BEFORE THE HARYANA REAL ESTATE APPELLATE TRIBUNAL

APPEAL NO.502 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. Mr. Neeraj Kumar;
2. Mrs. Mamta
   Both residents of 124-C, GH-2, Ankur Apartments, Paschim Vihar, Delhi-110 063

...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 Neeraj Kumar-respondent No.1-allottee in person.

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 order dated 09.03.2021 along with other 11 orders passed by learned Haryana Real Estate Regulatory Authority, Panchkula (hereinafter referred as 'Ld. Authority') whereby the complaint No.779 of 2019 filed by the

respondents-allottees was disposed of. The appellant has impugned the final order dated 09.03.2021 along with all the other 11 orders of the learned Authority. The impugned order dated 09.03.2021 is being reproduced as below; the directions in other orders of the learned Authority are not being brought out here for the purpose of brevity. The same will be brought out when required.

> *"3. This matter has been heard eleven times earlier. There is no dispute between the parties that the complainant was allotted flat by the respondent in his project named "Royal Heritage", Sector 70, Faridabad and he has already paid almost 75% of the sale consideration. The possession of his flat was to be delivered in February, 2016 but the respondent offered them possession in December, 2017 after obtaining occupation certificate. The complainants' grievance was that there were certain deficiencies in the flat offered to him due to which he was unable to take the possession of the flat. The complainant further disputed additional demand of Rs.4,43,601/- vide orders dated 17.12.2013, the respondent was directed to revise the statement of accounts issued to the complainant. In compliance of the orders of the Authority, the respondent had filed statement of accounts dated 31.10.2019 and 21.09.2020. The above said statements submitted by the respondent were discussed in detail vide order dated 22.09.2020, some of the charges were acceptable to the complainant and some were*

disputed. Order dated 22.09.2020 is reproduced here for ready reference:

1. ***

2. *In further compliance of the orders of the Authority, the respondent has filed a fresh statement of accounts via email. A copy has also been sent to the complainant. The revised statement submitted by the respondent was discussed in detail. The complainant has disputed certain charges levied by the respondent. Some of the charges shown in the statement are acceptable to the complainant. The disputed amounts are discussed below:*

(i) *An amount of Rs.15000/- has been charged as legal and administrative charges. The complainant wishes to complete all legal and all other administrative activities at his own level. For this reason, the said demand of Rs.15,000/- is hereby quashed.*

(ii) *The respondent has charged Rs.63,296/- as taxes; VAT (Rs.50,081/-) and other taxes (Rs.13,215/-). No justification or calculations in this regard have been provided. The respondent shall satisfy the complainant about levy of the said charges by furnishing detailed calculations.*

(iii) Rs.2,23,509/- has been demanded as enhanced EDC. The Authority has ordered in several cases, that levy of enhanced EDC has been stayed by the Hon'ble Punjab & Haryana High Court. If the Hon'ble Court decides this amount to be payable by the complainants, the demands in this regard can be raised by the respondent at that stage. Till a decision in this regard is arrived at by the Hon'ble Court no amount shall be charged towards the enhanced EDC. It is however, ordered that in case the Hon'ble Court find this amount payable, the respondent shall be entitled to recover the same from the complainant.

(iv) Rs.17,500/- have been demanded on account of electricity meter. The respondent shall provide detailed justification for arriving at this amount.

(v) Rs.1,10,621/- interest has been demanded on account of delayed payment of installments. The case of the complainant is that he had made all the payments in time. Only the last installments of Rs.1,74,580/- was payable at the time of offer of possession. The offer of possession was made in December, 2017 but

was accompanied by certain unjustified demands because of which the complainant did not take possession. Further there was certain deficiencies in the apartment which the complainant had pointed out to the respondent, had not rectified. Accepting the request of the complainant, the said demand of Rs.1,10,621/- towards interest on account delayed payments is not justified and the same is quashed.

(vi) The respondent is demanding Rs.3,67,537/- towards holding charges since December, 2017 when the possession was offered to the complainants. As already observed the complainant had not taken the possession on account of certain deficiencies and unjustified demands. For this reason, the demand of the holding charges is also not justified.

3. The respondent shall revise their statement of account in accordance with the above principles and issue a fresh offer of possession to the complainants.

4. Adjourned to 19.11.2020.

4. The respondent has now filed revised statement of accounts dated 31.12.2020 and the same is taken on record as final statement. It has been

discussed in detail and the authority orders as below:

(i) Respondent has charged an amount of Rs.15,000/- as legal and administrative charges. The same were quashed vide order dated 22.09.2020 as the complainant wishes to complete all legal and other administrative activities at his own level.

