

**BEFORE THE HARYANA REAL ESTATE APPELLATE
TRIBUNAL**

Appeal No.232 of 2021

Date of Decision: 28.05.2024

1. Mr. Pradeep Kumar Bhatia;
2. Ms. Deepti Dua

Both the resident of F-604, F-Block, 6th Floor, Ardee Residency,
Ardee City, Gate No.2, Sector-52, Gurugram, Haryana-122003.

Appellants

Versus

1. M/s Orris Infrastructure Pvt. Ltd.

Registered office RZ-D-5, Mahavir Enclave, New Delhi-110045

Corporate Office: Orris HQ, J-10/5, DLF Phase II, M.G. Road,
Gurugram-122002, Haryana.

Respondent-Promoter

2. Haryana Real Estate Regulatory Authority, Gurugram office at
PWD Rest House, Old Railway Road Civil Lines, Gurugram-
122001.

Respondent

CORAM:

Justice Rajan Gupta

Chairman

Present: Mr. Pradeep Kumar Bhatia one of appellants in person along
with
Mr. Hemant Saini, Advocate,
Ms. Neha Saini, Advocate,
for the appellants.

Mr. Surjeet Bhadu, Advocate with
Mr. Agam Bansal, Advocate
for respondent No.1.

Mr. Roshan Singh, Legal Executive,
for respondent no. 2-Authority.

ORDER:

RAJAN GUPTA, CHAIRMAN (Oral):

Present appeal is directed against the order dated
20.08.2019 passed by the Haryana Real Estate Regulatory Authority
at Gurugram (for short 'the Authority') in Complaint No.1106 of 2019.

Operative part thereof reads as under:-

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“33. The Authority exercising its power under Section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby directs the respondent to pay delayed possession charges at the prevalent prescribed rate of interest of 10.45 % per annum with effect from the due date of delivery of possession i.e. 15.05.2017 till the date of this order within the period of 90 days and continue to pay charges month by month interest at the prescribed rate of interest @ 10.45 % per annum on or before the 10th day of each subsequent English calendar month till actual handing over of possession of the subject apartment to the complainant. The respondent is also directed to refund the electricity installation charges (EIC) of Rs.2,06,250/- to the complainants within the same period of 90 days from the date of this order.

34. The complaint stands disposed of accordingly.

35. The case file be consigned to the registry.

N.K. Goel

(Former Additional district and Sessions Judge)
Registrar-cum-Administrative Officer (Petition)
Haryana Real Estate Regulatory Authority, Gurugram
(Authorized by resolution No.HARERA, GGM/Meeting/
2019/Agenda 29.2/Proceedings / 16th July 2019)
Dated: 20.08.2019”

2. It appears that the complainants (appellants herein) had applied for a flat in the project of the respondent/promoter, namely “Orris Aster Court” Sector 85, Gurugram. They were allotted a unit therein. ‘Apartment Buyer Agreement’ (for short ‘the agreement’) was entered into between the parties on 15.11.2013. Basic Sale Price of the unit was Rs.29,40,000/- besides other charges i.e. Utility Charges Rs.2,50,000/-, Preferential Location Charges Rs.1,87,500/-, External Development Work Charges & Infrastructure Development Charges Rs.4,16,250/- and Club Membership Charges Rs.50,000/-. Thus, the total sale price of the unit was Rs.38,43,750/-. Due date of delivery of possession, as per Clause 10.1 of the agreement, was 15.05.2017. As

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per record, the Occupation Certificate (OC) was granted to the respondent-promoter on 18.10.2018. However, due to continuous delay in handing over the possession, the appellant/allottees were constrained to approach the Authority seeking possession of the unit, delay possession charges (DPC) and ancillary issues.

3. Respondent (M/s Orris Infrastructure Pvt. Ltd.) filed its reply and contested the complaint. However, after considering the entire matter, it was directed that the appellants be granted possession of the unit and delay possession charges. This order was passed by the Registrar-cum-Administrative Officer (Petition) working with the Authority.

