

BEFORE THE HARYANA REAL ESTATE APPELLATE TRIBUNAL

Date of Decision: April 01, 2025

(1) Appeal No. 264 of 2024

M/s Indiabulls Commercial Credit Ltd. through its authorized representative, 5th Floor Building NO. 27, KG Marg, Cannaught Place, New Delhi-110001

Appellant.

Versus

(1) Haryana Real Estate Regulatory Authority, Gurugram through its Secretary, New PWD Rest House Civil Lines, Gurugram, Haryana 122001

(2) Nidhi Singh, A-2104, Ireo Victory Valley, Sector 67, Gurugram 122101 Haryana

(3) M/s Ireo Victory Valley Pvt. Ltd. through its authorized representative 305, 3rd Floor, Kanchan House, Karampura Commercial Complex, New Delhi-110015

(4) M/s KSS Properties Pvt. Ltd. through its authorized representative, 305, 3rd Floor, Kanchan House, Karampura Commercial Complex, New Delhi 110015

(5) M/s High Responsible Realtors Properties Pvt. Ltd. through its authorized representative, C-4, 1st Floor, Malviya Nagar, New Delhi 110017

(6) Deepak Bansal and Nivedita Bansal, 3B, Tower-1, Bellevue, Central Park-II, Sohna Road, Sector 48, Gurugram-122018

(7) Swati Goel, H. No. 1/100, 2nd Floor, Rohini, Sector 16, North-West Delhi, New Delhi

(8) M/s Indiabulls Housing Finance Ltd. through its authorized representative, 5th Floor, Building No. 27, KG Marg, Connaught Place, New Delhi-110001

(9) Sub Registrar, Tehsil Badshahpur, District Gurugram, office of Sub-Registrar, Tehsil Badshahpur, Swarg Marg, Badshahpur, Secor 66, Gurugram-122101 ...Respondents

(1) Appeal No. 276 of 2024

Evinos Builders Ltd. through its authorized representative, D-4/2, 2nd Floor, Gali No. 4, Gasant Vihar, New Delhi-110057

Appellant.

Versus

(1) Haryana Real Estate Regulatory Authority, Gurugram through its Secretary, New PWD Rest House Civil Lines, Gurugram, Haryana 122001

(2) Nidhi Singh, A-2104, Ireo Victory Valley, Sector 67, Gurugram 122101 Haryana

(3) M/s Ireo Victory Valley Pvt. Ltd. through its authorized representative, 305, 3rd Floor, Kanchan House, Karampura Commercial Complex, New Delhi-110015

(4) M/s KSS Properties Pvt. Ltd. through its authorized representative, 305, 3rd Floor, Kanchan House, Karampura Commercial Complex, New Delhi 110015

(5) M/s High Responsible Realtors Properties Pvt. Ltd. through its authorized representative, C-4, 1st Floor, Malviya Nagar, New Delhi 110017

(6) Deepak Bansal and Nivedita Bansal, 3B, Tower-1, Bellevue, Central Park-II, Sohna Road, Sector 48, Gurugram-122018

(7) Swati Goel, H. No. 1/100, 2nd Floor, Rohini, Sector 16, North-West Delhi, New Delhi

(8) M/s Indiabulls Housing Finance Ltd. through its authorized representative, 5th Floor, Building No. 27, KG Marg, Connaught Place, New Delhi-110001

(9) Sub Registrar, Tehsil Badshahpur, District Gurugram, office of Sub-Registrar, Tehsil Badshahpur, Swarg Marg, Badshahpur, Sector 66, Gurugram-122101

Respondents

Present : Mr. Randeep S. Rai, Senior Advocate assisted by
Ms. Rubina Virmani, Ms. Radhika Mehta and
Mr. Arjun Singh Rai, Advocates for the appellant(s)

Mr. Siddhant Arora, Advocate for respondent
No. 1-HRERA

Mr. Bhupender Pratap Singh, Advocate for respondent
No. 2.

Mr. Raj Vijay Rohlania, Advocate for respondent
No. 7.

