

BEFORE THE HARYANA REAL ESTATE APPELLATE TRIBUNAL

**Appeal No. 434 of 2023
Date of Decision: 26.09.2024**

1. Sanjay Kumar Goel

2. Sadhna Goel

Both residents of R/o House No. 844, Sector-37,
Faridabad-121003.

Appellants

Versus

M/s Jindal Realty Private Limited through
Director/Authorised Representative, DSM-648, 6th
Floor, DLF Tower, Shivaji Marg, Najafgarh Road, Moti
Nagar, New Delhi-11015.

Respondents

CORAM:

Justice Rajan Gupta

Chairman

Present: Mr. Mayank Sharma, Advocate,
for the appellants.

ORDER:

RAJAN GUPTA, CHAIRMAN (ORAL):

Present appeal is directed against order dated
17.02.2022 passed by the Adjudicating Officer at Panchkula.

Operative part whereof reads as under:-

“10. Compensation has to be awarded to the complainants/allottees under Section 72 of RERA Act 2016. The said section has enumerated factors to be taken into account while adjudging the quantum of compensation. The first factor to be taken into consideration is amount of disproportionate gain or unfair advantage and as a result of default, second amount of loss caused as a result of default and repetitive nature of default. It is observed that the complainants have failed to prove default committed by the respondent. It is the

argument of learned counsel for respondent that the default has been committed by the complainants themselves and they cannot take benefit of their own wrong. The complainants have failed to prove as to how the respondent has gained disproportionate amount or has taken unfair advantage. It is also not proved on the record that what amount of loss has been caused to the complainants as a result of default of respondent. So far as repetitive nature of default is concerned, it has not been proved by the complainants, having been committed by the respondent.

11. Since the complainants have failed to prove the default committed by the respondent, unfair advantage gained by respondent, loss caused to the complainants, the complainants cannot be said to be entitled to compensation. The complainants have concealed material facts of offer of possession as well as pendency of proceedings before Hon'ble Debt Recovery Tribunal-I, Delhi.

12. Finding no merit in the complaint, it is ordered to be dismissed with no order as to costs. Judgment be uploaded on the website of the Authority. File be consigned to record room.”

2. Present appeal came up for hearing before this Tribunal on 28.08.2024 when the following order was passed:-

“We have perused the order passed by the Adjudicating Officer.

Certain queries have been put to learned counsel for the appellant:

(i) As to how the order passed by the Authority below is unsustainable?

(ii) Whether the issue of pendency of proceedings before the DRT concealed in the complaint from the aforesaid officer?

(iii) Stage of proceedings initiated against the appellant under the SARFAESI Act, 2002?

Learned counsel for the appellant prays for some time to file affidavit in response thereto.

*Two weeks' time is granted.
Adjourned to 12.09.2023."*

3. Thereafter, the matter was adjourned from time to time. On the last date of hearing i.e. 23.07.2024, affidavit was filed in light of the queries raised by this Bench. Same was taken on record. The order reads as under:

"Affidavit in light of order dated 21.12.2023 passed by this Tribunal has been filed. Same is taken on record. Registry to paginate the paper book accordingly.

List on 26.09.2024."

4. Today, at the outset, Mr. Mayank Sharma submits that he has been instructed by the appellant to withdraw the present appeal as he intends to avail another remedy if available under law.

5. Dismissed as withdrawn.

6. File be consigned to the records.

Justice Rajan Gupta
Chairman
Haryana Real Estate Appellate Tribunal

26.09.2024
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