

**BEFORE THE HARYANA REAL ESTATE
APPELLATE TRIBUNAL**

Appeal No.501 of 2021
Date of Decision: 21.11.2022

Tata Housing Development Company Limited, Registered
Office: Block, Voltas Compound, T.B. Kadam Marg,
Chinchpokli, Mumbai.

...Appellant-Promoter

Versus

1. Nitin Singhal;
2. Surender Kumar Singhal

Both residents of A-43, Shivalik, New Delhi-110017.

...Respondents-Allottees

CORAM:

**SHRI INDERJEET MEHTA,
SHRI ANIL KUMAR GUPTA,**

**MEMBER (JUDICIAL)
MEMBER (TECHNICAL)**

Argued by: Shri Kamal Jeet Dahiya, Advocate, with
Ld. counsel for appellant-promoter.

Ms. Kushal Deep Kaur, Advocate,
Ld. counsel for respondents-allottees.

ORDER:

ANIL KUMAR GUPTA, MEMBER (TECHNICAL):

This appeal has been preferred under Section 44(2)
of the Real Estate (Regulation and Development) Act, 2016 (for
short, 'the Act') by the appellant-promoter against the
impugned order dated 09.07.2021 passed by the Ld. Haryana

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Real Estate Regulatory Authority, Gurugram (hereinafter called 'the Authority'), in complaint No.3322/2022 filed on 13.10.2020 by the respondents-allottees which was disposed of with the following directions:

"i. The respondent is directed to pay interest at the prescribed rate i.e. 9.30 % per annum for every month of delay on the amount paid by the complainants from due date of possession i.e. 30.10.2017 till 22.07.2019 i.e. expiry of 2 months from the date of offer of possession (22.5.2019). The arrears of interest accrued so far shall be paid to the complainants within 90 days from the date of this order as per rule 16(2) of the rules.

ii. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 9.30 % by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottee, in case of default i.e., the delay possession charges as per Section 2(za) of the Act.

iii. The respondent shall not charge anything from the complainants which is not the part of the buyer's agreement.

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iv. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.”

2. As per the averments of the respondents-allottees in the complaint, it was pleaded that they have booked an apartment/flat bearing No.T-7/904, 4th floor in the appellant-promoter project namely TATA Primanti in Sector 72, Gurugram on 04.12.2012 by depositing Rs.20 lacs against the total sale consideration of Rs.3,17,48,900/- plus Rs.9,50,000/- for car parking charges. Allotment letter in respect of the flat was issued on 31.03.2013 while the Apartment Buyer's Agreement (for short, the ABA) was signed on 16.11.2013.

3. It was further pleaded that as per Clause 4.2 of the ABA, the appellant-promoter was to handover the possession of the flat to the respondents-allottees on or before the month of October, 2017. However, the appellant-promoter issued a letter dated 03.10.2017 claiming force majeure as per Clause 4.4 of the ABA and extended the time for handing over of possession till 02.03.2018. It was further mentioned in the letter that the club house was operational and the flat would be made ready by May, 2018 and the owners could start their interior works before the occupation certificate is received. According to the respondents-allottees, the force majeure

condition was not brought to their notice between 2013 to 2017 when the appellant-promoter had been raising regular invoices for payments as per the construction linked plan.

4. It was further pleaded that the respondents-allottees took home loan from the Citi Bank and payments were to be made against the construction linked plan.

5. It was further pleaded that the respondents-allottees visited the project in the month of January, 2018 and thereafter, wrote an email dated 09.01.2018 to the appellant-promoter apprehending therein that the handing over of possession of the flat did not seem to be possible in May, 2018. However, the appellant-promoter issued the first offer of possession letter on 19.03.2018 on receipt of which the respondents-allottees did not take the possession as the flat was incomplete. The appellant-promoter accepted this fact and accordingly, issued a revised possession letter on 23.08.2018 thereby giving the date of possession as 29.09.2018.

6. It was further pleaded that the respondents-allottees had already deposited Rs.3,17,00,829/- till 02.06.2018 which also includes the credit of Rs.4,56,280/- given by the appellant-promoter and Rs.1,40,910/- as GST setoff and Rs.3,15,370/- as EDC credit given by the appellant-

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promoter; however, the appellant-promoter has charged Rs.8,60,925/- towards delayed installments as the rate of 18% p.a. which is contrary to the RERA guidelines.

7. It was further pleaded that the grievance of the respondents-allottees is that after getting revised letter of possession they sent several e-mails to the appellant-promoter for recalculation/waiver of interest but to of no effect, rather the appellant-promoter is not allowing any waiver. After mentioning that some payments deposited by the respondents-allottees were missing in the statement of account and which were brought to the notice of the appellant-promoter even before the amnesty scheme the respondents-allottees once again brought to the notice of the appellant-promoter on 16.03.2019 to send the correct statement but the appellant-promoter did not do so and in the absence of correct statement the respondents-allottees could not deposit the balance amount. It is stated that the appellant-promoter came with an amnesty scheme with effect from 20.03.2019 valid up to 30.04.2019 thereby offering some waivers/reliefs/benefits but due to the wrong statement of account supplied to the respondents-allottees, the appellant-promoter could not get the amount released from the CITI Bank during amnesty scheme period also.

8. It was further pleaded that on 02.05.2019 the respondents-allottees wrote to the appellant-promoter to increase the period of amnesty scheme but to of no effect. However, on 23.07.2019 on getting correct statement of account from the appellant-promoter, the respondents-allottees once again approached the appellant-promoter to consider their case under the amnesty scheme as the delay was caused due to supply of wrong statement to them. But, the appellant-promoter did not accede to their request. Since then, the respondents-allottees time and again, vide the emails dated 13.11.2019, 18.11.2019, 03.12.2019 and telephonically on 03.06.2020 have requested the appellant-promoter to adjust/waive the amount but to no effect. Hence, this complaint for issuing direction to the appellant-promoter to pay interest with effect from October, 2017 till date on the amount deposited by the respondents-allottees i.e. Rs.3,17,00,829/- till date. It was further contended that the Ld. Authority does have the jurisdiction to decide the case relating to grant of compensation and interest on the delay in delivery of possession.

9. With the aforesaid pleadings the respondents-allottees sought the following relief in their complaint:-

“a) In case failure to give possession, then the respondent be directed to give interest from the date

of possession given in the ABA till the date by the builder i.e. October, 2017 or till the date at the rate as per RERA guidelines on the amount paid Rs.3,17,00,829/-

b) Direct the respondent to charge interest as per RERA guidelines i.e. 'MCLR of SBI Plus' instead of 18% on the delay in payment of installment by the allottee."

10. The appellant-promoter contested the complaint by filing reply in the shape of an affidavit of Mrs. Sanjana Mago who is authorized representative of the appellant-promoter. It was pleaded that post issuing the allotment letter, the appellant-promoter vide letter dated 24.11.2017 and 22.05.2019 and through emails requested the respondents-allottees to pay the stamp duty and registration charges and come forward to complete the registration formalities; however, the respondents-allottees did not come forward to register the agreement/conveyance deed towards the purchase of the apartment in question.

11. It is further pleaded that the appellant-promoter faced several difficulties and hurdles during the period of construction but despite that the appellant-promoter completed the construction of Tower 7 (in which the apartment

allotted to the respondents-allottees is situated) and offered the possession of the said apartment to appellant-promoter on 19.03.2018 after receiving the occupation certificate on 09.03.2018; the possession of the apartment was offered to the respondents-allottees subject to payment of the outstanding amounts by them as per the demands raised and also requested the respondents-allottees to execute and register the conveyance deed. But, however, till date respondents-allottees have not made any further payments post offering the possession of the apartment and have failed and neglected to take possession of the apartment, delay in paying the installments prior to offer of possession has caused accruing of interest and post issuing possession of letter dated 19.03.2018. The respondents-allottees have not made the payment despite first reminder sent on 06.08.2018 and the second reminder sent on 21.08.2018. According to the appellant-promoter, in addition to the same the respondents-allottees are also liable for interest bearing maintenance security (IBMS) and monthly maintenance till the time they take the possession of letter.

12. It was further pleaded that despite sending final reminder dated 22.11.2018 and a notice dated 10.07.2020 to the respondents-allottees thereby calling upon them to pay the outstanding amounts and also to take the possession of the

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apartment simultaneously to execute and register the conveyance towards sale of the apartment the respondents-allottees have failed and neglected to respond to the said notice and did not bother to comply with the same which act on the part of the respondents-allottees not only amounts to breach of the terms and conditions agreed by them under the apartment buyer agreement/application but is also an act of violation of the provisions of the Act and the Rules.

13. It was further pleaded that the appellant-promoter has put reliance on Clause 4.4 of the ABA dealing with force majeure conditions and has stated that it was only after the offering of the possession of the apartment to the respondents-allottees on 19.03.2018 within the extended period of 06 months that the complainants started levelling frivolous allegations to seek waiver of interest and delay compensation when there is no such delay in completion of Tower no.7 and offering the possession of the apartment to the respondents-allottees.

14. It was further pleaded that vide e-mail dated 27.10.2020, the respondents-allottees repeated the allegations and informed the appellant-promoter that they are moving to the RERA Authority and that they are paying the balance towards possession of the said apartment and requested to

hand over the possession of the apartment but till the date the respondents-allottees have not made any further payments.

15. With these pleadings, the appellant-promoter pleaded that the complaint may be dismissed being without any merits.

16. We have heard Shri Kamal Jeet Dahiya, Advocate, Ld. counsel for the appellant-promoter and Ms. Kushal Deep Kaur, Advocate, Ld. counsel for the respondents-allottees and have carefully examined the record of the case.

17. Initiating the arguments, Shri Kamal Jeet Dahiya, Advocate, Ld. counsel for the appellant-promoter has contended that as per ABA Clause 4.2 of the ABA, the appellant-promoter is to give possession of the said premises to the respondents-allottees on or before the October 2017 and after providing necessary infrastructure in the Sector by the Government but subject to force majeure circumstances and reasons beyond the control of appellant-promoter.

18. It was further contended that in Clause 4.3 of the ABA, the project falls within the new Master Plan of Gurugram and the site of the project may not have the infrastructure in place as on the date of booking or even at the time of handing over possession as the same is to be provided/developed by the Government/nominated agency. Since this is beyond the

control of Seller, therefore, the purchaser shall not claim any compensation for delay/non-provision of infrastructure facilities and/or consequent delay in handing over the possession of the said premises.

19. It was further contended that as per Clause 4.4 of the Agreement, the possession of the said premises is subject to force majeure condition which are beyond the control of the appellant-promoter.

20. It was further contended that the work remained stopped on account of ban on use of ground water pursuant to the order dated 31.07.2020 from Punjab and Haryana High Court in the matter of Sunil Singh v. Ministry of Environment and Other (MOEF) in Civil Writ Petition 20032 of 2008. The work also got delayed on account of installation of Sewage Treatment Plant (STP) and Water Treatment Plant (WTP), which was beyond the control of the appellant-promoter. Because of the stoppage of construction of STP, the labour also demobilized and on account of demobilization of the labour, there was loss of 65 man working days commencing from 15.08.2012 to 30.11.2012. The construction industry faced acute shortage of sand due to ban of sand mining by the Hon'ble High Court of Punjab and Haryana which also adversely affected the constructing activities in Gurugram and in the neighbouring states. There was also delay due to the

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order 08.11.2016 of National Green Tribunal (NGT) for putting a ban on the construction activities in National Capital Region (NCR) in order to control the smog in the NCR. The work was also got severally affected from 29.07.2016 to 01.09.2016 due to heavy rainfall and waterlogging the construction work project site. The unforeseen event of demonetization by the Government on 08th November, 2016 greatly affected the mobilization and payments of workforces, vendors and contractors at the site. Due to implementation of Goods and Services Tax (GST) across India since 01st July, 2017 the procurement and supply of materials from many contractors was got deeply impacted.

