

BEFORE THE HARYANA REAL ESTATE APPELLATE TRIBUNAL

Date of Decision: 17.03.2022
Appeal No.50 of 2021

Smt. Kanta Malhotra w/o late Sh. Badri Nath Malhotra age around 69 years, right now permanent R/o House No.58, Old Housing Board Colony, Rohtak, Haryana - 124001

...Appellant

Versus

M/s Parsvnath Developers Ltd. Through its Chairman, corporate office address 6th Floor, Arunachal Building 19, Barakhamba Road, New Delhi - 110001, also registered office address Parsvnath Developers Ltd., Parsvnath Tower, Near Shahdara Metro Station, Shahdara, Delhi - 110032

...Respondent

Coram: Justice Darshan Singh (Retd), Chairman
Shri Inderjeet Mehta, Member (Judicial)
Shri Anil Kumar Gupta, Member (Technical)

* * *

Argued by: Sh. Sushil Kumar Malhotra, Advocate, Ld. counsel for the appellant/allottee/complainant.

Ms. Rupali Shekhar Verma, Advocate, Ld. counsel for the respondent/promoter.

ORDER

INDERJEET MEHTA, MEMBER (JUDICIAL)

Feeling aggrieved by the Order dated 15.12.2020 handed down by the Ld. Adjudicating Officer, Haryana Real Estate Regulatory Authority, Panchkula in Complaint No.918 of

2018 titled as 'Kanta Malhotra Vs. M/s Parsvnath Developers Ltd.', vide which two applications preferred by the appellant/complainant i.e. one for amendment of title was dismissed and second for amendment of prayer/relief was partly allowed, she has chosen to prefer the present appeal.

2. Ld. counsel for the appellant/complainant, while referring to various documents and pleadings, which shall be referred to subsequently, has submitted that the Ld. Adjudicating Officer has not properly evaluated the documents and the pleadings available on record and has wrongly dismissed the application for amendment of the title and declined some of the amendments in relief clause, which are necessary for the proper adjudication of the controversy between the parties.

3. Countering this vehemently, Ld. counsel for the respondent has submitted that the Ld. Adjudicating Officer after proper evaluation of the documents and pleadings has rightly disposed of the two applications preferred by the appellant and there is no illegality and irregularity in the impugned order handed down by the Ld. Adjudicating Officer.

4. For proper appreciation of the rival submissions of the Ld. counsel for the parties and proper adjudication of the controversy between the parties, first of all, let us look at the facts and circumstances, which have led to filing of the present appeal.

5. The appellant/allottee had purchased a unit bearing No.B-278 measuring 402 sq. yd./336 sq. mt. plot in the Real Estate Project namely "Parsvnath Rohtak Township" in May, 2013 from the initial purchaser by making all due payments and with all rights of the said unit from the time of its booking and later on, the said unit was transferred in the name of the appellant. The said unit was allotted to the appellant against the total sale-purchase consideration of Rs.40,43,049/- paid to the initial purchaser/allottee and real estate agent-Mr. Sunil Rajan. The endorsement of the said unit in favour of the appellant was executed on 23.05.2013.

6. As per Plot Buyer's Agreement, the delivery of the possession of the said unit was to be given by the respondent till March, 2014. Since, the possession of the said unit was not offered/delivered to the appellant within the stipulated period, so the appellant preferred complaint bearing No.77 of 2018 on 15.02.2018 for refund of the amount paid along with interest and compensation. The said complaint was resisted by the respondent/promoter before the Ld. Haryana Real Estate Regulatory Authority, Panchkula (in short the Ld. Authority) and finally, the said complaint was disposed of by the Ld. Authority on 04.10.2018. The appellant was held entitled for refund of the amount of Rs.47,80,499/- along with interest as per Rule 15 of the Haryana Real Estate (Regulation & Development) Rules, 2017 (in short the Rules) within two months.

