

BEFORE THE HARYANA REAL ESTATE APPELLATE TRIBUNAL

Appeal No.157 of 2019
Date of Decision: 02.09.2019

Ms. Shivani Dewan, Resident of 15, Club Lane, Karnal-132001,
Haryana.

Appellant

Versus

M/s SS Group Pvt. Ltd. through its Managing Director,
77, SS House, Sector-44, Gurugram, Haryana.

Respondent

CORAM:

Justice Darshan Singh (Retd.)	Chairman
Shri Inderjeet Mehta	Member (Judicial)
Shri Anil Kumar Gupta	Member (Technical)

Present: Ms. Rakhi Punia, Advocate, counsel for the appellant.
Ms. Nitika Sharma, Advocate, counsel for the respondent.

ORDER:

1. The present appeal has been preferred by the appellant-complainant against the order dated 12.09.2018 passed by the learned Haryana Real Estate Regulatory Authority, Gurugram (hereinafter referred to as the learned Authority) seeking refund of the entire amount deposited by her with the respondent along with the interest from the date of filing of complaint and delay compensation.

2. The appellant-complainant has filed complaint with the Ld. Authority for compensation with interest on paid amount to the respondent-builder @ 18% simple interest amounting to Rs.31,84,053/- (Rupees thirty one lacs, eighty four thousand and fifty three only) and refund of paid amount of Rs.36,21,040/- (Rupees thirty six lacs, twenty one thousand and forty only) and total refund of Rs.68,05,093/- (Rupees sixty eight lacs, five

thousand and ninety three only) for not handing over the possession of the apartment on the due date.

3. The learned Authority vide order dated 12.09.2018 has given the following directions: -

- I. The respondent is duty bound to hand over the possession of the said unit by 31.12.2019 as declared by the promoter in the application for registration of the said project and as stated by the counsel of the respondent.
- II. The respondent is duty bound to pay the interest at the prescribed rate i.e. 10.45% on the amount paid by the complainants i.e. Rs.36,21,040/- for every month of delay from the due date of possession i.e. 17.01.2017 till the actual date of handing over of the possession.
- III. The respondent is directed to pay interest accrued from 17.01.2017 to 12.09.2018 on account of delay in handing over of possession which shall be paid to the complainant after adjusting any due against the allottee within 90 days from the date of decision and subsequent interest to be paid by the 10th of every succeeding month.
- IV. Since, it is construction linked project, the promoter shall be bound by the terms of the agreement by virtue of which they will be raising demand from time to time as per the completion of the project. Besides this, the complainant is bound to fulfil her part of the obligations i.e. making timely payments etc.”

4. Aggrieved with the aforesaid order dated 12.09.2018 the present appeal has been preferred by the appellant/complainant allottee and has sought refund along with interest from the date of filing of the complaint and delay compensation.

5. The appellant/complainant allottee had sought refund of the entire amount in the complaint before the learned Authority. The same relief has been sought by her in the present appeal before this Tribunal. So, the complaint filed by the appellant was for grant of relief of refund/return of the entire amount deposited by her with the Respondent-Promoter alongwith interest on account of delay in the delivery of possession of the flat/apartment.

6. We have heard Ms. Rakhi Punia, Advocate, learned counsel for the appellant and Ms. Nitika Sharma, Advocate, learned counsel for the respondent and have gone carefully through the case file.

7. The question as to whether the learned Authority was competent to entertain and deal with the complaint wherein the complainant/allottee claim the relief of refund alongwith interest and compensation is not res-integra, as we have already answered this question in a bunch of 19 appeals the lead appeal being appeal No.6/2018 titled as Sameer Mahawar Vs. MG Housing Pvt. Ltd. Vide our detailed order dated 02.05.2019. In that order after taking into consideration the provisions of sections 11(4), 12, 14, 18, 19, 31, 34(f), 37, 38 and 71 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter called the Act) and rule 28 & 29 of Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter called the rules), we have laid down as under:-

“48. Thus, as a result of our aforesaid discussions, we conclude and sum up our considered view in following manner: -

(i) That violations and causes of actions arising out of the same bundle of facts/rights giving rise to the multiple reliefs shall be placed before one and the same forum for adjudication in order to avoid the conflicting findings.

- (ii) *The complaints for the grant of relief of compensation can only be adjudicated by the adjudicating officer as per the provisions of section 71 of the Act and rule 29 of the Rules.*
- (iii) *Similarly, if compensation is provided as a part of the multiple reliefs alongwith refund/return of investment with interest flowing from the same violation/violations and causes of action, the complaints have to be placed before the adjudicating officer exercising the powers under Section 31, 71(1) read with rule 29 of the Rules as only the adjudicating officer is competent to deal with the relief of compensation.”*

8. In view of our aforesaid findings the learned Authority had no jurisdiction to entertain the complaint filed by the appellant-allottee wherein she has claimed the relief of refund alongwith interest. The Adjudicating Officer, who is the only forum to entertain the complaint, will decide this question afresh, in accordance with law.

9. Thus, keeping in view of our aforesaid discussions, the present appeal is hereby allowed. The impugned order dated 12.09.2018 is hereby set aside. The complaint filed by the appellant/allottee stands transferred to Adjudicating Officer, Gurugram for adjudication in accordance with law. The Adjudicating Officer will allow the appellant/allottee to amend her complaint in order to bring it within the parameters of Form “CAO” as provided in rule 29 of the Rules.

10. This order passed by this Tribunal and observation of the learned Authority in the impugned order will not prejudice the mind of the learned Adjudicating Officer qua the rights of the parties on merits of the case.

11. The parties are directed to appear before the Learned Adjudicating Officer, Gurugram on 24.09.2019 for further proceedings. Copy of this order be communicated to the learned

Real Estate Regulatory Authority, Gurugram and the learned
Adjudicating Officer, Gurugram for compliance.

12. File be consigned to records.

Justice Darshan Singh (Retd.)
Chairman,
Haryana Real Estate Appellate Tribunal,
Chandigarh
02.09.2019

Inderjeet Mehta
Member (Judicial)
02.09.2019

Anil Kumar Gupta
Member (Technical)
02.09.2019

Judgment - Haryana Real Estate Appellate Tribunal