

HARYANA REAL ESTATE APPELLATE TRIBUNAL
S.C.O. No.50-51, 3rd FLOOR, SECTOR 17A, CHANDIGARH

Appeal No.225/2019.

Jarnail Singh son of Shri Dharpal, resident of Phool Singh Enclave, Shivaji Colony, Behind SPS Convent School, Jhansi Road, Karnal (Haryana).

...Appellant.

Versus

M/s TDI Infrastructure Ltd. through its Managing Director/Chairman/Director, regd. Office at 11, Tolstoy Marg, UG Floor, Vandana Building, Connaught Place, New Delhi-110001.

....Respondent.

Coram: Justice Darshan Singh(Retd), Chairman
Sh Inderjeet Mehta, Member(Judicial)
Sh Anil Kumar Gupta, Member(Technical)

Present: Shri Kamaljeet Dahiya, Advocate, Ld. counsel for the appellant/applicant.

Shri Rajnish Singh, Advocate, Ld. counsel for the respondent.

ORDER:-

Arguments heard.

2. The present appeal has been preferred against order dated 30.07.2018, passed by the ld. Real Estate Regulatory Authority, Panchkula, whereby the claim lodged by the appellant for refund of the amount paid by him alongwith interest and compensation and penalty was declined. However, the appellant was awarded the interest for delayed possession. The respondent/promoter was also directed to offer possession after obtaining the occupation certificate.

3. The appellant aggrieved by the aforesaid order has prayed the present appeal wherein, he has pressed his claim for refund alongwith interest including compensation.

4. The only question involved in the present appeal is as to whether the Real Estate Regulatory Authority was competent to grant the relief of refund along with interest including compensation or not. This question 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 Sections 31, 71(1) read with rule 29 of the Rules as only the adjudicating officer is competent to deal with the relief of compensation.”

5. So, in view of our order reproduced above, the present appeal has to be allowed. Consequently, the present appeal is hereby allowed. The impugned order dated 30.07.2018 is hereby set-aside. The complaint filed by the appellant/allottee stands transferred to the adjudicating officer, Panchkula, for adjudication in accordance with law. It has been informed by the Ld. counsel for the parties that Shri A.K. Singh Panwar, the Judicial Member of the Authority, is also discharging the functions of the Adjudicating Officer. But the present case should not be placed before him as he has already dealt with this case and expressed his opinion in the capacity of the Member of the Authority. So, this case be placed before some other Adjudicating Officer for adjudication in accordance with law. The adjudicating officer will allow the appellant/allottee to amend his complaint in order to bring it within the parameters of Form "CAO" as provided in rule 29 of the Rules. Copy of this order be forwarded to Ld. Real Estate Regulatory Authority, Panchkula for compliance.

6. File be consigned to records.

Announced
Dated 02.07.2019

Justice Darshan Singh (Retd.)
Chairman,
Haryana Real Estate Appellate Tribunal,
Chandigarh
02.07.2019

Inderjeet Mehta
Member (Judicial)
02.07.2019

Anil Kumar Gupta
Member (Technical)
02.07.2019