7. Thereafter, the appellant in accordance with the order dated 04.10.2018 passed by the Ld. Authority, filed a complaint bearing No.918 of 2018 dated 09.11.2018 before the Ld. Adjudicating Officer for compensation. However, on 27.11.2018, the respondent/promoter filed an application for rectification of the order dated 04.10.2018 under Section 39 of the Real Estate (Regulation & Development) Act, 2016 (in short the Act) before the Ld. Authority. In the said application, it was requested that the amount of refund of Rs.47,80,499/-, which was ordered in favour of the appellant, be reduced to Rs.30,83,024/-. After coming to know about the said application filed by the respondent/promoter, for rectification of the order dated 04.10.2018, the appellant contested the same. However, vide order dated 22.08.2019, the Ld. Authority allowed the review application and ordered that the amount of refund as indicated in the order dated 04.10.2018 be reflected as Rs.30,83,024/- instead of Rs.47,80,499/-.

8. Aggrieved by the said order dated 22.08.2019 handed down by the Ld. Authority, Panchkula, the appellant preferred an appeal bearing No.1390 of 2019 titled as 'Kanta Malhotra Vs. Parsavnath Developers Ltd.' before this Tribunal and the same was disposed of by this Tribunal with following observations: -

"Ld. counsel for the appellant states that the appellant has already filed the complaint No.918 of 2018 before the Ld. Adjudicating Officer, Panchkula for grant of compensation under certain heads. He stated that he wants to move an application before the Ld.

Adjudicating Officer for amendment of the complaint and to add certain more heads to claim the compensation. He states that with the aforesaid liberty to move the requisite application before the Ld. Adjudicating Officer the present appeal may be dismissed as withdrawn.

In view of the aforesaid statement made at Bar by the Ld. counsel for the appellant, the present appeal is hereby dismissed as withdrawn. The appellant shall be at liberty to move the application for amendment of the complaint before the Ld. Adjudicating Officer to add certain more heads for grant of compensation and we hope that the said application moved by the appellant shall be considered judiciously by the Ld. Adjudicating Officer.

File be consigned to the records.”

9. In accordance with the aforesaid order dated 17.09.2020 handed down by this Tribunal, the appellant/complainant moved two applications i.e. (i) Application under Order 1 Rule 10(1) & (2) of CPC for amendment of the title of the complaint for inclusion of the name of Sh. Sunil Rajan S/o Sh. Sant Rajan R/o House No.20, Omaxe City, near Delhi Bye Pass, Rohtak as respondent No.5 in complaint No.918 of 2018 and (ii) Application for amendment to prayer/relief clause in Complaint No.918 of 2018.

10. The said applications were contested by the respondent/promoter. The first application under Order 1 Rule 10(1) & (2) of CPC preferred by the appellant for inclusion of the name of Sh. Sunil Rajan S/o Sh. Sant Rajan was dismissed by the Ld. Adjudicating Officer vide impugned order dated

15.12.2020. The second application for amendment of prayer/relief clause in Complaint No.918 of 2018 was partly allowed to the extent that an amount of Rs.7,37,450/- being loan interest, was allowed to be added in the claim of compensation, whereas the amount of Rs.9,60,027/-, which the appellant had allegedly paid to Sh. Sunil Rajan S/o Sh. Sant Rajan, being alleged representative of the respondent/promoter, was not allowed to be added in the relief clause.

11. During the course of arguments, Ld. counsel for the appellant had submitted that he did not press the application under Order 1 Rule 10 (1) & (2) of CPC for amendment of the title of the complaint for inclusion of Sh. Sunil Rajan as respondent No.5 in Complaint No.918 of 2018 pending before the Ld. Adjudicating Officer. So, the said application, which has already been dismissed by the Ld. Adjudicating Officer vide impugned order dated 15.12.2020, is no more pressed by the appellant before this Tribunal and the aforesaid submissions of the Ld. counsel for the appellant was also recorded by this Tribunal in the interlocutory order dated 22.02.2022.

