on 25.09.2020. The offer of possession has not yet been issued.

17. The appellant has posed a challenge to the impugned order on the ground that the complaint is not maintainable being time barred as the complaint was filed by the respondent-allottee on 31.03.2021, whereas, the appellant had cancelled the unit vide its letter dated 15.10.2013. The respondent-allottee has denied having received the said letter dated 15.10.2013. We have perused the courier receipt, placed at page no. 64 of the paper book, vide which the appellant has claimed to have sent the letter dated 15.10.2013. On perusal of the said receipt, it is found that only the name of the respondent-allottee as consignee is mentioned on the said receipt and some initials are there in the column of the sender's signatures, rest all column have been left blank. No tracking report of the courier company regarding the said letter has been placed on record to show that the letter has actually been received by the respondent-allottee. Under these circumstances, it is highly doubtful that such a letter was ever issued by the appellant. In addition to the above, after cancellation of the unit, the appellant was under obligation to return the amount due to the respondent-allottee. Admittedly, the appellant has not paid any amount after cancellation of the unit to the respondent-allottee. In case, even if it is assumed, the

appellant had cancelled the unit vide its letter dated 15.10.2013, the cause of action which accrued to the respondent-allottee continued. Therefore, the question of becoming the complaint time barred does not arise.

18. The appellant in this appeal has posed another challenge to the impugned order on the ground that the complaint is not maintainable on account of doctrine of *res subjudice* as a similar complaint on similar grounds was pending adjudication before PLA Gurugram which was filed by the respondent-allottee on 30.07.2018. We find no merit in this plea of the appellant as the complaint filed in the Permanent Lok Adalat is decided on the basis of the consent of the parties. The complaints filed under the RERA Act are decided on merits of the case as per the provision of the RERA Act, which is a special enactment for dealing with the cases related to the Real Estate. The present case has been decided by the authority on the basis of the merit of the case and the pendency of the complaint before PLA Gurugram has no effect on the merit of the case. Thus, we find no merit in the plea that the complaint was barred by the doctrine of *res subjudice*.

19. In this appeal the appellant has only challenged the maintainability of the complaint. No plea on the merits or on quantum of relief allowed to the respondent has been racked up before us. As discussed above there is no merit in

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the pleas regarding maintainability of complaint and therefore there is no merit in the appeal and the same deserves to be dismissed.

20. No other point was argued before us.

21. Consequently, we find no merit in the present appeal filed by the appellant-promoter and therefore, the same is hereby dismissed.

22. The amount of Rs. 27,97,452/- deposited by the appellant/promoter with this Tribunal as pre-deposit to comply with the provisions of proviso to Section 43(5) of the Act, along with interest accrued thereon, be sent to the Authority for disbursement to the respondent/allottee subject to tax liability, if any, as per law.

23. No order as to costs.

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

25. File be consigned to the record.

Announced:
May 19, 2023

Justice Rajan Gupta
Chairman
Haryana Real Estate Appellate Tribunal,

Inderjeet Mehta
Member (Judicial)

Anil Kumar Gupta
Member (Technical)