(ii) An amount of Rs.63,296/- as taxes; VAT (Rs.50,081/-) and other taxes (Rs.13,215/-). As per government notification, the complainant is liable to pay VAT and other tax charges. Therefore, the same is required to be payable to the respondent.

The total outstanding amount payable by the complainant to the respondent is shown as Rs.3,50,626/-. After deduction of Rs.15,000/- i.e. complainant to the respondent comes to Rs.3,35,626/-.

5. Respondent has shown an amount of Rs.7,21,254/- payable to the complainant on account of delay interest and timely payment discount. After deduction of Rs.3,35,626/- i.e. the amount payable by the complainant, the net recoverable amount come to rs.3,85,628/- which is payable to the complainant by the respondent at the time of offer of possession.

6. Accordingly, the case is disposed of with the direction to the respondent to hand over possession of the flat to the complainant within 45 days from the date of uploading of this order. The respondent shall

also pay an amount of Rs.3,85,628/- along with offer of possession.

7. In view of the above terms, case is disposed of and file consigned to 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. Flat bearing No.1504 in Tower-4/Maurya was allotted to the complainants on 18.07.2012. Total sale consideration of the flat was Rs.39,56,276/- out of which the complainants have already paid Rs.38,21,695/-. Flat Buyer's Agreement (hereinafter referred as, the FBA) was executed between the parties on 24.08.2012. As per terms and conditions of FBA, the appellant-promoter was under an obligation to hand over possession of the flat within 42 months from the date of execution of the FBA i.e. up to 14.02.2016. The appellant-promoter had offered possession of the flat on 07.12.2017 along with an additional demand of Rs.4,43,601/-. After receiving the aforementioned offer, the respondents-allottees had visited the site of the project in January 2018 and found that there were certain deficiencies in the flat and same were informed to the appellant-promoter vide e-mail dated 08.02.2018. Respondents-allottees, thereafter, reminded the

appellant-promoter about the deficiencies vide various e-mails dated 13.02.2018, 09.08.2018, 25.09.2018, 22.10.2018 and 10.12.2018, but no response was received from the appellant-promoter to the emails and reminders. Aggrieved by the above facts, the complainants-respondents-allottees have filed the complaint seeking the following reliefs:

> *"It is, therefore, most respectfully and humbly prayed that this Hon'ble Court may kindly be pleased to direct the respondents to immediately deliver the possession of the flat of the complainants after preparing the same in a habitable condition and further direct the respondents to adjust the compensation of Rs.3,78,675/- besides giving 2% discount on account of making timely payment by the Complainants in the balance amount/demand.*
>
> *Any other or further relief/order as deem, fit and proper by this Hon'ble Court may also be passed in favour of the complainants and against the respondents, in the interest of justice."*

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 14.08.2012, i.e. before coming into force of the Act.

4. It was pleaded that the appellant-promoter had obtained the occupation certificate on 30.11.2017 for 10 towers and had also applied with the competent authority for getting the occupation certificate for remaining towers. It was further pleaded that the appellant-promoter has already delivered physical possession of the flats of 710 allottees. It was also pleaded that as per terms and conditions of the builder buyer's agreement, the respondent-allottee had delayed in making payment of several installments which caused delay in completion of the project.

5. All other pleas raised by the respondents-allottees were controverted by the appellant-promoter and 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 learned counsel for the appellant-promoter 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 Licence 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 respondents-allottees were allotted a unit bearing No.1540 in Tower-IV Maurya in the project Royal Heritage, Sector 70, Faridabad, Haryana vide allotment letter dated 18.07.2012 and the FBA dated 16.08.2012 was executed between the appellant-promoter and the respondents-allottees containing the terms and conditions of the allotment.

9. It was further contended that on 08.12.2017, the offer of possession was made to the respondents-allottees along with raising the final demand as per the terms of the FBA 16.08.2012. The final demand was raised for a sum of Rs.4,43,601.28 with due date of 30.12.2017. The amount of the above said final demand was never paid by the respondents-allottees and the same is still due and payable.

10. It was further contended that the learned Authority while adjudicating the complaint of the respondents-allottees passed several orders during the course of the proceedings which were against the established principles of law and rules of natural justice being followed by the various courts and tribunals, and also the learned Authority had failed to take into account the true and correct facts of the subject matter while adjudicating the complaint filed by the complainants. The learned Authority without taking into account the true

and correct facts and without following the legal provisions passed several orders which culminated in the final order dated 09.03.2021 and the same are collectively challenged in the present appeal.

11. It was further contended that the impugned order dated 09.03.2021 along with all other previous orders cannot be held to be legally valid as per the provisions of the Act and Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as, 'the Rules') on several grounds. The Ld. Authority does not have the jurisdiction to entertain and adjudicate the complaint, as the complaint can only be adjudicated by an Adjudicating Officer appointed under the provisions of the Act.