21. With these contentions, it was submitted that none of the events mentioned above were within the control of the appellant-promoter, as the same are fore majeure events as defined under Clause 4 of the ABA, which hindered progress of the construction work and delayed the handover process for which the appellant-promoter cannot be held liable. He contended that the copies of the documents showing the delay is beyond the control of the appellant-promoter are annexed has an evidence from Page No.320 to 347 of the paper book.

22. It was further contended that the Ld. Authority did not consider that vide email dated 03.10.2017, the appellant-promoter had duly intimated the reasons of force majeure

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events and circumstances beyond their control. He has further contended that the offer of possession to the Respondents-Allottees on 19.03.2018 is well within the period of limitation of possession time, as according to the agreement, the possession was to be handed over to the respondents-allottees in October 2017 plus six months of extension due to force majeure. Hence, the due date of possession as per the agreement should be April 2018, however the possession had been offered to the complainants in March 2018 vide letter dated 19.03.2018, i.e. before the due date of possession. As such, the appellant-promoter is not liable to pay any interest to the respondents-allottees.

23. It was further contended that the appellant-promoter offered the possession of the apartment to the respondents-allottees on 19.03.2018. The respondents-allottees have stopped making payments in 2018 without indication and never raised any grievance till the offer of possession. It is only after 19.03.2018 that the respondents-allottees raised various concerns and objections to the possession. As per Section 19(10) of the Act, it was obligatory on the respondents-allottees to take possession within 02 months from receipt of occupation certificate. The appellant vide letter dated 22.05.2019 called upon the respondents to

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come forward and take possession of the apartment failing which holding charges will be applicable.

24. It was further contended that the Ld. Authority erred in holding that the revised possession letter was issued by the appellant-promoter on 22.05.2019 when no such revised possession letter was issued. The Ld. Authority did not consider the submission made in the reply to the complaint by the Appellant-promoter that it had not issued the revised possession on 23.08.2018, in fact, vide email dated 23.08.2018 the appellant-promoter has stated that the process of handing over of the respective apartments to the Customers from subject Tower No.7 is going on and for which limited labours will be there for final interior work. It was also clarified in the said email dated 23.08.2018 that the possession of the said apartment would be ready by 20.09.2018 which does not at all mean that the said apartment was not ready for occupation when the possession of the Apartment was issued on 19.03.2018. In-fact, the appellant-promoter vide email dated 23.08.2018 had requested to make the balance payment and to have a site visit on 15.09.2018 to point out snag point, if any, so that the same can be rectified and the Apartment could be ready for possession by 20.09.2018. However, the Respondent Complainant neither cleared the payment towards possession

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of the Apartment nor paid the stamp duty / registration charges and failed to take possession of the Apartment. Hence, it is needless to state here that the allegation of incomplete work is completely false and baseless and there was no revised possession letter issued either on 23.08.2018 or on 22.05.2019. In fact, final finishing work is done by the appellant-promoter upon receipt of the complete payment and after accepting the offer of possession. The Company normally handover the physical possession after completing all the finishing work i.e. fixtures, toilets, kitchen work etc., as per the terms and conditions of Agreement. It does not mean at all mean that the construction work of the said Apartment was incomplete in any manner as mentioned in the Complaint. The Appellant-promoter issued the said email on 24.09.2018 stating that the Apartment is ready for possession, does not mean that the work of the Apartment was earlier incomplete.

25. It was further contended that the respondents-allottees have wrongly alleged in the complaint that the respondents-allottees could not pay the balance amount because of incorrect statement of account. It was contended that the respondents-allottees themselves alleged vide para 14 of the brief facts of the complaint that the complainants received the corrected statement of accounts on 23.07.2019 also received the statement of accounts on 09.03.2018 and

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06.04.2018. Despite receipt of various account statements as stated herein above, the respondents-allottees did not make any further payment and kept on asking for waiver of interest and interest for delay which is contrary to the terms and conditions of the Agreement.

