

PROCEEDINGS OF THE DAY

Day and Date	Friday and 16.04.2021
Complaint No.	CR/109/2019 Case titled Gagan Bhatia VS Ramprastha Promoter & Developers Private Limited
Complainant	Gagan Bhatia
Represented through	Shri Nelotpal Shyam, Adv
Respondent	Ramprastha Promoter & Developers Private Limited
Respondent Represented through	Shri Dheeraj Kapoor, Adv for the respondent-company.
Last date of hearing	
Proceeding Recorded by	Pawan Sharma

Proceedings

On 12.04.2021 when the matter was fixed for arguments, the respondent-builder moved an application for rejection of complaint on the ground of jurisdiction. It is pleaded that the complaint relates to refund/compensation and interest filed under Sections 12,14, 18 & 19 of the Real Estate (Regulations and Development) Act, 2016 and the same was pending before the Hon'ble Authority. After amendment of Rules made by the State of Haryana in September, 2019, the complaints filed in this regard were disposed off by this forum and the files were transferred to the Authority. The issue with regard to amendment of rules by the State of Haryana was under challenge before the Hon'ble Punjab & Haryana High Court in Civil Writ Petition Nos. 34271 of 2019 and 3059 of 2020 and wherein the validity of the same was upheld vide orders dated 16.10.2020. So, in view of orders passed by the Hon'ble Punjab & Haryana High Court, the cases pending before this forum were ordered to be again transferred to the Hon'ble Authority for passing appropriate orders. Now, the cases are being taken up again by this forum for further proceedings and due to lack of jurisdiction, this forum cannot proceed with the complaint and is liable to be rejected.



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HARYANA REAL ESTATE REGULATORY AUTHORITY
GURUGRAM

हरियाणा भू-संपदा विनियामक प्राधिकरण, गुरुग्राम

New PWD Rest House, Civil Lines, Gurugram, Haryana

नया पी.डब्ल्यू.डी. विश्राम गृह, सिविल लाईंस, गुरुग्राम, हरियाणा

2. But it is pleaded on behalf of the complaint that no doubt, the rules framed by the State of Haryana under the Act, 2016 were under challenge and the validity of the same was affirmed by the Hon'ble Punjab & Haryana High Court vide its orders dated 16.10.2020 but that matter is sub-judice before the Apex Court of land in SLPs bearing No.13005 of 2020 and 1101 of 2021. So, when the orders passed by the Hon'ble Punjab & Haryana High Court have been stayed, it means there is status quo ante and the jurisdiction of this forum is not barred to proceed further with the complaint and dispose off it under the law as existed prior to amendment of rules and the law as declared by the HREAT, Chandigarh.

3. I have heard the learned counsel for both the parties who reiterated their position as stated above.

4. No doubt, under Rule 29 of Haryana Real Estate (Regulation and Development) Rules, 2017, the complaints with regard to refund/compensation and interest were to be filed under the Act, 2016 before the Adjudicating Officer but the same were being filed earlier before the Hon'ble Authority. That issue arose for consideration before the Hon'ble Haryana Real Estate Appellate Tribunal in case of Sameer Mahawar Vs M G Housing Pvt Ltd. bearing Appeal No. 6 of 2018 and wherein it was held on 02.05.2019 that the complaints with regard to refund/compensation and interest for violations under sections 12, 14 & 16 of the Act of 2016 are required to be filed before the Adjudicating Officer under Rule 29 of the above stated Rules of 2017. So, in pursuant to that the matters pending before the Hon'ble Authority seeking refund besides interest and compensation were transferred and the same were being dealt with by this forum. However in September, 2019, the State of Haryana amended Rules of 2017 and by virtue of which the Hon'ble Authority was given power to adjudicate on the issues detailed above except compensation So, in view of amendments made in Rules of 2017(the Hon'ble Authority vide Notification No.Misc/862/1/83/2019/ITCP dated 12.09.2019), the complaints pending before this forum seeking refund and compensation were ordered to be disposed of and the files were ordered to be transferred to the Hon'ble Authority for further action. However, the rules framed by the State of Haryana were subject matter in Civil Writ Petition No. 34271/2019 before the Hon'ble Punjab & Haryana High Court who initially stayed operation of those rules but ultimately affirmed the validity of the same vide orders dated

