BEFORE THE HARYANA REAL ESTATE APPELLATE TRIBUNAL

Appeal Nos.483 & 575 of 2022

Date of Decision: 28.09.2023

Appeal N.483 of 2022

Ashok Kumar, H.No.629, Village Pakasma, District Rohtak at present House No.1429, Sector-3, Rohtak, Haryana.

Appellant

Versus

1. One City Infrastructure Private Limited through its Director Sunil Kumar Jain, 8-D Hansalya, 15 Barakhamba Road, New Delhi-110001.
2. One Point Reality Private Limited through its Director Sunil Kumar Jain, 8-D Hansalya, 15 Barakhamba Road, New Delhi-110001.
3. One City Infrastructure Private Limited through its Director Udit Jain, 8-D Hansalya, 15 Barakhamba Road, New Delhi-110001.
4. Mr. Sumit Surejwala, Director One Point Reality Private Limited, 8-D Hansalya, 15 Barakhamba Road, New Delhi-110001.
5. Dipika Jain, Director One Point Reality Private Limited, 8-D Hansalya, 15 Barakhamba Road, New Delhi-110001.
6. Mr. Sanjay Hasija, Director One Point Reality Private Limited, 8-D Hansalya, 15 Barakhamba Road, New Delhi-110001.

Respondents

Appeal No.575 of 2022

One City Infrastructure Private Limited, now the affairs of the project in dispute are being managed by: One Point Reality Private Limited through its authorised signatory Mr. Gurwinder Singh, 8-D Hansalya, 15 Barakhamba Road, New Delhi-110001.

Appellant

Versus

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Appeal Nos.483 & 575 of 2022

Ashok Kumar, H.No.629, Village Pakasma, District Rohtak at present House No.1429, Sector-3, Rohtak, Haryana.

Respondent

CORAM:

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

Argued by: Mr. Kulvir Narwal, Advocate, for the allottee (appellant in appeal no.483/2022 and respondent in appeal no.575/2022).

Mr.Rahul Garg, Advocate for promoter (respondents in appeal no.483/2022 and appellant in appeal no.575/2022).

O R D E R:

ANIL KUMAR GUPTA, MEMBER (TECHNICAL)

This order shall dispose of both the appeals mentioned above which have arisen out of the same order dated 15.02.2022 passed by the Haryana Real Estate Regulatory Authority, Panchkula (hereinafter called the 'Authority') whereby complaint No.1386 of 2019, filed by the allottee (appellant in appeal no.483/2022 and respondent in appeal no.575/2022), was disposed of with the following directions:-

"10. However, Authority observes that the said refund should have been offered to complainant after duly incorporating interest accrued on it for the period said amount had been wrongfully retained by respondent. Respondent returned only the paid amount without the interest accrued. The averment of respondent that he

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has not deducted earnest money at the time of returning the amount is not binding on the complainant. Therefore, respondent is directed to pay to the complainant interest accrued on the amount of Rs.20,41,100/- retained by respondent from 18.02.2013 to 18.02.2019 in terms of Rule 15 HRERA Rules 2017 after deducting earnest money.

11. *As per clause 13 of allotment letter earnest money is 25% of the Basic Sale Price and preferential location charges. 25% earnest money is too high and authority would consider it unconscionable and unreasonable. RERA provides for Earnest money of 10% of Basic cost price of the unit. This is also a standard market practice. Therefore, respondent can be allowed to deduct only 10% of basic sale price as earnest money and return remaining amount to the complainant.*

12. *Basic sale price of the unit Rs.16,29,550/-. Thus, the amount of earnest money works out to Rs.1,62,955/-. Further, the amount of interest payable to the complainant on the retained amount for said period has been calculated at the rate of 9.30% i.e. SBI MCLR+2% and same works out to Rs.11,22,327/-. After deducting earnest money of Rs.1,62,955/- from the amount of interest payable to complainant i.e. Rs.11,22,327/-, respondent shall now pay an amount of Rs.9,59,372/- to the complaint."*

2. As both the parties have filed appeal against the same order, so in order to avoid confusion with respect to the identity of the parties Ashok Kumar-complainant (appellant in appeal no.483/2022 and respondent in appeal no.575/2022) shall be referred to as 'allottee' and One City Infrastructure Private Limited and others (respondents in appeal

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no.483/2022 and appellant in appeal no.575/2022) shall be referred to as 'promoter'.