None for respondent Nos. 3 to 6, 8 and 9.

Mr. Aman Madan, Advocate with Mr. Vivek Dahiya,
Advocate (in CM No. 936 of 2024).

CORAM:

Justice Rajan Gupta
Rakesh Manocha

Chairman
Member (Technical)

O R D E R:

RAJAN GUPTA, CHAIRMAN

This order shall dispose of above mentioned two appeals, as common questions of law and facts are involved.

2. A project-Ireo Victory Valley was floated by the promoter in Sector 67, Gurugram. It appears that it has not yet been granted completion certificate or registration certificate (paragraph No.1 of the order passed by the Authority¹). It is claimed that certain units out of the project were purchased by appellants-Indiabulls Commercial Credit Ltd. and Evinos Builders Limited. Nidhi Singh preferred Complaint No. 2785 of 2021 against the promoter (M/s Ireo Victory Valley Private Ltd.) and other respondents claiming certain reliefs. Said complaint was disposed of by the Authority *vide* its order dated

¹ Haryana Real Estate Regulatory Authority, Gurugram)

04.03.2022 directing institution of enquiry in the affairs of the respondent-promoter with regard to the allegations made by Nidhi Singh. Chartered Accountant was also entrusted with the task of carrying out audit of accounts of the project and diversion of funds, if any. On 07.06.2022, an order was passed by an official of the Authority, operative part whereof reads as under:

“5. In view of the above said findings of the auditor M/s MKPS & Associates, Chartered Accountants and the fact that the project is still unregistered despite specific orders to that effect passed by the Authority including but not limited to the final judgment dated 04.03.2022, you the addressee No. 1 herein is hereby directed not to register any conveyance/sale deed in respect of the 43 units (36 units + 7 units) as mentioned in above tables until further orders of the Authority.

6. The addressee Nos. 2 to 6 herein are hereby directed to maintain status quo with respect to the said units and further directed not to facilitate any sales in the project, either directly or indirectly in any way, shape or form, until further orders of the Authority.”

3. Aggrieved by the aforesaid order, the appellants preferred Appeals No. 500 and 504 of 2022 before the predecessor Bench of this Tribunal and contended that the order passed by the official of the Authority was unsustainable and without jurisdiction. There was nothing to suggest that any power had been delegated to the said official empowering him to pass such an order. Agreements to sell in respect of 43 units, which were purchased by the appellants, were executed prior to the restraint order passed by the Authority. They also alleged

that they were neither arrayed as party in Complaint No. 2785 of 2021, titled "*Nidhi Singh v. M/s Ireo Victory Valley Pvt. Ltd. and others*" nor any opportunity of hearing was provided to them by the Authority before the restraint order was passed. The Tribunal, *vide* its order dated 01.09.2022, held that the order passed by the official i.e. Executive (Admin. & Estt.) was valid. It came to the conclusion that the audit report dated 30.05.2022 was put up before Vijay Kumar Goyal, one of the Members of the Authority, who had directed the office to initiate necessary action in view of violations pointed out in the audit report. It also observed that the note submitted by said Member was also endorsed by Chairman of the Authority on 31.05.2022. The predecessor Bench, thus, held that the impugned order was passed after due application of mind and procedural irregularity, if any, could be ignored. As regards plea of the appellants that they were not afforded any opportunity of hearing, it gave liberty to the appellants to approach the Authority for vacation of the restraint order by taking all available pleas. The appeals were accordingly dismissed.

4. The appellants, instead of filing any application in view of the liberty granted by the Tribunal, impugned the order before Hon'ble Punjab and Haryana High Court by way of RERA Appeal No. 44 of 2022. The plea that the order dated 07.06.2022 was without any jurisdiction or delegation by the Authority was raised before the Court. The same was dealt with and findings were returned against the appellants. Relevant paragraphs are reproduced hereunder for ready reference:

“8. This Court has analyzed the arguments of the learned counsel. With regard to the first argument of the learned counsel, it may be noticed that the Real Estate Regulatory Authority, while issuing direction on 04.03.2022, had directed a firm of chartered accountants to carry out the said inquiry/audit/fact finding in the affairs of the promoter. It was also observed that the report, as submitted by the inquiry officer/auditor/fact finding team, shall be examined by the Planning Branch of RERA and if violations are noticed, the matter shall be placed before the authority for initiating further action, as per the provisions of law. Pursuant thereto, the report was submitted, which was examined by the appropriate authority at the relevant stage.

