

**REAL ESTATE APPELLATE TRIBUNAL, PUNJAB,
SAS NAGAR (MOHALI)**

M.A. No. 28 of 2018

In

Appeal No. 30 of 2018

Navin Gupta son of Mr. Santosh Kumar Gupta, resident of 3F-304, 3rd Floor, Maya Garden Phase-III, VIP Road, Zirakpur, District SAS Nagar.

....Appellant

Versus

M/s Barnala Builders & Property Consultant, having its registered office SCO No.1, Opposite Yes Bank, Zirakpur, Patiala Road, Zirakpur, SAS Nagar though its Proprietor/Representative Sh. Satish Jindal son of Angrej Lal resident of House No. 288, Sector 10, Panchkula.

....Respondent

Appeal No. 31 of 2018

Navin Gupta son of Mr. Santosh Kumar Gupta, resident of 3F-304, 3rd Floor, Maya Garden Phase-III, VIP Road, Zirakpur, District SAS Nagar.

....Appellant

Versus

M/s Barnala Builders & Property Consultant, having its registered office SCO No.1, Opposite Yes Bank, Zirakpur, Patiala Road, Zirakpur, SAS Nagar though its Proprietor/Representative Sh. Satish Jindal son of Angrej Lal resident of House No. 288, Sector 10, Panchkula.

....Respondent

APPEALS NO. 30 AND 31 OF 2018

Present: Sh. Deepak Bharadwaj, Advocate for the appellant.

Sh. Ambrish Sharma, Advocate for the respondent.

QUORUM: JUSTICE RAJIVE BHALLA,(RETD), CHAIRMAN
S.K. SHARMA, IPS (RETD.), MEMBER

-*-

JUDGMENT: (*Rajive Bhalla (J) (Retd)*): (oral)

M.A. NO. 28 OF 2018
IN APPEAL No. 30 of 2018

Prayer in this application is for condonation of 134 days delay in filing the appeal.

Counsel for the applicant submits that delay is neither intentional nor malafide but caused by the fact that the Authority granted liberty to the applicant to file a complaint for compensation in Form-N but when the complaint was filed, before the Adjudicating Officer, the complaint was dismissed by holding that as the Authority has already determined that there is no violation of provisions of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the Act), Rules or Regulations by the promoter, a subsequent adjudication of the same violation is prohibited, even if relief is different from the relief sought before the Authority. The applicant was therefore left with

APPEALS NO. 30 AND 31 OF 2018

no alternative but to file an appeal against order passed by the Authority and the Adjudicating Officer, thereby causing delay.

Counsel for the respondent has filed a reply pleading that sufficient cause has not been pleaded and as delay is intentional and malafide, the application merits dismissal. The fact that the Authority had granted liberty to file a complaint under form N or the fact that the Adjudicating Officer dismissed the complaint is irrelevant for condoning delay.

We have heard counsel for the parties and are of the firm opinion that the application discloses sufficient cause. The applicant filed a complaint claiming refund, interest and compensation for violations of provisions of the Act and the agreement for sale. The Authority rejected the complaint but granted liberty to file a complaint for compensation in form N, before the Adjudicating Officer. The applicant filed a complaint before the Adjudicating Officer which has been dismissed on the ground that as violations have already been determined by the Authority, he has no jurisdiction to reopen this matter and consequently cannot grant compensation. The applicant was faced with a situation where both complaints were dismissed rendering imperative, the filing of this appeal to challenge the order passed by

APPEALS NO. 30 AND 31 OF 2018

the Authority. Consequently the application is allowed and delay of 134 days in filing the appeal is condoned.

MAIN APPEALS

By way of this order we shall decide Appeal No. 30 of 2018 titled as “ *Naveen Gupta V/s M/s Barnala Builders and Property Consultant*” and Appeal No. 31 of 2018 titled as “ *Naveen Gupta V/s M/s Barnala Builders and Property Consultant*”, as they raise common questions, namely the jurisdiction of the Authority and the Adjudicating Officer to adjudicate violations and then grant relief of refund, interest and compensation etc. and whether adjudication of violations by a forum that lacks jurisdiction prohibits the jurisdictional forum, from adjudicating such a violation on the ground that the other forum has already decided the violation?

