BEFORE THE HARYANA REAL ESTATE APPELLATE TRIBUNAL

Appeal No.321 of 2019
Date of Decision: 05.07.2022

M/s BPTP Ltd., M-11, Middle Circle, Connaught Circus, New Delhi 110 001

...Appellant-Promoter

Versus

1. Sanjay Singh Tanger;

2. Pushpa Singh Tanger, both residents of C-1/1475, Vasant Kunj, New Delhi 110 070

...Respondents-Allottees

CORAM:

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

Argued by: Shri Hemant Saini, Advocate
Ld. counsel for the appellant-promoter.

Shri Simarpal Singh Sawhney, Advocate,
Ld. counsel for respondents-allottees.

O R D E R:

Inderjeet Mehta, Member (Judicial):

Feeling aggrieved by the impugned order dated 14.03.2019 handed down by Learned Haryana Real Estate Regulatory Authority, Panchkula (hereinafter called, 'the Authority'), vide which a complaint bearing No.923 of 2019 titled as '*Sanjay Singh Tanger and another versus M/s BPTP Ltd."* preferred by the respondents-allottees, seeking direction to the appellant-promoter for handing over the possession of

the allotted unit along with delayed interest in handing over the possession, was allowed, the appellant-promoter has chosen to prefer the present appeal.

2. As back as on 25.05.2009, the respondents-allottees had booked a flat in a project named "Park Elite Floors" Faridabad, launched by the appellant-promoter. The allotment letter dated 24.12.2019 was issued in favour of the respondents-allottees and they were allotted a flat bearing No.P4-09-FF. The appellant-promoter without executing the Builder Buyer's Agreement (BBA) (hereinafter called, 'the Agreement') started raising demands from the respondents-allottees. However, after repeated requests of the respondents-allottees, the Agreement was executed on 26.04.2010. On the same date, an addendum was also executed between the parties vide which the possession clause i.e. 4.1 of the main Agreement dated 26.04.2010 was amended. At that time, the respondents-allottees reiterated that the addendum was against the agreed terms of the Agreement as the appellant-promoter had assured to hand over the possession within a span of 24 months from payment of the booking amount. However, as per the addendum, possession was to be handed over in 24 months from the date of Agreement or on completion of payment of 35% of BSP along with 20% of EDC and IDC by the purchaser, whichever is later. Accordingly, the respondents-

allottees pleaded that time period to deliver the possession had expired on 26.04.2012 and there has been delay of more than six years in handing over the possession to the respondents-allottees. Further, it has been averred that basic sale price of the flat was agreed to be Rs.24,53,762/- after discount of Rs.1,02,240/- and till the date of institution of the complaint, respondents-allottees had already paid Rs.27,57,981/-. In spite of paying the complete consideration of the unit, on several visits to the site, the respondents-allottees found that the project was still under construction and external works in the building, land scape, plumbing, electrical work, wooden work and other such development & facilities were not completed till date. Thus, they had no other option but to file the complaint seeking direction to the appellant-promoter to handover the possession of the unit along with delayed interest in handing over the possession.

3. Upon notice, the appellant-promoter while filing reply, resisted the complaint on the ground of maintainability. On merit the appellant-promoter has taken the stand that the unit allotted to the respondents-allottees is an independent floor being constructed over a plot area measuring 209.30 sq. mts. and as per Section 3 of the Real Estate (Regulation and Development) Act, 2016 (for short, 'the Act'), registration of the project is not mandatory

for an area proposed to be developed that does not exceed 500 sq. mts.

4. Further, it has been alleged that the provisions of the Act cannot be invoked qua the Agreement dated 26.04.2010 executed prior to coming into force of the Act. The appellant-promoter also alleged that Clause 33 of the Agreement dated 26.04.2010 provides for referring the matter to the arbitration, but the respondents-allottees did not initiate any step in this regard. The appellant-promoter has also alleged that despite availing benefit of additional incentives like Time Payment Discount (TPD) of Rs.77,963/-, the respondents-allottees committed occasional default in making the payment which not only adversely affected the cash flow but also resulted in delay of completion of the project. Regarding the change in possession timeline, the appellant-promoter has alleged that as per Clause 12 of the booking form, possession was tentatively proposed to be handed over within 24 months from the date of issuance of the sanctioned letter of the project and the same timeline has been adopted in the Agreement dated 26.04.2010. The appellant-promoter denied that the addendum was executed on the same date i.e. 26.04.2010, rather the addendum was executed on 31.08.2010. While denying all other averments taken in the complaint, the appellant-promoter prayed for dismissal of the complaint.