9. On 31.05.2022, the office of the Authority, after processing the report alongwith the record, placed the file before a Member of the Real Estate Regulatory Authority. The Member directed the office to initiate the necessary action, especially on the violations pointed out in the audit report while directing the issuance of interim directions to stay the sale of the property of any kind. The Member also directed the office to make a reference for the same. Thereafter, the file was sent to the Chairman, who countersigned the note. Subsequently, a draft copy of the letter was prepared and submitted for approval, which was granted. In such circumstances, the learned counsel is not correct in contending that the order has not been signed by the authority.”

5. As regards the plea that restraint order had been passed without affording opportunity to the appellants, the Hon’ble High Court observed that the order under challenge was only in nature of an interim direction and that the Appellate Tribunal had already granted liberty to the appellants to knock at the doors of the Authority for modification/vacation

of the restraint order. It, thus, dismissed the appeals. It was clearly held that the question whether the Authority had any power to delegate was not required to be examined in view of the fact that the order had been passed by a Member of the Authority and approved by the Chairman. Relevant paragraphs are reproduced hereunder for ready reference:

“11. As regards the last argument, it may be noted that the authority has only passed an interim order. The matter is still pending before the authority. In fact, the appellate authority has observed that non-joining of the appellants as party, in the complaint No. 278 of 2021, was beyond the control of the complainant as she could not have visualized that the promoter was in the process of transferring the units to the appellant. Moreover, the appellate Tribunal has already granted liberty to the appellant to knock the doors of the learned authority for modifying/vacating the restraint orders, by taking all the pleas available to it.

12. Lastly, the argument of the learned counsel that the authority has no power to delegate is not required to be examined, particularly when on careful perusal of the photocopy of the order, it is evident that the order was passed by a Member of the Authority which has also been approved by the Chairman.

13. Consequently, finding no merit, the appeal is dismissed. However, before closing the judgment, it is considered appropriate to request the Real Estate Regulatory Authority to conclude its investigation/inquiry in an expeditious manner, positively within a period of next six months, from today.

15. With these observations, the appeal is dismissed.

16. All the pending miscellaneous applications, if any, are also disposed of.”

[Emphasis supplied]

6. The appellants still did not approach the Authority in view of liberty granted in aforesaid order. They, however, preferred Special Leave to Appeal (C) No(s). 24061/2022 before the Hon’ble Supreme Court. Same was disposed of *vide* order dated 04.01.2023. The order passed is reproduced hereunder for ready reference:

“We notice that the High Court in the impugned order has, inter alia, noticed that the appellate Tribunal has already granted liberty to the petitioner to knock the doors of the learned authority for modifying/vacating the restraint orders by taking all the pleas available to it.

Bearing the same also in mind, we are not incined to entertain the special leave petition. The special leave petition is dismissed.

Pending application(s), if any, stand disposed.”

7. After the aforesaid order was passed, the appellants moved applications before the Authority wherein number of pleas were raised. Same were, however, dismissed by the Authority *vide* impugned order dated 07.02.2024. Paragraph 63 thereof reads as under:

“63. In the light of the aforesaid discussion, this authority finds no merit in the applications and the same are accordingly dismissed and the order dated 07.06.2022 is re-affirmed and made absolute. All pending intervention applications are also disposed of in the above terms. Further, this Authority adopt the audit report and the supplementary report filed by the auditor and holds that the promoters as well as the

applicants herein shall be bound by it. Accordingly, the application of the applicants w.r.t. vacation of order dated 07.06.022 is declined being devoid of merits.”

