

**137 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

RERA-APPL-58-2022 (O&M)

Date of decision: 07.12.2022

Jaideep Harpalani and another

....Appellants

Versus

Mascot Buildcon Private Limited and another

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Aashish Chopra, Sr. Advocate with
Ms.Rupa Pathania, Advocate for the appellants

ANIL KSHETARPAL, J (Oral)

CM-9226-C-2022

For the reasons stated in the application, the delay of 15 days
in re-filing the appeal is condoned.

CM stands allowed.

CM-9227-C-2022

For the reasons stated in the application, the delay of 3 days
in filing the appeal is condoned.

CM stands allowed.

Main case

1. This appeal has been filed under Section 58 of the Real Estate (Regulation and Development) Act, 2016 while challenging the concurrent findings of fact arrived at by the Haryana Real Estate Regulatory Authority (hereinafter referred to as 'HRERA') which has subsequently been confirmed in appeal by the Haryana Real Estate Appellate Tribunal (hereinafter referred to as 'HREAT').

2. The relevant facts in brief are required to be noticed which are as follows:-

The appellants initially booked two shops of 250-300 square feet each on the ground floor of the proposed building while paying Rs.6,00,000/- and Rs.5,00,000/- respectively. The basic sale price was fixed at the rate of Rs.10,999/- per square feet minus 3% broker's discount. Subsequently, the appellants agreed to purchase the unit bearing no.G-87, measuring 480 square feet. Ultimately, the appellants entered into a space buyer's agreement on 04.04.2016 in order to purchase space in Oodles Sky Walk, Sector 83, Gurugram, for a sum of Rs.73,00,383/-. As per the agreement, the possession was to be delivered on or before 3rd July, 2019 which included the grace period. Further, the payments were linked with the construction of the building. The respondent-promoter demanded a sum of Rs.3,00,00,558.28 vide communication dated 27 July, 2019. However, no payment was made. In para 36, it has been asserted that repeated demand notices were sent to the appellants on 21st August, 2017, 6th December, 2017, 9th February, 2018, 21st April, 2018, 28th September 2018 as well as on 18th March, 2019 to make the payment according to the stage of the construction in terms of the agreement, however, the appellants failed to respond to the same. Ultimately, the promoter cancelled the space buyer's agreement vide notice dated 24th April, 2019 while transferring a sum of Rs.30,92,142/- to the accounts of the appellants after deducting 10% of the basic price as per the agreement. Subsequently, the appellants filed

complaint before HRERA, which was dismissed. As already noticed, the HREAT has affirmed the order of the HRERA.

3. Heard the learned senior counsel representing the appellants at length and with his assistance perused the paper book.

4. While highlighting that the promoter has failed to get completion/occupation certificate, he has submitted that the appellants have been making repeated representations for getting the relevant information. He submits that the appellants are interested in continuing with the project, if one opportunity is granted to them. He submits that the information sought by the appellants was relevant for ensuring that the promoter is going ahead with the project as planned. At the outset, it must be noticed that Section 62 of the Indian Contract Act, 1872 which provides for novation of the contract is applicable in the facts of the present case. Hence, after entering into a new space buyer's agreement on 4th April, 2016, the appellants cannot pray for enforcement of a prior agreement, particularly when the subsequent agreement stands substituted in place of the original agreement and the latter can no longer be enforced. The appellants, herein wish to purchase a commercial space. They entered into a space buyer's agreement, which was on construction linked payment plan. It was on 27th July, 2017 that the promoter demanded the next installment in accordance with the agreement. If the appellants had any doubt, they could have visited the site. They are residents of Delhi and the project is coming up at

Gurugram, which is located nearby. Except for making the representations, the appellants did not choose to respond though repeated demands were being made. Forced by these circumstances, the promoter cancelled the agreement in accordance with the terms of the space buyer's agreement and refunded the amount. It was only thereafter that the appellants invoked the jurisdiction of HRERA. Both the courts have concurrently held that the conduct of the appellant was not appropriate. The conduct of the promoter may also not be above board, however, that would not enure to the benefit of the appellants, particularly when they have failed to furnish any justifiable reason for not making the payments in the agreed time. They were atleast expected to respond to the various demand notices issued to them. At this stage, the learned senior counsel has submitted that the appellants have also been complaining about slow progress of the project. The primary question before this Court is "Whether the next installment vide letter dated 27th July, 2017 was demanded correctly or not? As per the agreement, the same was required to be deposited on the casting of the 6th floor slab. The appellants have nowhere stated that on their visit, the casting of 6th floor slab did not exist.

5. Moreover, a second appeal is maintainable only on a substantial question of law as provided under Section 100 of the Code of Civil Procedure, 1908. Hence, no ground to interfere is made out.

6. The present appeal is dismissed.

7. All the pending miscellaneous applications, if any, are also disposed of.

07.12.2022

rekha

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE