

BEFORE THE HARYANA REAL ESTATE APPELLATE TRIBUNAL

Appeal No.1352 of 2019
Date of Decision: 26.11.2019

1. Siddharth Kastwar s/o Shri Rajiv Kastwar, Resident of Flat No.403, 4th Floor, Building No.2, Kamat Harmony Cooperative Housing Society, Taleigao, Panjim, Goa-403002
Permanent Address: 52, Chanakyapuri, Chunnabhatti, Near Ram Mandir, Kolar Road, Bhopal (M.P.) 462016.
2. Arnika Kastwar w/o Siddharth Kastwar, Resident of Flat No.403, 4th Floor, Building No.2, Kamat Harmony Cooperative Housing Society, Taleigao, Panjim, Goa-403002.
Permanent Address: 52, Chanakyapuri, Chunnabhatti, Near Ram Mandir, Kolar Road, Bhopal (M.P.) 462016.

Appellants/Complainants

Versus

1. Orris Infrastructure Private Limited, having its Registered Office at C-3/260, Janakpuri New Delhi-110058.
Corporate Office at Orris HQ, J-10/5, DLF Phase-2, M.G. Road, Gurgaon-122002.
2. Three C Shelters Private Limited, having its registered Office at C-23, Greater Kailash Enclave I, New Delhi – 110048 and having its Corporate Office at Tech Boulevard, Central Block, Plot No.6, Sector-127, Noida – 201301.

Respondents

CORAM:

Justice Darshan Singh (Retd.)	Chairman
Shri Inderjeet Mehta	Member (Judicial)
Shri Anil Kumar Gupta	Member (Technical)

Present: Shri A.K. Ranolia, Advocate on behalf of Shri Manoj Yadav, Advocate, counsel for the appellant.
Respondents ex parte.

ORDER:

The present appeal has been preferred against the order dated March 19th, 2019 passed by the learned Haryana Real Estate Regulatory Authority, Gurugram (hereinafter called 'the Authority') vide which the complaint filed by the appellants/allottees was disposed of in view of the decision in complaint bearing No.225 of

2018 titled as “Greenopolis Welfare Association Versus M/s Orris Infrastructure Pvt. Ltd.”

2. Notice of the appeal was issued to the respondents. But none appeared on behalf of the respondents despite service. Thus, the respondents have been proceeded against ex parte.

3. Learned counsel for the appellants has pleaded that the complaint filed by the appellants/allottees was an individual complaint wherein they have sought the relief of refund alongwith interest on account of delay in completion of the project. He contended that the complaint No.225 of 2018 was filed by the Welfare Association. There were totally different issues in that complaint wherein the main prayer was for completion of the project. He contended that no adjudication has been made by the learned Authority in the complaint filed by the appellants/allottees.

4. We have duly considered the aforesaid contentions.

5. The impugned order passed by the learned Authority reads as under: -

“Complaint bearing No.225 of 2018, titled as Greenopolis Welfare Association versus M/s Orris Infrastructure Pvt. Ltd. and another has already been decided in a representative capacity. Since the subject matter is the same/identical, as such the decision in the above stated complaint shall be read in this complaint also.”

6. The aforesaid order passed by the learned Authority shows the complete non-application of the judicial mind to the complaint filed by the appellants/allottees. The appellants have filed their individual complaint seeking the relief of refund alongwith interest. The said complaint was being tried separately and was not clubbed with the Complaint No.225 of 2018. Learned counsel for the

appellants has repeatedly pleaded that the appellants are not interested to participate in the project and they want to withdraw from the project and want refund of their amount in view of section 18 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter called 'the Act').

7. We have gone through the judgment passed in Complaint No.225 of 2018 wherein only the passing reference has been given with respect to the relief of refund claimed by some of the allottees. But the main stress in the judgment dated January 23rd, 2019 was with respect to the completion of the project. So, the plea raised by the appellants for refund of their amount due to violation of section 18 of the Act should have been separately dealt with and adjudicated upon by the learned Authority in the complaint filed by the appellants as every case has to be decided on its own facts. The individual complaint filed by the appellants should not have been disposed of in terms of the order passed in Complaint No.225 of 2018. There is nothing on the record to show that the appellants were also the members of the Greenopolis Welfare Association. So, it cannot be stated that the complaint filed by the Greenopolis Welfare Association was in the representative capacity qua the present complaint also.

8. Thus, keeping in view our aforesaid discussions the present appeal is hereby allowed. The order dated March 19th, 2019 passed by the learned Authority is hereby set aside. The case is remitted to the learned Authority for adjudication of the complaint filed by the appellants/allottees afresh in accordance with law. The learned Authority will make every endeavour to dispose of the complaint

filed by the appellants expeditiously as much time has already passed since the filing of the complaint.

9. The appellants are directed to appear before the learned Haryana Real Estate Regulatory Authority, Gurugram on 09.12.2019 and the learned Authority will issue notice to the respondents. A copy of this order be communicated to the learned Authority.

10. File be consigned to records.

Justice Darshan Singh (Retd.)
Chairman,
Haryana Real Estate Appellate Tribunal,
Chandigarh
26.11.2019

Inderjeet Mehta
Member (Judicial)
26.11.2019

Anil Kumar Gupta
Member (Technical)
26.11.2019

Judgment - Haryana Real Estate Appellate Tribunal

Siddarth Kastwar & anr. Vs. Oriss Infra Pvt. Ltd.
Appeal No.1352 of 2019

Present: Shri A.K. Ranolia, Advocate on behalf of Shri Manoj Yadav, Advocate, counsel for the appellant.

As per report of the office, notice of the appeal has been delivered to the respondents. Learned counsel for the appellants has also supplied the track consignment report which also shows that the notice has been delivered to the respondent no.1 on 09.11.2019 and on 08.11.2019 to the respondent no.2, but none is present on behalf of the respondents. Thus, the respondents are proceeded against ex parte.

Arguments heard.

Vide our separate detailed order of the even date, the appeal stands allowed.

Justice Darshan Singh (Retd.)
Chairman,
Haryana Real Estate Appellate Tribunal,
Chandigarh
26.11.2019

Inderjeet Mehta
Member (Judicial)
26.11.2019

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