An Authority constituted under section 20 the Real Estate (Regulation and Development) Act, 2016
Act No. 16 of 2016 Passed by the Parliament

भू-संपदा (विनियमन और विकास) अधिनियम, 2016 की धारा 20 के अंतर्गत गठित प्राधिकरण

भू-संपदा विनियमन और विकास अधिनियम, 2016 की धारा 20 के अंतर्गत गठित प्राधिकरण



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16.10.2020. So, in view of orders passed by the Hon'ble Punjab & Haryana High Court, the cases pending before this forum with regard to refund etc. were directed to be put up before the Hon'ble Authority for passing appropriate orders vide order dated 20.10.2020. But that judgement is admittedly under challenge before the Apex Court of land in SLP bearing No.13005 of 2020 & 1101 of 2021 wherein following orders dated 05.11.2010 and 25.11.2020 were passed by the Hon'ble Apex Court:

I

05.11.2020

***Upon hearing the counsel the Court made the following
ORDER***

Issue notice.

In the meantime, there shall be stay of further proceedings in impugned final judgment dated 16.10.2020 passed by the High Court of Punjab and Haryana at Chandigarh in CWP No. 34271 of 2019

II

05.11.2020

***Upon hearing the counsel the Court made the following
Issue notice.***

The operation of the impugned order(s) shall remain stayed until further orders.

III

25.11.2020

Issue notice.

There would be stay of the operation of the impugned judgment and order passed by the High Court till the disposal of the matters.

However, we clarify that the Appellate Authority under the Real Estate (Regulation and Development) Act, 2016 would be entitled to take up the appeal for hearing and decision on merits, in case there is no objection from the respondents,

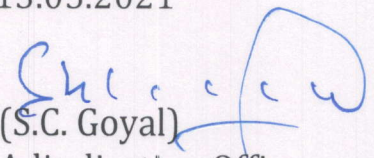
5. A perusal of the above mentioned orders and facts clearly shows that though under the amended rules, the Hon'ble Authority has been vested with powers to adjudicate the issue with regard to refund and interest but that power was challenged before the Haryana Real Estate Appellate Tribunal, Chandigarh in case Sameer Mahawar & Anr Vs M.G Housing Pvt Ltd. & Ors and who vide orders dated 02.05.2019 directed the complaints seeking refund to

New PWD Rest House, Civil Lines, Gurugram, Haryana

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be transferred to the Adjudicating Officer with liberty to amend their complaints in order to bring the same in the parameters of form CAO as provided under Rule 29 of Rules, 2017. After that there was an amendment in the rules by the State of Haryana on 12.09.2019 and which mandated an inquiry under Section 35 of the Act, 2016 before the complaint can be referred to the Adjudicating Officer for refund. A challenge to these rules was successfully made before the Hon'ble Punjab & Haryana High Court in Writ Petition Nos. 34271 of 2019 and 3059 of 2020 who upheld the validity of the same. But the orders passed in this regard by the Hon'ble High Court on 16.10.2020 are under challenge before the Apex Court of land in SLP No.13005/2020 and 1101 of 2021 and wherein the operation of the orders passed by the Hon'ble High Court has been stayed. The orders passed in this regard by the Apex Court of land operate as order in *Rem* and not in personm. So, it means that there is status quo ante as existing prior to amendment of rules i.e. 12.09.2019 framed by the State of Haryana. Thus, in view of the factual as well as the legal position detailed above, the continuation of the proceedings before this forum seeking refund by an allottee cannot be said to be without jurisdiction. So, the plea advanced in this regard on behalf of the respondent-builder is not maintainable and the application filed in this regard is ordered to be dismissed.

Let the matter be put up on for arguments on 13.05.2021


(S.C. Goyal)
Adjudicating Officer
16.04.2021