

**BEFORE THE HARYANA REAL ESTATE APPELLATE
TRIBUNAL**

Appeal No. 884 of 2022

Date of Decision: 17.08.2023

Krishan Loiwal son of Shri S.C.Loiwal, through Special Power of Attorney holder of Siddhartha Loiwal son of Sh. Kishan Loiwal, B-1 (G.F.) Suncity, Sector 54, Gurugram-122003.

Appellant

Versus

1. M/s Athena Infrastructure Limited, through its Director, Registered Office at M-62 and 63, First Floor, Connaught Place, New Delhi-110001.
2. M/s India Bulls Real Estate Private Limited, India Bulls House, Ground Floor, 448-451, Udyog Vihar, Phase-5, Gurugram-122001.

Respondents

CORAM:

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

Argued by: Mr. Anurag Jain, along with
Ms. Suruchi Sharma Tiwari, Advocate,
for the appellant.

Mr. Ajiteshwar Singh, Advocate,
for the respondents.

ORDER:

RAJAN GUPTA, CHAIRMAN:

1. The present appeal is directed against order dated 25.07.2022 passed by the Haryana Real Estate Regulatory

Authority, Gurugram (hereinafter referred to as 'the Authority').

Operative part of the order reads as under:-

Directions of the Authority:

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

i. The authority hereby directs the promoter to return the amount received by him after deducting 5% amount of the basic sale price as per application form within a period of 90 days from date of this order and failing which legal consequences would follow.

42. Complaint stands disposed of.

43. File be consigned to the registry.”

2. It appears that the appellant booked an apartment (B-111 on 11th floor, tower B, Indiabulls Enigma, Sector 110, Gurugram) with the respondent-promoter. He remitted booking amount of Rs. 5 lacs vide a cheque dated 21.10.2010. The said amount was credited in the account of respondent-promoter. The complainant (Appellant herein) thereafter received a demand letter dated 09.12.2010 demanding total payment of 10% of the sale consideration. Due date for payment of the same was 20.11.2010. The complainant, however, failed to pay this amount. He received another demand letter dated 14.02.2011 asking him to pay Rs. 12,35,350/- followed by another similar letter dated 06.05.2011 for the same amount. However, no response was received from the complainant/allottee. On the other hand, appellant-allottee

claimed that he issued a cheque for Rs. 12,35,350/- and submitted it to one M/s Sanjeev Real Estate. The said cheque was, however, mis-placed by M/s Sanjeev Real Estate. The complainant, thus, claimed that he was under the bona fide impression that he had paid an amount of Rs. 12,35,350/- to the respondent-promoter. He also claims that he was willing to make further payments.

3. Admittedly, on 12.07.2011, he received a letter dated 06.07.2011 from the promoter whereby the provisional reservation of flat No. B-111 was cancelled and amount of Rs. 5 lacs was forfeited by the promoter. The complainant, thereafter, claims to have served a legal notice dated 01.11.2013 claiming that the amount of Rs.5 lacs along with interest @ 24% be refunded to him and compensation of Rs. 10,00,000/- be granted. He further claims that as no response was received to the legal notice. Thus, he approached the District Consumer Disputes Redressal Forum (for short 'DCDRF') for necessary relief, however, the said complaint was returned on 01.05.2018 due to lack of Pecuniary Jurisdiction. The order passed by the DCDRF is reproduced below for ready reference:

Order

“The OP has moved an application for dismissal of complaint on the ground of pecuniary jurisdiction, stating that the cost of the flat/plot exceeds Rs. 20 lacs i.e. Rs. 39,00,000/-, as such, this Forum does not have pecuniary jurisdiction to entertain this complaint, in the light of Ambrish Kumar Shukla and ors. Vs. Ferrous Infrastructure Pvt. Ltd., Case no. 97 of 2016, decided by Hon’ble NCDRC on

07.10.2016 reported as Manu/CF/0499/16. During the course of arguments, it is admitted that cost of the flat/plot in question and reliefs claim exceeds the pecuniary jurisdiction of this Forum, i.e. Rs. 20 Lacs.

In view of the above, we are of the considered opinion that this Forum does not have the Pecuniary Jurisdiction to entertain the present complaint. Accordingly, the complaint be returned to the complainant along with annexures/documents by retaining a copy of the same for records with liberty to file the same before the competent Forum as per the Law. The particulars in the light of the judgment of Hon'ble NCDRC in the matter of Tushar Batra & Anr. Vs. M/s Unitech Limited decided on 26.04.2017, Case no. 299 of 2014 are as follows:-

- *Date of Presentation of complaint:- 06/12/2013.*
- *Date of return of complaint:- 01/05/2018*
- *Name of complainit:- KishanLoiwal.*

Copy of the order be given Dasti to the parties.

Announced in open Forum on 01.05.2018.

File be consigned to record room.”

4. After about a lapse of nine months from the date of above said order, the complainant preferred instant complaint before the Authority at Gurugram, in which, he prayed that the amount of Rs. 5 Lacs along with interest @ 18% be refunded to him.

5. According to counsel for the appellant, for no fault of the allottee, the unit was cancelled and booking amount of Rs. 5 Lacs was forfeited.

6. Learned counsel for the respondent has rebutted the pleas.

7. We have heard learned counsel for the parties and given careful thoughts to the facts of the case.

8. At the outset, it needs to be noticed that the matter pertains to the year 2011. The complainant invoked the provisions of the Real Estate (Regulation and Development) Act, 2016 after lapse of eight years i.e. in the year 2019. A plea was raised that there was recurring cause of action in favour of the complainant. However, this argument is totally mis-conceived as there is no explanation forthcoming for inordinate delay in approaching the Authority. If, in-between, the complainant approached a Forum not having pecuniary jurisdiction, that would not be a ground to conclude that the complaint does not suffers from serious latches.

9. In the eventuality, the complainant was not satisfied with the order dated 01.05.2018 passed by the DCDRF, he could have availed appropriate remedy against the said order. There is nothing on record to show that he took any such steps. Having chosen a Forum for redressal of his grievance and failed, question arises whether he can avail the same remedy before a different Forum. In our view, in the facts and circumstances of the instant case, the answer is in the negative. Apart from paying amount of Rs. 5 lacs as booking amount, the appellant appears to have taken no steps in response to the demand letters issued by the respondent-promoter. The plea taken by the appellant that he had issued a cheque and delivered the same to some stranger M/s

Sanjiv Real Estate, appears to be not only untenable but contumacious.

10. We, thus, find no grounds to interfere in our Appellate Jurisdiction. The appeal is without any merit and same is hereby dismissed.

11. Copy of this order be communicated to the parties/learned counsel for the parties and the learned Authority for compliance.

12. File be consigned to the record.

Announced:
August 17, 2023

Justice Rajan Gupta
Chairman
Haryana Real Estate Appellate Tribunal

Anil Kumar Gupta
Member (Technical)

Rajni