



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

BEFORE THE ADJUDICATING OFFICER

COMPLAINT NO. 92 OF 2020

Baldev Singh & Anr.

....COMPLAINANTS

VERSUS

Ultratech Township Developers Pvt. Ltd.

....RESPONDENT

Date of Hearing: 12.03.2020

Hearing: 2nd

Present:- Ms. Rakhi, Counsel for the complainants.
Ms. Divya Kathuria, Counsel for the respondent.

ORDER (Dr. Sarita Gupta-Adjudicating Officer)

1. Arguments heard on maintainability of the present complaint before undersigned in the event of dismissal of Complaint no. 335 of 2018 titled as Baldev Singh & anr. vs. Ultratech Township Developers Pvt. Ltd. by the Haryana Real Estate Regulatory Authority, Panchkula.

2. It has been argued by learned counsel for the complainants that complainants in their Complaint no. 335 of 2018 titled as Baldev Singh & anr.

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vs. Ultratech Township Developers Pvt. Ltd . had sought refund of the amount paid by them to the respondent but the Haryana Real Estate Regulatory Authority, Panchkula vide its order dated 27.11.2018, had rejected their plea of refund and directed respondent to handover possession of their unit along with compensation on account of delay in delivery of possession. Thereafter, Hon'ble Real Estate Appellate Tribunal, Chandigarh, while deciding bunch of matters on 02.05.2019 with lead Case No. 6/18 – titled as Sameer Mahawar Versus M.G. Housing Pvt. Ltd. has held that cases involving relief for refund along with interest and compensation lie within the jurisdiction of Adjudicating Officer and cannot be decided by the Real Estate Regulatory Authority. Therefore, order dated 27.11.2018 passed by the Haryana Real Estate Regulatory Authority, Panchkula has become bad in law due to lack of jurisdiction. Hence, the present complaint is maintainable before the Adjudicating Officer.

3. Learned counsel for the respondent has argued that the present complaint is not maintainable as the matter had already been decided by the Haryana Real Estate Regulatory Authority, Panchkula vide its order dated 27.11.2018. The said order has attained finality as no appeal has been filed against that order by either of the parties. Moreover, the aforementioned Case No. 6/18 – titled as Sameer Mahawar Versus M.G. Housing Pvt. Ltd decided by Hon'ble Real Estate Appellate Tribunal, Chandigarh does not apply to the

present case. Hence, the present complaint is not maintainable and should be dismissed.

4. After perusal of record and hearing both parties, it is evident that the complainants had earlier filed Complaint No. 335 of 2018 titled as Baldev Singh & anr. vs. Ultratech Township Developers Pvt. Ltd., before the Haryana Real Estate Regulatory Authority, Panchkula wherein they had sought refund of the amount paid by them to the respondent. Vide its order dated 27.11.2018, the Haryana Real Estate Regulatory Authority, Panchkula rejected their plea of refund and directed respondent to handover possession of their unit along with compensation on account of delay in delivery of possession. Now, the complainants have filed the present complaint before the Adjudicating Officer qua the same unit and seeking the same relief of refund. As per the principle of "Res Judicata" there should be a finality to litigation and no one should be vexed twice for the same cause of action. It has also been admitted by the complainants that at the time of passing of order dated 27.11.2018, the Haryana Real Estate Regulatory Authority, Panchkula was well within its jurisdiction to hear and decide the complaint.

5. Therefore, once an issue regarding the same unit has already been decided by a court i.e. the Haryana Real Estate Regulatory Authority, Panchkula, which had the jurisdiction to hear and decide the matter at that time, the same issue qua the same subject matter for same relief cannot be reopened before another court i.e. the Adjudicating Officer. As far as the

application of Case No. 6/18 – titled as Sameer Mahawar Versus M.G. Housing Pvt. Ltd passed by Hon'ble Real Estate Appellate Tribunal, Chandigarh to the present case is concerned, it is a right in personam which only determines the rights of the litigants/parties inter se to the res. It is judgment in rem not judgment in personam. Hence, the observations in aforementioned judgment by the Appellate Tribunal will only bind the litigating parties and not everyone even though having similar facts of the case.

In view of the aforementioned discussion, it is observed that the present complaint is not maintainable before the Adjudicating Officer and hence ordered to be dismissed. File be consigned to record room and the order be uploaded on the website.

Sarita Gupta

DR. SARITA GUPTA
[ADJUDICATING OFFICER]