Counsel for the appellant submits that the Authority had no jurisdiction to decide the violations, particularly as compensation is linked to the relief of refund of payments and interest. The only forum authorized to hold an enquiry and assess and award compensation and or interest is the Adjudicating Officer, exercising power under Section 71 (1) and 71(3) of the Act, read with Rule 37 of the Punjab State Real Estate (Regulation and Development) Rules, 2017. The Authority had no jurisdiction to

APPEALS NO. 30 AND 31 OF 2018

decide these violations and therefore order passed in relation to these violations did not prohibit the Adjudicating Officer, the forum jurisdictionally empowered to decide the violations from examining the violations and awarding compensation, refund and interest.

Counsel for the respondent submits that as violations alleged by the appellant were rejected by the Authority, the complaint was rightly dismissed by the Adjudicating Officer, who had no jurisdiction to reopen the matter even if liberty was granted to file a fresh complaint. The appeals are therefore devoid of any merit and may be dismissed.

We have heard, counsel for the parties and perused the impugned order. The appellant is an allottee of a flat in Maya Garden Phase-III, VIP Road, Zirakpur, District SAS Nagar. The promoter is M/s Barnala Builders and Property Consultant. The appellant has been in possession since 2013, pursuant to an allotment letter dated 03.03.2011. After coming into force of the Real Estate (Regulation and Development), Act, 2016, the appellant filed a complaint in form M alleging violations of delay in delivery of possession, maintenance charges demanded without obtaining a completion certificate, refund of parking charges, refund of service

APPEALS NO. 30 AND 31 OF 2018

tax, a direction to the builder to provide a solar power system, water heating, change in the super area and common areas street lights etc. and claiming compensation under various heads and interest. The respondent filed a reply denying any violation of any provision and alleging malafide on the part of the appellant and other residents who are not paying maintenance charges. The respondent also alleged delay in deposit of instalments by the appellant etc.

The Authority has vide order dated 12.04.2018, rejected the allegations of violations but granted liberty to the appellant to approach the Adjudicating Officer by way of a fresh complaint in form-N, for compensation. The appellant thereafter filed a complaint in form N before the Adjudicating Officer claiming compensation, interest etc. The complaint was opposed by the respondent by invoking Order 2 Rule 2 of the Code of Civil Procedure. The Adjudicating Officer dismissed the complaint by holding that as the Authority has already decided the violations, the matter cannot be reopened.

Admittedly the complainant filed a complaint for compensation, interest and refund of maintenance charges etc. Section 71(1) and (3) of the Act read with Rule 37 of the Rules,

APPEALS NO. 30 AND 31 OF 2018

requires a violation that leads to a claim for compensation or and interest to be decided by the Adjudicating Officer alone. A violation and a cause of action that leads to multiple reliefs and includes a relief for compensation and or interest, requires that the entire bundle of rights leading to these multiple reliefs be placed before the Adjudicating Officer, being the only forum empowered to grant compensation. The complaint filed by the appellants seeking multiple reliefs of compensation, interest and return of maintenance charges was therefore required to be placed before the Adjudicating Officer but was placed before the Authority, which rejected the complaint but granted liberty to approach the Adjudicating Officer for compensation. The appellant approached the Adjudicating Officer but the complaint was dismissed on the ground that as violations have already been decided by the Authority, he has no jurisdiction to decide the matter.

Apart from the fact that the Authority had no jurisdiction to entertain the complaint as the violations and the causes of action raised a claim for compensation, amongst other reliefs of refund etc., an order passed by a Court or Tribunal that lacks jurisdiction is not binding on the forum vested with jurisdiction. The order passed by the Authority was without

APPEALS NO. 30 AND 31 OF 2018

jurisdiction and was therefore not binding on the Adjudicating Officer, which is the only forum empowered to determine violations that pray for a relief of compensation. The Adjudicating Officer chose to be careful and dismissed the complaint for compensation, apparently in view of certain circulars issued by the Authority.

In view of what has been recorded herein above, the appeals are allowed, the impugned orders are set aside and the matter is remitted to the Adjudicating Officer to decide the complaint filed in Form-N, on merits after adjudicating all violations and reliefs claimed before the Authority and the Adjudicating Officer, in accordance with law, within two months. Parties are directed to appear before the Adjudicating Officer on 15.03.2019.

No order as to costs.


JUSTICE RAJIVE BHALLA (RETD.)

CHAIRMAN


SH. S.K SHARMA, IPS (RETD.)

MEMBER

February 15, 2019

AN