12. It was further contended that the learned Authority has wrongly recorded the submission of the counsel for the appellant-promoter in the order dated 12.09.2019 that "Ld counsel for the respondent seeks time to remove the deficiencies and make the flat in habitable condition before handing over the possession accordingly", which was never submitted by the counsel for the appellant-promoter.

13. It was further contended that the unit of the respondents-allottees was ready to be handed over in June 2018 and the same was in habitable condition since the said

date. Even the report dated 28.01.2020 of the Local Commissioner, who was appointed by the learned Authority vide its order dated 17.12.2019, also mentions that the flat is fit for human habitation and there are only minor deficiencies in the flat.

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

15. It was further contended that the learned Authority cannot direct the appellant-promoter to issue "revised offer of possession" as offer of possession made by the appellant-promoter has legal sanctity because the same was offered only after obtaining the Occupation Certificate from the competent authority. Therefore, several orders passed by the learned Authority asking the appellant-promoter to issue "revised offer of possession" was in itself contrary to the established real estate practices as well as against the rules of law.

16. It was further contended that vide order dated 12.09.2019, the learned Authority directed the appellant-promoter to issue fresh 'Statement of Account' in accordance

with the earlier order in the complaint bearing No.49 of 2018 titled *Prakash Chand Arohi v. Pivotal Infrastructure Pvt. Ltd.*, but, vide order dated 17.12.2019 the learned Authority reviewed its earlier order and issued several directions, like directions on holding and maintenance charges, which were never part of the judgment passed by the learned Authority in Prakash Chand Arohi v. Pivotal Infrastructure Pvt. Ltd. Thus, the learned Authority went beyond its powers and reviewed its earlier order dated 12.09.2019.

17. It was further contended that vide order dated 17.12.2019, the learned Authority was in error to state that the Holding Charges will be payable by the respondents-allottees from the date on which "actual possession" is/was delivered. The directions qua the holding charges are erroneous on account of the fact that the respondents-allottees had agreed to pay the holding charges if the respondents-allottees delays in taking over the physical possession of the allotted unit in accordance with the terms and conditions of the FBA dated 16.08.2012. The allotted unit is lying unattended and thus causing deterioration of the unit. The learned Authority went beyond the powers granted under the Act which do not permit the learned Authority to review its earlier orders.

18. It was further contended that the learned Authority on 05.08.2020 redirected the appellant-promoter to file the statement of account in accordance with the guidelines issued by the learned Authority in the complaint bearing No.49 of 2018 titled as *Prakash Chand Arohi v. Pivotal Infrastructure Pvt. Ltd.* which tantamount to reviewing its earlier order passed on 17.12.2019.

19. It was further contended that vide order dated 22.09.2020, the learned Authority had wrongly held that "a sum of Rs.1,10,621/-, which was the interest amount calculated on the last installment of offer of possession and which was payable by the respondents-allottees on account of offer of possession and the same remained unpaid, was unjustified on account of the fact that since the respondents-allottees did not take the possession on account of several deficiencies in the apartment as well as on account of certain unjustified demands, therefore, no interest shall be demanded on the last installment payable by the respondents-allottees." The learned Authority did not pass any such directions in the judgment in complaint bearing No.49 of 2018 and hence, the learned Authority issued altogether new directions which amount to reviewing its own order and goes beyond the powers of the learned Authority. Further, the learned Authority observed in previous orders that the units are ready for

possession and that there are no major deficiencies in the units and the respondents-allottees should take over the possession, while in the order dated 22.09.2020, the learned Authority held that not taking over the possession by the respondents-allottees was justified. The learned Authority is taking the contrary view to its earlier orders without taking into account the true and correct facts that were placed on the judicial records by the appellant-promoter.

20. It was further contended that the learned Authority had stated vide its order dated 02.02.2021 observed that the respondents-allottees are satisfied with the charges levied by the appellant-promoter in its statement of account. Then, vide its impugned order dated 09.03.2021, the learned Authority passed a totally contrary order thereby adjudicating each and every item of the statement of account which was accepted and admitted by the respondents-allottees during the previous hearing. Thus, the impugned order cannot be held legally valid and is liable to set aside.

21. It was further contended that the learned Authority was wrong to opine that till the time an allottee occupies the purchased flat he is not liable to pay the maintenance charges. The learned Authority vide its order dated 21.08.2019 further directed the appellant-promoter to make the flat in a habitable

condition by removing all the deficiencies pointed out by the respondents-allottees before handing over the possession of the allotted flat to the respondents-allottees. While in the same order the learned Authority is directing the parties to visit the site of the project on 26.08.2019, to point out the deficiencies in the flat. Therefore, the learned Authority was wrong to state that there were existing deficiencies in the flat without the same being pointed out by the respondents-allottees. The said order shows the absolute biasness of the learned Authority towards the appellant. The appellant-promoter had offered the possession in December 2017 and the learned Authority was hearing the complaint in August 2019. Thereafter, around two years had already lapsed since the said unit was lying locked and unattended. Therefore, the learned Authority failed to take into account these facts and passed the orders as per its own "whims and fancies" and did not consider any fact brought on record by the appellant-promoter.

