

**BEFORE THE HARYANA REAL ESTATE APPELLATE
TRIBUNAL**

Appeal No. 115 of 2022

Uma Shankar Sharma S/o Sh. Gopi Ram Sharma, R/o
House No. 17-B, Adampur, Hisar, Mandi Adampur,
Haryana-125052.

Appellant

Versus

Jindal Realty Limited, Registered Office at DSM-648, 6th
Floor, DLF Tower, Shivaji Marg (Najafgarh Road) Moti
Nagar, New Delhi-110015.

Respondent

CORAM:

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

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

Present: Mr. Ajay Nara, Advocate,
for the appellant.

None for the respondent.

ORDER:

Rajan Gupta, Chairman:

The appellant (Uma Shankar Sharma) filed a complaint bearing no. 364 of 2020 before the learned Haryana Real Estate Regulatory Authority, Panchkula (hereinafter called, 'the Authority') for refund of amount of Rs.16,70,772/- paid by him to the respondent-promoter. He sought that the amount be refunded with interest @ 24% per annum (reciprocally charged) from the date the amounts were paid till realization; alternatively, a plot in the same

project be offered to him after adjusting principle amount paid along with delayed possession interest. He stated before the Authority for possession of Villa E-144 for which he had already paid an amount of Rs.16,70,772/- against total sale consideration of Rs.51,26,755/-. According to him, the respondent was duty bound to deliver possession by 10.11.2014 in terms of Builder Buyer's Agreement executed on 10.11.2011. According to him, the respondent terminated the allotment of Unit on 08.12.2016 due to non-payment of Rs.5,13,288/- demanded as instalment at the stage of commencement of construction. According to him, it was continuing the cause of action as complainant had neither received back the amount paid nor received possession of booked unit. He alleged that demand raised of Rs.5,13,288/- was not justified on part of respondent as no construction has been raised at the site.

2. The plea of the appellant was strongly resisted by the respondent. According to it allotment of booked unit was cancelled vide letter dated 08.12.2016. This step was taken as the complainant did not response to the legitimate demand of Rs. 5,13,288/- raised at the stage of commencement of construction. Respondent also annexed Annexure R-3 along with response depicting that amount of

Rs.16,70,772/- was only on account of booking. Certain other documents such as Annexure R-A/1 and A/3 were annexed to prove that PCC work was done on the plot on which villa was supposed to be raised but due to non-payment of demanded amount by the complainant, construction could not continue. Stand of the respondent was that the complainant did not adhere to the payment plan.

3. The Authority heard both the parties. It came to the conclusion that the relationship of promoter and the allottee subsisted between the parties. Thus, the Authority was empowered to entertain the complaint and decided the same. It, however, deemed fit not to grant relief of possession as it felt that the respondent could not be forced to start the whole process of the construction all over again. Disposing of the complaint it held in the impugned order dated 26.10.2021 as under:

“The respondent, however, alongwith cancellation should have returned the balance amount to the complainant, which respondent failed to do.

Now the balance equities, Authority orders that respondent is not liable to handover possession of Villa and vacant plot to the complainant. The respondent, however shall return the entire amount paid by the complainant alongwith reasonable simple

interest @9% from the date of payment till its actual realization within 45 days of uploading of this order.

Disposed of in above terms. File be consigned to record room.”

4. Before us, the appellant mainly contended that the he amended his complaint later on and sought possession of the Villa. According to him, the same has not been considered by the Authority. A query was put to him whether any reply was filed to any application for amendment or any order was passed thereon. No clear answer is forthcoming.

5. Even in the original complaint, the complainant made an alternative prayer for allotment of the unit.

6. A perusal of the order passed by the learned Authority, we find that the issue regarding possession of the unit has been dealt with. The Authority came to the conclusion that at this late stage, the prayer for possession of the unit was misconceived as the construction party had already left and it was on record that the complainant did not make the payment of the instalments at the stage of construction commenced.

7. On the last date of hearing while considering the prayer of the appellant, we had put a

query whether the appellant was ready to return the amount of Rs. 30,32,384/- which was refunded to him by the respondent and was retained by him since 08.12.2021. The said order is reproduced below for ready reference:

“Learned counsel for the appellant prays for two weeks’ time to seek instructions from the appellant whether an amount of Rs. 30,32,384/-, which has been retained by the appellant since 08.12.2021, is ready to returned to the respondent in case his prayer for allotment of the unit is considered in the present appeal.

Adjourned to 15.03.2023.”

8. Today Mr. Nara, representing the appellant has clearly stated that the appellant is not interest in refunding the amount, therefore, it is observed that the contention of the appellant for allotment/possession of the unit does not appear to be bona fide.

9. At this stage, Mr. Nara has raised plea regarding compensation. We are of the considered view that this plea cannot be raised for first time in the appeal before this Tribunal.

10. The appeal stands dismissed.

11. Copy of this judgment be communicated to both the parties/learned counsel for the parties and the

learned Haryana Real Estate Regulatory Authority,
Panchkula.

12. File be consigned to the record.

Justice Rajan Gupta
Chairman
Haryana Real Estate Appellate Tribunal
Chandigarh

Inderjeet Mehta
Member (Judicial)

Anil Kumar Gupta
Member (Technical)

15.03.2023
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