

**BEFORE THE HARYANA REAL ESTATE APPELLATE
TRIBUNAL**

Appeal No. 312 of 2022

Date of Decision: 28.07.2023

Sushil Kumar Sood K-99, Ground Floor, Kalkaji, New Delhi-110019.

Appellant

Versus

M/s Spaze Towers Private Limited, UG-39, Upper Ground Floor, Somdatt Chaber-II, 9, Bhikaji Cama Place, New Delhi South West Delhi-110066.

Respondent

CORAM:

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

Argued by: Mr. Amarjeet Kumar, Advocate,
for the appellant.

Mr. Yashvir Singh Balhara, Advocate,
for the appellant.

ORDER:

RAJAN GUPTA, CHAIRMAN:

In the present case the appellant has posed to challenge the order dated 14.10.2021 passed by Haryana Real Estate Regulatory Authority, Gurugram (hereinafter referred to as 'the Authority'), in Complaint No.4840 of 2020. The order reads as under:-

“Vide order dated 09.07.2018 of the National Consumer Disputes Redressal Commission, New Delhi the matter has been settled as it comes within

the ambit of res judicata. It cannot be re-opened. Hence dismissed and disposed of accordingly. File be consigned to the registry.”

2. Learned counsel for the appellant submits that question of *res judicata* does not arise in the instant case. The Authority has misinterpreted the concept of *res judicata*.

3. Learned counsel for the respondent, however, submits that the appellant earlier had approached the Hon'ble National Consumer Disputes Redressal Commission, New Delhi (for brevity 'NCDRC'), where a settlement was arrived at between the parties. The complaint filed before the Authority after lapse of considerable time is misconceived. The order under challenge is thus sustainable.

4. We have heard learned counsel for the parties on the issues involved and perused the record with their assistance.

5. It appears that the appellant-allottee first approached the Hon'ble NCDRC vide Consumer Complaint No.210 of 2016 titled "Sushil Kumar Sood vs. Spoze Towers Pvt. Ltd." seeking refund of the total amount deposited by him along with interest and compensation. It appears, however, the said complaint (No.210 of 2016) was dismissed vide order dated 08.02.2018, due to some lapses on the part of the complainant. He, thereafter, filed review application no.103/2018 before the Hon'ble NCDRC. During the

pendency of the said review application, a settlement was arrived at between the parties. A perusal of order dated 09.07.2018 (Annexure-9) passed by Hon'ble NCDRC shows that the applicant had moved another application seeking withdrawal of the review application on the plea that matter had been compromised/settled between the parties. The review application was thus dismissed as withdrawn vide order dated 09.07.2018 and file was consigned to record room.

6. As the matter was disposed of by the Hon'ble NCDRC in view of the deed of settlement, it is necessary to reproduce the same here as under:-

“ *DEED OF SETTLEMENT*

THIS DEED OF SETTLEMENT (hereinafter referred to 'Agreement') is made and executed at New Delhi on this 26th day of June, 2018.

BETWEEN

M/s Spaze Towers Pvt. Ltd., a Company registered under the Companies Act 1956, having it's Corporate Office at Spazedge, Sector-47, Gurugram, Haryana through it's duly authorised representative Sh. Vivek Sharma (General Manager-Commercial), hereafter referred to as the First Party of the ONE PART.

AND

Sh. Sushil Kumar Sood S/o Sh. B.N. Sood R/o K-99, Ground Floor, Kalkaji, New Delhi-110019, hereinafter referred to as the Second Party of the OTHER PART.

The Terms “FIRST PARTY” and “SECOND PARTY” shall, unless repugnant to the context or the meaning thereof, be deemed to mean and include their respective nominees, heirs, successors, subsidiaries companies and the permitted assigns.

WHEREAS:

1. *A Group Housing Complex popularly known as “Privity AT4” situated Sector 84, Gurugram is being developed by the First Party on a piece and parcel of land admeasuring 10.512 Acres falling in the Revenue Estate of Village Sihi Tehsil and District Gurugram.*
2. *The Second Party has booked an Apartment/Unit bearing No.053 in tower-B3, admeasuring 2070 Sq. Ft. Super area in the said residential project “Privity AT4” situated Sector 84, Gurugram (hereinafter called the “Said Unit”) vide application dated 28.03.2011.*
3. *A Buyers Agreement was entered into by both the parties on 17.02.2014 which contained all the terms and conditions for sale and purchase of this Apartment/Unit bearing No.053 in Tower-B3 as mentioned in para 2 above.*
4. *The Second Party filed a consumer complaint bearing No.210 of 2016 titled “Sushil Kumar Sood Vs. M/s Spaze Towers Pvt. Ltd.” before the Hon’ble National Consumer Disputes Redressal Commission, New Delhi which was dismissed by the Hon’ble Commission vide it’s order dated 08.02.2018.*
5. *The Second Party thereafter filed a Review Application bearing No.103 of 2018 before the*

Hon'ble National Commission, New Delhi for recalling the orders dated 24.08.2017 and 08.02.2018. The said Review Application is pending before the Hon'ble National Commission, New Delhi wherein the next date of hearing is on 09.07.2018.

