

**BEFORE THE HARYANA REAL ESTATE APPELLATE
TRIBUNAL**

**Appeal No.388 of 2022
Date of Decision: 24.03.2023**

Pankaj Kansal son of Shri Raj Kumar Kansal, through Power of Attorney R.K. Kansal, H.No.503, Swarn Jayanti Apartment, Sector-54, Gurgaon-122002.

Appellant

Versus

M/s Vatika Limited through its Director, Vatika Triangle, 4th Floor, Mehrauli Gurugram Road, Sushant Lok, Phase-I, Block-A, Gurugram-122002, Haryana.

Respondent

CORAM:

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

Argued by: Shri Ashok Kumar Jindal, Advocate for the appellant.

Shri Kamaljeet Dahiya, Advocate for the respondent.

ORDER:

RAJAN GUPTA, CHAIRMAN:

The present appeal has been preferred under Section 44(2) of the Real Estate (Regulation and Development) Act, 2016 (hereinafter called 'the Act') against the order dated January 18th, 2022, passed by learned Haryana Real Estate Regulatory Authority, Gurugram, (hereinafter called 'the Authority'), in Complaint No.E/3317/2021/1986/2018 titled

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as 'Pankaj Kansal vs. Vatika Limited', which is reproduced as below:-

“The CA has prepared the revised calculation sheet as per which the balance amount payable by the JD is Rs.3,68,166/- after payment of demand draft for Rs.1,16,13,270/- till date. The counsel for the JD states at bar that a HDFC, Bank cheque bearing No.001199 dated 17.01.2022 for an amount of Rs.3,21,334/- has been prepared and already signed by one signatory. But the same could not be submitted in the registry as the second signatory is not well and the cheque after his signatures will be deposited in the registry of the authority within one week. The TDS of Rs.46,832/- has been deduced and after its inclusion the total payment amount shall be Rs.3,68,166/- and will be as per total balance amount worked out by CA of the authority in the calculation sheet and shall lead to the satisfaction of decretal amount.

The present execution petition stands disposed of. File be consigned to the registry.”

2. The complainant/allottee (appellant herein) stated before the authority that he had booked an apartment in the project 'Tranquil Heights' Sector 82-A, New Gurugram, on 15.11.2013. The respondent/promoter allotted 2290 sq. ft. super area bearing flat no.1003, 10th floor to the appellant in the said project. The total cost of the unit worked out to be

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Rs.1,66,43,720/-. The appellant/allottee had made payment of Rs.73,13,786/-. According to him, the construction work was not carried out in time, forcing the appellant to send various communications to the respondent/promoter. Left with no other option, the appellant filed complaint before the learned Authority seeking refund of the amount paid by him along with interest.

3. Respondent/promoter filed reply in which it agreed to refund the amount. Consequently, the following directions were issued by the learned authority vide order dated 19.03.2019:-

“The respondent is duty bound to refund the deposited amount of the complainants along with prescribed rate of interest @ 10.75% p.a. from the actual date of payment till its realization within 90 days from this date of order.”

4. As per the appellant, the respondent did not comply with the above said order forcing him to file the execution petition.

5. During the course of hearing of the execution petition, direction was given by the learned authority to the Chartered Accountant (for brevity ‘C.A.’) to file calculation-sheet. As a result, calculation-sheet dated 05.10.2021 was

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presented before the authority. Thereafter, C.A. presented the revised calculation-sheet as well on 08.10.2021 after adjusting the payments made by the appellant/allottee firstly towards the principal amount and thereafter towards the interest. The learned Authority, thus, disposed of the execution petition vide its order dated 18.01.2021 relying upon the calculation-sheet prepared by the C.A. The amount calculated was paid to the appellant/allottee. After having accepted the said amount, the appellant/allottee has challenged the aforesaid procedure adopted by the Executing Authority.

6. Relying upon the judgment reported in **V. Kala Bharathi v. Oriental Insurance Co. Ltd. (SC) Law Finder Doc Id#539181**, he submitted that the amount deposited by the Judgment Debtor is to be adjusted firstly towards interest and costs and thereafter principal amount. If calculated in this manner, he would be benefited to the extent of about Rs.15,00,000/-.

7. On the other hand, counsel for the respondent/promoter submitted that the appellant/allottee has accepted the amount and thus he is estopped from challenging the same. According to him, the judgment reported in **V. Kala Bharathi's** case (Supra) is not applicable

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as the same relates to money decree and facts of the said case are totally different from the facts of the instant case.

8. We have heard learned counsel for the parties and carefully considered the factual and legal issues raised before this court.

9. We are of the considered view that there is substance in the submissions made by learned counsel for the respondent. The allottee has accepted the amount as directed by the authority and cannot raise his grievance at this stage. There can be no dispute with the proposition of law laid down by Hon'ble Supreme Court in **V. Kala Bharathi's** case (Supra). However, the said case relates to money decree passed by the Civil Court wherein the execution proceedings ensued. In our considered view, the judgment in **V. Kala Bharathi's** case (Supra) is not applicable to the facts of the present case. Besides, admittedly the appellant did not file any objection before the authority despite opportunity having been granted to him. In the execution proceedings, the authority had no other option but to confine itself within the ambit of the decree passed by it. It is settled law that the Executing Court cannot go behind the decree. Peculiar fact of the instant case is that the appellant accepted the entire amount before the Executing Court without demur. His

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grouse that he was misled, appears to be an afterthought. We thus find no merit in the contentions raised by the appellant in the instant appeal. The same is hereby dismissed with no order as to costs.

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

11. File be consigned to the record.

Announced:
March 24, 2023

Justice Rajan Gupta
Chairman
Haryana Real Estate Appellate Tribunal
Chandigarh

Inderjeet Mehta
Member (Judicial)

Anil Kumar Gupta
Member (Technical)

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