

**BEFORE THE HARYANA REAL ESTATE APPELLATE
TRIBUNAL**

**Appeal No.73 of 2020
Date of Decision: 01.02.2021**

M/s Alpha Corp. Development Private Limited, Golf View Corporate Towers, Tower-A, Sector 42, Golf Course Road, Gurgaon-122002.

Appellant

Versus

Mrs. Vibha Gandhi, Resident of House No.825, IInd Floor, Arjun Nagar, Kotla Mubarakpur, New Delhi-110003.

Respondent

CORAM:

Justice Darshan Singh (Retd.)	Chairman
Shri Inderjeet Mehta	Member (Judicial)
Shri Anil Kumar Gupta	Member (Technical)

Argued by: Shri Harsh Bunger, Advocate, Id. Counsel for the appellant.
Shri J.M. Chhabra, learned Authorised Representative for the respondent.

ORDER:

JUSTICE DARSHAN SINGH (Retd.) CHAIRMAN:

The present appeal has been preferred by the appellant/promoter under Section 44 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter called 'the Act'), against the order dated 10.12.2019 passed by the learned Haryana Real Estate Regulatory Authority, Gurugram (hereinafter called 'the Authority'), vide which the complaint filed by the respondent/allottee was disposed of ex parte with the following directions:-

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- “i. The respondent is directed to pay delayed possession charges at prescribed rate of interest i.e. 10.20% per annum w.e.f. 06.05.2016 to 13.10.2017 as per the provisions of section 18(1) of the Real Estate (Regulation & Development) Act, 2016.*
- ii. The complainant is directed to take over the possession of the unit within a period of 30 days by making the requisite payments to the respondent failing which the respondent shall be entitled to charge holding charges.*
- iii. Interest on the due payments from the complainant shall be charged at the prescribed rate of interest i.e. 10.20% p.a. by the promoter which is the same as is being granted to the complainant in case of delayed possession.*
- iv. Complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.*
- v. The promoter shall not charge anything from the complainant which is not part of the apartment buyer’s agreement.”*

2. We have heard Shri Harsh Bunger, Advocate, learned counsel for the appellant, Shri J.M. Chhabra, learned Authorised Representative for the respondent and have carefully examined the record of the case.

3. Learned counsel for the appellant contended that the impugned order passed by the learned Authority is

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violative of the principles of natural justice. He contended that the case was listed before the learned Authority on 26.09.2019. On that date, learned Presiding Officers were busy in the administrative work and the next date of hearing was to be informed later on. He contended that the next date of hearing was never conveyed to the appellant/promoter by the learned Authority before initiating the ex parte proceedings and consequent impugned order. He contended that the e-mail with respect to the next date of hearing was sent on the wrong ID and was never received by the appellant or the counsel for the appellant.

4. He further contended that the learned Authority had directed the respondent/allottee to file the second complaint which was filed by the respondent/allottee on 04.12.2019. The learned Authority did not supply the copy of the said complaint to the appellant/promoter. No reply of the appellant/promoter to the second complaint was taken and on the very first date of hearing, the appellant/promoter was proceeded against ex parte and the impugned order was passed. He contended that substantial questions of law and facts were involved in the present case, but those were not touched at all by the learned Authority and the complaint filed by the respondent/promoter was allowed ex parte which is violative of the principles of natural justice and has resulted in great prejudice to the rights of the appellant. Thus, he

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contended that the impugned order is liable to be set aside and the case should be remanded to the learned Authority for fresh decision in accordance with law after obtaining reply of the appellant/promoter to the second complaint.

5. On the other hand, Shri J.M. Chhabra, learned authorised representative of the respondent/allottee contended that the appellant/promoter had every knowledge of the next date of hearing fixed by the learned Authority after 26.09.2019. He contended that the learned Authority had sent the notice regarding the next date of hearing to the appellant/promoter through e-mail dated November 19th, 2019. He further contended that the intimation of the next date of hearing was even sent through SMS generated in the system of the learned Authority on telephone no.9818842202 of Shri Parveen Kumar, Senior Manager (Legal) of the appellant, who had been appearing in this case before the learned Authority.