4. During the course of hearing, Mr. Saini produced copy of the decision taken by the Authority vide resolution number HARERA, GGM/Meeting/2019/Agenda 29.2/Proceedings/16th July 2019) dated 20.08.2019. He stated that powers had been delegated to the Administrative Officer by the Authority vide this resolution. As per terms of same, authority would be competent to ratify any decision taken by the said officer and thereafter the order would be treated as an order passed by the Authority itself.

5. On 05.04.2024, this Tribunal passed an order, copy whereof was sent to HRERA-Gurugram. Today, one of the representatives of the Authority at Gurugram namely Mr. Roshan Singh, Legal Executive, has appeared in Court. He has produced the original file and referred to a letter dated 08.01.2024. Perusal of the same shows that the Authority has placed reliance on Section 81 of the Real Estate (Regulation and Development) Act, 2016 (for short 'the Act') to delegate its power to any member or officer of the Authority or to any other person. His stand is that Section 81 of the Act, does not

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distinguish between judicial and administrative powers and functions of the Authority. He submits that report in this regard was sent to this Tribunal vide letter dated 08.01.2024.

6. Learned counsel for the appellants has further pointed out that the order passed by the Administrative Officer (a Retd. Additional District Judge in the instant case) was ratified by the Authority vide its order dated 31.01.2020.

7. A query has been put to learned counsel for the appellants as well as learned counsel for the respondent whether procedure adopted by the Authority is sustainable in law. Both are *ad idem* that there can be no question of delegation of judicial powers to any subordinate authority or officer. There has to be an independent application of mind by the Authority having subject matter jurisdiction while passing an order, judicial or quasi-judicial in nature.

8. Learned counsel for the appellants has referred to the judgment of the Hon'ble Supreme Court in case titled as ***Newtech Promoters & Developers Pvt. Ltd. vs. State of UP & Ors. Etc. 2022(1) R.C.R. (Civil) 357***, relevant paras whereof read as under:-

“118. *In the instant case, by exercising its power under Section 81 of the Act, the authority, by a special order dated 5th December, 2018 has delegated its power to the single member of the authority to exercise and decide complaints under Section 31 of the Act and that being permissible in law, cannot be said to be de hors the mandate of the Act. At the same time, the power to be exercised by the adjudicating officer who has been appointed by the authority in consultation with the appropriate Government under Section 71 of the Act, such powers are non-delegable to any of its members or officers in exercise of power under Section 81 of the Act.*”

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9. Perusal of the observations made in ***Newtech Promoters'*** case (*supra*) shows that the Act, 2016 does not contemplate delegation of any judicial power to any other official except a member of the Authority or the Adjudicating Officer, as the case may be. Otherwise also delegation of judicial power is not in consonance with any law or the jurisprudence on the subject. Mere ratification of order already passed by the officer would show that the matter has not been independently considered by the competent authority. Needless to observe that all these functions ought to be performed by the Authority in which this power is vested. Ratification of order would be in the nature of mere approval of a decision already taken by a subordinate officer. An order which is *per se* without jurisdiction and *non est* cannot become valid by the subsequent ratification by members of Authority sitting jointly or otherwise.

Regulation, if any, framed which is contrary to the aforesaid legal proposition would have to be revisited as there is no enabling provisions in the statute (RERA Act) which would permit ratification of the orders passed by an officer not vested with the jurisdiction to do so.

10. Mr. Saini counsel for the appellants submits that the case may be remitted to the same Authority for decision afresh in accordance with law and legal procedure. Learned counsel for the respondent makes a prayer in the same terms.

11. In view of above, the appeal is allowed, the order under challenge is set aside and the case is remitted to the Authority for decision afresh after taking into consideration the established legal principles and observations made in ***Newtech Promoters'*** case (*supra*). As already considerable delay has occurred, the Authority

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shall endeavour to decide the matter expeditiously in any case not later than four months.

12. Parties are directed to appear before the Authority on 01.07.2024.

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

14. File be consigned to the records.

Justice Rajan Gupta
Chairman
Haryana Real Estate Appellate Tribunal

28.05.2024

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