

**BEFORE THE HARYANA REAL ESTATE APPELLATE
TRIBUNAL**

**Appeal No.295 of 2021
Date of Decision: 17.06.2021**

Vikas Choudhary, Resident of D-27, New Multan Nagar, Delhi-110056.

Appellant

Versus

M/s Neo Developers Pvt. Ltd. 1507, Tower-D, Global Business Park
M.G. Road, Gurgaon-122002, Haryana

Respondent

CORAM:

Justice Darshan Singh (Retd),
Shri Inderjeet Mehta,
Shri Anil Kumar Gupta,

Chairman
Member (Judicial)
Member (Technical)

Present:

Shri Prateek Rathee, Advocate, ld. counsel for the appellant.

Shri Venket Rao, Advocate, ld. counsel for the respondent.

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

ORDER:

JUSTICE DARSHAN SINGH (RETD.) CHAIRMAN:

Office report perused.

2. Appeal be registered.

3. Learned counsel for the appellant contended that the respondent/promoter has played fraud with the appellant/allottee for which a criminal case bearing F.I.R. No.330 dated 24.11.2017 has already been registered at Police Station Karol Bagh, New Delhi.

He further contended that the appellant/allottee has filed the

counter-claim but the same has not been decided at all by the learned Authority. Even the impugned order passed by the learned Authority is factually incorrect and non-speaking.

4. Let notice of the appeal be issued.

5. Shri Venket Rao, Advocate, has appeared on behalf of the respondent/promoter and has accepted the notice of the present appeal.

6. We have heard learned counsel for the parties.

7. Shri Prateek Rathree, Advocate, learned counsel for the appellant has reiterated the arguments advanced by him for issuance of the notice of motion as mentioned above.

8. Shri Venket Rao, learned counsel for the respondent has also very fairly admitted that the impugned order passed by the learned Authority is factually incorrect. The allotment of the appellant was never cancelled vide letter dated 08.07.2016 mentioned in the impugned order. Rather, the final notice for payment was issued to the appellant/allottee on 13.07.2016. He also admitted that counter-claim filed by the appellant has not been decided nor the reply to counter claim was obtained.

9. We have duly considered the aforesaid contentions. Respondent-M/s Neo Developers Private Limited has filed the complaint before the learned Authority wherein the respondent/promoter has sought the relief for issuance of the direction to the appellant/allottee to pay the instalments due along

with interest as per 'Buyer's Agreement' from the date when the amount became due for payment. In the alternative, the respondent/promoter has prayed for passing the order entitling/enabling the respondent/promoter to cancel the allotment and forfeit the amount paid by the appellant/allottee as per the terms of the Buyer's Agreement.

10. The complaint was contested by the appellant/allottee by filing the detailed written reply controverting the averments raised in the complaint. In addition to that, the appellant/allottee has also filed the counter-claim wherein the appellant/allottee has sought the refund of the amount of Rs.19,28,026/- deposited by the appellant with the respondent/promoter along with interest.

11. In the background of these pleadings, the learned Authority disposed of the complaint filed by the respondent/promoter by passing the following order:-

"Arguments heard.

Reply has already been filed by the respondent.

The counsel for the complainant has submitted that due to non-payment of due instalments, they have cancelled the unit of the respondent vide cancellation letter dated 8.7.2016.

The respondent is directed to make the due payment to the complainant within a period of three weeks failing which the unit shall be treated as cancelled.

Matter stands disposed of. File be consigned to the registry."

12. The impugned order passed by the learned Authority suffers from various legal infirmities. Firstly, it is not the case of the respondent/promoter that the allotment of the appellant/allottee

has been cancelled vide letter dated 08.07.2016, rather the respondent/promoter has sought the order from the learned Authority for entitling/enabling it to cancel the allotment of the appellant/allottee and forfeiture of the amount as per the terms of the Buyer's Agreement. It shows that the allotment is still surviving and the impugned order is factually incorrect.

13. It is an admitted fact that the appellant/allottee has filed the counter-claim seeking refund of the amount deposited by him with the respondent/promoter along with interest. We can take guidance from the provisions of Order 8 Rule 6A to 6G of the Code of Civil Procedure, 1908 (hereinafter referred to as the CPC) with respect to the procedure for dealing with the counter-claim. The counter-claim filed by the defendant shall be treated as a plaint and will be governed by all the Rules applicable to the plaint. The counter-claim shall have the same effect as a cross-suit. Even if the suit of the plaintiff is stayed, dis-continued or dismissed the counter-claim may nevertheless be proceeded with. It is also settled principle of law that the defendant by filing the counter-claim to the suit filed by the plaintiff can set up its own claim in the same suit, subject to the provisions of Order 8 Rule 6A, 6B and 6C of the CPC.

14. Herein, in this case, the learned Authority has totally ignored the counter-claim filed by the appellant/allottee. It appears that no cognizance at all has been taken of the counter-claim filed by the appellant/allottee. The respondent/promoter was not even invited to file reply to the counter-claim filed by the appellant/allottee. The counter-claim filed by the appellant/allottee

was not adjudicated upon at all while passing the impugned order by the learned Authority. It appears that the impugned order has been passed just keeping in view the pleadings raised by the respondent/promoter in the complaint. The learned Authority was required to pass the order by adjudicating upon the plea raised in the complaint filed by the respondent/promoter, reply filed by the appellant/allottee to the said complaint, the plea raised in the counter-claim filed by the appellant/allottee and the reply, if any, filed or to be filed to the said counter-claim. Nevertheless, it was within the competence of the learned Authority to determine as to whether the counter-claim filed by the appellant was maintainable or not under the provisions of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred to as the Act). Thus, the impugned order passed by the Learned Authority is half baked.

15. The impugned order is also non-speaking and has been passed without assigning the reasons while deciding the substantive rights of the parties. The impugned order is also factually incorrect as already described. Such an order cannot be allowed to sustain in the eye of law.

16. Consequently, the present appeal is hereby allowed. The impugned order dated 05.03.2021 passed by the learned Authority is hereby set aside. The case is remitted to the learned Authority for fresh adjudication of the complaint filed by the respondent/promoter as well as the counter-claim filed by the appellant-allottee, in accordance with law. It is made clear that it will be within the competence of the Learned Authority to determine as to whether the

counter-claim filed by the appellant/allottee was maintainable or not under the provisions of the Act.

17. The parties are directed to appear before the learned Authority on 06.07.2021.

18. Copy of this order be communicated to both the parties/learned counsel for the parties and the learned Haryana Real Estate Regulatory Authority, Gurugram.

19. File be consigned to the record.

Announced:
June 17, 2021

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

Inderjeet Mehta
Member (Judicial)

Anil Kumar Gupta
Member (Technical)

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