6. He further contended that the appellant has filed the amended complaint in the format "CRA" as a result of amendment of the rules as per the direction given by the learned Authority in the notice dated 19.11.2019. He contended that as per the regulations framed by the learned Authority, the appellant was required to file reply to the said complaint within seven days itself on its own. The copy of the amended complaint was duly sent by the respondent/allottee

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to the appellant/promoter and even the next date of hearing i.e. 10.12.2019 was written in hand on the upper part of the first page of the amended complaint. That was also a notice to the appellant with respect to the next date of hearing. He contended that the appellant was having due knowledge regarding the next date of hearing. Earlier also, the counsel for the appellant had absented from the proceedings of the case on various dates. So, the appellant has been rightly proceeded against ex parte by the learned Authority and there is no violation of the principles of the natural justice.

7. He further contended that the respondent/allottee had purchased the flat in question from the original allottee on 01.12.2011. Though, a period of ten years has elapsed but the appellant is illegally declining the delivery of possession. He contended that if the case is remanded, it will further cause delay. He further contended that as the counsel for the appellant/promoter had not appeared in spite of due notice of the next date of hearing i.e. 10.12.2019, so the only option before the learned Authority was to initiate ex parte proceedings against the appellant/promoter. Thus, he contended that there is no illegality in the action taken by the learned Authority.

8. We have duly considered the aforesaid contentions. We are reproducing certain relevant interim orders passed by

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the learned Authority during the proceedings of the complaint which read as under:-

“ *Proceedings*

Project is not registered with the authority.

Since the project is not registered, notice under section 59 of the Real Estate (Regulation & Development) Act, 2016, for violation of section 3(1) of the Act be issued to the respondent. Registration branch is directed to do the needful.

Ms. Debhina Dey Assistant Manager (Legal) appearing on behalf of respondent-company has requested for short adjournment which is allowed subject to payment of costs of Rs.5,000/- to be paid to the complainant. Case is adjourned to 13.8.2019 for final arguments.

*Samir Kumar
(Member)
06.08.2019*

*Subhash Chander Kush
(Member)”*

“ *Proceedings*

Ms. Parul Singh, Advocate has appeared on behalf of the respondent and filed power of attorney and a copy of resolution passed by the Board of Directors.

Coram not complete. Case is adjourned to 26.9.2019 for the purpose as already fixed.

*Subhash Chander Kush
(Member)
13.08.2019”*

“ *Proceedings*

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The Presiding Officers are busy in administrative work and the next date of hearing will be informed later on.

*Reader,
26.9.2019”*

9. From the aforesaid proceedings, it comes out that the complaint was listed on 06.08.2019 for hearing the final arguments. On the request made by Ms.Deblina Dey, the Assistant Manager (Legal), the case was adjourned to 13.08.2019 for final arguments subject to Rs.5,000/- as costs. On 13.08.2019, Ms. Parul Singh, Advocate had appeared on behalf of the respondent and filed the Power of Attorney and Board Resolution of the appellant/promoter. Since, the Coram was not complete, so the case was adjourned to 26.09.2019 for the purpose already fixed i.e. for final arguments. On 26.09.2019, the case could not be taken up as learned Presiding Officers were busy in the administrative work. It was ordered that the next date of hearing shall be informed later on.

10. It is the case of the appellant that after 26.09.2019, the next date of hearing was never communicated to it by the learned Authority. No reply to the amended complaint was invited and on the very first date of hearing, the ex parte proceedings were initiated and the impugned order, adversely affecting the substantial rights of the appellant, was passed by violating the principles of natural justice.

11. As per Section 38 sub-section (2) of the Act, for disposing of the complaint filed before the learned Authority, it shall be guided by the principles of the natural justice. The compliance of the doctrine of natural justice is not only to secure justice but to prevent miscarriage of justice also. The adherence to principles of natural justice is of supreme importance when a quasi-judicial body embarks on determining disputes between the parties. A full and fair opportunity of being heard is required to be provided to every party before the quasi-judicial authority determining the rights of the parties. If the due opportunity of being heard is not provided, it is violative of the principles of natural justice. To support the aforesaid view, reference can be made to the following cases:-

