

**BEFORE THE HARYANA REAL ESTATE APPELLATE
TRIBUNAL**

**Appeal No.280 of 2019
Date of Decision: 02.07.2020**

Sandeep Bansal son of Shri Shyam Lal Bansal, Resident of House No. B3/9, Janakpuri, New Delhi through his attorney holder Shri Shyam Lal Bansal son of Shri Gobind Ram Bansal, Resident of House No. B3/9, Janakpuri, New Delhi.

Appellant

Versus

M/s IREO-Victory Pvt. Ltd., Ireo Campus, Archview Drive, Ireo City Golf Course Extension Road, Gurugram-122201, Haryana.

Respondent

CORAM:

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

Argued by: Shri Sandeep Gupta, Advocate, Ld. Counsel for the appellant.
Shri Vinod S. Bhardwaj, Advocate with Ms. Mehak Sahni, Advocate, Ld. Counsel for the respondent.

ORDER:

JUSTICE DARSHAN SINGH (Retd.) CHAIRMAN:

The present appeal has been preferred against the order dated 31.10.2018 passed by the learned Haryana Real Estate Regulatory Authority, Gurugram (hereinafter called 'the Authority') under Section 44 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter called 'the Act'), whereby the complaint filed by the appellant/allottee was disposed of by the learned Authority with the following directions:-

- “(i) The complainant is directed to take possession of the unit within a week time failing which he shall too be liable for all the obligations as per the provisions of section 19(a) of the Real Estate (Regulation & Development) Act, 2016.
- (ii) The complainant is eligible for prescribed rate of interest i.e. 10.45% per annum from the date of possession till the date of offer of possession as per the provisions of section 18(1) of the Act *ibid*.
- (iii) If complainant is not satisfied with this decision, he is at liberty to file an appeal before the appropriate forum. Accordingly, the respondent is directed to pay interest at the prescribed rate @ 10.45% p.a. for delayed period within a period of 90 days from the issuance of this order. Interest accruing thereafter shall be paid before the 10th of each month.”

2. The appellant/allottee purchased apartment no.A-2103 admeasuring 3155 sq. ft. in second sale dated 17.10.2011 in IREO-Victory Valley, Gurugram. The Builder Buyer Agreement was executed between the respondent/promoter and the original allottees namely Ms. Arhune Giare and Rashmi Giare on 20.09.2010 which was endorsed in favour of the appellant on 17.10.2011. As per clause 13.3 of the Agreement, the respondent/promoter was bound to deliver the possession by April, 2014 but the respondent failed to complete the building within the stipulated period. The possession was offered only on 15.11.2017 with the final demand but the project was still

incomplete. The appellant/complainant had made request vide repeated emails for doing the needful but no satisfactory reply was received. Hence, the complaint. The appellant/allottee sought the following relief:-

“The Complainants therefore prayed that their compensate with interest on paid amount to respondent @ 15% (Rupees 15601687(One Crore Fifty-Six Lac One Thousand Six Hundred Eighty-Seven only)) and refund of paid amount Rupees 2,42,46,262 (Two Crore Forty-Two Lac Forty-Six Thousand Two Hundred Sixty-Two Only).

Total amount of refund Rs.39847949 (Three Crore Ninety-Eight Lac Forty-Seven Thousand Nine Hundred Forty-Nine only).”

3. The respondent/promoter contested the complaint on the ground inter alia that there is slight delay in handing over the possession due to the factors which were beyond the control of the respondent. The appellant/allottee has also committed several defaults which contributed to the delay in completion of the project. The respondent/promoter is ready to pay compensation to the appellant/complainant as per the agreed terms of the Builder Buyer's Agreement. It is further pleaded that as per the terms and conditions of the agreement, the respondent/promoter was required to hand over the possession within 36 months from the date of approval of the building plan and/or fulfilment of the preconditions imposed thereunder. The

building plan was approved on 29.11.2010 wherein several preconditions were imposed which were required to be satisfied. The last of these preconditions i.e. Fire NOC was granted on 28.10.2013. Therefore, the period of 42 months expired on 28.04.2017. The respondent/promoter had to comply with the modifications made in the Fire Fighting Scheme approval. A revision was also sought by the Municipal Corporation and an outside expert had to be consulted. The said recommendations were implemented in November/December, 2011. After due consideration of all the material, the Fire Fighting Scheme was approved only on 28.10.2013 and the possession has been offered on 15.11.2017. All other pleas raised in the complaint were controverted. With these pleas, the respondent pleaded for dismissal of the complaint with costs.

