**BEFORE THE HARYANA REAL ESTATE APPELLATE TRIBUNAL**

**APPEAL NO.658 OF 2021**
Date of Decision: 02.09.2022

M/s Pivotal Infrastructure Pvt. Ltd., 704-705, JMD Pacific Square, Sector-15, Part-II, Gurugram (Haryana)

...Appellant-promoter

Versus

1. Harkesh Deshwal;
2. Savitri Deshwal

Both residents of 285, 2nd floor, Housing Board, Sector-18, Faridabad-12100.

...Respondents-Allottees

**CORAM:**

**Shri Inderjeet Mehta Member (Judicial)**
**Shri Anil Kumar Gupta Member (Technical)**

**Argued by:** Shri Rohan Gupta, Advocate,
Ld. counsel for appellant-promoter.

Shri Akshat Mittal, Advocate,
Ld. counsel for respondents-allottees.

**O R D E R:**

**ANIL KUMAR GUPTA, MEMBER (TECHNICAL):**

The present appeal has been preferred under Section 44(2) of the Real Estate (Regulation

and Development) Act, 2016 (hereinafter referred as, 'the Act') by the appellant-promoter against final impugned order dated 09.03.2021 along with all the previous orders passed by Ld. Haryana Real Estate Regulatory Authority, Panchkula (hereinafter referred as, Ld. Authority) whereby the complaint No. 2024 of 2019 filed by the respondents-allottees was disposed of. The directions of the ld. Authority in the impugned order date 09.03.2021 are reproduced as under:

> "4. *Arguments put forth by both ld. counsels for the parties have been carefully heard. The complainant has not disputed the statement of account filed by the respondent. Respondent has shown an amount of Rs. 2,44,070/- payable by the complainant and an amount of Rs. 12,27,643/- payable by the respondent to the complainant. After adjusting an amount of Rs. 2,44,070/-, an amount of Rs. 9,83,573/- is payable to the complainant by the respondent. The Authority after consideration of the matter orders that respondent shall hand possession of the flat complete in all aspects to the complainant within 45 days from passing of this order. The respondent is also directed to pay*

*outstanding amount of Rs. 9,83,573/- to the complainant along with offer of possession.*

*5. In view of the above terms, case is disposed of and file be consigned to the record room."*

2. As per the averments of the respondents-allottees in the complaint, they had booked a flat in the year 2012 in the project named "Royale Heritage" Sector 70, Faridabad being developed by appellant-promoter. The respondents-allottees were allotted a flat bearing No. 803 in Tower-20 on 11.05.2012 by the appellant. Total sale consideration of the flat was Rs.31,29,215/-against which the respondents-allottees has already paid Rs.32,45,641/-. Flat Buyer's Agreement (hereinafter referred as, the FBA) was executed between the parties on 18.07.2012. As per terms and conditions of FBA, the appellant-promoter was under obligation to hand over possession of the flat within 42 months from the date of execution of FBA but the appellant failed to offer possession of the flat in scheduled period. Aggrieved by the above facts, the respondents-allottees filed the complaint seeking the following reliefs:

*"1. To direct the respondents to offer immediate possession of the unit in question to the complainant allottees.*

*2.To direct the respondents to compensate for delay in offer of possession by paying interest as prescribed under the Real Estate (Regulation and Development) Act 2016 read with Haryana Real Estate (Regulation & Development) Rules 2017 on the entire deposited amount of Rs. 32,45,641/- (Rupees Thirty Two Lakh, Forty Five Thousand, Six Hundred and Forty One Only) which has been deposited against the property in question so booked by the complainants.*

*3. To direct the respondents to waive of the delayed payment charges demanded from the complainants herein, for the reasons stated in the instant complaint.*

*4. The registration, if any, granted to the Respondent for the project namely, "Royal Heritage", situated in the revenue estates of Faridabad, District Faridabad, Haryana, under RERA read with relevant Rules may be revoked under Section 7 of the RERA for violating the provisions of the Act.*

*5. Any other relief as this Hon'ble Authority may deem fit and appropriate in the facts and circumstances of the instant complaint."*

3. The appellant-promoter has contested the complaint by taking the preliminary objections that the complaint is not maintainable under the

provisions of the Act as the FBA was executed between the parties on 18.07.2012, i.e. before coming into force of the Act.

