

**BEFORE THE HARYANA REAL ESTATE APPELLATE
TRIBUNAL**

**Appeal No.273 of 2020
Date of Decision: 16.03.2022**

M/s Landmark Apartments Private Limited, Plot No.65,
Institutional Area, Sector-44, Gurugram, Haryana.

Appellant

Versus

Resident Welfare Association Golden Heights, E-419A, Golden
Heights, 82nd Mile Stone, near Golden Huts Hotel, NH-8,
Dharuhera, District Rewari, Haryana.

Respondent

CORAM:

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

Chairman
Member (Judicial)
Member (Technical)

Present: Shri Shubhnit Hans, Advocate, learned counsel
for the appellant.
Shri Anand Bishnoi, Advocate, learned counsel
for the respondent.

[Hearing conducted through V.C.]

ORDER:

JUSTICE DARSHAN SINGH (RETD.) CHAIRMAN:

This is an appeal against the interim order dated
09.10.2019 passed by the Haryana Real Estate Regulatory
Authority, Panchkula (hereinafter referred as 'the Authority'),
whereby the plea raised by respondent-promoter with respect

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to maintainability of the complaint was decided against the appellant.

2. We have perused the impugned order. The learned Authority has concluded the matter with the following observation:-

“5. So, the document relied by respondent itself proves that he in view of the conditions imposed in the exemption letter, is bound to abide the laws and rules of the Town and Country Planning Department from the date on which land of his project was included in the additional controlled area. It is not disputed that the land of his project was included in the controlled area in the year 2007. This fact is evident from the field book report, a copy of which is attached as Annexure B with the documents today filed by the respondent. Said document was prepared by the Patwari and counter-signed by the representatives of Town and Country Planning Department.

6. The respondent by virtue of the conditions imposed in the exemption letter, thus, became liable to abide by the laws and rules of Town and Country Planning Department from the year 2007 when the area of the project was declared controlled area.

7. Viewed from the perspective discussed above, the objection on the ground that the present complaint is not maintainable before this

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Authority, is not tenable. Accordingly, the Authority directs the respondent to file a detailed reply in respect of all the grievances agitated by RWA in order to enable the Authority to decide as to which of the RWA's grievances deserve redressed subject to law of limitation. Such reply shall be filed and its copy of supplied to the complainant at least five days before the next date of hearing.”

3. The above quoted observation of the learned Authority shows that the learned Authority has only discussed that the exemption granted to the appellant-promoter by the Town and Country Planning Department was no more available as the area of the project had fallen in the controlled area in the year 2007. But, there is no discussion, at all, as to how falling of the area of the project within the controlled area will determine the issue regarding the jurisdiction of the Authority under the provisions of the Real Estate (Regulation and Development) Act 2016. So, in our opinion, this issue requires reconsideration by the learned Authority on appreciating the documents produced or to be produced by the parties.

4. Consequently, the present appeal is hereby allowed. The impinged order dated 09.10.2019 passed by the learned Authority with respect to the maintainability of

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the complaint is set aside. This issue shall be decided afresh by the learned Authority along with the main complaint on appreciation of the evidence/documents produced before it. Copy of the status report dated 08.01.2022 and the objections to the status report filed by the respondent-allottee be communicated to the learned Authority along with the copy of this order.

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

6. File be consigned to the record.

Announced:
March 16, 2022

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

Inderjeet Mehta
Member (Judicial)

Anil Kumar Gupta
Member (Technical)

CL