26. It was further contended that the respondents-allottees were well aware that the appellant-promoter had announced Limited Period One-Time Amnesty Scheme only for those customers who agreed to make the payment on or before 30.04.2019. The same was duly informed by the appellant-promoter to the respondents-allottees vide email dated 24.04.2019. However, the respondents-allottees did not obtain/avail the said One-Time Amnesty scheme and it is after the expiry of the said scheme, just with an intention to create nuisances and to buy time, the respondents-allottees again started writing an emails for waiver of interest, relying upon the amnesty scheme which was announced by the promoter for a very short period of time. Thus, at this stage, the respondents-allottees cannot also rely upon the said amnesty scheme, moreover, policy decision of the company cannot be extended for one allottee or any specific customer.

27. It was further contended that the appellant-promoter fulfilled all his obligations as per the agreement executed between the parties and settling all the grievances of

the respondents-allottees, the respondents-allottees did not clear the outstanding against them and, hence, after final reminder of payment dated 22.11.2018 the appellant-promoter was constrained to serve letter dated 10th July 2020 on the respondents-allottees, for specific performance of the obligations as per ABA.

28. With these contentions, it was contended that the impugned order dated 09.07.2021 may be modified and the appellant-promoter may be granted the benefit of force majeure conditions and 30.10.2017 may not be considered as deemed date of delivery of possession.

29. Per contra, Ms. Kushal Deep Kaur, Advocate, Ld. counsel for the respondent has contended that as per the Clause 4.2 of the ABA the due date of possession was 30.10.2017. As per the said clause the due date of possession was subject to force majeure events as provided under clause 4.4. She further contended that the invocation of Clause 4.4 at the instance of the appellant-promoter is arbitrary and wrong as force majeure events existing prior to the execution of the ABA were well known to the appellant-promoter and the due date of possession given as October 2017 in the ABA was after considering those events which had happened before the execution of ABA on 02.01.2014. The other events of force

majeure pleaded by the appellant-promoter are delay in getting the approvals from the Government. She contended that the Hon'ble Supreme Court of India in **DLF Home Developers Ltd. (Earlier Known as DLF Universal Ltd) and Another v. Capital Green Flat Buyers Association etc. CA 3864-3889/2020**, has rejected the defence of force majeure on the ground of delay in getting approval from the government on the ground that delay in approval of buildings plans is a normal incident of a construction project. A developer in the position of the appellant-promoter would be conscious of these delays and cannot set this up as a defence to a claim for compensation where a delay has been occasioned beyond the contractually agreed period for handing over possession.

30. It was further contended that the issue of occupation certificate on 09.03.2018, would not ipso facto imply that all the specifications which were promised to the respondents were existing at the site and the flat was possession ready. The respondent visited the site after offer of possession in 19.03.2018 and found that the works were not completed and the flat was still not ready. She contended that the photographs showing the ongoing construction has also been placed on record. The fact that the flat was not ready is evident and admitted by the appellant-promoter itself in the email dated 21.08.2018/23.08.2018 and 24.09.2018 as per

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which the representative of appellant-promoter has specifically stated that the flat will be ready for possession by 20.09.2018, this implies that when offer of possession was made on 19.03.2018, the flat was not possession ready and such offer was merely made to avoid compensation for delayed possession. She contended that though as per Section 19(10) of the Act the allottee shall take the possession within two months from the issuance of occupancy certificate, however, said clause is to be read with Section 11(4)(a) of the Act wherein it obligatory on the part of Promoter to provide possession as agreed in agreement. The possession was not offered till 23.08.2018, hence the appellant-promoter t is liable to pay delayed possession as awarded by the Ld. Authority.