8. Mr. Rai, learned senior counsel for the appellants, has impugned the order and submitted that the same is wholly unsustainable. He primarily argued that restraint order dated 07.06.022 was passed by an official of the Authority, who was not empowered to pass any restraint order under any provision of the Act². The order was, thus, *non-est* and needed to be declared as such. As per him, this plea was raised before the Authority as well but it did not deal with the same. On the other hand, it returned number of findings which were not warranted.

9. Mr. Bhupender Pratap Singh, counsel for respondent No. 2-Nidhi Singh referred to the orders passed by the Tribunal, whereby plea raised by the appellants was rejected. He also referred to the order passed in RERA Appeal No. 44 of 2022 to state that the Tribunal's order was upheld by the Hon'ble High Court.

10. Applications were moved by the intervenors who, *inter alia*, contended that their plea with regard to averments made in their applications need to be considered by the Tribunal as they are necessary parties to the case. It is important that their interest be protected as they were bonafide purchasers of the units.

11. We heard learned counsel for the parties and have given careful consideration to the facts of the case.

² The Real Estate (Regulation and Development) Act, 2016

12. The primary question that arises for adjudication is about the validity of order dated 07.06.2022, which bears the signatures of Executive (Admin. & Estt.), whereby respondents No. 3 to 5 and 8 herein were directed to maintain *status quo* with respect to the units in question and further directed not to facilitate any sales in the project either directly or indirectly in any way, shape or form. This was subject-matter of examination by this Tribunal in Appeal Nos. 500 and 504 of 2022. It found that the order dated 31.05.2022 had been passed after Vijay Kumar Goyal, a Member of the Authority, directed the office to initiate action in view of the violations pointed out in the audit report. This note was endorsed by the Chairman on 31.05.2022. Finding that the order had been passed after due application of mind, it was upheld. Grievance of the appellants that they had not been heard was also redressed by allowing them to make appropriate application before the Authority. The appellants, however, challenged the order before the Hon'ble High Court which came to the same conclusion as the Tribunal. It was also observed that the appellants had been granted opportunity by the Tribunal to approach the Authority for modification/vacation of the restraint order. In the Special Leave Petition preferred by the appellants, the Hon'ble Apex Court, after noticing that opportunity had already been granted to the appellants to knock the doors of the learned Authority, declined to entertain the SLP and thus, dismissed the same.

13. It was at this stage that the appellants approached the Authority which passed detailed order re-affirming its

earlier order and declining the prayer for vacation of interim order dated 07.06.2022.

14. Having examined the relevant record and the jurisdictional issue raised by the appellants, we find that there is no ground to interfere with the same.

15. While discharging its quasi-judicial functions, it appears that Vijay Kumar Goyal, one of the Members of the Authority, directed the office to initiate action against the concerned in view of the violations pointed out in the audit report. This proposal/direction was endorsed by the Chairman of the Authority *vide* his order dated 31.05.2022. It appears that a communication incorporating the order was thereafter sent by the Executive (Admin. & Estt.) to the concerned parties. The issue regarding validity of this procedure adopted by the Authority had been examined by this Tribunal in its earlier order and affirmed by Hon'ble High Court. This Bench finds no reason to deviate from the view already taken.

16. The other grievance of the appellants that they were not afforded opportunity of hearing no longer survives. After dismissal of SLP by Hon'ble Supreme Court, they approached the Authority which passed a detailed order refusing to vacate restraint order dated 07.06.2022. It is, thus, apparent that ample opportunity of hearing has been granted to the appellant by the Authority and also by this appellate body. Besides, the main issue is still pending before the Authority below and the hearing is being conducted by three Members sitting together. This Tribunal hopes and trusts that decision shall be taken by the Authority expeditiously.

17. As regards the grievances of respondent No. 2 and the intervenors, suffice it to say that this Tribunal need not express any opinion on merits as same are not directly in issue before this Bench and can be adjudicated by the Authority.

18. In view of above, the appeals are hereby dismissed with no order as to costs.

Rajan Gupta
Chairman
Haryana Real Estate Appellate Tribunal

Rakesh Manocha
Member (Technical)

April 01, 2025
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