

**BEFORE THE HARYANA REAL ESTATE APPELLATE
TRIBUNAL**

Appeal No. 493 of 2021 (O&M)

Date of Decision: 24.08.2023

Anju Tyagi resident of House No.12, 2nd Floor, Village Budhella, Vikaspuri, New Delhi.

Appellant

Versus

M/s TDI Infrastructure Pvt. Ltd., Vandana Building, Upper Ground, Floor 11, Tolstoy Marg, Connaught Place, New Delhi.

Respondent.

CORAM:

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

Present: Mr. Vivek Sethi, Advocate,
for the appellant.

Mr. Shubnit Hans, Advocate,
for the respondent.

ORDER:

RAJAN GUPTA, CHAIRMAN (ORAL):

There is an application for condonation of delay of 626 days in filing the present appeal. Same is supported by an affidavit of appellant. On perusal of the contents of the application, normally we would be reluctant to condone such a huge delay in filing the appeal. However, keeping in view of the facts and circumstances of the case and the contentions contained in the application, we are convinced that sufficient cause is made out to condone the delay. Even, learned counsel for the respondent very fairly submits that in peculiar facts of the appeal, the appeal needs to be entertained.

Accordingly, we allow the application and condone the delay in filing the appeal.

2. The present appeal is directed against order dated 31.10.2019 passed by the Haryana Real Estate Regulatory Authority, Gurugram (hereinafter referred to as 'the Authority').

Operative part of the order reads as under:-

"5. Face in the aforesaid situation, the respondent's counsel has sought to justify the impugned demand of car parking charges by arguing that the complainant being a user of basement/stilt area for parking his vehicle is liable to pay car parking charges. This argument too cannot provide any right to the respondent for raising demand of car parking charges because the complainant's counsel has today clarified that his client does not want to use stilt or basement area for parking his vehicle. In view of such statement made by complainant's counsel, the respondent will not be liable to offer any parking space to the complainant in the basement or the stilt area and therefore, he will not be even entitled to demand car parking charges from the complainant.

6. As regards charges for the super area increase and charges for club and maintenance facilities. The parties have fairly conceded that these issues are squarely covered by earlier decisions of the Authority in Complainant No. 607 of 2018 titled Vivek Kadyan Vs. M/s TDI infrastructure Pvt. Ltd., Complaint no. 22 of 2019 Parmeet Singh Vs. M/s TDI Infrastructure Pvt. Ltd. and Complaint No. 598 of 2018 Satya Pal Tyagi vs M/s TDI infrastructure Pvt. Ltd. So, the complainant will be liable to pay the charges in terms of the findings already recorded in the aforesaid decisions.

7. *In view of the above discussion, the complaint is disposed of. The file be consigned to the record room and the orders be uploaded on the website of the Authority.*

*Rajan Gupta
(Chairman)*

*Anil Kumar Panwar
(Member)”*

3. Learned counsel for the appellant, at the outset, submits that the appellant had preferred a complaint only seeking refund of the amount paid by her to the respondent along with interest. It is inexplicable as to how the Authority went on to decide the issues such as car parking charges, increasing super area, club charges and maintenance etc. which were not raised in the complaint at all. As a result, a review application has also been filed before the Authority, but the same was summarily dismissed vide order dated 19.08.2021.

4. On a query being put to counsel representing the respondent regarding the aforesaid contentions, he submits that he has no reason to controvert the same. According to him, the Authority below went on another tangent and decided the matter without referring to the actual relief sought by the appellant i.e. refund of the amount paid by her.

4. A submissions on similar lines were made before us on 12.04.2023 as well, we sought a report from the Authority regarding this issue. Though, a report has been received, no clear answer is forthcoming therein. We find no need to refer to said report as learned counsel are ad idem that the authority below failed to decide the issue which was raised before it. It in fact, went

on to decide the matter such as increase in super area, car parking charges, club and maintenance charges etc. which were alien to the relief sought by the complainant. As per the counsel, it appears that the file of the case was tagged with some other cases in which issues of increase in super area, car parking charges, club and maintenance charges etc. were involved.

5. In view of the above, learned counsel for the appellant prays that the matter be remitted to the same Authority for decision afresh. This prayer is not opposed by counsel representing the respondent.

6. We, thus, set aside the impugned order and remit the case to the same Authority for decision afresh at the earliest, in any case, not later than three months.

7. We hereby advise the Executive Director of H-RERA at Panchkula to bring this order to the notice of the Authority to ensure that the situation as has arisen in this case does not arise in any other case.

8. Copy of this order be communicated to the parties/learned counsel for the parties, the learned Authority and Executive Director of H-RERA for compliance.

9. File be consigned to the record.

Announced:
August 24, 2023

Justice Rajan Gupta
Chairman
Haryana Real Estate Appellate Tribunal

Anil Kumar Gupta
Member (Technical)