31. She further contended that the respondents have always been willing to pay the consideration amount which is evident from the fact that out of total consideration of Rs.3,17,48,900/-, the respondents-allottees has already paid Rs.3,16,18,366.15/-. The outstanding dues are owing to the negligence and callous attitude being shown by the appellant-promoter in providing the account statement due to which the amount could not have been got released from the bank of the appellants. Despite having requested the appellant time and again to supply the correct account statement after adjusting the payments made by the respondents vide email dated

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27.06.2018, 16.03.2019, 02.05.2019. The respondents also wanted to avail the Amnesty Scheme which was valid upto 30.04.2019, however, due to delay in supply of correct accounts statement, the respondents were unable to get the amount released from the bank. It was only on 23.07.2019 that the correct statement was provided to the respondents and the delayed interest was added in the outstanding amount. Thereafter the respondents requested to waive the interest in view of the aforesaid circumstances, however they refused to do so.

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

33. The respondents-allottees booked an apartment/flat bearing no.T-7/904, 4th Floor measuring 3355 sq. ft. in the respondent project TATA Primanti in Sector 72, Gurugram on 04.12.2012. The allotment letter was issued on 31.03.2013. The ABA was executed between the parties on 02.01.2014. The total sale consideration as per statement of account dated 09.12.2020 is Rs.3,14,13,400/-. The total amount paid by the respondents-allottees as per statement of account dated 09.12.2020 is Rs.3,16,18,366.55/-.The appellant-promoter got the occupation certificate issued on 09.03.2018. The date of possession is subject to force majeure events as per Clause 4.4 and in case of force majeure events

the appellant-promoter is entitled to six months extension for delivery of possession. The Clause 4.4 of the ABA reads as under

“4.4 Force Majeure.

The purchaser(s) agrees that the sale and possession of the said Premises is subject to Force Majeure Conditions, which means any even or combination of events or circumstances beyond the control of a party which cannot (a) by the exercise of reasonable diligence, or (b) despite the adoption of reasonable precaution and/or alternative measures, be prevented, or caused to be prevented, and which adversely affects the THDCL’s ability to perform obligations under this Agreement, which shall include:

- (a) acts of God i.e. fire, drought, flood, earthquake, natural disasters;*
- (b) explosions or accidents, air crashes and shipwrecks; acts of terrorism*
- (c) circumstances or conditions or other beyond the control of unforeseen by THDCL including strikes or lock outs, industrial dispute or other agitations by the workers, employees or labourers of the promoter or the contract or the suppliers and/or;*
- (d) non-availability of cement, steel or other construction material;*
- (e) war and hostilities of war, riots, band or civil commotion;*
- (f) any legislation, or rule or regulation made or issued by the Government Authority or Court, Tribunal and/quasi judicial authority/body; if any competent authority (ies) refuses, delays withholds, denies the grant of necessary approvals, occupation certificate, completion certificate/s for the said premises/said complex or if; any matters, issues relating to such approvals, permissions, notices, notifications by the competent authority (ies) become subject matter of any suit/ writ before a competent court or for any reasons whatsoever;*

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- (g) *the promulgation of or amendment in any law, rule or regulation or the issue of any injunction, court order or direction from any governmental authority that prevents or restricts a party from complying with any or all the terms and conditions as agreed in this agreement; or*
- (h) *any event or circumstances analogous to the foregoing.*

In case of Force Majeure event, THDC shall be entitled to an extension of 6 (six) months for delivery of possession of the said premises, depending upon the contingency/prevaling circumstances at that time. THDCL as a result of such a contingency arising thereto reserves, its right to alter or vary the terms and conditions of allotment or if the circumstances beyond the control of THDCL so warrant THDCL may suspend the scheme for such period as it may consider expedient and no compensation of any nature whatsoever may be claimed by the Purchaser (s) for the period of suspension of scheme.”

