

M/s Ansal Housing Ltd.
Vs.
Mrs. Jyotsna Makan & Sandeep Makan
Appeal No. 524 of 2021

Present: Shri Surjeet Bhadu, Advocate, Id. counsel for the appellant.
Ms. Priyanka Agarwal, Advocate, Id. counsel for the respondent.

{The Court proceedings conducted through VC}

Ms. Priyanka Aggarwal, Advocate has filed the memo of appearance on behalf of the Respondent.

We have heard Id. counsel for the parties.

There are two controversies involved in the present appeal. Firstly, with respect to the jurisdiction of the Adjudicating Officer to entertain the complaint. Secondly, the validity of the order striking off the defence of the appellant.

As far as the first controversy is concerned the Id. counsel for the respondent has very fairly stated that now the complaint has been transferred to the learned Authority for adjudication. So, this issue no more survives.

The second grievance of the appellant is that the defence of the appellant was wrongly struck off, though, the reply of the appellant was already on record.

Learned Authority vide order dated 19.11.2019 directed the appellant (respondent in complaint) to submit the following documents:

- i) Copy of building plan alongwith sanction letter duly sanctioned by the competent authority.
- ii) Copy of fire approval scheme/plan.
- iii) Copy of environment clearance certificate.
- iv) Respondent is directed to get their licence renewed from the competent authority before the next date of hearing.
- v) Respondent is directed to get their project registered with the Authority as per requirement of Section 3 of RERA, 2016.

vi) To submit the details of bank accounts of all projects which are located within the territorial jurisdictional of this Authority for taking further action, if required.

Direction no. (i) to (iii) & (vi) are with respect to the production of documents. Directions no. (iv) & (v) are for getting licence renewed from the competent authority and to get the project registered under Section 3 of the Real Estate (Regulation and Development) Act, 2016 respectively.

Learned counsel for the appellant states that the appellant has already applied for renewal of the licence on 26.11.2021 and the application is pending before the competent authority. Regarding direction no. (v), if the appellant does not get the project registered, the ld. authority is within its competence to initiate the consequential legal proceedings and the said proceedings in our opinion will not be relevant for the decision of the present complaint.

The appellant has already availed sufficient opportunities to produce the documents. Even the costs imposed by the learned authority for non-compliance of the orders, has not been deposited/paid by the appellant so far. However, ld. counsel for the appellant has stated that the reply of the appellant to the complaint is already on record and the appellant is ready to produce the documents mentioned at Sr. No. (i) to (iii) & (vi) of the order dated 19.11.2019 passed by the ld. Authority, if, one opportunity is granted to the appellant

Thus, as per contentions raised by ld. counsel for the appellant which have not been controverted by ld. counsel for the respondent. The reply filed by the appellant to the main complaint is already on record of the Learned Adjudicating Officer/Authority and appellant is seeking only one opportunity to comply with the directions given in the order dated 19.11.2019. It is settled principle of law that the rights of the parties should be decided on merits and not on

technicalities. It is also well settled principle of law that procedural law is handmaid of justice. It cannot be used to obstruct the substantial justice.

Therefore, in the interest of justice, we deem it appropriate to grant one more opportunity to the appellant to produce the documents mentioned at sr. no. (i) to (iii) and (vi) of the order dated 19.11.2019 passed by the learned authority, however, subject to further costs of Rs. 20,000/- in addition to the costs already imposed by the learned Authority. The said documents will be filed with the ld. authority by moving miscellaneous application within four weeks. The appellant will also pay the costs imposed by the ld. authority and this Tribunal to the respondent/allottee before moving the said application under proper receipt.

If the aforesaid concession given by this Tribunal is availed within stipulated period by the appellant, then the documents supplied by the appellant shall be taken on record and the order striking the defence of the appellant shall be deemed to have been set aside. It is made clear that if the appellant fails to comply with the concession given by this tribunal, the impugned orders passed by the learned authority will stand intact.

In view of our aforesaid discussion, the present appeal stands disposed of accordingly.

Copy of this order be conveyed to ld. counsel for the parties/parties as well as the learned Authority.

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)

02.03.2022

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