12. The only bone of contention between the parties is that whether the amount of Rs.9,60,027/-, which the appellant had allegedly paid to Sh. Sunil Rajan S/o Sh. Sant Rajan, alleged representative of the respondent/promoter, can be allowed to be added in the relief clause or not?

The answer of the aforesaid query is certainly in negative.

13. A thorough perusal of the pleadings and documents available on record reveals that at the time of adjudication of the application, preferred by the respondent/promoter for rectification of the order dated 04.10.2018 passed by the Ld. Authority, the appellant had taken the stand that two cheques for the value of Rs.2,00,000/- and Rs.7,30,027/- were paid to Sh. Sunil Rajan, an employee of the respondent/promoter and the said Sunil Rajan had issued the receipt regarding acceptance of the said cheques. However, the said plea of the appellant/allottee was resisted by the respondent/promoter by taking the stand that the said Sunil Rajan had never been in the employment of the respondent/promoter.

14. During adjudication of the said application, preferred by the respondent/promoter for rectification of the order dated 04.10.2018, the appellant was provided sufficient opportunities to prove that she had paid the disputed amount to the authorised person of the respondent and the respondent/promoter was also directed to file an affidavit to the effect that the said Sunil Rajan was not the employee/authorised representative of the respondent/promoter. Though on behalf of the respondent/promoter, its duly authorized person had filed an affidavit stating that Sh. Sunil Rajan had never been in the employment of the respondent/promoter nor he was authorized representative of the respondent/promoter, but the appellant/allottee in spite of availing four opportunities, could not lead even an iota of evidence, as is also established from the perusal of the order

dated 22.08.2019 handed down by the Ld. Authority. Ld. counsel for the appellant had stated before the Ld. Authority in the said proceedings that he did not want to adduce any evidence for proving that Sh. Sunil Rajan, to whom amount of Rs.9,60,027/- was paid, was authorized agent of the respondent/promoter. On the basis of the said statement of Ld. counsel for the appellant, it was held by the Ld. Authority in its order dated 22.08.2019 that the amount of Rs.9,60,027/-, allegedly paid to Sh. Sunil Rajan, cannot be deemed as a payment made to the respondent/promoter and the appellant is not entitled for refund of the same. The aforesaid findings of the Ld. Authority have attained the finality. So, the same cannot be reopened by allowing the appellant to make the addition in the relief clause. Similar observations have also been rightly made by the Ld. Adjudicating Officer in the impugned order dated 15.12.2020.

15. Since the factum of alleged payment of Rs.9,60,027/- to one Sh. Sunil Rajan, alleged authorized representative/employee of the respondent, is not established on the record and as the counsel for the appellant, as referred above, during the course of arguments, had stated that he did not press the application under Order 1 Rule 10(1) & (2) of CPC for amendment of title of the complaint for inclusion of Sh. Sunil Rajan as respondent No.5 in Complaint No.918 of 2018 pending before the Ld. Adjudicating Officer, so the appellant is not entitled to add this amount of Rs.9,60,027/- in the relief clause of the complaint, pending before the Ld. Adjudicating Officer.

16. Thus, as a consequence to the aforesaid discussions, we are of the considered view that there is no illegality and irregularity in the impugned order dated 15.12.2020 handed down by the Ld. Adjudicating Officer, Panchkula. Hence, the present appeal, containing no merit, deserves dismissal and is dismissed accordingly.

17. Copy of this order be conveyed to the parties/Ld. counsel for both the parties and the Ld. Adjudicating Officer for information.

18. 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)

17.03.2022
Gaurav

Kanta Malhotra
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Present: None.

Vide our separate detailed order of the even date, the present appeal stands dismissed.

Copy of the detailed order be conveyed to the parties/Ld. counsel for both the parties and the Ld. Adjudicating Officer, Panchkula.

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)

17.03.2022
Gaurav