4. It was pleaded by the appellant-promoter that the payment of Rs. 31,52,631 has been paid by the respondents-allottees and not Rs. 32,45,641/-. It was further pleaded that as per the terms and conditions of builder buyer agreement, the respondents-allottees had delayed in payments of several installments which caused delay in completion of the project. The appellant has already delivered physical possession of flats in 14 towers and construction of the tower in question is also complete. The appellant had already applied for grant of occupation certificate of the tower in question on 06.09.2018, as a proof of which he placed a copy of application dated 06.09.2018 filed in Town and Country Planning Department. It was further pleaded that due to pendency of occupation certificate with the competent authority, the possession of the flat of the respondents-allottees is being delayed.

5. After controverting all the pleas raised by the respondents-allottees, it had pleaded for dismissal of the complaint being without any merits.

6. We have heard Ld. counsel for both the parties and have carefully examined the record of the case.

7. Initiating the arguments, it was contended by the ld. counsel for the appellant that the project named "Royal Heritage" is developed by appellant-promoter over a land admeasuring 20.3125 acres, located in the revenue estate of Village Mujheri, Sector 70, Tehsil and District Faridabad, Haryana, in accordance with Licences bearing No.78 of 2009 and 33 of 2010 granted by the Directorate of Town and Country Planning Haryana (DTCP), Chandigarh.

8. It was further contended that the respondent no. 1 & 2 were allotted a unit bearing No.803 in Tower-20 Anant in the project Royal Heritage, Sector 70, Faridabad, Haryana vide allotment letter dated 23.06.2012 and the FBA dated 18.07.2012 was executed between the appellant-promoter and the respondent no. 1 & 2 governing the terms and conditions of the allotment.

9. It was further contended that the on 18.08.2020, the offer of possession was made to the respondents-allottees along with raising the final demand of Rs. 4,65,402/- as per the terms of the

FBA dated 18.07.2012. The said final demand was never paid by the respondent no. 1 & 2 and the same is still due and payable.

10. It was further contended that the Ld. Authority did not adjudicate any interest to be granted to the complainant and had failed to pass any order to the effect that the respondents-allottees are entitled to interest at the specified rate as mentioned under rule 15 of Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as, 'the Rules'). Ld. Authority had not passed a single order wherein the respondents are granted the interest at the specified rate and rather in a totally ambiguous manner directed the appellant to pay a sum of Rs. 9,83,573/- to the respondents-allottees. It was further contended that even if for the sake of arguments, it is presumed that the ld. Authority has passed an order to grant interest to the complainant at SBI MCRL+2% as specified under rule 15 of the Rules even then the said rate of interest does not come to 10.65% as directed to be paid to the respondents-allotteess vide impugned order dated 09.03.2021.

11. It was further contended that the ld. Authority had granted the relief to the respondents-allottees which were not even claimed by the respondents-allottees in their complaint and the ld. Authority went beyond the contents of the complaint and granted various reliefs to the respondents-allottees.

12. It was further contended that the ld. Authority did not take into account the fact that the appellant had filed an application for grant of Occupation Certificate vide application dated 06.09.2018 and the delay in granting the Occupation Certificate was on the part of the Department of Town and Country Planning Haryana, which granted the Occupation Certificate only on 17.8.2020 for which the appellants cannot be held liable. The Ld. Authority had failed to take into cognizance any of the relevant facts pointed out by the Appellants and in a sterotype manner has passed the impugned order dated 09.03.2021 directing the Appellants to pay a sum of Rs. 9,83,573/- to the respondents no. 1 & 2.