4. The learned Authority on appreciating the contentions raised by both the parties and the material available on the record, disposed of the complaint vide impugned order dated 31.10.2018 giving the directions to the respondent/promoter as mentioned in the upper part of this judgment.

5. Aggrieved with the aforesaid order the present appeal has been preferred by the complainant/allottee.

6. We have heard learned counsel for the parties and have meticulously examined the record of the case.

7. Shri Sandeep Gupta, learned counsel for the appellant contended that as per clause 13.3 of the Builder Buyer's Agreement dated 20.09.2010, the possession of the unit was to be delivered within a period of 36 months from the date of approval of the building plan and/or fulfilment of the preconditions imposed thereunder. He contended that the building plan was approved on 29.11.2010. The fire NOC was applied on 17.12.2010, but the respondent/promoter had already started the construction prior to the Fire NOC and had even received the instalments being the Construction Linked Plan. Thus, he contended that the deemed date of possession should be reckoned from the date of the provisional fire NOC and not from the final fire NOC. He relied upon case **Shamshul Hoda Khan Vs. M/s IREO VICTORY VALLEY Pvt. Ltd. and another, Consumer Case No.2110 of 2016** decided by the Hon'ble National Consumer Disputes Redressal Commission, New Delhi on 17.01.2019.

8. He further contended that in fact the possession was offered to the appellant/allottee on 08.02.2019 and not on 15.11.2017. He contended that the offer of possession letter dated 15.11.2017 cannot adversely affect the rights of the appellant as on that date the building was incomplete and the appellant had issued various emails for pointing out the delay in the completion of the project. Thus, he contended that the

appellant shall be entitled for delayed possession interest from 17.08.2014 to 08.02.2019 (the letter of offer of possession). He plead that the learned Authority has wrongly awarded the interest only for the period w.e.f. 28.04.2017 to 15.11.2017 i.e. for a period of six months and eighteen days only.

9. On the other hand, learned counsel for the respondent/promoter contended that as per clause 13.3 of the Builder Buyer's Agreement, the possession was to be delivered/offered within a period of 36 months from the date of approval of the building plan and/or fulfilment of the preconditions imposed thereunder. The allottee had further agreed that the respondent/promoter shall be entitled for an additional period of 180 days as a grace period. He contended that the appellant has applied for issuance of fire safety clearance on 17.12.2010 which was finally granted on 28.10.2013. Thus, the preconditions imposed in the approval were fulfilled only on 28.10.2013 and the period of 42 months has been rightly counted from the said date by the learned Authority and the possession was to be offered by 28.04.2017. He contended that there is nothing wrong in the findings of the learned Authority with respect to the determination of the deemed date of delivery of possession.

10. He further contended that the possession was offered to the appellant vide letter dated 15.11.2017 but the appellant

has not taken over the possession on one pretext or the other. For this lapse on the part of the appellant, the respondent/promoter cannot be made to suffer. The letter dated 08.02.2019 was issued only in continuation of letter dated 15.11.2017 to impress upon the appellant to take over the possession.

11. We have duly considered the aforesaid contentions. The points for determination in the present appeal are as to from which date the due date of possession should be reckoned and secondly up to which date the appellant should be granted the interest for delayed possession.

12. Clause 13.3 of the agreement dated 20.09.2010 reads as under: -

“13.3 Subject to Force Majeure, as defined herein and further subject to the Allottee having complied with all its obligations under the terms and conditions of this Agreement and the Allottee not being in default under any part of this Agreement including but not limited to the timely payment of the total Sale Consideration, Stamp Duty and other charges and also subject to the Allottee having complied with all formalities or documentation as prescribed by the Company, the Company proposes to hand over the possession of the said Apartment to the Allottee within a period of 36 months from the date of approval of the building

Plans and/or fulfilment of the preconditions imposed thereunder (“Commitment Period”). The Allottee further agrees and understands that the Company shall additionally be entitled to a period of 180 (One Hundred and Eighty) days (“Grace Period”), after the expiry of the said Commitment Period to allow for unforeseen delays in obtaining the Occupation Certificate etc. from the DTCP under the Act, in respect of the IREO-Victory Valley Project.”