5. After hearing Ld. counsel for both the parties and evaluating the material available on record, the Ld. Authority allowed the complaint preferred by the respondents-allottees with the following observations:-

> *"v. Even if there is occasional default by the complainant in making timely payments, the complainant had paid a substantial amount of Rs.27,57,981/- till date against the BSP of Rs.24,53,762/-. Moreover, even after receiving the entire consideration, respondent had caused the delay of more than 6 years. So, this delay is unjustified and the respondent is directed to offer possession by December, 2019 along with delay compensation. Further, the respondent is directed to calculate the compensation for delay in delivery of possession keeping in mind the principles already laid down by this Authority in complaint case no.113/2018 titled "Madhu Sareen vs. M/s BPTP Pvt. Ltd." and complaint case no,49/2018 titled "Prakash Chand Arohi vs. Pivotal Infrastructure Pvt. Ltd." at the rate of prescribed in Rule 15 of HRERA Rules, 2017 i.e. at the rate of equivalent to SBI highest marginal cost of lending rate plus 2%.*

*Consequently, case is **disposed of** in the abovesaid terms and file be consigned to the record room."*

6. Hence, the present appeal.

7. Along with present appeal, the appellant-promoter has preferred two applications under Section 5 of the Limitation Act for condonation of delay of nil days in filing the appeal and for condonation of delay of 329 days in re-filing appeal, by taking the stand that the said delay is bona fide as large number of applications for waiver of the condition of pre-deposit were already pending before the Hon'ble High Court for adjudication, so the delay in filing and re-filing the appeal is neither intentional nor deliberate. Thus, it was prayed that both the aforesaid applications for condonation of delay may be allowed.

8. The respondents-allottees resisted the said two applications for condonation of delay by way of filing two separate replies to the same. However, the stand taken by the respondents-allottees in both their respective replies is almost the same. They have alleged that the present appeal was initially filed on 24.05.2019 in order to stop the limitation period and at the time of filing of the appeal certain objections were raised by the Registry of this Tribunal and the said objections were only removed by the appellant-

promoter on 04.08.2020, after coming to know that the respondents-allottees had filed an execution petition before the Ld. Authority in the month of March 2020. Thus, the respondents-allottees prayed for dismissal of the aforesaid applications for condonation of delay.

9. *Per* Section 44(2) of the Act, 60 days limitation period has been provided to file an appeal against the order of the Authority, before this Tribunal. After the impugned order had been handed down on 14.03.2019, the limitation to file the appeal against the said impugned order had expired on 13.05.2019. Admittedly, the present appeal has been filed before this Tribunal on 24.05.2019 and, in this way, there is delay of 11 days in filing the appeal before this Tribunal.

10. However, Ld. counsel for the respondents-allottees has contended that institution of the present appeal on 24.05.2019 by the appellant-promoter cannot be treated as legal because at that time, as per the objections raised by the Registry of this Tribunal, *Vakalatnama* was not complete; affidavit was not attested by the Notary; signatures of Advocate were not on grounds of appeal; Resolution was not attached with the appeal and calculation sheet was not attached. Since all these objections were removed by the appellant-promoter on 04.08.2020, so, the date of filing of the present appeal can only be construed as 04.08.2020.

Thus, there is delay of 449 days in filing the appeal and the said delay has not at all been properly explained and both the applications preferred by the appellant-promoter for condonation of delay deserve to be dismissed.

11. Admittedly, initially the present appeal was filed by the appellant-promoter on 24.05.2019 and as referred above, there was delay of only 11 days in filing the present appeal. Regarding the submissions made by Ld. counsel for the respondents-alottees that the institution of the appeal on 24.05.2019 cannot be termed as legal one because various documents as referred above were not annexed with the appeal, it is suffice to say that the venturing into the said technicalities would in fact amount to denial of the adjudication of the controversy on merit specifically when first of all as mentioned in the order dated 21.12.2020 handed down by the Hon'ble High Court in RERA Appeal 30 of 2020 (O&M) titled as *M/s BPTP Ltd. versus Haryana Real Estate Appellate Tribunal and others,* the counsel for the respondents-allottees had submitted that the respondents-allottees were ready to give their 'no objection' if the appeals were heard without pre-deposit and secondly during the pendency of the present appeal before this Tribunal as is explicit from the interlocutory order dated 08.10.2021, the appellant-promoter had placed on file two cheques dated 27.09.2021 for a sum of Rs.7,26,012/- each in the name of

both the respondents-allottees and the counsel for the respondents-allottees had accepted those cheques without any prejudice to the rights of the respondents-allottees in the present appeal. From these facts and circumstances, it is explicit that even the respondents-allottees intend to get the controversy adjudicated upon between the parties on merit.

