Appeal No. 344 of 2019

Date of Decision: 13.01.2020

Smt. Sonia Bansal wife of Sh. Lalit Bansal, resident of H.No. 2190, Sector-13, Urban Estate, Karnal – 132001.

...Appellant

Versus

Pareena Infrastructure Pvt. Ltd., Flat No.2, Palms Apartment, Sector-5, Plot No.13-B, Dwarka, New Delhi.

... Respondent

Coram: **Justice Darshan Singh (Retd), Chairman**
Sh Inderjeet Mehta, Member (Judicial)
Sh Anil Kumar Gupta, Member (Technical)

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Present: Shri Drupad Sangwan, Advocate, Ld counsel for the appellant.

Shri Amit Jain, Advocate, Ld counsel for the respondent.

ORDER

1. Feeling aggrieved by the order dated 20.03.2019 handed down by Ld. Haryana Real Estate Regulatory Authority, Gurugram, (hereinafter referred as 'the Authority') in complaint No.2280 of 2018 titled Smt. Sonia Bansal Vs. M/s Pareena Infrastructure Pvt. Ltd., vide which the complaint preferred by the

appellant/complainant for refund of the amount deposited by her with the respondent, was partly allowed, she has chosen to prefer the present appeal.

2. As back as in the year 2013, on the assurance of the representative of the respondent, the complainant had booked a 2BHK Flat in a Group Housing Society proposed in Sector-68, Gurugram.It was assured at that time that the price of the said flat would be around Rs.55 to 60 lacs and no further amount would be payable by the complainant. On the said assurance of the representative of the respondent, the complainant paid an amount of Rs.5,00,000/- on 20.11.2013, amount of Rs.6,82,571/- on 30.04.2014 and Rs.2,19,621/- on 22.05.2015. In this way, the total amount of Rs.14,02,192/- was deposited by the complainant with the respondent.

3. Thereafter, on 18.02.2015, the complainant sent a letter through registered post to the respondent requesting refund of the total amount of Rs.14,02,192/- on account of the reason that till the said date, the construction of the project had not started and the price of the flat had escalated. After receipt of the said letter dated 18.02.2015, the

respondent sent an allotment letter on 15.07.2015 mentioning therein that on an application dated 22.05.2015 preferred by the complainant, the flat was allotted. Infact, the complainant had never submitted any such application to the respondent and thus, the said allotment letter is a bogus document.

4. Since, inspite of best efforts of the complainant, the amount of Rs.14,02,192/- was not returned by the respondent, so having no other option the complainant/appellant was constrained to institute the complaint before the Authority.

5. Upon notice, the respondent/promoter had resisted the complaint preferred by the appellant/complainant on the grounds of maintainability and suppression of material facts.On merits, it had taken a stand that after coming to know from a broker namely Axiom Properties qua development of Coban Residences in Sector-99/A, Gurugram, being developed by the respondent, the complainant had approached the respondent requesting for allotment of unit and paid the amount of Rs.5,00,000/- for the same vide cheque dated 20.11.2013 and another amount of Rs.6,82,571/- vide cheque dated 30.04.2014. However, after coming to

know that the respondent was developing a project namely MICASA in Sector-68, Gurugram, the complainant through the same broker requested for substitution of the earlier unit in Coban Residences on 22.05.2015 with a unit in MICASA. The complainant even paid an amount of Rs.2,19,621/- vide cheque dated 22.05.2015. Subsequently, on 15.07.2015, a unit in MICASA was allotted to the complainant and an allotment letter was also issued to the complainant in this regard. Subsequent thereto, vide letter dated 09.09.2015, the respondent sent a letter along with two copies of Apartment Buyer Agreement which were duly received by the complainant. However, she failed to sign the said agreement without any justifiable cause. Since thereafter, neither any effort was made by the complainant to sign the Apartment Buyer Agreement nor any amount was deposited towards the price of the apartment, so the complainant is not entitled for refund of the deposited amount and prayed for dismissal of the complaint.

6. After taking into consideration all the material facts as adduced by both the parties, the Ld. Authority while exercising powers vested in it under Section 37 of the Real Estate (Regulation & Development) Act,

2016 (hereinafter called, the 'Act') disposed of the complaint, preferred by the appellant, with the following directions to the respondent:-

> *(i)* *Keeping in view the default on the part of complainant, respondent is directed to forfeit 10% of basic sale price and refund the balance amount deposited by the complainant within 90 days from today.*

7. Hence, the present appeal.

8. Initiating the arguments, Ld. Counsel for the appellant has submitted that the appellant had deposited the amount of Rs.14,02,192/- qua a unit in Coban Residences in Sector-99, Gurugram, being developed by the respondent and as the construction of the said project had not started and the price of the flat had escalated, so vide letter dated 18.02.2015, he had asked for refund of the said amount from the respondent. Further, it has been submitted that the allotment letter dated 15.07.2015 qua the unit in project MICASA, also being developed by the respondent, is a bogus document and the appellant never made any request to the respondent for allocation of any unit in the project MICASA. Lastly, it has been submitted that the Ld. Authority without any

justifiable cause and reason has held the respondent entitled to forfeit 10% of the basic sale price and in fact, the appellant deserves the refund of the total amount of Rs.14,02,192/-.

