

**BEFORE THE HARYANA REAL ESTATE APPELLATE
TRIBUNAL**

Appeal No.480 of 2021
Date of Decision: 05.10.2023

1. Mr. Vinod Kumar, R/O H. No. 951, Bawana, New Delhi.
2. Madhu Yadav, W/o Mr. Sher Singh, R/o-H.No. 17, Data Ram CGHS, Sector-18, Rohini, New Delhi-110089.

Appellants

Versus

1. M/s Landmark Apartments Pvt. Ltd. registered office at A-8, Chitranjan Park, New Delhi second address Plot No.65, Sector 44, Gurugram, Haryana;
2. Sandeep Chillar, Director/CMD, M/s Landmark Apartments Pvt. Ltd. registered office at Plot No.65, Sector 44, Gurugram, Haryana;
3. Shri Dinesh Kumar, Director M/s Landmark Apartments Pvt. Ltd. registered office at Plot No.65, Sector 44, Gurugram, Haryana;

Respondents

CORAM:

**Justice Rajan Gupta
Shri Anil Kumar Gupta**

**Chairman
Member (Technical)**

Present: Mr. Chandan Singh, Advocate,
for the appellant.

Mr. Shobit Phutela, Advocate,
for the respondent.

ORDER:

Rajan Gupta, Chairman (Oral):

The appellants have posed to challenge the order dated 31.01.2019 in complaint No. 953/2018 passed by the

Appeal No.480 OF 2021

Haryana Real Estate Regulatory Authority, Gurugram (for short, the Authority). Operative part thereof reads as under:-

“Decision and directions of the Authority:

21. *After taking into consideration all the material facts as adduced and produced by both the parties, the authority exercising powers vested in it under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby issues the following directions to the respondent in the interest of justice and fair play:*

(i) *since the project is not registered, as such, notice under section 59 of the Real Estate (Regulation and Development) Act, 2016, for violation of section 3(1) of the Act be issued to the respondent. Registration branch is directed to do the needful.*

(ii) *Memorandum of Understanding was signed inter-se the parties on 12.10.2010 for which complainant has made payment of Rs. 13,75,000/- for commercial unit in Landmark Cyber Park, Sector-67, Gurugram. As per clause 4 of MoU which reads as under:-*

“That the first party will pay Rs. 27500/- as assured return per month payable quarterly to second party till the date of possession or 3 years whichever is later.”

(iii) *As such, the counsel for the respondent stated that they have received occupation certificate which is placed on record and they are offering possession to the complainant. As per clause 4 of MoU, both the complainant and respondent are advised to settle their matter w.r.t. assured return.*

22. *Complaint stands disposed of accordingly.*

23. *Detailed order will follow.*

24. *file be consigned to the registry.*

Appeal No.480 OF 2021

(Samir Kumar)
(Member)

Subhash Chander Kush)
Member

Date: 31.01.2019”

2. A perusal of the aforesaid order shows that the case has been disposed of with an advice to the complainants as well as respondents to settle their matter with respect to assured return.

3. It appears that an application for rectification of the said order was also filed, but was rejected on the ground that the same was outside the purview of the Authority.

4. A perusal of the impugned order shows that the matter has not been decided on merits. Neither plea raised by the complainants nor the stand taken by the respondents has been dealt with. The Authority has disposed of the matter merely with the advice to both the parties to settle their matter with respect to assured return.

5. We are of the considered view that the role of the Authority is not advisory in nature. It is adjudicatory body set up under the Real Estate (Regulation and Development) Act, 2016 (for short, the Act). On a complaint having been filed before it, it has to proceed as per law i.e. the Act and Rules framed thereunder. If the matter is decided finally by merely advising the parties to settle the matter, it would set a wrong precedent as it would relieve the Authority of responsibility to adjudicate upon the complaints.

Appeal No.480 OF 2021

6. We, thus, feel that the order passed by the Authority is wholly unsustainable in the eyes of law. The order under challenge is hereby set aside. The matter is remitted to the Authority for decision afresh after affording opportunity of hearing to both the parties.

7. As the matter has been considerably delayed we expect the Authority to decide the matter expeditiously, in any case, not later than two months.

8. Parties to appear before the Authority on 30.10.2023.

9. No order needs to be passed in the application seeking condonation of delay as we have disposed of the main appeal with the aforesaid observations.

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)

05.10.2023
Manoj Rana