

**BEFORE THE HARYANA REAL ESTATE APPELLATE
TRIBUNAL**

Appeal No.232 of 2022

Date of Decision: 16.03.2023

Nitin Kapoor, C-4, Greater Kailash Enclave-I, New Delhi-110048.

Appellant

Versus

DSS Buildtech Private Limited, 506, 5th floor, Time Square Building, B-Block Sushant Lok-I, Gurugram-122002.

Respondent

CORAM:

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

Present: Ms. Bhawna Thakur, Advocate
on behalf of Shri Munish Kumar Garg, Advocate,
for the appellant.

Shri Ashwarya Sinha, Advocate,
for the respondent.

ORDER

RAJAN GUPTA, CHAIRMAN:

The present appeal is directed against the order dated 05.10.2021 passed by learned Haryana Real Estate Regulatory Authority, Gurugram, (hereinafter called 'the Authority'). The operative part thereof is as under:-

"24. On consideration of the documents available on record and submissions made by the party regarding contravention of provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 19(6) and (7) of

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the Act. By virtue of clause 11.1 of apartment buyer's agreement, it is the buyer's obligation to timely give payments for the total sale consideration. The respondent has paid only Rs.20,24,947/- out of Rs.80,69,850/- which is the total sale consideration. Accordingly, it is the failure of the respondent/allottee to fulfill its obligations and responsibilities as per the agreement to make timely payments to the promoter. Accordingly, the non-compliance of the mandate contained in section 19(6) and (7) of the Act on the part of the respondent is established.

D. Directions issued by the Authority

25. 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 promoter on allottee as per the function entrusted to the authority under section 34(f):-

a. The respondent/allottee shall make the requisite payments as per the provisions of Section 19(6) and (7) of the Act.

b. The respondent/allottee shall be charged interest at the prescribed rate of interest that is at the rate of 9.30% per annum by the complainant/promoter which is same as is being granted to the complainant/promoter in case of delayed possession.

26. Complaint stands disposed of.

27. File be consigned to the registry.”

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2. The matter has been heard at length.
3. During the course of arguments, this Tribunal has been apprised by learned counsel for the appellant that a complaint bearing no.2039 of 2021 was also preferred by the allottee (appellant herein) before the learned Authority subsequent to the instant complaint (no.5012 of 2020). In the said complaint, the allottee has prayed for refund of the amount i.e. Rs.20,24,947/- remitted by him to the promoter. Both the complaints, i.e. one preferred by the promoter and the other by the allottee were pending before the Authority at the same time. It, however, proceeded to take Complaint No. no.5012 of 2020 in the first instance and decided the same, wherein it directed the allottee to make the requisite payments as per the provisions of Section 19(6) and 19(7) of the Real Estate (Regulation and Development) Act, 2016. It was also directed that the allottee shall be charged interest @ 9.3% per annum on the payments made by him.
4. Learned counsel for the respondent submits that it is inexplicable why complaint no.2039 of 2021 was not taken up by the Authority so that same could be decided alongwith the instant case when the issue involved in both the complaints is substantially the same.
5. Keeping in view the facts and circumstances of the case, learned counsel for the appellant has prayed that the

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matter may be remanded to the same Authority for decision afresh as the complaint of the allottee has not been decided so far. Learned counsel for the respondent has no objection to this prayer.

6. On due consideration of the matter, we deem it fit to set aside the impugned order and remand the case to the same Authority for decision afresh after affording opportunity of hearing to both the parties. Needless to observe that while deciding the matter afresh, the Authority shall not be swayed by any of the observations made earlier in its order dated 05.10.2021 (impugned in the instant appeal).

7. Both the parties are directed to appear before the learned Authority 27.03.2023.

8. The copy of this order be communicated to the parties/learned counsel for the parties and the learned Authority for compliance.

9. File be consigned to the record.

Announced:
March 16, 2023

Justice Rajan Gupta
Chairman
Haryana Real Estate Appellate Tribunal
Chandigarh

Inderjeet Mehta
Member (Judicial)

Anil Kumar Gupta
Member (Technical)