3. As per the averments in the complaint, the allottee had booked a plot measuring 300 sq. yards in the project of the promoter named 'One City Sector-37, Rohtak' in the year 2010. The basic sale price of the plot was Rs.16,29,550/-. The allottee paid an amount of Rs.25,91,100/-, however, later on corrected this amount as Rs.20,41,100/-vide separate application dated 06.09.2021. The allottee up to 2012, paid an amount of Rs.19,41,100/- to the promoter. The promoter vide letter dated 18.02.2013 had offered possession of the said plot along with demand of Rs.7,87,838/-, out of which Rs.3,51,290/- was charged as interest for delayed payment. At the time of offering possession, the development works at the site were not complete and possession was offered without obtaining completion certificate. The allottee made a further payment of Rs.1,00,000/- to the promoter on 20.12.2014. The allottee did not make more payment because of lack of development works at the site. The allottee had paid more than the basic sale price of the said plot by the year 2012. It was further pleaded that even if the allottee had defaulted in making payments after 2012, the promoter had no right to retain such huge amount for more than five years and then cancel the allotment of booked plot in the year 2018. At the

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most, the promoter could have charged interest from the allottee on delayed payments.

4. It was also pleaded by the allottee that the promoter has unfairly retained the amount paid by him since 2012. He submitted that even though the promoter has returned the amount paid by him, the allottee still has the right of interest on the said amount in terms of rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred to as 'the rules'). Also, the allottee is ready to return the amount of Rs.20,41,100/- and prayed for annulling the cancellation of plot.

5. With these pleadings, the allottee sought following reliefs in the complaint:-

i. Issue an appropriate order or direction for declaring the cancellation/refund order qua plot no.Gama 181 measuring 300 sq. Yards, situated at One City Sector-37 Rohtak to be null and void and not binding upon the rights of complainant and for further directing the respondents to receive back the RTGS amount of Rs.20,41,100/- in the interest of justice.

ii. Issue direction to the respondents/promoter not to charge any illegal amount including penalty/interest etc and hand over the possession of the plot no.Gama 181 measuring 300 sq. Yards, situated at One City Sector-37

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Rohtak, along with all basic amenities within some stipulated period.

iii. Further to direct the promoter to pay Rs.10 lacs for causing mental agony, harassment, pain and suffering to complainant-allottee.

iv. To direct the respondents/promoter to reimburse litigation cost of Rs.2 lacs to complainant/allottee.

6. The complaint was resisted by the promoter on the ground that the allottee had booked the plot in its project in the year 2010. The allotment letter was issued on 16.06.2010. The total sale price of the said plot is Rs.23,77,648/- against which the allottee had paid an amount of Rs.20,41,100/-. The allottee had made payment of Rs.19,41,100/- by the year 2012. He has made further payment of Rs.1,00,000/- on 20.12.2014. The project in which the plot of the allottee is situated, was ready for possession by the year 2013 and the promoter issued offer of possession on 18.02.2013 along with a demand for payment of Rs.7,87,838/- which was to be paid on or before 30.04.2013. The allottee was given many opportunities to pay the outstanding dues and take possession. As the allottee failed to make the outstanding payments, the promoter was constraint to issue final demand notice dated 03.01.2018 for cancellation of the plot due to non-payment of the dues. After the said cancellation, the promoter refunded the entire amount of Rs.20,41,100/- paid

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by the allottee for the said plot by crediting it to his account by way of RTGS on 18.02.2019 without deducting any money out of goodwill. It was also pleaded that the allottee vide application dated 06.09.2021 filed before the Authority has himself admitted this fact that the total amount paid by the allottee is Rs.20,41,100/- and not Rs.25,91,100/- against the basic sale price of Rs.16,29,550/-. It was further pleaded that at the time when the allottee filed complaint, all contractual obligations had ended between both the parties as the promoter had refunded the entire amount paid by the allottee on 18.02.2019.

7. With these pleadings, it was prayed that there is no merit in the complaint and the same deserves to be dismissed.

8. The authority after hearing both the parties passed the impugned order which has been reproduced in the opening para of this order.

9. We have heard learned counsel for the parties and have carefully gone through the record of the case.

10. At the outset, while reiterating the pleadings of the complaint, learned counsel of the allottee contended that there was no clause in the allotment letter with regard to the scheduled completion of the project, but the payment plan existed. The allottee paid an amount of Rs.19,41,100/- from the year 2010 to 2012, which is much above the basic sale

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price of the plot. However, the promoter did not carry out any kind of development work at the project site. The promoter vide letter dated 18.02.2013 offered the possession of the plot and informed that since the development works of the project had been completed, the possession of the plot can be obtained after payment of outstanding dues, which must be cleared before 30.04.2013. The possession of the plot and sale-deed would be executed on payment of the stamp duty, registration and other incidental charges. Therefore, the allottee made another payment of Rs.1,00,000/- in 2014. In this way, the allottee had paid an amount of Rs.20,41,100/- i.e. more than 85% of the total sale consideration of the plot which is Rs.23,77,648/-. The promoter till 2018 kept on demanding from the allottee the above said amount. However, on 03.01.2018, the promoter issued a notice to the allottee regarding cancellation of the plot due to non-payment of the dues mentioning therein that if the due amount is not paid by 20.01.2018, the plot allotted would be treated as cancelled. The promoter, thereafter, cancelled the allotment on 31.01.2018. The promoter 18.02.2019 refunded the total amount of Rs.20,41,100/- in the account of the allottee through RTGS. The promoter applied for part completion certificate of the project on 28.03.2019. The offer of possession of the plot in 2018 was without development works