22. It was further contended that the appellant-promoter also offered the compensation of Rs.7.50 per sq. ft. per month to the respondents-allottees, which the respondents-allottees had agreed as per the FBA dated 16.08.2012 and the learned Authority, without having the jurisdiction and powers to grant the compensation beyond the

terms of the FBA dated 15.09.2012, had passed the impugned order thereby directing the appellant-promoter to pay the delay compensation @ SBI MCLR + 2% per annum, in accordance with Rule 15 of the Rules which is wholly illegal and contrary to the provisions of the Act and Rules.

23. It was further contended that the learned Authority was wrong to state that since the GST came into force in the year 2017, whereas the appellant-promoter was under an obligation to hand over the physical possession of the allotted unit in February, 2016, therefore, the appellant-promoter shall have to bear the liability of GST and totally overlooked the relevant terms of the FBA 16.08.2012, wherein the respondents-allottees had undertaken to pay any taxes that may be levied in future on the demands to be raised by the appellant-promoter upon the respondents-allottees.

24. It was further contended that vide order dated 17.12.2019, the learned Authority had admitted that there were no deficiencies in the allotted unit but still the respondents-allottees failed to come forward to take over the physical possession and pay the outstanding amount which was demanded by the appellant-promoter in accordance with the terms and conditions of the FBA 15.09.2012.

25. It was also contended by the learned counsel for the appellant that provision in Section 18 of the Act for grant of interest on return of amount and interest in case of delay in delivery of possession are different. In case of return of the amount, it is mentioned in Section 18 that the interest shall be as prescribed in the Act, whereas, in case of delay in delivery of possession, it is interest as may be prescribed. Therefore, it is contented that the rate of interest as per rule 15 of the Rules will not be applicable.

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

27. Per contra, Neeraj Kumar-respondent No.1 has contended that the impugned order dated 09.03.2021 and all the other orders passed by the learned Authority, are as per the Act, Rules and the Regulations.

28. It was contended that after receiving the offer of possession letter dated 07.12.2019, issued by the appellant-promoter, the respondents visited the site of the project in June 2018 and found that there were so many deficiencies in the flat and the various facilities to be provided by the appellant-promoter as per the agreement such as the main

road to the entrance was not constructed, club house was not ready, shops and swimming pool and park etc. were not ready. The demand letter dated 08.12.2017 issued along with offer of possession dated 07.12.2017 by the appellant-promoter did not contain the delay possession as per the Act and also timely payment discount @2% was not given to them. The demand letter dated 08.12.2017 contained a demand of Rs.4,43,601.28 which was very much on higher side and unreasonable and without the payment of the said demand of Rs.4,43,601.28, the appellant did not give them the possession. Therefore, the respondents-allottees sent e-mails dated 08.02.2018 intimating the above deficiencies to the appellant-promoter. These above deficiencies were subsequently reminded to the appellant-promoter vide e-mails dated 13.02.2018, 09.08.2018, 25.09.2018, 22.10.2018 and 10.12.2018, but the appellant-promoter did not reply to these e-mails. The respondents-allottees ran from pillar to post to get the possession of the flat and ultimately got possession of the flat on 15.11.2021.

29. He contended that the learned Authority asked the appellant during hearing on 05.08.2020 to submit the correct 'Statement of Account'. The appellant submitted the 'Statement of Account' dated 21.09.2020. The 'Statement of Account' also contained a demand of Rs.1,07,530/-. This

'Statement of Account' was also not correct and the learned Authority vide order dated 19.11.2020 again asked the appellant to submit the 'Statement of Account', which was again submitted on 22.12.2020. According to this 'Statement of Account' an amount of Rs.3,70,628/- was payable to the allottees. This clearly shows that the demand of Rs.4,43,601.28 received with the offer of possession was very much on the higher side.

30. He contended that the club house facility to be provided as per the provisions of the FBA (Annexure-III) specification was also not ready. He contended that the report dated 28.09.2020 of the Local Commissioner appointed by the learned Authority also mentions that there are deficiencies in Flat bearing No.1504, Tower-4, allotted to them and the work of club house is incomplete.

