

**BEFORE THE HARYANA REAL ESTATE APPELLATE
TRIBUNAL**

Appeal No.630 of 2019

Date of Decision: 16.11.2022

Sunil Mor son of Shri Ishwar Singh Mor, Resident of House No.126, Sector 15, Sonipat, Haryana.

Appellant

Versus

M/s TDI Infrastructure Limited through its Managing Director/Chairman/Director, TDI House, G-7, Outer Circle Connaught Place, New Delhi-110001.

Respondent

CORAM:

Shri Inderjeet Mehta,

Member (Judicial)

Shri Anil Kumar Gupta,

Member (Technical)

Present:

Shri Kamal Jeet Dahiya, Advocate, learned counsel for the appellant.

Shri Kunal Jain, Advocate, learned counsel for the respondent.

ORDER:

INDERJEET MEHTA, MEMBER (JUDICIAL):

Feeling aggrieved by the order dated 29.01.2019, handed down by the learned Haryana Real Estate Regulatory Authority, Panchkula (hereinafter called the 'Authority'), in Complaint No.RERA-PKL631/2018, vide which the relief of

refund of the amount deposited by the appellant/allottee was declined, she has chosen to prefer the present appeal.

2. In response to the advertisement made by the respondent/promoter regarding launching of its project “Espania Royale Floor” in District Sonipat, the appellant booked a flat measuring 1499 sq. ft. by making initial payment of Rs.5,00,000/- in cash on 05.03.2012 and was issued a receipt for the same on 23.03.2012. Subsequently, an allotment letter dated 05.01.2013 qua the said flat was also issued in favour of the appellant.

3. A ‘Floor Buyer’s Agreement’ (hereinafter called ‘the Agreement’) dated 13.03.2014, was executed between the parties and the total sale consideration of the said flat was Rs.40,71,426/- including External Development Charges (EDC), Infrastructure Development Charges (IDC), Interest Free Maintenance Security Charges (IFMS), Preferential Location Charges (PLC), Comprehensive Maintenance Contract (CMC), Car Parking and Maintenance Charges etc. Till the time of execution of the agreement, the appellant had already paid an amount of Rs.18,68,072/- . As per the stipulated terms and conditions of the agreement, the possession of the unit/flat was to be handed over to the appellant in the month

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of September, 2016. Since, even after the expiry of two years from the stipulated date of handing over of the possession, the appellant was not given the possession of the unit/flat, so, having no other option, the appellant instituted a complaint before the learned Authority for refund of the deposited amount.

4. Upon notice, the respondent/promoter, while filing reply, has resisted the complaint on the ground of jurisdiction of the learned Authority to adjudicate the controversy. On merits, the respondent has taken the stand that out of the total demand of Rs.40,71,426/-, the appellant had only made a payment of Rs.18,68,072/-, which was made as back as in January, 2013 and thereafter, no payment was made by the appellant/allottee. Further, it has been alleged that as per the statement of account, an amount of Rs.28,78,210.94 is due and pending to be paid by the appellant/allottee. While denying all other allegations, as contained in the complaint, the respondent/promoter prayed for dismissal of the complaint.

5. After hearing learned counsel for both the parties and appreciating the material on record, the learned Authority disposed of the complaint filed by the appellant/allottee vide

impugned order dated 29.01.2019, vide which the relief of refund of the amount deposited by the appellant/allottee was declined.

6. Hence, the present appeal.

7. Learned counsel for the appellant has contended that as the respondent/promoter has not been able to deliver the possession of the unit/flat to the appellant/allottee within the stipulated period i.e. up to September, 2016, as well as up to July, 2019, as directed by the learned Authority in the impugned order and till date and as neither the Occupation Certificate nor the Completion Certificate qua the said project has been issued in favour of the respondent/promoter, so, the appellant/allottee is entitled for the relief of refund, which has been wrongly declined by the learned Authority. He has relied upon the judgment of the Hon'ble Apex Court of India in ***Newtech Promoters & Developers Pvt. Ltd. vs. State of UP & Ors. Etc. 2022(1) R.C.R. (Civil) 357.***

8. On the other hand, learned counsel for the respondent/promoter has contended that the delay in delivery of possession had occurred due to non-payment of the remaining amount in time by the respondent/allottee and such other circumstances beyond the control of the

respondent/promoter, so, the learned Authority had rightly declined the relief of refund.

9. We have duly considered the aforesaid contentions.

10. First of all, let the admitted facts be taken note of. The appellant/allottee had booked a flat/unit in the residential group housing project namely "Espania Royale Floor" launched by the respondent/promoter in District Sonipat, and out of the total sale consideration of Rs.40,71,426/-, the appellant/allottee had deposited an amount of Rs.18,68,072/- prior to the execution of the agreement on 13.03.2014. The payment plan was Construction Linked Plan. As per the stipulation made at point 28 of the agreement dated 13.03.2014, the possession was to be delivered within 30 months from the date of execution of the agreement and thus the date of delivery of possession of the unit was in the month of September, 2016 and the complaint for refund was filed by the appellant/allottee in September, 2018.

11. From the perusal of the impugned order, it is explicit that the respondent/promoter had applied for issuance of the Occupation Certificate on 31.03.2017 and the respondent/promoter had stated before the learned Authority

that flat will be ready for delivery in all respects by July, 2019. Admittedly, till date, neither the Occupation Certificate nor the Completion Certificate has been issued by the competent Authority in favour of the respondent/promoter regarding the said project. Thus, a period of more than six years has elapsed from the due date of possession i.e. September, 2016.

12. The Hon'ble Apex Court in ***M/s Newtech Promoters & Developers Pvt. Ltd. vs. State of UP & Ors. Etc. (Supra)*** has laid down as under:-

“25. The unqualified right of the allottee to seek refund referred under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period

of delay till handing over possession at the rate prescribed.”

13. As per the aforesaid ratio of law laid down by the Hon'ble Apex Court, the allottee has an unqualified right for refund under Section 18(1)(a) of the Real Estate (Regulation and Development) Act, 2016 (hereinafter called 'the Act') and Section 19(4) of the Act, which is not dependent on any contingencies or stipulations. It was further observed that the right of refund on demand is an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer.

14. Since the respondent/promoter has failed to deliver possession of the flat/unit in question to the appellant/allottee within the stipulated period as per the terms and conditions of the 'Floor Buyer's Agreement' dated 13.03.2014, so, in our view, the appellant/allottee has become entitled to the refund of the amount paid along with the prescribed rate of interest from the date of respective deposit of each amount.

15. Thus, in view of our aforesaid discussion, the present appeal is hereby allowed and the impugned order dated 29.01.2019 is hereby set aside. The respondent/promoter is directed to refund Rs.18,68,072/- to the appellant/allottee along with the prescribed rate of interest from the date of respective deposit of each amount till the date of realisation.

16. Copy of this order be communicated to the parties/learned counsel for the parties and the learned Authority for compliance.

17. File be consigned to the record.

Announced:
November 16, 2022

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

Anil Kumar Gupta
Member (Technical)