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and without obtaining the completion certificate. The completion certificate has been granted to the promoter in the year 2020 during the pendency of the complaint. The promoter after receiving the amount of Rs.20,41,100/- from the allottee by the year 2014 kept the said amount for four years and then in the year 2019 refunded the full amount. The allottee had paid 85% of the amount of the unit and only 15% of the amount was retained, therefore, the cancellation of the allotment is unfair on the part of the promoter. The authority in its order dated 27.01.2021 had rightly observed that the promoter after collecting the entire basic sale price is guilty of not completing the project and its obligation towards the delivery of possession. The authority has rightly observed in the said order that the promoter had no right to effect cancellation and at the most was entitled to charge interest on the defaulted amount, if any, outstanding against the allottee. However, the learned authority while passing the impugned order took a u-turn from the said order.

11. With these pleadings, it was prayed that the impugned order dated 15.02.2022 may be modified to the extent that cancellation dated 31.01.2018 be set aside and the plot be restored to the allottee.

12. On the other hand, learned counsel for the promoter contended that the allottee had paid total amount of

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Rs.19,41,100/- up to December, 2012, and thereafter, offer of possession was made to the allottee on 18.02.2013. The allottee failed to make the balance payment despite various request letters and reminders. Thereafter, on 20.12.2014, the allottee paid another amount of Rs.1.00 lac to the promoter (totaling Rs.20,41,100/-). Various reminders during the years 2010/2011/2012 and 2014 were sent to the allottee but no response was ever received. Left with no other alternative, the promoter cancelled allotment of the plot on 03.01.2018 and the total amount of Rs.20,41,100/- paid by the allottee was refunded to him by way of RTGS on 18.02.2019. In the complaint, it was alleged that the allottee had made payment of Rs.25,91,100/- against the basic sale price of Rs.16,29,550/- and after cancellation, the promoter had not refunded the amount paid by the allottee. Under this impression, learned authority passed order dated 27.01.2021 by mentioning that full payment has been made by the allottee and therefore quashed the cancellation letter issued by the promoter. However, the allottee moved an application dated 06.09.2021 for correcting the amount of Rs.20,41,100/- paid by him instead of Rs.25,91,100/-. After noticing these facts, the said finding of the orders dated 27.01.2021 were not considered by the authority while passing the impugned order.

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13. He further submitted that an amount of Rs.19,41,100/- was paid by the allottee till 18.02.20213. He contended that as per clause 24 of the allotment letter, the possession of the plot was to be handed over on as is where is basis and if the allottee fails to take possession of the unit within a period of one year from the date of offer of possession, the allotment can be cancelled and earnest money alongwith such dues payable by the allottee can be forfeited and the balance amount, if any, is to be refunded without interest. Therefore, the authority has wrongly ordered for payment of interest. He asserted that in the peculiar facts and circumstances of the case, the direction of the authority to pay interest accrued on the amount of Rs.20,41,100/- is not justified. He submitted that the allottee has not claimed any interest in his complaint.

14. With these pleadings, it was prayed that the impugned order may be modified to the extent that no interest on the amount of Rs.20,41,100/- is payable to the allottee.

15. We have duly considered the aforesaid contentions of both the parties.

16. The brief facts of the case are that the allottee booked a plot in the project of the promoter named 'One City Sector-37, Rohtak' in the year 2010. The allotment letter for plot no.Gama 181 measuring 300 sq. yards in the said project

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of the promoter was issued on 16.06.2010 for basic sale price of Rs.16,29,500/- (excluding EDC). The total sale consideration of the plot is Rs.23,77,648/-. The allottee had made payment of Rs.19,41,100/- to the promoter by the year 2012. The promoter issued offer of possession through its letter dated 18.02.2013 along with a demand of Rs.7,87,838/-. In response to this, the allottee paid an additional amount of Rs.1.00 lac on 20.12.2014. This brought the total amount paid by the allottee to Rs.20,41,100/-. The allottee did not make further payment alleging that the development works had not been completed by the promoter and it had not obtained completion certificate. The promoter issued various letters to the allottee for making the balance payment. However, no further payment was made by the allottee. Therefore, due to non-payment of the balance amount, the promoter ultimately issued letter dated 03.01.2018 cancelling the allotment. The promoter on 18.02.2019 returned the entire amount of Rs.20,41,100/- to the allottee through RTGS. To further appreciate the issue, clause 24 of the allotment letter dated 16.06.2010 is reproduced herein below:-