9. Countering this vehemently, Ld. counsel for the respondent while drawing the attention of this Tribunal towards the application (available at page 80 of the paper book) for substitution of the allotment of flat/dwelling unit has submitted that on 22.05.2015, the appellant had requested for substitution of his unit in the Coban Residences in Sector-99/A, Gurugram, to another project being developed by the respondent in Sector-68, Gurugram and had even requested to adjust the amount of Rs.5,00,000/-, initially deposited by the appellant towards the earlier unit in Coban Residences. Acceding to her request, the unit allotted to the appellant in Coban Residences was substituted with another unit in the MICASA being developed by the respondent and the appellant had agreed to purchase the same for an amount of Rs.83,85,367/- after adjustment of the amount already deposited by her. Further, it has been submitted that thereafter allotment letter dated 15.07.2015 (available at page 31 of the paper book)

was issued and thereafter the appellant neither signed the Apartment Buyer Agreement sent to her nor paid the remaining amount. So, she is not entitled for refund of the amount and the Ld. Authority vide impugned order has rightly held the respondent entitled to forfeit 10% of the basic sale price and there is no illegality and infirmity in the findings arrived at by the Ld. Authority and the present appeal deserves to be dismissed.

10. After thoroughly going through the impugned order and the material available on the record, we are of the considered opinion that the arguments advanced by the Ld. counsel for the appellant are not only bereft of merit but are also misconceived for the reasons as stated hereinafter.

11. Admittedly, an amount of Rs.14,02,192/- had been paid by the appellant to the respondent till 22.05.2015. Regarding the submission of the ld. counsel for the appellant that the allotment letter dated 15.07.2015 is a bogus document, it is suffice to say that to substantiate the said allegation, no evidence or document worth the name has been led or is available on the record of the case. In fact, a perusal of the application preferred by the appellant for substitution of allotment of flat/dwelling unit

(available at page 80) shows that earlier the appellant had applied for allotment of residential apartment being developed by the respondent under the name and style of Coban Residences in Sector-99/A, Gurugram, and an amount of Rs.5,00,000/- was paid by her towards the earnest money and booking amount. After coming to know that another project was being developed in Sector-68, Gurugram by the respondent, she requested for allotment of a unit in the new project MICASA and also requested to adjust the earnest amount towards the booking in the said project. At the time of making that application, she had also moved an application dated 22.05.2015 (available at page 81 of the paper book) for allotment of flat/dwelling unit in MICASA in Sector-68, Gurugram, Haryana being developed by the respondent. In the said detailed application the price of the unit at MICASA has been mentioned to be Rs.83,85,367/-. Both these applications for substitution of the allotment as well as for allotment of the flat in MICASA dated 22.05.2015, are duly signed by the appellant. Though, the said allotment letter dated 15.07.2015, has been alleged to be a bogus document but we have compared the signature of the appellant on the appeal as well as

on the affidavit annexed with the appeal, with her signatures on applications for substitution of allotment and for allotment of flat in MICASA dated 22.05.2015 and these appear to have been signed by the same person. Moreover, the burden to prove that her signatures have been forged on the application for substitution of the allotment, was on the appellant, but she has not led any evidence to show that her signatures were forged on the said application. Thus, the stand taken by the appellant that the application dated 22.05.2015 and the allotment letter are bogus documents, cannot be attached any credence.

12. Further, a perusal of this allotment letter dated 15.07.2015 reveals that in the said allotment letter it has been specifically mentioned that the said allotment of the said apartment did not entitle the appellant any right in the said apartment till the Apartment Buyer Agreement was executed and the payment towards the sale price and all other charges in respect of the said apartment are paid in full. Admittedly, as agreed by the ld. counsel for the appellant, Apartment Buyer Agreement was sent to the appellant. However, as submitted by the ld. counsel for the appellant, the same was not

executed because the price of the unit had been unnecessarily escalated by the respondent. There appears to be no substance in this submission made by the ld. counsel for the appellant. As referred to above in the application dated 22.05.2015 regarding the allotment of unit in MICASA, it was specifically mentioned that the value of the unit is Rs. 83,85,367/- and the said document is a genuine document which was duly signed by the appellant. Since, the appellant did not execute the Apartment Buyer Agreement nor paid the payment towards the sale, so in these circumstances the appellant was not entitled to the total refund of Rs.14,02,192/- and it appears that the appellant, in fact, intended to wriggle out of the project without any justification.

13. Faced with the situation, ld counsel for the appellant has submitted that the finding of the Authority that the respondent is entitled to forfeit 10% of the basic sale price, out of the amount deposited by the appellant is not tenable and justifiable and the same be set aside.

14. The aforesaid submission of the Ld. counsel for the appellant is also without any substance because neither the appellant signed the Apartment

Buyer Agreement nor paid the remaining sale price. In fact, the deduction of 10% of total sale consideration of the unit, out of the amount deposited by the complainant, is also inconformity with the Regulations 2018, as notified by the Authority, wherein, it has been stipulated that forfeiture amount of the earnest money shall not exceed more than 10% of the consideration amount of the Real Estate i.e. apartment/plot/building. Thus, there is no illegality in the findings arrived at by the Ld. Authority that the respondent is entitled to forfeit 10% of the basic sale price in the given facts and circumstances of the case.

15. All said and done. However, the fact remains that as ordered in the impugned order, the respondent is liable to refund an amount of Rs.5,65,656/- (Rs.14,02,192 minus Rs.8,36,536 being 10% of the sale price) within 90 days from the date of the impugned order i.e. 20.03.2019. Admittedly, till date the said amount of Rs.5,65,656/- has not been refunded by the respondent to the appellant. Since, the appellant had to knock the door of the Authority for refund of the amount, so she is entitled for the refund of said amount Rs.5,65,656/- {Five lacs, sixty five

thousand, six hundred and fifty six} along with interest at the rate of 10.20% (maximum SBI MCLR +2%) per annum from the date of institution of the complaint, i.e., 21.12.2018 before the Authority, till realisation.

16. Resultantly, as a consequence to the aforesaid discussion, the present appeal is partly allowed as referred to above.

17. File be consigned to record.

Announced:

January 13th, 2020

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

Inderjeet Mehta
Member (Judicial)

Anil Kumar Gupta
Member (Technical)