

**BEFORE THE HARYANA REAL ESTATE APPELLATE
TRIBUNAL**

Appeal No. 263 of 2023 (O&M)
Date of Decision: 07.08.2023

SS Hibiscus Apartment Owners Association, the
Hibiscus, Village Admapur, Sector-50, Gurugram
(Haryana).

Appellant

Versus

M/s S.S. Group Pvt. Ltd. Plot No. 77, SS House, Sector-
44, Gurugram, 122003, Haryana.

Respondent

CORAM:

**Justice Rajan Gupta
Shri Anil Kumar Gupta**

**Chairman
Member (Technical)**

Present: Mr. Venket Rao, Advocate, along with
Ms. Ankita Saikia, Advocate,
for the appellant.

Mr. Aashish Chopra, Sr. Advocate,
assisted by Mr. Yash Pal Sharma,
Advocate, for the respondent.

ORDER:

Rajan Gupta, Chairman (Oral):

Appeal has been preferred against the order
dated 24.04.2023, passed by Haryana Real Estate
Regulatory Authority, Gurugram (hereinafter called 'the
Authority). The operative part thereof reads as under:-

“It is evident that the convenient shops nine in number were constructed by the respondent-builder after some deviations of the sanctioned building plan and same have been compounded by DTCP while granting OC on 03.12.2019. Thus, the complainant-association cannot disconnect the power connection to the shops, the same being the basic facility for those premises. The occupants of those shops have a right to use their property in a proper and effective manner with provision the basic facilities such as power. Since, there is now an association of the unit owners of the project and who is managing its affairs, it is directed to restore the power connection to those shops immediately.

Thus, the application filed for restoration of power connection to those shops is hereby allowed and the application filed by the complainant not to allow refurbishment of those shops is rejected.

While discussing in preceding paras, it was observed in order dated 29.01.2021 by the Authority that the builder be given a notice for violating the provisions of section 3(1) of the Act, 2016 and same has not been issued. It is directed that the same be issued by the Planning Branch within 3 days.

Notwithstanding the fact that the shops built by the respondent have been duly compounded and stand granted occupation certificate, a prime facie case is made out against the respondent for violating the provisions of

Section 14(1) of the Act as there is no evidence on record regarding the respondent having obtained the consent of the allottees before effecting change in the approved layout plan. Therefore, the builder be issued a show cause notice as to why action under Section 61 of the Act of 2016 may not be taken against it for having committed the above violation, giving it two weeks's time to reply to the same.

Order pronounced.

Matter to come up on 04.07.2023 for further proceedings.”

2. Perusal of the aforesaid order shows that the matter is still pending before the authority and the proceedings are in progress.

3. Aggrieved with the aforesaid order, SS Hibiscus Apartment Owners Association (Appellant herein) preferred the present appeal before this Tribunal.

4. Pursuant to the notice issued by this Tribunal, learned counsel for the respondent had appeared on 04.07.2023. At that time, we had ordered that status quo be maintained in respect of the shops in question till the next date of hearing. It appears that respondent-promoter preferred RERA Appeal no. 81 of 2023 before the Hon'ble Punjab and Haryana High Court, Chandigarh against the order dated 04.07.2023. The matter was disposed of on same day. The order passed by the

Hon'ble High Court is reproduced below for ready reference.

“Harkesh Manuja, J.(ORAL)

By way of present appeal, challenge has been laid to an order dated 04.07.2023 passed by the Haryana Real Estate Appellate Tribunal.

2. *At the outset, learned counsel for appellants prays for requesting the appellate tribunal to decide the appeal No. 263-2023 titled as “SS Hibicus Apartment Owners Association Vs. S.S. Group Pvt. Ltd.” pending for 07.08.2023, at the earliest.*

3. *In view of the fact that the issue involves restoration of electricity as well as the occupation and user of the shops in question, which requires urgent consideration, Haryana Real Estate Ld. Appellate Tribunal is most humbly requested to decide the abovementioned appeal within a period of two weeks from the date already fixed.*

4. *Disposed of in aforesaid terms.”*

5. Admittedly, Occupation Certificate was granted to the respondent-promoter way back in December, 2019. The shops in question are stated to be fully constructed. The authority in the impugned order has observed that occupants of those shops have a right to use their property in a proper and effective manner with

provision of the basic facilities such as electric connection. Direction was issued to the association of the unit owners to restore the connection to the shops in question.

6. As the matter is still pending before the Authority and the parties are at liberty to raise their respective pleas at the time of final hearing. We do not intend to express any opinion on the observations made by the Authority in the aforesaid order.

7. However, a query has been put to learned counsel for the appellant whether electric connection can be provided to the shops in question during the pendency of the proceedings before the Authority. He submits that in case, respondent provides its load requirement within ten days from today, earnest effort shall be made to provide the temporary connection at least. This aspect shall be supervised by the Authority. Earnest efforts shall be made to provide temporary connection within ten days.

8. In view of the aforesaid statement, we dispose of the appeal. We, however, direct that the Authority shall endeavour to conclude the proceedings at the earliest, in any case, not later than four weeks.

9. The appeal is disposed of as such.

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.

Justice Rajan Gupta
Chairman
Haryana Real Estate Appellate Tribunal

Anil Kumar Gupta
Member (Technical)

07.08.2023
rajni