13. It was further contended that the ld. Authority had granted the registration for the project

vide registration no. 47 of 2018 dated 14.09.2018 whereby the appellants were granted the time till 31.12.2019 for the completion of the project. In view of the fact that the appellants had applied for the grant of Occupation Certificate prior to the said last date as per the RERA Registration, inspite of that the Ld. Authority directed the appellant to pay interest to the respondents no. 1 & 2, since the date of deemed possession as per the terms of the Flat Buyer Agreement dated 18.07.2012. Ld. Authority had failed to take in account its own approvals granted to the appellants at the time of the registration of the project.

14. It was further contended that the ld. Authority had failed to take into account the law laid down by the Hon'ble Supreme Court in judgment titled as ***DLF Home Developers Limited Vs. Capital Greens Flat Buyer's Assoc iation 2020 (3) RCR (Civil) 544 as well as Wing Commander Arif Rehman Khan Vs. DLF Southern Homes in Civil Appeal No. 3864-3889 of 2020,*** wherein the Hon'ble Supreme Court had categorically stated that the allottees who had been delivered the possession cannot be compared with the allottees who are being refunded as both the

categories of the allottees are entitled to different compensation amount as the allottees who is getting the possession of the allotted unit is receiving the benefit of the increase in prices of the delivered flat. Therefore, the learned authority had failed to comply with the law laid down by the Hon'ble Supreme Court as well as the provisions of the Act which distinguish the two categories of the allottees. The law laid down by the Hon'ble Supreme Court is that there is no thumb rule to grant a specified rate of interest inspite of grievances aired by the complainants.

15. With these contentions, it was prayed that the appeal may be allowed and the impugned order dated 09.03.2021 along with previous orders passed by the ld. authority in the complaint may be set aside.

16. Per contra, ld. counsel for the respondents-allottees, contended that the impugned order dated 09.03.2021 and all the other orders passed by the Ld. Authority are as per the Act, Rules & Regulations.

17. It was contended that offer of possession dated 18.08.2020 was with a demand of Rs. 4,65,402/- to be paid by the respondents-allottees

whereas, as per the impugned order, the appellant is to pay an amount of Rs. 9,83,573/- to the respondents-allottees. Thus, the offer of possession was not a valid offer of possession. It was further contended that vide impugned order dated 09.03.2021, ld. authority has granted the SBI highest MCRL+2% as per rule 15 of the Rules, and therefore a correct rate of interest has been applied.

18. With these contentions, ld. counsel for the respondents-allottees has prayed for dismissal of the appeal being without any merits.

19. We have duly considered the aforesaid contentions of the parties.

20. The undisputed facts of the case are that the flat bearing No.803 in Tower-20 Anant in the project Royal Heritage, Sector 70, Faridabad, Haryana was allotted to the respondents-allottees vide allotment letter dated 11.05.2012 and the FBA dated 18.07.2012 was executed between the appellant and respondents no. 1 & 2. The total sale consideration of the flat was Rs.31,29,215/-against which the complainant has already paid Rs.32,45,641/-. As per the terms and conditions of the FBA, the appellant was to hand over the

possession of the flat by the 18.01.2016 i.e. within 42 months from the date of execution of the FBA. However, the appellant failed to offer the possession of the flat in scheduled period as per FBA. The offer of possession was ultimately issued to the respondents-allottees on 18.08.2020 with a demand of Rs. 4,65,402/-. This amount was not paid by the respondents-allottees to the appellant.

21. It is the contention of the appellant that the ld. Authority did not adjudicate any interest to be granted to the complainant and had failed to pass any order to the fact that the complainants are entitled to the interest at the specified rate as mentioned under rule 15 of the Rules, rather, in a totally ambiguous manner directed the appellant to pay a sum of Rs. 9,83,573/- to the respondents-allottees.

22. Ld. Authority vide its order dated 19.11.2020 ordered to issue revised statement of accounts according to the principles laid down by the Authority with regard to permissible interest payable to the respondents-allottees for the delay caused in offering possession. The appellant submitted on 22.12.2020, the objections/clarifications to the order

dated 19.11.2020, and, also the statement of accounts of the flat allotted to the respondents-allottees in which interest for delayed possession charges was calculated by the appellant itself @ 10.65% p.a. and an amount of Rs. 9,83,573/- has been shown to be payable to the respondents-allottees.