6. *In pursuance to the policy of the First Party of having good relations with it's customers and to provide best of services, the First Party has moved ahead to resolve all issues with the Second Party and remove misunderstanding and confusions whatsoever.*
7. *The parties have had lengthy mutual discussions to alley the misunderstandings as also the grievances, of the second party and have reached a broad understanding which they now wish to record in writing to avoid any disputes in future as well as under:*

NOW, THEREFORE, THIS AGREEMENT WITNESSETH AS UNDER:-

1. *That the First Party has clarified on all the issues raised by the Second Party, to is entire satisfaction and thereafter all the misunderstandings between the parties have been cleared.*
2. *That the Second Party has requested the First Party to waive of the Interest amounting to Rs.6,58,796/- against demand of certain stages of completion in lieu of the aforementioned booking in the project. First party has acceded to the request of the Second Party as a special*

case and waived of the interest of all demanded & delayed payments till date.

- 3. That it has been further agreed between the parties that the amount outstanding towards the demand raised on “completion of electrical & plumbing” shall be paid by the Second Party along with other charges as per the terms and conditions of the Builder Buyer Agreement dated 17th February 2014 on offer of possession without any interest levied upon.*
- 3. That the Second Party has specifically agreed to voluntarily withdraw the Review Application bearing No.103 of 2018, fixed for hearing on 09.07.2018 before the Hon’ble National Commission, New Delhi in Full & Final settlement of all his claims and grievances.*
- 4. That the parties have executed this Agreement out of their own sweet will and without any coercion or pressure from any corner.*
- 5. That this Deed of Settlement can’t be amended modified and rescinded/revoked unilaterally by one of the parties except with the written consent of both the parties.*
- 6. That this Deed of Settlement is subject to specific performance and can be enforced through court of law.*
- 7. It is further agreed by both the parties that all other terms and conditions as laid down in original Buyer’s Agreement will be treated as they are written therein.*

IN WITNESS WHEREOF THE PARTIES HERETO HAVE SIGNED THIS AGREEMENT on the day/month and year

first above mentioned in the presence of the following witnesses.

WITNESSES

FIRST PARTY

M/s Spaze Towers Pvt. Ltd.

SECOND PARTY

(Sushil Kumar Sood)”

7. A perusal of the aforesaid ‘Deed of Settlement’ shows that almost all issues were settled between the parties. This order appears to have attained finality as there is nothing on record to show that any application was moved before the NCDRC to recall the order or any effort was made at any stage to set aside the terms of the ‘Deed of Settlement’. Almost after lapse of 2½ years, the appellant preferred a complaint before the Authority at Gurugram claiming delayed possession charges with effect from 06.12.2015 and for handing over possession of the unit after adjusting the charges for delay in handing over possession and the costs of litigation. The said complaint was dismissed by way of the order reproduced in the opening para of this order.

8. We are not convinced by the arguments raised by learned counsel for the appellant. In our view, the Authority has rightly dismissed the complaint filed by the allottee/appellant as the order passed by the NCDRC on 09.07.2018 came to its notice, it had no occasion to entertain the complaint and decide the same on merits. The appellant

had chosen other forum earlier i.e. NCDRC for redressal of his grievance, which culminated vide order dated 09.07.2018 passed by it. We feel that as an afterthought, the instant complaint moved by the appellant was summarily rejected by the Authority. As regard the question of res judicata or estoppel, we do not feel it necessary to express any view as the said question is not directly in issue, even the impugned order is not happily worded. We, thus, hereby dismiss the appeal.

9. Needless to observe that the appellant is always at liberty to approach the same forum which he had chosen way back in the year 2016 to prefer his complaint and thereafter review application, if permissible in law.

10. Copy of this order be communicated to the parties/learned counsel for the parties and the Haryana Real Estate Regulatory Authority, Gurugram.

11. File be consigned to the record.

Announced:
July 28, 2023

Justice Rajan Gupta
Chairman
Haryana Real Estate Appellate Tribunal

Inderjeet Mehta
Member (Judicial)

Anil Kumar Gupta
Member (Technical)