> *"If the allottee fails to take possession of the unit within 30 days of the sellers giving written notice to the allottee intimating that the residential unit is ready for physical possession, or any date if*

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extended by the seller in its sole discretion, the seller will not be responsible for deterioration in the condition of the unit and will hand over the physical possession on as is where is basis and any work or expense to improve on the condition of the unit will have to be carried out and borne by the allottee himself. If the allottee fails to take possession of the unit within the period of one year from the date of offer of possession or any date if extended by the seller in its sole discretion, the allotment can be cancelled by the seller and earnest money as mentioned in clause 13 along with all such dues payable by the allottee towards maintenance charges on the date of cancellation shall stand forfeited and the balance amount, if any, will be refunded without any interest on receiving the original documents from the allottee and after compliance of necessary formalities."

17. From the perusal of the above said clause, it is evident that the promoter had right to cancel the unit if the allottee fails to take possession of the unit within the period of one year from the date of offer of possession. The offer of possession was made to the allottee on 18.02.2013 along with a demand of Rs.7,87,838/- payable up to 30.04.2013. Out of the said amount of Rs.7,87,838/-, the allottee paid an amount of Rs.1.0 Lac on 20.12.2014 and did not pay any amount thereafter. The allottee in his pleadings has nowhere contested that the demand so raised by the promoter was beyond the

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terms of the allotment or it was excessive or invalid. The allottee did not bring to our notice any term of allotment to show that the promoter was to offer possession after obtaining completion certificate. However, the promoter didn't cancel the allotment after expiry of the one year of nonpayment of the demand raised by it in terms of said clause 24, rather, accepted further payment of Rs.1.00 lac on 20.12.2014. In this way, the promoter retained the amount of Rs.19,41,100/- from 30.04.2014 (one year after 30.04.2013) and Rs.1.0 lac from 20.12.2014 and returned the amount of Rs.20,41,100/- through RTGS on 18.02.2019, after issuing letter dated 03.01.2018 canceling the allotment of the unit. Therefore, in view of our aforesaid findings we are of the considered opinion that there was a breach of the terms of the allotment on the part of the allottee for not making the payments of demands raised by the promoter for a period of more than four years without any reason. Therefore, we find nothing wrong in the impugned order of the authority. The cancelation of the plot is in terms of the allotment is justified. Additionally, the impugned order of the Authority to reimburse the payment, after deducting 10% the basic sales price, along with interest on the remaining amount retained by the promoter for excessive period of time, is well-founded and is as per law.

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18. The authority through its order dated 27.01.2021 had ordered that cancellation of the unit allotted to the allottee is unsustainable and therefore quashed such cancellation. It was observed in the said order dated 27.01.2021 that the allottee had paid an amount of Rs.25,91,100/- and the promoter had not returned the amount after cancellation. Later on, it was brought to the notice of the authority by the contesting parties that the said amount of Rs.25,91,100/- paid by the allottee is wrong, in fact, the allottee had paid an amount of Rs.20,41,100/- and the promoter had returned the amount of Rs.20,41,100/- to the allottee on 18.02.2019. The authority based on the new facts passed the impugned final order which was different from the order dated 27.01.2021 affecting substantial rights of the parties. Section 39 of the Act provides power to the authority limited to rectify mistakes apparent on record. Therefore, a question arises, whether the authority can issue an interim order, subsequently review it and pass another order altering the significant rights of the parties upon the emergence of new facts. Since, no serious challenge has been made to this issue by either of the party, therefore, we are not passing any order on this issue.

19. In view of our aforesaid observations, we do not find any legal infirmity in the order passed by the Authority. We,

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thus, find no merit in both these appeals and the same are hereby dismissed.

20. No order to costs.

21. The amount deposited by the promoter (in appeal no.575 of 2022) i.e. Rs.9,59,372/- with this Tribunal in view of proviso to Section 43(5) of the Real Estate (Regulation and Development) Act, 2016, along with interest accrued thereon, be sent to the learned Authority for disbursement to the allottee subject to tax liability, if any, as per law and rules.

22. Copy of this order be placed on the record of Appeal No.575 of 2022 titled "One City Infrastructure Private Limited Vs. Ashok Kumar".

23. The copy of this order be communicated to the parties/learned counsel for the parties and the learned Authority for compliance.

24. Files be consigned to the record.

Announced:
September 28, 2023

Justice Rajan Gupta
Chairman
Haryana Real Estate Appellate Tribunal

Anil Kumar Gupta
Member (Technical)

CL

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