23. It is the further contentions of the appellant that even if the for the sake of arguments, it is presumed that the ld. Authority has passed an order to grant interest of SBI highest MCLR+2% as specified under rule 15 of the Rules, even then, the said rate of interest does not come out to 10.65% per annum as directed to be paid to the respondents-allottees vide the impugned order dated 09.03.2021.

24. As brought out in above para that the appellant submitted on 22.12.2020, the objections/clarifications to the order dated 19.11.2020 of the ld. Authority in this complaint, and also the statement of accounts of the flat allotted to the respondents-allottees and itself applied the interest at the rate of 10.65% per annum for the delay in delivery of possession. As per rule 15 of the Rules interest for delay in delivery of possession is

mentioned to be SBI highest MCLR+2%. The SBI highest MCLR+2% was 8.65% per annum on 10.06.2019, 8.60% per annum on 10.07.2019, 8.45% per annum on 10.08.2019 and 8.35% per annum on 10.09.2019. The appellant itself applied the rate of SBI highest MCLR @ 8.65% per annum, which was prevalent in the month of June 2019. The respondents-allottees online registered their complaint on 13.08.2019 with the Ld. Authority. The SBI highest MCLR at the time of online registration of the compliant was 8.45% per annum. Therefore, the interest payable under rule 15 of the Rules i.e. SBI highest MCLR+2% comes out to 10.45% per annum at the time of online registration of the complaint. Therefore, we find no merit in the plea of the appellant that the ld. Authority had not passed any order to grant interest to the respondents-allottees as specified under rule 15 of the Rules.

25. Further plea raised by the ld. counsel for the appellant is that the appellant was permitted to complete the project by 31.12.2019 as per the certificate of registration granted by the ld. Authority vide Registration no. 47 of 2018 dated 14.09.2018. The appellants had applied for occupation certificate

prior to the last date as per the time of completion i.e. 31.12.2019 granted under the registration of the project. This plea of the appellant is not correct as per its own pleadings, as the appellant had failed to offer possession even within the time of completion given in the registration of the project i.e. 31.12.2019. However, the date of completion of 31.12.2019 might have been mentioned in the registration certificate on the basis of declaration submitted by the appellant-promoter under Section 4(2)(l)(c) of the Act at the time of getting the project registered. This declaration is given to the ld. Authority at the time of getting the real estate project registered of its own by the appellant to complete the project. The declaration has nothing to do with the already executed agreements by the appellant-promoter with the different allottees of the project. The allottees are not party in the registration of the project with RERA Authority. This unilaterally act of mentioning the date of completion of project by the appellant will not abrogate the rights of the allottee under the agreements for sale entered into between the parties. The Division Bench of the Hon'ble Bombay High Court in case, Neel Kamal Relators

Subruban Pvt. Ltd. & anr. Vs. Union of India and others 2018(1) RCR (Civil) 298 (DB) has laid down as under;-

> *"Section 4(2)(l)(c) enables the promoter to revise the date of completion of project and hand over possession. The provisions of RERA, however, do not rewrite the clause of completion or handing over possession in agreement for sale. Section 4(2)(l)(c) enables the promoter to give fresh time line independent of the time period stipulated in the agreements for sale entered into between him and the allottees so that he is not visited with penal consequences laid down under RERA. In other words, by giving opportunity to the promoter to prescribe fresh time line under Section 4(2)(l)(c) he is not absolved of the liability under the agreement for sale."*

26. The Hon'ble Bombay High Court by taking note of the provisions of Section 4(2)(l)(c) of the Act has categorically laid down that the provisions of the Act will not re-write the clause of completion or handing over of the possession mentioned in the agreement for sale. The fresh time line independent of the time stipulated in the agreement is given in order to save the developer from the penal

consequences but the promoter is not absolved of the liability under the agreement for sale. Thus, the appellant was required to offer the possession of the unit to the respondents-allottees as per the terms and conditions of the agreements, failing which the respondents-allottees are entitled to claim the remedies as provided under Section 18 of the Act.

