

M/s Orris Infrastructure Pvt. Ltd.

Vs.

Tanveer Kamal & Anr.

Appeal No.37 of 2021

Present: Shri Surjeet Bhadu, Advocate, Ld. counsel for the appellant.

Shri Sanjeev Sharma, Advocate, Ld. counsel for the respondents.

{The aforesaid presence is being recorded through video conferencing}

We have received the copy of the *Vakalatnama* of Shri Sanjeev Sharma, Advocate, Ld. counsel for the respondents through e-mail.

Ld. counsel for the appellant stated that the settlement has taken place between the parties on 17<sup>th</sup> September, 2019 but this fact could not be brought to the notice of the Haryana Real Estate Regulatory Authority, Gurugram (for short 'the Ld. Authority') as the respondents were preceded ex parte and the impugned order was passed without taking into consideration the said settlement. He contended that as the matter was settled between the parties, the Ld. Authority was not required to decide the complaint on merits.

Shri Sanjeev Sharma, Ld. counsel for the respondents while referring to the order dated 08<sup>th</sup> February, 2021 passed by the Hon'ble Apex Court in SLP (C) No.1886 of 2021 stated that he has no objection to proceed further with this appeal even without compliance of proviso to Section 43(5) of the Real Estate (Regulation & Development) Act, 2016 (for short 'the Act'), as the matter between the parties was already settled before passing the impugned order and the grievances of the respondents-allottees were settled with the refund of Rs.12,50,000/-.

Thus, in view of the consent given by Ld. counsel for the respondents, we proceed to entertain the present appeal without compliance of proviso to Section 43(5) of the Act.

Ld. counsel for the respondents has stated that the settlement has taken place between the parties. The Settlement Deed was reduced into writing on 17<sup>th</sup> September, 2019. Copy thereof is available as Annexure A-10 (at page 126 to 129 of the paper book). He further pleaded that as per the terms and conditions of the Settlement Deed dated 17<sup>th</sup> September, 2019, the respondents have received a refund of amount of Rs.12,50,000/- vide Draft dated 17<sup>th</sup> September, 2019. Thus, he stated that the grievances of the respondents were fully settled by way of the terms and conditions of the Settlement Deed dated 17<sup>th</sup> September, 2019. He further contended that the respondents have no objection if in view of the settlement between the parties, the impugned order dated 23<sup>rd</sup> January, 2020 is set aside and the present appeal is allowed. The Settlement Deed may be made the part of this order.

Shri Surjeet Bhadu, Ld. counsel for the appellant has also stated that the present appeal may be disposed of in terms of the settlement deed dated 17<sup>th</sup> September, 2019.

We have perused the Settlement Deed dated 17<sup>th</sup> September, 2019. The Settlement Deed is signed by the Authorised Representative of the appellant-company and both the respondents. As per Clause (i) of the Settlement Deed (Page 127), a sum of Rs.12,50,000/- has been refunded to the respondents by way of the bank demand draft dated 17<sup>th</sup> September, 2019 towards full and final settlement of the refund of amount to the respondents-allottees.

The respondents had surrendered the entire documents of the said unit to the appellant-company and there remained no liability of the appellant towards the respondents. It appears that the settlement between the parties could not be brought to the notice

of the Ld. Authority while passing the impugned order dated 23<sup>rd</sup> January, 2020.

Thus, in view of the amicable settlement between the parties and the statements made at bar by Ld. counsel for both the parties, the present appeal is hereby allowed in terms of the Settlement Deed dated 17<sup>th</sup> September, 2019. The impugned order dated 23<sup>rd</sup> January, 2020 is hereby set aside. The Settlement Deed dated 17<sup>th</sup> September, 2019 shall form part of the order and the rights of the parties shall be governed as per terms and conditions of the said Settlement Deed.

Copy of this order be communicated to the parties/Ld. counsel for the parties and the Ld. Authority for information.

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)

03.05.2021  
*Gaurav*