

**BEFORE THE HARYANA REAL ESTATE APPELLATE
TRIBUNAL**

Appeal No. 593 of 2022
Date of Decision: 05.01.2024

M/s Suncity Projects Pvt. Ltd. registered office at Suncity
Business Tower, 2nd Floor, Sector 54, Golf Course Road, Sector
54, Gurugram

...Appellant

Versus

Simrit Monga resident of Flat No.502, Tower 9B, Suncity
Parikarma, Sector 20, Panchkula

...Respondent

CORAM:

Justice Rajan Gupta
Anil Kumar Gupta

Chairman
Member (Technical)

Present: Mr. Himanshu Gupta, Advocate,
for the appellant.

Mr. Shobit Phutela, Advocate, along with
Ms. Arushi Lamba, Advocate,
for the respondent.

ORDER:

Rajan Gupta, Chairman (Oral):

Appellant-promoter has preferred present appeal
aggrieved by the directions of the Authority to grant parking
space to the respondent-allottee in the same building in which
her unit is there. Admittedly, respondent-allottee is in
possession thereof. Relevant para of the impugned order reads
as under:-

*“8. Now, factual matrix of the present case
provides that as per builder buyer agreement and
the conveyance deed, the complainant was entitle to
enjoy exclusive rights to a car parking space under*

the tow in which her flat is located. It is true that in the agreement a specific car parking space bearing No.B124 has been mentioned and same has been allotted by the respondent to the complainant and as such on the face of it there has been no violation on part of respondent. However, it is important to note that alongside the No.B124 it has also been clearly mentioned 'situated in the basement of the residential complex' (clause 2.6 of agreement) and same has been reiterated in Schedule-I of the conveyance deed which clearly bolsters the fact that the said car parking space i.e. B124 should have located under the residential tower of complainant and not at some far away location. Respondent has very cleverly executed all the documents with the complainant under the pretext that car parking space will be allotted under the residential complex, which has not been the case in reality. In order to ascertain availability of car parking in the basement of the tower of complainant and the criteria adopted in allotment of parking space to other allottees, Authority had directed the respondent to place on record certain relevant information which the respondent repeatedly failed to do despite multiple opportunities. Deliberate non compliance of the orders of Authority by the respondent only supports the fact that conduct of the respondent is not transparent and smacks of malafide."

2. We have heard learned counsel for the parties.
3. Primarily the issue of car parking which has been agitated before us, it has been contended that denial of proper car parking space by the promoter causes breach of the Builder Buyer's Agreement.

4. Learned counsel for the appellant, however, submits that allottee has already been in possession of the unit since 29.05.2019 and has been using car parking in the same complex. He further submits that the building plans etc. are not available with him at present. Therefore, he cannot refer to same for the purpose of deciding whether car parking is available in the same building.

5. Both counsel agree that the issue of car parking can be decided by the Executing Court, in case, execution is filed.

6. We, thus, dispose of this appeal with liberty to the allottee to prefer the execution, if so advised.

7. Learned counsel for the appellant also shall be at liberty to take all objections before the Executing Court.

8. In view of these observations, no lis survives in this appeal. Same is disposed of.

9. We, however, clarify that Executing Court will proceed in such a manner that the situation does not arise where possession of parking of third party is disturbed.

10. Impugned order is modified to the extent above. Appeal is disposed of in these terms.

11. Copy of this order be forwarded to counsel for the parties/parties and the Authority below.

12. File be consigned to the records.

Justice Rajan Gupta
Chairman
Haryana Real Estate Appellate Tribunal

Anil Kumar Gupta
Member (Technical)

05.01.2024
Manoj Rana