13. As per the aforesaid provisions of the agreement, the respondent/promoter was required to hand over the possession of the apartment to the appellant/allottee within a period of 36 months from the date of approval of the building plan and/or fulfilment of the preconditions imposed thereunder. The respondent/promoter was further granted a grace period of 180 days for delivery/offer of possession. The respondent/promoter wants to take the shelter of the delay in the grant of the fire safety clearance which was issued by the competent authority on 28.10.2013, though the requisite application for issuance of the fire safety clearance was moved on 17.12.2010.

14. It is not a fact that there was any hurdle to start the construction of the project by the respondent before obtaining the final fire safety clearance. This project had the Construction Linked Payment Plan, which is apparent from the Payment Plan available at page no.92 of the paper book. On commencement

of the excavation, 7.5% of the basic price alongwith part of EDC was to be paid as third instalment. 7.5% of basic price was Rs.17,11,587.50. The said amount has been paid by the appellant/allottee vide receipt dated 18.01.2011 (copy available at page 49 of the paper book). It shows that the construction has already started before issuance of the fire safety clearance. Learned counsel for the appellant has relied upon case **Shamshul Hoda Khan Vs. M/s IREO VICTORY VALLEY Pvt. Ltd. and another** (Supra). It could not be disputed at bar by the learned counsel for the respondent that the above said case also related to the same project and was having exactly the same clause of the Builder Buyer's Agreement. The Hon'ble National Consumer Disputes Redressal Commission, New Delhi, taking note of some previous cases laid down as under: -

“9. In the present case, the written version filed by the opposite party does not indicate as to whether the provisional NOC in terms of Sub-section (2) of Section 15 of Haryana Fire Service Act, 2009 was issued to them or not. If the said provisional NOC was not issued, the obvious inference would be that the application submitted by the opposite party for grant of the fire safety approval did not meet all the requirements of the said Act. If the said provisional NOC was issued, the opposite party had no difficulty in going ahead with the construction even if the final fire safety clearance came to be issued at a later date.

10. What is relevant for purpose of deciding the issue involved in this complaint is as to whether the opposite party was unable to commence construction for want of the final fire safety clearance which came to be issued on 28.10.2013 or not. It is an admitted position that the opposite party had been raising demand based upon the stage of construction even prior to 28.10.2013 when the first safety clearance came to be issued. The payment plan agreed between the parties envisaged payment of the 3rd instalment on commencement of excavation, 4th on casting of basement roof slab and the 5th on casting of ground floor roof slab. The 6th instalment was payable on casting of 3rd floor roof slab. It is an admitted position that even the 4th installment which was payable on casting of basement roof slab was demanded on 5.2.2013. The 5th and 6th instalments were demanded on 21.3.2013 and 18.9.2013 respectively. Admittedly, the fire safety clearance had not been received by that time. Thus the opposite party had actually started the construction of the buildings even before receipt of the fire safety clearance on 28.10.2013. This would mean that either the fire safety clearance was not mandatory before commencement of construction and could be obtained thereafter before issuance of the Occupancy Certificate or a provisional NOC in terms of Sub-section (2) of Section 15 of Haryana Fire Service Act, 2009 had been issued to it which enabled it to commence construction, even before receipt of the fire safety clearance on 28.10.2013. From whatever angle I may look at it, the fact remains that the fire

safety clearance which came to be issued on 28.10.2013 did not come in the way of the opposite party starting and continuing the construction of the buildings in which a unit was allotted to the complainant.

10. The contention of the learned Counsel for the opposite party is that irrespective of the opposite party having started the construction before receiving the fire safety clearance on 28.10.2013, the requisite period of 36 months in terms of Clause 13.3 of the Buyers Agreement has to be computed only from the date on which the said clearance was obtained. In my view, the above-referred clause contained in the Buyers Agreement cannot be interpreted in the manner suggested by the learned Counsel for the opposite party. The obvious purpose behind giving time period of 36 months from the date of approval of the building plans or fulfilment of the preconditions if any imposed thereunder was to give a clear period of 36 months to the builder for completing the construction. Even thereafter the builder was allowed a grace period of six months thereby giving it a total time period of 42 months for completing the construction. Had the opposite party been legally prohibited from commencing the construction without obtaining the fire safety clearance and it had actually not started the construction before receiving the said fire safety clearance, it could have been justified in saying that the requisite period of 36 months should be computed from the date on which the said clearance was actually obtained by it. However, the opposite party having already started