31. He further contended that the project was under construction and was not complete, the facilities to be provided by the appellant-promoter i.e. the club house was not complete and the same stands mentioned in the report dated 28.01.2020 of the Local Commissioner appointed by the learned Authority. He contended that as per Flat Buyer's Agreement Annexure II at Sr. No. 12 (page 97 of the paper book) club facilities are to be provided, which are essentially

associated with the flat to be provided by the appellant and the same was not ready.

32. It was further contended that the offer of possession dated 07.12.2017 was not a valid offer. It was contended that a demand of Rs 4,43,601.28 was made along with offer of possession with letter dated 08.12.2017, which is at page 100 of the paper book, whereas, respondents-allottee had already paid much in excess. As per the 'Statement of Account' (Page 222 of the paper book) submitted by the appellant before the learned Authority on 19.11.2020, an amount of Rs 3,70,028/- was payable to respondents-allottees.

33. With these contentions, the respondent-allottee No.1 prayed for dismissal of the appeal being without any merits.

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

35. The undisputed facts of the case are that the flat bearing No.1504 in Tower 4/Maurya in the project named "Royal Heritage", Sector 70, Faridabad was allotted to respondents-allottees on 18.07.2012 by the appellant-promoter. The total sale consideration of the flat was Rs.39,56,276/-against which the complainants have already paid Rs.38,21,695/-. Flat Buyer's Agreement 'FBA' was

executed between the parties on 24.08.2012. 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 i.e. up to 14.02.2016. However, the appellant-promoter had offered possession of the flat on 07.12.2017 along with a demand of Rs.4,43,601/-.

36. The various issues raised by appellant-promoter in this appeal are discussed as below.

37. **JURISDICTION:**

i) The appellant is contesting that the respondents-allottees have sought compensation of Rs.3,78,675/- under the 'relief' head in the complaint due to delay in handing over the possession. It is contention of the appellant-promoter that the jurisdiction to award compensation is with the Adjudicating Officer as per Sections 71 and 72 of the Act. The relief sought in the complaint has been brought out in the upper part of this appeal.

ii) A perusal of the para No.9 of the complaint clarifies that the amount of Rs.3,78,675/- as sought in the complaint is by way of 'interest' on account of

delay in handing over of the possession. Para No.9 of the complaint is reproduced as under:

> *"9. That the Complainants calculated the compensation amount as per government rule and the judgments passed by the RERA Courts in Panchkula in the case titled as Madhu Sarin Vs. M/s B.P.T.P. Ltd. and the Prakash Chand Arohi Vs. M/s Pivotal Infrastructure Ltd. on account of delay in delivery of possession within the stipulated period of 42 months as per agreement. According to the complainants' calculation, an amount of compensation is of approximately Rs.3,78,675/- (due to delay of 34 months from the date of agreement occurred and as per agreement the complainants are also entitle for compensation of Rs.7.50/- per sq.ft. per month i.e. 1485 * 7.50/- = 11,137.50/- per month), besides the above said amount of compensation, the complainants are also entitle to get the discount @ 2 % on account of making timely payment."*

iii) It is mentioned in para No.9 of the complaint filed by the complainants, that they have calculated the compensation amount as per government rules and the order passed by the RERA, Panchkula in the case titled as Madhu Sarin Vs. M/s B.P.T.P. Ltd. and the Prakash Chand Arohi Vs. M/s Pivotal

Infrastructure Ltd. on account of delay in delivery of possession.

iv) In both the above said cases, in the majority order, the learned authority has granted interest on the amount paid by the respondents-allottees for delay in delivery of the possession. Thus, it is clear that the respondents-allottees are seeking interest on delay in delivery of the possession. However, the complainants have wrongly mentioned as compensation whereas, it should have been interest for delay in delivery of possession.

v) The Hon'ble Supreme Court in case of ***M/s Newtech Promoters and Developers Pvt. Ltd. v. State of UP & others 2021 SCC Online SC 1044***, in para No.86 thereof has authoritatively pronounced that the authority would have the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount as well as for payment of interest on delayed delivery of possession and/or penalty and interest thereon. The jurisdiction in such matters would not be with the Adjudicating Officer. Para No.86 of the above

said judgment of ***M/s Newtech Promoters (Supra)*** reads as under:

> *"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. if the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer*

under Section 71 and that would be against the mandate of the Act 2016."

vi) Thus, from the aforesaid findings of the Hon'ble Supreme Court of India, the learned authority had the jurisdiction to deal with the complaint of possession of the unit along with interest on account of delay in delivery of possession.

