

BEFORE THE HARYANA REAL ESTATE APPELLATE TRIBUNAL

Appeal No. 490 of 2024
Date of Decision: 01.10.2024

M/s 4s Developer Private Limited, 2nd Floor, HUB 66, Opposite
Ansal Essencia, Sector 67, Gurugram, Haryana 122002,
Through Its Authorised Representative Akash Sharma.

Appellant/Promoter

Versus

Shashi Yadav R/o 418, Urban Estate, Sector 7, Gurugram-
122001.

Respondent/allottee

CORAM:

Justice Rajan Gupta	Chairman
Shri Rakesh Manocha	Member (Technical)

Present: Mr. Kunal Dawar, Advocate along with
Ms. Tanika Goyal, Advocate,
Mr. Mayank Aggarwal, Advocate,
Ms. Ankita Chaudhary, Advocate,
for the appellant.

ORDER:

RAJAN GUPTA, CHAIRMAN (ORAL):

CM No. 930 of 2024

This is an application (CM No.930 of 2024) seeking
condonation of 60 days' delay in filing the appeal.

2. Application is supported by an affidavit of Mr. Akash
Sharma, Authorised Representative of the appellant-company.

3. On perusal thereof, this Bench feels that sufficient
grounds are made out for condoning the delay. Accordingly, the
application (CM No. 930 of 2024) is allowed. Delay of 60 days in filing of
the appeal is condoned.

Main Appeal

Present appeal is directed against order dated 08.02.2024 passed by the Authority at Gurugram, operative part whereof reads as under:

“The respondent promoter is directed to refund the paid up amount of Rs.5,00,000/- received by it from the complainant within 90 days from the date of this order failing which legal consequences will follow.”

2. Mr. Kunal Dawar, submits that impugned order is erroneous in nature. The Authority has not considered the fact that the allottee has not made payments after remitting Rs.5,00,000/- (as booking amount). As per him, the total consideration of the property was Rs.1,55,00,000/- and the allottee did not remit 30% of the amount within 15 days of booking the unit. He never came even forward to execute the Builder Buyer's Agreement (BBA).

3. Mr. Vikrant Rana, Advocate is present in Court on behalf of respondent and craves leave of this Bench to address. We have accordingly afforded him an opportunity. He submits that the builder failed to issue any receipt with respect to the payment made by the allottee. The builder did not send any communication regarding execution of BBA. As per him, order passed by the Authority is sustainable.

4. We have heard learned counsel for the parties and given careful thought to the facts and circumstances of the case.

5. The Authority, on the basis of material on record, returned its findings on certain factual aspects. It came to the conclusion that the complainant had made a payment of Rs.5,00,000/- as booking amount. Though the respondent admitted receipt of the amount, no receipt in that respect had been placed on record.

6. As per the Authority, respondent failed to place on record any allotment letter pursuant to deposit of the booking amount. The Authority also found that no demand letter or reminder was placed on record by the promoter calling upon the allottee to pay further amount. Copy of the BBA was also not shared with the complainant. Relying upon the decision of Maharashtra Real Estate Appellate Tribunal in case of 'Mr. Dinesh R. Humane and Anr. Versus Piramal Estate Pvt. Ltd.' decided on 17.03.2021, it dismissed the complaint.

7. In the present appeal only factual issues are under consideration, which have already been adjudicated upon by the Authority on the basis of evidence available.

8. Learned counsel for the appellant has not been able to make out any case for re-appraisal of the evidence in appellate jurisdiction.

9. It appears that the allottee also prayed for compensation for harassment and litigation expenses, which prayer was declined by the Authority below.

10. In view of the entire facts and circumstances of the case, we are not inclined to interfere. The appeal is hereby dismissed.

11. The amount of Rs.5,00,000/- deposited by the appellant/promoter with this Tribunal as pre-deposit in terms of proviso to Section 43(5) of the RERA Act, along with interest accrued thereon be remitted to the learned Authority for disbursement to the respondent-allottee, subject to tax liability, if any, according to law.

12. File be consigned to the record.

Justice Rajan Gupta
Chairman
Haryana Real Estate Appellate Tribunal

Rakesh Manocha
Member (Technical)

01.10.2024
Manoj Rana