- (1) **Sirandip Singh Panag Versus State of Punjab and others, 2008(3) S.C.T. 766;**
- (2) **Kumaon Mandal Vikas Nigam Ltd. Versus Girja Shankar Pant, AIR 2001 (SC) 24;**
- (3) **Nagarjuna Construction Co. Ltd. Versus Govt. of Andhra Pradesh & Ors. 2008(16) SCC 276**
- (4) **Ajay Nanalal Soni Lecturer Vs. P. Paneervel And Or His Successor In Office & 2, 2008(24) S.C.T. 914.**

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12. It is being alleged that the next date of hearing after 26.09.2019 was communicated to the appellant/promoter through e-mail as well as SMS on the mobile number of Shri Parveen Kumar, Senior Manager (Legal) of the appellant/promoter. As per the documents available on record i.e. the copy of the Board Resolution, the amended complaint filed by the respondent/allottee herself, letter dated 13.10.2017 sent by the appellant/promoter to the respondent/allottee and the e-mail dated September 21st, 2018 sent by the learned Authority to the appellant, the correct e-mail ID of the appellant/promoter has been mentioned as under:-

“ info@alpha-corp.com ”

The respondent can not dispute the correctness of e-mail ID reproduced above as the respondent/allottee herself mentioned this very e-mail ID in the amended complaint filed by her. But, the notice dated 19.11.2019 regarding the next date of hearing was communicated to the appellant on the following e-mail ID:-

“ info@alpha-corp.in ”

Thus, the e-mail ID through which the next date of hearing was communicated to the appellant/promoter was apparently wrong. So, there is no question of delivering the notice of the next date of hearing i.e. 10.12.2019 to the appellant/promoter by the learned Authority through e-mail.

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13. The learned authorised representative of the respondent/allottee has contended that the intimation regarding the next date of hearing was also given to the appellant through SMS on the mobile number of Shri Parveen Kumar, Senior Manager (Legal). But, the attendance-sheet dated 06.08.2019 and 13.08.2019 immediately preceding the disputed date of hearing, shows said Parveen Kumar had not appeared before the learned Authority on 06.08.2019 but Ms.Deblina Dey, Assistant Manager (Legal), had appeared for the appellant. She has mentioned her mobile number and e-mail ID on the attendance-sheet dated 06.08.2019. On 13.08.2019 again, said Ms.Deblina Dey, had appeared along with Ms. Parul Singh. The mobile number of Ms.Deblina Dey and her e-mail ID was again mentioned in the attendance sheet dated 13.08.2019. The learned Authority has not sent any SMS communicating the next date of hearing on the mobile phone number of Ms.Deblina Dey, the Assistant Manager (Legal), who had appeared before the learned Authority immediately preceding the disputed date of hearing. Rather, it is alleged that the SMS was sent on the mobile number of Parveen Kumar, who had appeared before the learned Authority on some initial dates. It may be possible that at the relevant time Parveen Kumar might not be dealing with this case.

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14. Learned authorised representative of the respondent/allottee has alleged that he had sent the copy of the amended complaint to the appellant/promoter and had written the next date of hearing i.e. 10.12.2019 in his hand on the first page of the amended complaint. We are not impressed with this plea raised by learned authorised representative of the respondent/allottee. It was the duty of the learned Authority to communicate the next date of hearing to the appellant/promoter. This function cannot be delegated or performed by the opposite party.

15. It is further an admitted fact that on the direction of the learned Authority, the respondent/allottee had filed the amended complaint which was received in the office of the learned Authority on 04.12.2019.

16. In the original complaint, the respondent/allottee has sought the following relief:-

“(i) Requests that the Developer M/s Alpha Corp Development Pvt. Limited may kindly be directed to accept the amount of last instalment “At the Time of Possession” as per the Buyers Agreement excluding the amount charged on account of extra common area and Escalation in the Demand dated 13-10-2017.

(ii) The Developer may also be directed to fix all the accessories and furnish and complete the Flat and hand over the possession of the flat immediately.”