12. Thus, in view of these circumstances and well established proposition of law that the controversy between the parties should be adjudicated on merit and not on technicalities, the applications preferred by the appellant-promoter for condonation of delay in filing and refiling the appeal are accordingly allowed and the delay in filing and refiling of the appeal is condoned.

13. We have heard Ld. counsel for the parties and have meticulously examined the record of the case. Ld. counsel for the respondents-allottees has also filed the written arguments.

14. Ld. counsel for the appellant-promoter has raised the issue regarding the jurisdiction of the Ld. Authority to entertain and to adjudicate the complaint. He has also raised the contention with respect to the computation of the period for delayed possession charges. Ld. counsel for the appellant has submitted that the provisions of the Act are prospective in nature and as the Builder Buyer's Agreement between the parties had been

executed on 26.04.2010, so, the provisions of the Act are not applicable to the present dispute arisen between the parties and the provisions of the Act are not retrospective in nature.

15. On the other hand, Ld. counsel for the respondents-allottees has contended that the Ld. Authority has rightly determined the delayed period as per the terms and conditions of the Agreement. Further, he has submitted that the provisions of the Act are retroactive in nature and are applicable to a transaction which has not been completed. Lastly, he has submitted that there is no illegality and irregularity in the impugned order handed down by the Ld. Authority and the present appeal deserves to be dismissed. He has placed reliance on the case of ***M/s Newtech Promoters and Developers Pvt. Ltd. vs. State of UP and Others. Etc. 2022 (1) RCR (Civil) 357.***

16. The issue regarding jurisdiction has been set at rest by the Hon'ble Apex Court with its authoritative pronouncement in case ***M/s Newtech Promoters & Developers Pvt. Ltd. supra***, wherein the Hon'ble Apex Court has laid down 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."

17. As per the aforesaid ratio of law laid down by the Hon'ble Apex Court, when there is a dispute with respect to the 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 the complaint. The present complaint has been filed by the respondents-allottees for

grant of interest for delayed possession. So, the learned Authority was fully competent to entertain and decide the complaint and no fault can be found in this regard. Hence, the impugned order is perfectly within the competence of the learned Authority.

18. Similarly, the plea raised by learned counsel for the appellant that the application of the Act is prospective, has also no force as the operation of the Act is retroactive in nature. Reference can be made to the case titled ***M/s Newtech Promoters & Developers Pvt. Ltd. (supra)*** wherein the Hon Apex Court has held as under:-

> *"41. The clear and unambiguous language of the statute is retroactive in operation and by applying purposive interpretation rule of statutory construction, only one result is possible, i.e., the legislature consciously enacted a retroactive statute to ensure sale of plot, apartment or building, real estate project is done in an efficient and transparent manner so that the interest of consumers in the real estate sector is protected by all means and Sections 13, 18(1) and 19(4) are all beneficial provisions for safeguarding the pecuniary interest of the consumers/allottees. In the given circumstances, if the Act is held prospective then the adjudicatory mechanism under Section 31 would not be available to any of the allottee for an ongoing project. Thus, it negates the contention of the promoters regarding the contractual terms having an overriding effect over the retrospective applicability of the Act, even on facts of this case."*

"45. At the given time, there was no law regulating the real estate sector, development works/obligations of promoter and allottee, it was badly felt that such of the ongoing projects to which completion certificate has not been issued must be brought within the fold of the Act 2016 in securing the interests of allottees, promoters, real estate agents in its best possible way obviously, within the parameters of law. Merely because enactment as prayed is made retroactive in its operation, it cannot be said to be either violative of Articles 14 or 19(1)(g) of the Constitution of India. To the contrary, the Parliament indeed has the power to legislate even retrospectively to take into its fold the preexisting contract and rights executed between the parties in the larger public interest."

"53. That even the terms of the agreement to sale or home buyers agreement invariably indicates the intention of the developer that any subsequent legislation, rules and regulations etc. issued by competent authorities will be binding on the parties. The clauses have imposed the applicability of subsequent legislations to be applicable and binding on the flat buyer/allottee and either of the parties, promoters/home buyers or allottees, cannot shirk from their responsibilities/liabilities under the Act and implies their challenge to the violation of the provisions of the Act and it negates the contention advanced by the appellants regarding contractual terms having an overriding effect to the retrospective applicability of the Authority under the provisions of the Act which is completely misplaced and deserves rejection.