38. **DELAYED POSSESSION CHARGES**:

i) It was contended by the learned counsel for the appellant-promoter that unit allotted to the respondents-allottees was ready to be handed over in June, 2018 and the same was in habitable condition. It was further contended that the appellant-promoter had issued the offer of possession vide its letter dated 07.12.2017 after obtaining occupation certificate dated 30.11.2017 from the competent authority of the Director, Town and Country Planning Department, Haryana. The Local Commissioner Sh. Arvind Mehtani, Town and Country Planner (TCP) of the learned Authority, after visiting the site submitted the inspection report dated 28.01.2020 with the learned authority and reported that the flat was fit for human

habitation and only minor deficiencies were mentioned in the said report. It was further contended that the flat was fit in habitable condition, therefore, the offer was valid and the respondents-allottees are not entitled for any delay possession of the interest.

iii) The report dated 28.01.2020 of the Local Commissioner Sh. Arvind Mehtani, TCP is reproduced as under:

"Report of the local commissioner in complaint no 779 of 2019, 808 of 2019 and 1143 of 2019 V/s pivotal infrastructure Pvt. Ltd. as per the directions of the Authority vide its orders dated 17.12.2019.

The undersigned visited the site on 16.01.2020, where all the three complainants were present and Pivotal Infrastructure Pvt. Ltd. was represented by Sh. Anil Ahuja, Senior Marketing Manager.

The Authority had directed the undersigned to submit a comprehensive report on the following points:-

i. Whether there exists any structural or material defect(s) in the flats allotted to the allottees?
ii. Whether any part of the building or flat allotted to the allottees in damaged condition or unfit for human habitation?
iii. Whether there still exist deficiencies requiring rectification and if so, what such deficiencies are?

As far as the report on Sr. No. 1&2 above i.e. whether there exists any structural or material defects in the flats allotted to the allottees and whether any part of the building or flat allotted is in

damaged condition or unfit for human habitation, it is informed that there are no structural or material defects and the flats are fit for human habitation.

As far as minor deficiencies are concerned, the complainant of house no. 1504 in T4 informed that the Hinges of the cupboard are not functioning properly and a few wooden tiles used as flooring have swollen (have gained moisture) and should be replaced.

The complainant of house no. 001-T16 informed that one of the locks of the door is not functional;

The complainant of house no. 1002 in T-14 informed that white cement has been used by filling the joint of tiles, which should be replaced;

These are very minor deficiencies and do not justify the stand of the complainants for not taking possession.

The promoter be directed to rectify the minor works in Flat no. 1504-T4 and 001-T16 mentioned above and handover possession.

As far as external facilities are concerned marbles tiles have been used in common stair case instead of kota stone, plaster/paint in common areas is going on and the incomplete work in club house is being undertaken.

Arvind Mehtani
CTP
28.01.2020"

iv) From the above said perusal of the report dated 28.01.2020 of the local commissioner appointed by the learned Authority, it is clear that there were only minor defects in Flat no.1504 of the respondents-allottees. However, in the end of the above said report dated 28.01.2020, it is also

mentioned that as far as external facilities are concerned marble tiles have been used in common stair case instead of kota stone, plaster/paint in common areas is going on and the incomplete work in club house is being undertaken. It is mentioned in FBA at 'Annexure III facilities Sr. No. 12' that club facilities are to be provided. The appellant has annexed with this appeal certain copies of booking of club buildings by residents of the project to show that the club building was complete and was being used by the residents of the project. For completion of the structure such as club building, the competent authority of DTCP issues occupation certificate. The occupation certificate for the club building has not been appended with this appeal by the appellant. Therefore, it is apparent that the club building was not ready even on 28.01.2020, when the local commissioner visited the project site. So, the work of club house was incomplete, the work of which was being undertaken by the appellant-promoter even after two years of offer of possession dated 07.12.2017.

v) The offer of possession dated 07.12.2017 was also accompanied with the demand of Rs.4,43,601.28.

vi) A statement of account (SOA) dated 21.09.2020 (Page No.176 of the paper book) was submitted before the learned authority as per its directions dated 05.08.2020,wherein a total receivable amount from the respondents-allottees has been shown to be Rs.1,07,530/-. It is also mentioned in this (SOA) that enhanced EDC of Rs.2,23,509/- has also yet not been received from the respondents-allottees.

vii) Another statement of account dated 19.11.2020 (page No.222 of the paper book) was submitted by the appellant before the learned Authority, wherein it has been mentioned that net payable to the respondents-allottees is Rs.3,70,628/- and enhanced EDC of Rs.2,23,509/- has not been received from the respondents-allottees till date.

viii) With regards to levy of enhanced EDC, it is mentioned in the impugned order of the learned authority that the levy of enhanced EDC has been

stayed by the Hon'ble Punjab & Haryana High Court. If the Hon'ble Court decides this amount to be payable by the complainants, the demands in this regard can be raised by the respondent at that stage. Till a decision in this regard is arrived at by the Hon'ble Court no amount shall be charged towards the enhanced EDC. However, it ordered that in case the Hon'ble Court finds this amount payable, the respondent shall be entitled to recover the same from the complainant. We find no illegality in this order.