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17. In the amended complaint, the respondent/allottee has sought the following relief:-

Relief(s) sought:				
In view of the facts mentioned in paragraph 5 above, the complainant/s prays for the following relief(s)				
Sr.No.	Relief sought			
1.	In case of failure to give possession			
	1.1	In case allottee/s intends to continue with the project.	I.	Amount paid 43,17,465/-
			II.	Interest for every month of delay at Prevailing rate of interest 10.75% PA Per month interest comes to Rs.41205 P.M.
	OR			
		In case allottee/s intends to withdraw	I.	Amount paid
			II.	Interest for every month of delay at Prevailing rate of interest.
	1.2	Delayed payment of instalment by allottee/s	I.	Instalment due 14 NOV.2017
			II.	Due date of instalment 15 Dec.2017
			III.	Prescribed rate of interest for delay payment till 15% Simple Interest.
	1.3	Any other relief	<p>1. The Developer M/s Alpha Corp Development Pvt. Ltd. May kindly be directed to accept the amount of last instalment at the time of Possession as per Buyer Agreement excluding the amount charged on account of extra common area and Escalation in the Demand dated 13.10.2017.</p> <p>2. He may also kindly be directed to handover the possession of the Flat after fixing all the accessories, furnish and complete the Flat.</p> <p>3. The Developer may also be directed to pay interest at the prescribed rate as per clause 18.1 of the RERA Act-2016 and clause 15 of 2017 Notification of Haryana Govt. for the delayed period in handing over of the Possession of the Flat, which he has calculated @ of Rs.5/- till the date of obtaining OC.</p>	

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18. It is evident that in the amended complaint, the respondent/allottee has added the relief regarding grant of interest for the delayed possession at the prescribed rate as per section 18(1) of the Act. The learned Authority has not itself communicated the copy of the amended complaint to the appellant/promoter to enable it to file the reply. The learned authorised representative of the respondent has drawn our attention to The Haryana Real Estate Regulatory Authority, Gurugram (Adjudication of Complaints), Regulations, 2018 (hereinafter referred to as 'the Regulations, 2018') wherein Regulation 17 requires the respondent in the complaint to submit four copies of reply at least seven days before the next date of hearing with an advance copy to the complainant. But, at the same time Regulation 15 provides that the notice to the respondent shall be sent through registered post and the courier with copy of the complaint by the Secretary of the Authority. So, it was the duty of the Secretary of the Authority to send the copy of the amended complaint to the appellant/promoter. But, as already mentioned, no such copy of the complaint was ever communicated to the appellant/promoter by the learned Authority. The amended complaint was filed with the learned Authority on 04.12.2019. The notice of the date of hearing was already sent to the appellant/promoter on November 19, 2019 that too on wrong ID. Regulation 17 will come into play only when there is due

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compliance of Regulation 15 and 16 of the Regulations, 2018. Thus, the appellant/promoter has been deprived of to file the reply to the amended complaint which is substantial breach of the principles of natural justice and prejudicial to the rights of the appellant.

19. Even if for the sake of arguments, it is accepted that the next date of hearing was communicated to the appellant through SMS on the mobile number of Shri Parveen Kumar, as per the provisions in the Regulations, 2018, the regulations are the subordinate procedural legislation framed by the learned Authority to conduct its business. It is settled principle of law that all the rules of procedure are handmaid of justice. The procedural law should not ordinarily be construed as mandatory. It is always subservient to and is in aid of justice. Thus, the provisions of such regulations cannot be a ground to cause miscarriage of justice and violation of the principles of natural justice.

20. As already mentioned, on 26.09.2019 the case was adjourned as the learned Presiding Officers were busy in administrative work and the next date of hearing was to be intimated later on. As per the notice dated 19.11.2019, the next date of hearing was 10.12.2019. On the said date, the appellant/promoter was proceeded against ex parte and the impugned ex parte order issuing the directions reproduced in para no.1 of this judgment was passed and the complaint filed

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by the respondent/allottee was disposed of. Thus, due to single default on the part of the appellant/promoter, the ex parte proceedings were ordered and even the complaint was decided on the same date. There was no reason to show such an extra ordinary hurriedness by the learned Authority to dispose of the complaint. In order to do the substantial justice, the learned Authority could have issued the fresh notice of the next date of hearing to procure the presence of the appellant/promoter. To pass such an order substantially affecting the rights of the appellant for a single default of appearance is quite harsh. There is no material on record to show that the appellant/promoter had any malafide intention for non-appearance before the learned Authority. The learned Authority has suppressed the natural flow of the justice and violated the principles of natural justice. Such an action of the learned Authority has virtually denied the due opportunity of being heard to the appellant/promoter. To support this view, reference can be made to the following cases:-