54. From the scheme of the Act 2016, its application is retroactive in character and it can safely be observed

that the projects already completed or to which the completion certificate has been granted are not under its fold and therefore, vested or accrued rights, if any, in no manner are affected. At the same time, it will apply after getting the ongoing projects and future projects registered under Section 3 to prospectively follow the mandate of the Act 2016."

19. The same legal position was laid down by the Division Bench of the Hon'ble Bombay High Court in ***Neel Kamal Realtors Suburban Pvt. Ltd. & anr. Vs. Union of India and others 2018(1) RCR (Civil) 298 (DB)*** wherein it was laid down as under: -

*"122. We have already discussed that above stated provisions of the RERA are not **retrospective** in nature. **They may to some extent be having a retroactive or quasi retroactive effect** but then on that ground the validity of the provisions of RERA cannot be challenged. The Parliament is competent enough to legislate law having **retrospective** or **retroactive** effect. A law can be even framed to affect subsisting/existing contractual rights between the parties in the larger public interest. We do not have any doubt in our mind that the RERA has been framed in the larger public interest after a thorough study and discussion made at the highest level by the Standing Committee and Select Committee, which submitted its detailed reports. As regards Article 19(1)(g) it is settled principles that the right conferred by sub-clause (g) of Article 19 is expressed in general language and if there had been no qualifying provisions like clause (6) the right so conferred would have been an absolute one."*

20. As per the aforesaid ratio of law, the provisions of the Act are retroactive in nature and are applicable to an act or transaction in the process of completion. Thus, the rule of retroactivity will make the provisions of the Act and the Rules applicable to the acts or transactions, which were in the process of the completion though the contract/agreement might have taken place before the Act and the Rules became applicable. Hence, it cannot be stated that the provisions of the Act and the Rules made thereunder will only be prospective in nature and will not be applicable to the agreement for sale executed between the parties prior to the commencement of the Act.

21. Regarding the submission of the appellant-promoter that the Ld. Authority has not computed the period of delayed possession charges properly, it is pertinent to mention that as per Clause 4.1 of the Agreement dated 26.04.2010 and from the addendum dated 31.08.2010 (Annexure P-4) the possession timeline was amended from the "24 months from sanction of project" to 24 months of execution of the agreement or on completion of payment of 35% of BSP and 20% EDC and IDC, with a grace period of 06 months. Since, the respondents-allottees had signed the addendum dated 31.08.2010 and agreed to such amendment, so they cannot wriggle out of the same. Thus, the deemed date of possession shall be taken as per

addendum i.e. 26.04.2012 (within 24 months from the execution of agreement dated 26.04.2010) and after grace period of 06 months, deemed date of possession comes to 26.10.2012. Thus, there is no illegality in the finding recorded by the Ld. Authority regarding the due date of possession.

22. No other point was argued before us by any of the parties.

23. Thus, keeping in view of our aforesaid discussion, the appellant-promoter is directed to pay to the respondents-allottees the delayed possession charges w.e.f. 26.10.2012 till the date of offer of possession. However, while calculating the possession charges, the amount of Rs.14,52,024/- which has been paid by the appellant-promoter to the respondents-allottees vide two cheques each of Rs.7,26,012/-, as mentioned in the interlocutory order dated 08.10.2021, shall be deducted while calculating the delayed possession charges. With this modification, there is no merit in the present appeal and the same is hereby dismissed. No order as to costs.

24. Copy of this order be communicated to the parties/Ld. counsel for the parties and the Ld. Haryana Real Estate Regulatory Authority, Panchkula for information and compliance.

25. File be consigned to the record, after completion.

Announced:
July 05, 2022

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

Inderjeet Mehta
Member (Judicial)

Anil Kumar Gupta
Member (Technical)

Manoj Rana

BPTP Ltd.
Vs.
Sanjay Singh Tanger and another
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Present: Shri Himanshu Monga, Advocate,
Ld. counsel for the appellant.

Shri Himanshu Gupta, Ld. proxy counsel for
Shri Simarpal Singh Sawhney, Advocate,
Ld. counsel for the respondents.

Vide our separate detailed order/judgment of the even date, the appeal stands dismissed.

Copy of the detailed order/judgment be sent to the concerned parties/Ld. counsel for the parties for information.

File be consigned to the record.

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

Inderjeet Mehta
Member (Judicial)

Anil Kumar Gupta
Member (Technical)

July 05, 2022
Manoj Rana