ix) From the above statement of account dated 19.11.2020, nothing was to be payable by the respondents-allottees, however, the appellant-promoter was to pay to the respondents-allottees a net amount Rs.3,70,628/-. Whereas, the appellant-promoter has asked for an amount of Rs.4,43,601.28 from the respondent allottee vide the demand letter dated 08.12.2017 accompanied with letter of possession dated 07.12.2017. As brought out above, the appellant-promoter could not provide club facilities and the work of club house was incomplete which was being undertaken by the appellant-promoter even after two years of

offer of possession dated 07.12.2017and that too after receiving whole of the consideration amount. Therefore, the offer of possession letter dated 07.12.2017 was not a valid offer of possession. There, we do not find any illegality in the impugned order of the learned authority for award of delayed possession interest to the respondents -allottees for the period for which the respondents-allottees did not occupy the flat.

39. **HOLDING CHARGES:**

i) It was contended by the Ld. counsel for the appellant-promoter that the appellants are entitled for charging the holding charges as stipulated in the FBA @ Rs.7.50 of super area per month for the period after the offer of possession dated 07.12.2017 till the possession was taken over by the respondents-allottees as appellants were incurring expenditure for maintenance of the unoccupied flat.

ii) As mentioned in above paras, the offer of possession dated 07.12.2017 issued by the appellant promoter was accompanied with a demand of Rs.4,43,601.28, whereas, as per statement of account submitted before the Learned

authority on 22.12.2020, a net amount Rs 3,70,628/- was payable to the respondents-allottees. The appellant-promoter could not provide club facilities and the work of club house was incomplete as per the report dated 28.01.2020 of Local Commissioner which was being undertaken by the appellant-promoter even after two years of offer of possession dated 07.12.2017 and that too after receiving whole of the consideration amount. Therefore, on account of these reasons, the offer of possession letter dated 07.12.2017 has already been held be not a valid offer of possession. Therefore, the appellant-promoter is not entitled for holding charges. Moreover, the Hon'ble National Consumer Disputes Redressal Commission, New Delhi (for short, 'NCDRC') in Consumer Case No.351 of 2015, ***Capital Greens Flat Buyer Associations and others vs. DLF Universal Ltd. and another*** has held as under:

> *"As far as holding charges are concerned, the developer having received the sale consideration has nothing to lose by holding possession of the allotted flat except that it would be required to maintain the apartment. Therefore, the*

holding charges will not be payable to the developer. Even in a case where the possession has been delayed on account of the allottee having not paid the entire sale consideration, the developer shall not be entitled to any holding charges through it would be entitled to interest for the period the payment is delayed."

The Hon'ble Supreme Court of India in Civil Appeal Nos.3864-3889 of 2020 titled as ***"DLF Home Developers Ltd. (Earlier Known as DLF Universal Ltd) and another vs. Capital Greens Flat Buyers Association Etc. Etc."*** has upheld the above said findings regarding holding charges of the Hon'ble NCDRC.

Thus, we find no merit in the plea of the appellant for grant of holding charges.

40. **MAINTENANCE CHARGES:**

i) Ld. counsel for the appellant-promoter contended that the appellant is entitled to charge maintenance charges from the date of offer of possession as these maintenance charges are for the maintenance of the infrastructure of the project outside the flat which they are incurring since the offer of possession dated 07.12.2017.

ii) It has already been held in above paras that the offer of possession letter issued by the appellant on 07.12.2017 was not valid offer of possession. At the cost of repetition, it is again brought out here that the offer of possession dated 07.12.2017 issued by the appellant promoter was accompanied with a demand of Rs.4,43,601.28, whereas, as per statement of account submitted before the Learned authority on 22.12.2020, a net amount Rs 3,70,628/- was payable to the respondents-allottees. The appellant-promoter could not provide club facilities and the work of club house was incomplete which was being undertaken by the appellant-promoter even after two years of offer of possession dated 07.12.2017 and that, too, after receiving whole of the consideration amount. Therefore, on account of these reasons, the offer of possession letter dated 07.12.2017 has already been held to be not a valid offer of possession. Therefore, the appellant-promoter is not entitled to claim maintenance charges from the offer of possession letter dated07.12.2017.

However, the appellant can charge the maintenance charges from 15.11.2021 the date of actual possession of the unit as per FBA.

41. It is further plea of the Appellant that the Learned Authority cannot ask the appellant to issue revised offer of possession. Also, the Learned Authority vide order dated 17.12.2019 reviewed its earlier order dated 12.09.2019 and issued several instructions vide order dated 17.12.2019 which were not part of its earlier order dated 12.09.2019. Further, it is contended that the Learned Authority vide order dated 05.08.2022 directed the Appellant to file the statement of account as per the guidelines issued in complaint bearing number 49 of 2019 Parkash Chand Arohi v. pivotal infrastructure private limited reviewing its earlier order dated 17.12.2019.

