

**BEFORE THE HARYANA REAL ESTATE APPELLATE
TRIBUNAL**

**Appeal No.471 of 2020
Date of Decision: 20.07.2021**

OCUS SKYSCRAPERS REALTY LIMITED, 5th floor, Ocus Technopolis Building, Golf Course Road, Sector 54, Gurugram, Haryana-122001.

Appellant

Versus

1. Shri Bhagat Singh Negi
2. Mrs. Sushma Negi

Both residents of House No.862, Sector 40, Gurugram-122003.

Respondents

CORAM:

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

Chairman
Member (Judicial)
Member (Technical)

Present: Shri Lokesh Bhola, Advocate, Id. counsel for the appellant.

Shri Harshit Batra, Advocate, Id. counsel for the respondents.

[The aforesaid presence is being recorded through video conferencing]

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 19.11.2020 passed by the learned

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Haryana Real Estate Regulatory Authority, Gurugram (hereinafter called the 'Authority'), whereby the complaint filed by the respondents/allottees has been disposed of in ex parte proceedings directing the appellant to hand over the possession of the commercial unit to the respondents/allottees within a period of one month failing which action under Section 37 of the Act shall be initiated against the appellant/builder. It has been further ordered that any payment due against the respondents/complainants/allottees shall be paid/adjusted.

2. Learned counsel for the appellant has primarily contended that the ex parte proceedings were wrongly initiated against the appellant/promoter. The appellant was not afforded any opportunity to file the written statement to the amended complaint. So, the impugned order passed by the learned Authority is violative of the principles of natural justice.

3. Shri Harshit Batra, learned counsel for the respondents/allottees contended that the copy of the amended complaint was supplied to the appellant/promoter by the allottees through email which was duly received by the appellant and the appellant was bound to file reply to the said complaint with the learned Authority. So, the appellant has defaulted in filing reply and has also absented from the proceedings of the case. Thus, he contended that the impugned order passed by the learned Authority does not suffer from any legal infirmity.

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4. We have duly considered the aforesaid contentions. The facts are not disputed that initially the complaint was filed before the learned Adjudicating Officer, Gurugram and the learned Adjudicating Officer due to the amendment of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter called 'the Rules'), transferred the complaint pending before him vide order dated 17.09.2019. It appears that thereafter the complaint filed by the respondents/allottees was tried by the learned Authority.

5. From the record available with us, we have perused the proceedings recorded before the learned Authority. The copy of the first order dated 05.12.2019 shows that the case file was not taken up by the learned Authority, rather, it was adjourned to 05.02.2020 by order. On 05.02.2020 also, the file was not put up before the learned Authority and the case was adjourned to 24.03.2020 by order. In the meanwhile, an application for additional submissions and amendment in the relief clause of the complaint was filed by the respondents/allottees before the learned Authority. It is not known as to whether any notice to the appellant/promoter was given on the said application by the learned Authority or not. There is also no material on record to show that the said application was dealt with by the learned Authority in lawful manner and whether any order was passed by the learned Authority to allow the said application. However, it is not disputed that thereafter the proceedings were taken up by the

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learned Authority on the basis of the amended complaint. The learned Authority has not even passed any formal order for taking on record the amended complaint.

6. The proceedings dated 24.03.2020 shows that the matter was adjourned to 14.05.2020 by order due to Lockdown. Thereafter, it was adjourned to 06.08.2020, 30.09.2020 and 19.11.2020 for the same reason and in the same manner. In this way, the case file was never put up before the learned Authority prior to 19.11.2020 and abruptly on 19.11.2020, i.e. first date of hearing before the learned Authority, the complaint filed by the respondents/allottees was disposed of.

7. There is also no material on record to show that the learned Authority had issued any notice to the parties for the next date of hearing i.e. 19.11.2020. So, there was no basis for initiation of the ex parte proceedings against the appellant. It is an admitted case that reply of the appellant to the amended complaint was not obtained and the impugned ex parte order dated 19.11.2020 was passed without any reply to the amended complaint from the side of the appellant/promoter. It is further an admitted fact that in the amended complaint the reliefs sought by the respondents/allottees have been entirely changed. In the initial complaint there was relief for refund of the amount but in the amended complaint this relief was deleted and totally different reliefs were sought. Due to such a substitution of the claims in

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the amended complaint, the interest of justice required that adequate opportunity to contest the amended complaint should have been granted to the appellant/promoter. But, instead of giving sufficient opportunity to the appellant to put forward its case to the amended claims, the impugned order has been passed at the back of the appellant.

8. Thus, the procedure adopted by the learned Authority is unwarranted and violative of the principles of natural justice. The appellant has been deprived of the due opportunity of being heard. So, the impugned order passed by the learned Authority, due to the aforesaid legal infirmities, cannot be sustained in the eyes of law.

9. Consequently, the present appeal is hereby allowed. The impugned order dated 19.11.2020 (It is pertinent to mention that in the short order the date of decision is mentioned as 19.11.2020 but in the heading of the detailed order the date of decision has been mentioned as 18.11.2020, whereas at the bottom of this order the date has been mentioned as 19.11.2020) passed by the learned Authority is hereby aside and the case is remitted to the learned Authority. The learned Authority will decide the matter afresh after granting opportunity to the appellant/promoter to file reply to the amended complaint.

10. The parties are directed to appear before the learned Authority on 09.08.2021. The appellant/promoter will file its reply

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to the amended complaint with the learned Authority on or before 02.08.2021 with advance copy to the respondents/allottees.

11. A sum of Rs. 33,000/- deposited by the appellant with this Tribunal in compliance of the proviso to Section 43(5) of the Act, is ordered to be refunded to the appellant as per rules after expiry of the period of limitation for filing the appeal or the result thereof, as the case may be.

12. Copy of this order be communicated to learned counsel for the parties/parties and the learned Authority.

13. File be consigned to the record.

Announced:
July 20, 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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Ocus Skyscrapers Realty Ltd. Vs. Bhagat Singh Negi & anr.
Appeal No.471 of 2020

Present: Shri Lokesh Bhola, Advocate, Id. counsel for the appellant.
Shri Harshit Batra, Advocate, Id. counsel for the respondents.
[The aforesaid presence is being recorded through video conferencing]

Arguments heard.

2. Vide our separate detailed order of the even date, the appeal is allowed, the impugned order dated 19.11.2020 passed by the learned Haryana Real Estate Regulatory Authority, Gurugram (hereinafter called the 'Authority'), is set aside and the case is remitted to the learned Authority. The learned Authority will decide the matter afresh after granting opportunity to the appellant/promoter to file reply to the amended complaint.

3. The parties are directed to appear before the learned Authority on 09.08.2021. The appellant/promoter will file its reply to the amended complaint with the learned Authority on or before 02.08.2021 with advance copy to the respondents/allottees.

4. A sum of Rs.33,000/- deposited by the appellant with this Tribunal in compliance of the proviso to Section 43(5) of the Act, is ordered to be refunded to the appellant as per rules after expiry of the period of limitation for filing the appeal or the result thereof, as the case may be.

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July 20, 2021
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