the construction, it would be only fair and reasonable to say that the said construction could have been started within 60 days of the date on which the fire safety clearance was applied. This is so, considering the provisions contained in Sub-section (2) of Section 15 of Haryana Fire Service Act, 2009 which envisage issuance of a provisional NOC within 60 days of submission of the application giving all details of construction as well as the rescue fire provision and fire safety details. The opposite party admittedly applied for the fire safety clearance on 17.12.2010. The time period of 36 months for completing the construction therefore would commence from 17.2.2011. Therefore, the construction ought to have been completed by 17.2.2014 and after giving benefit of the grace period of six months, it ought to have been completed by 17.8.2014.”

15. The respondent/promoter preferred Civil Appeal No.4801/2019 against the order of the Hon'ble National Consumer Disputes Redressal Commission and the said appeal was dismissed by the Hon'ble Apex Court, vide order dated 03.05.2019. Even the review petition filed by the respondent against that judgment was dismissed by the Hon'ble Apex Court vide order dated 15.10.2019. So, the judgment rendered by the Hon'ble National Consumer Disputes Redressal Commission has attained finality.

16. It has not been disputed at bar that the respondent/promoter has applied for issuance of fire safety

clearance on 17.12.2010. The provisional NOC shall be deemed to have been issued on completion of period of 60 days from the date of submission of the said application as per section 15(2) of the Haryana Fire Service Act, 2009. Hence, the respondent/promoter was at liberty to start the construction after completion of 60 days from the date of moving the application for fire safety clearance. Moreover, it is evident from the record that the respondent/promoter had actually started the construction even before issuance of the final fire safety clearance. It shows that either the fire safety clearance was not mandatory before commencement of the construction or could be obtained thereafter before issuance of the Occupancy Certificate or the provisional NOC in terms of Section 15 Sub-section (2) of the Haryana Fire Service Act, 2009 had been issued to enable the respondent to commence the construction. The payment plan and the receipt dated 18.01.2011 makes the position clear that the respondent had started the construction of excavation and had even received the instalment from the appellant for that purpose. The observations by the Hon'ble National Consumer Disputes Redressal Commission in the judgment referred above shall be binding on the rights of the respondent/promoter as it was a party to the said litigation, which related to the same very project and had exactly similar clauses of the agreement. So, the period for deemed date of

delivery/offer of possession is to be reckoned w.e.f. 17.02.2011 i.e. after completion of 60 days from 17.12.2010, the date on which the fire safety clearance was applied. Thus, the learned Authority has erred in determining the deemed date of possession from the date of final fire safety clearance i.e. 28.10.2013. So, the respondent/promoter was bound to deliver/offer the possession by 17.08.2014 i.e. 42 months with effect from 17.02.2011.

17. The letter of offer of possession is available at page 94 of the paper book which shows that the same was issued on 15.11.2017. Learned counsel for the appellant could not point out as to what was the deficiency in the building at that time. There is no material on record to show that on the date of issuance of the letter of offer of possession dated 15.11.2017, the building was incomplete. So, the date of offer of possession shall be taken to be 15.11.2017.

18. Consequently, the appellant shall be entitled to the delayed possession interest at the rate determined by the learned Authority w.e.f. 17.08.2014 to 15.11.2017.

19. Thus, keeping in view our aforesaid discussions, the present appeal is hereby partly allowed, the impugned order dated 31.10.2018 passed by the learned Authority is hereby modified to this extent that the appellant/allottee shall be entitled to the delayed possession interest at the prescribed rate

of interest i.e. 10.45% per annum w.e.f. 17.08.2014 to 15.11.2017.

20. No order as to costs.

21. The copy of this order be communicated to learned counsel for the parties/parties and the learned Authority for compliance.

22. File be consigned to the records.

Announced:
July 02nd, 2020

Justice Darshan Singh (Retd.)
Chairman,
Haryana Real Estate Appellate Tribunal,
Chandigarh

Inderjeet Mehta
Member (Judicial)

Anil Kumar Gupta
Member (Technical)

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