- (1) **Shiv Om & another versus Motor Accident Claims Tribunal & others, 2003(4) R.C.R. (Civil) 155 (P&H)**
- (2) **Dilbagh Singh Versus Harjit Singh and Others 2011(2) PLR 626 (P&H)**
- (3) **Riyaj Khan and others Versus Kasam Khan and others, 2013(2) M.P.L.J.110**
- (4) **Tarlok Chand Versus Kailash Chander 2018(4) PLR 354 (P&H)**

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21. Thus, in view of our above discussions, the next date of hearing i.e. 10.12.2019 was never communicated to the appellant/promoter by the learned Authority. The appellant/promoter was also denied the opportunity to file reply to the amended complaint which has resulted in prejudice to the rights of the appellant/promoter and miscarriage of justice. Thus, the impugned order which is violative of the principles of natural justice cannot be sustained in the eyes of law.

22. As the appellant/promoter is yet to file reply to the amended complaint, so the case will require the re-trial in accordance with law. Thus, we have no other option but to remand the case to the learned Authority.

23. Before parting with this judgment, it is pertinent to mention that the respondent/allottee purchased the flat in question from the original allottee on 01.12.2011. The Buyer's Agreement was executed on 03.09.2011. The total consideration of the flat was Rs.45,99,629/-. The respondent/allottee has already paid the amount of Rs.43,17,465/- to the appellant/promoter. Thus, the substantial amount has already been paid by the respondent/allottee but yet she has not been delivered the possession of the apartment. Learned counsel for the appellant at the notice of motion stage has contended that the appellant/promoter is to recover a sum of Rs.7,28,099/- from

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the respondent/allottee and is to pay an amount of Rs.6,33,197/- towards delayed interest as per the order of the learned Authority. Learned counsel for the appellant has now pleaded that the aforesaid amount does not include the holding charges etc. and the appellant/promoter is to recover much more amount. The respondent/allottee had purchased the apartment nine years back. Substantial portion of the basic sale price has already been paid but still she has been deprived of the possession. We are convinced that a direction should be given to the appellant/promoter to deliver the possession to the respondent/allottee on part payment because the decision of the case will take time as the case is being remanded to the learned Authority for re-trial.

24. In view our aforesaid discussions, the present appeal is hereby allowed, the impugned order dated 10.12.2019 passed by the learned Authority is hereby set aside and the case is remanded to the learned Authority for fresh decision by following the principles of natural justice and in accordance with law. The learned Authority will ensure that the possession of the apartment allotted to the respondent/allottee be delivered to the respondent/allottee within two weeks of her depositing a sum of Rs.2,00,000/- with the appellant/promoter, however the final settlement of the accounts shall be subject to the final decision of the complaint.

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25. The parties are directed to appear before the learned Authority, Gurugram on 11.02.2021.
26. Copy of this order be communicated to the learned counsel for the parties/parties, the learned Haryana Real Estate Regulatory Authority, Gurugram for compliance.
27. File be consigned to the records.

Announced:
February 01st, 2021

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

Inderjeet Mehta
Member (Judicial)

Anil Kumar Gupta
Member (Technical)

CL

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Present: None.

Vide our separate detailed judgment of the even date, the present appeal stands allowed, the impugned order dated 10.12.2019 passed by the learned Authority is set aside and the case is remanded to the learned Authority for fresh decision by following the principles of natural justice and in accordance with law. The learned Authority will ensure that the possession of the apartment allotted to the respondent/allottee be delivered to the respondent/allottee within two weeks of her depositing a sum of Rs.2,00,000/- with the appellant/promoter, however the final settlement of the accounts shall be subject to the final decision of the complaint.

The parties are directed to appear before the learned Authority, Gurugram on 11.02.2021.

Copy of the detailed judgment be communicated to the learned counsel for the parties/parties and the learned Haryana Real Estate Regulatory Authority, Gurugram for compliance.

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)

February 01st, 2021

cl