

M/s Omaxe Ltd. &Anr.

Vs.

Dr. Seema Jain &Anr.

Appeal No.259 of 2020

Present: Shri Munish Gupta, Advocate, Ld. counsel for the appellant.
Shri Brahma Prakash, Advocate, Ld. counsel for the respondent.

{The aforesaid presence is being recorded through video conferencing since the proceedings are being conducted in virtual Court}

Respondents have filed reply to the grounds of appeal along with Annexures R-4 and R-8. There is no provision for taking reply to the grounds of appeal. So, the reply filed by the respondents-allottees is not being taken on record. However, Annexures R-4 and R-8 being the documents filed by the appellants before the Ld. Authority are taken on record.

2. The present appeal has been preferred against the order dated 04th March, 2020 passed by the Ld. Authority vide which the Ld. Authority has appointed 'Baldev Garg & Co.' firm of Chartered Accountant to examine the records of the respondents with respect to the following issues:-

“(i) what was the date of booking in case of each allottee.

(ii) what was the description given about the booked property in the receipts issued to the allotted person.

(iii) whether possession has been given to any of the person who had booked property after 03.02.2011 which is the date of booking by the person whose rights have devolved upon the present complainant.

(iv) whether any property similar to the one allotted to a person who made booking after 03.02.2011, is available with the respondent.

(v) whether or not the promoter had sold property to fresh persons in the above named project after 03.02.2011 and if so, what was the rate at which such sale was made.”

3. Ld. counsel for the appellant has contended that no specific property was allotted to the respondent, they have just purchased the allotment rights from the previous allottee.

4. Shri BrahmaPrakash, Ld. counsel for the respondent has pleaded that the appellant-promoter has received Rs.20 lacs from the respondents-allottees. They have also paid Rs.3 lacs to the previous allottee. In this way, they have paid the huge amount.

5. He further contended that the appellants are still having unsold units in their project namely "Omaxe World Street" which the respondents-allottees are entitled for allotment as per the original booking.

6. These issues raised by Ld. counsel for the respondents relate to the merits of the case. The present appeal is only against the interim Order and the grievance raised by the appellant-promoter is with respect to the appointment of 'Baldev Garg & Co.' Chartered Accountant to examine the records of the respondents.

7. In the present case, the allotment of only one unit is involved and for the adjudication of such dispute, in our view, this type of fishing enquiry by the Chartered Accountant should not be indulged into. The information sought by the Ld. Authority in Para 7 of the impugned order can be extracted by way of affidavit of the Director of the appellant-promoter. Thus, the impugned order dated 04th March, 2020 passed by the Ld. Authority is hereby modified. Instead of any examination of the records by the Chartered Accountant, the Director of the company, well-conversant with the facts of the case, will file his affidavit with respect to all the 5 points formed by the Ld. Authority in the impugned order with the Ld. Authority within a period of four weeks with advance copy to Ld. counsel for the respondents-allottees.

8. The respondents-allottees will also be entitled to file the counter-affidavit, if they so desire.

9. The present appeal stands disposed of accordingly.

10. Copy of this order be sent to Ld. counsel for the parties/parties and Ld. Haryana Real Estate Regulatory Authority, Panchkula for compliance.

11. File be consigned to the records.

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

Inderjeet Mehta
Member (Judicial)

Anil Kumar Gupta
Member (Technical)

03.11.2020
Gaurav