27. The appellant has not provided any evidence to the effect that its project was ready and the delay in grant of occupation certificate was on the part of the Department of Town and Country Planning, Haryana. Mere applying of occupation certificate does mean that its project was complete as per the requirement under the relevant Act and the appellant is entitled for grant of occupation certificate. Moreover, it is incumbent upon the appellant to get the occupation certificate and issue offer of possession to the respondents-allottees. Therefore, we do not find any merit in the contentions that the appellant cannot be held responsible for delay in grant of occupation certificate by the Department on Town and Country Planning, Haryana.

28. It is the contentions of the appellant that the Hon'ble Supreme Court of India in judgment titled as ***DLF Home Developers Ltd. and Ors. case (supra) and Wing Commander Arifur Rahman Khan and Ors. case (supra)*** has held that the allottees who had been delivered the possession cannot be compared with the allottees who are being refunded as both the categories of the allottees are entitled to different compensation. The law laid down by the Hon'ble Supreme Court is that there is no thumb rule to grant the specified rate of interest. However, ld. authority has awarded the rate of interest as specified under rule 15 of the Rules as a matter of thumb rule.

29. We have duly considered the aforesaid contentions of the ld. cousnel for the appellant. In both the above mentioned judgments of the Hon'ble Apex Court as relied upon by the ld. counsel for the appellant, the mater considered in these judgments is relating to the consumer protection Act, 1986, wherein, the interest and compensation for delay in deliver of possession of the unit has been awarded. Whereas, Section 18 of the Act provides that in case allottee wishes to withdraw from the project, then the

promoter shall return the amount received by him with interest at such rate as may be prescribed including compensation. In case, the allottee intends to continue with the project, in that case, Section 18 of the Act provides for payment of interest to the allottee for every month of delay at such rate as may be prescribed till the handing over of the possession of the unit. As per the definition of the 'prescribed' at Section 2(zi) of the Act, 'prescribed' means prescribed by rules made under the act. The rule 15 of the Rules provides for interest at the rate of SBI highest MCLR+2%, in case of delay in delivery of possession. In the instant case, the ld. Authority has awarded interest at the prescribed rate i.e. SBI highest MCLR+2%. Therefore, the above two judgments of the Hon'ble Apex Court as cited by the appellant will not be of any help to him.

30. No other point was argued before us by counsel for the parties.

31. Thus, keeping in view our aforesaid discussion, the present appeal filed by appellant-promoter has no merit and the same is hereby dismissed.

32. The amount of Rs.9,83,573/- deposited by the appellant with this tribunal to comply with the provisions of proviso to section 43(5) of the Real Estate (Regulation and Development) Act, 2016, along with interest accrued thereon, be sent to the learned Authority for disbursement to the respondents-allottees, excess amount may be remitted to the appellant, subject to tax liability, if any, as per law and rules.

33. No order to costs.

34. Copy of this order be sent to the parties/Ld. counsel for the parties and Ld. Haryana Real Estate Regulatory Authority, Panchkula.

34. Files be consigned to the record.

Announced:
September 02 , 2022

Inderjeet Mehta
Member (Judicial)
Haryana Real Estate Appellate Tribunal,
Chandigarh

Anil Kumar Gupta
Member (Technical)

*Rajni thakur*

M/s Pivotal Infrastructure Pvt. Ltd.
Vs.
Harkesh Deshwal and another

Appeal No. 658 of 2021

Present: None for the appellant.

Shri Akshat Mittal, Advocate, ld. counsel for the respondent.

Vide our separate detailed order of the even date, the present appeal filed by appellant-promoter has no merit and the same is hereby dismissed.

The amount of Rs.9,83,573/- deposited by the appellant with this tribunal to comply with the provisions of proviso to section 43(5) of the Real Estate (Regulation and Development) Act, 2016, along with interest accrued thereon, be sent to the learned Authority for disbursement to the respondents-allottees, excess amount may be remitted to the appellant, subject to tax liability, if any, as per law and rules.

Inderjeet Mehta
Member (Judicial)
Haryana Real Estate Appellate Tribunal
Chandigarh

Anil Kumar Gupta
Member (Technical)

02.09.2022
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