42. After passing the order dated 17.12.2019 and order dated 05.08.2020, 8 hearings and 5 hearings respectively took place where in the Learned Authority passed order in each such hearing deciding the substantial rights of the parties. But the Appellant never took objection with the Learned Authority. The Learned Authority, ordered the Appellant to file statement of account on the above said number of hearings.

The Appellant had filed the statement of account charging some amounts from the respondent allottee under different heads. The function of the authority under the Act is to impart substantial justice to the parties. The authority can take suo moto notice, if anything wrong comes to its notice. Therefore, under these circumstances, the learned authority issued directions in number of hearings to the appellant to file the correct statement of account, which it felt are not in accordance with law. In the complaint bearing No 49 of 2018 titled as Parkash Chand Arohi v. Pivotal Infrastructure Pvt. Ltd. in the majority judgement passed by the learned authority, the allottee has been awarded interest at the prescribed rate as per rule 15 of the Rules for delay in possession of the unit. In the present case also the respondent-allottee has also been awarded interest at the prescribed rate as per rule 15 of the Rules for delay in possession of the unit. Thus, we find that the Learned Authority has not reviewed any order by its subsequent order and there is no illegality in the impugned orders in this regard. However, Learned Authority has been passing several orders in one complaint deciding substantial rights of the parties which is not a good practice.

43. **Interest amounting to Rs1,10,621/- on last instalment claimed by appellant from the respondent-allottees**

i) It is the contention of the Appellant that vide order dated 22.09.2020, the Learned Authority wrongly held that a sum of Rs.1,10,621/- which is the interest amount calculated on the last installment on offer of possession, is not payable to the appellant. It was further contended that the offer of possession was a valid offer of possession and the allottees themselves didn't take possession and hence interest on the last payment had become payable to the appellant.

ii) It has been held in the earlier paras that the offer of possession was not valid offer of possession as Club building was not ready and club facilities were not being provided at the time of offer of possession dated 07.12.2017. In addition to it, the Appellant had demanded an amount of Rs.443601.48 along with offer of possession letter dated 07.12.2017, whereas Rs.3,70,628/- were payable by the appellant to the respondent allottee as per SOA submitted before the learned authority

on 22.12.2020 by the appellant along with its objection /clarifications to order dated 19.11.2020 of the Learned Authority. As the offer of possession was not a valid offer, therefore the appellant cannot Charge an interest of Rs.1,10, 621/- on the last installment due on offer of possession.

44. **GST**

We find nothing wrong in the order of the Learned Authority that the appellant is to bear the liability of GST as the GST came into force in the year 2017 and the Appellant promoter was to handover the possession of the allotted unit in the month of February 2016. Since it is the Appellant who has delayed the handing over of the unit, therefore, the appellant is liable to bear any extra expenditure which has arisen after the schedule date of possession.

45. The appellant is contesting that provision in section 18 of the Act for grant of interest on return of amount and interest in case of delay in delivery of possession are different. In case of return of the amount, it is mentioned in section 18 that the interest shall be as prescribed in the Act. Whereas, in case of delay in delivery of possession, it is interest as may be prescribed. Therefore, it is pleaded by the

Ld counsel for the appellant that the rate of interest as per rule 15 of the Rules will not be applicable.

Section 18 of the Act reads as under:

> *18. Return of amount and compensation.—*
> *(1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building,—*
>
> *(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or*
>
> *(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,*
>
> *he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:*
>
> *Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.*

The bare reading of the section 18 of the Act clarifies that, in case of return of amount, the 'interest at such rate as may be prescribed' is mentioned. Similarly, in the case of delay in handing over of the possession 'interest at such rate as may be prescribed' is mentioned. We find no difference in the provision for award of interest in case of return of an amount or in case of delay in handing over the possessions. It is felt that the learned council is confusing with the provision of compensation associated with the return of amount, wherein, it is mentioned that compensation in the manner as provided under this Act. There is no merit in the plea of the appellant that the interest mentioned with the return of the amount and interest on delay in delivery of possession are different and the rate of interest as per rule 15 of the Rules shall not be applicable in case where interest is awarded to the allottee in case of delay in delivery of handing over of the possession.

46. No other point was argued before us

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

48. The amount of Rs.3,85,628/- 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 and the excess amount, if any, may be remitted to the appellant. The afore-mentioned disbursement to the parties shall be made subject to tax liability, if any, as per law and rules

49. No order to costs.

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

51. 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)

Manoj Rana