34. It was contended by the Ld. counsel for the appellant-promoter that the appellant-promoter has put forth its best efforts to complete the project. However, on accounts of following reasons which were beyond the control of the appellant-promoter could not complete the project within agreed period. The Ld. Authority did not consider the effect of these events in completion of the project, however, the appellant-promoter is entitled for extension of six months in fixing due date of delivery of possession on account of the various force majeure events. The reasons stated by the appellant-promoter are reproduced as below:-

- a. *Delay is due to stoppage of work because of ban on use of ground water pursuant to an*

order dated 31.07.2010 from Punjab and Haryana High Court in the matter of Sunil Singh v. Ministry of Environment and Other(MOEF) in CWP 20032 of 2008; Accordingly, show Cause notices dated 14.08.2012 were issued by the District Administration to 81 Developers in Gurgaon, including THDC causing suspension of construction work at site. Due to this stoppage and complete slowdown in construction work due to non-availability of water, the Appellant Company had to re-deploy resources and equipment's to use alternate water source for construction leading to a loss of approximately 35 man working days commencing from 14.08.2012 to 17.09.2012. This issue was also published in media

- b. Installation of Sewage Treatment Plant (STP): Construction work could be commenced with water sourced from nominated STP only approved by HUDA. Pursuant to the undertaking given by the Company, the suspension of work notice was withdrawn and NOC, for construction activity by the office of the Administrator, HUDA was issued on 17.09.2012. The Company had to install tertiary water treatment plant to ensure usability of STP water for construction. The work orders for water treatment plant were placed 07.09.2012 and the plant was commissioned on 26.09.2012. Even though as per directions and mandates, STP was*

installed, however water supply under the STP was never adequate for a full-fledged running of a construction site. Due to several technical hurdles which were kept occurring at the site in relation to the working of the STP, resulting in loss of approximately 8 man working days due to this issue commencing from 07.09.2012 to 15th September, 2012. Further, due to inadequate water supply for local issues and maintenance of the STP plant a further period of approximately 35 days were been lost in between 07.10.2012 to 07.03.2015,

- c. Demobilization of labour from site: Stoppage of construction work and installation of STP led to demobilization of labour from site. There was loss of approximately 65 man working days due to this issue, commencing from 15.08. 2012 to 30.11. 2012;*
- d. The construction industry faced acute shortage of sand due to ban of sand mining by the Hon'ble High Court of Punjab and Haryana which also adversely affected the constructing activities in Gurgaon and in the neighboring states*
- e. Delay due to order on 08.11.2016 for putting a ban on the construction activities in National Capital Region passed by the National Green Tribunal ("NGT") in order to rid the national capital from smog etc.*
- f. Due to heavy rainfall and waterlogging the construction work at the Project was severally affected from 29.07.2016 to 01.09.2016,*

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- g. The unforeseen event of demonetization by the Government on 8th November, 2016, greatly affected the mobilization and payments of workforces, vendors and contractors at the Site,*
- h. Few months deeply impacted the procurement and supply of materials from many contractors on account of implementation of the Goods and Services Tax (GST) across India since 1st July, 2017.”*

35. The reason mentioned at Serial No.a above is regarding ban of use of ground water by the Hon'ble High Court of Punjab and Haryana in 2010 is a matter which existed prior to the signing of the ABA on 02.01.2014 and, thus, does not have any effect as the due date of handing over of the possession mentioned as October 2018 in the ABA has been fixed by considering this event.

36. The reason mentioned at Serial No.b, that the appellant-promoter was to use the water from STP for construction purpose by installing tertiary water treatment plant. That due to several technical hurdles regarding working of STP, 8 man working days were lost from 07.09.2012 to 15.09.2012. This event also happened prior to the signing of the ABA on 02.01.2014 and, thus, does not have any effect as the due date of handing over of the possession mentioned as October 2018 in the ABA has been fixed by considering this event. Further, it is mentioned that the inadequate water

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supply for local issues and maintenance of the STP plant a further period of approximately 35 days were lost in between 07.10.2012 to 07.03.2015. The appellant-promoter has not provided any evidence of having lost any day between the period of execution of the Agreement on 02.01.2014 and 07.03.2015. The appellant-promoter has also not mentioned what were the local issue for maintaining the STP and, how these were beyond the control of the appellant-promoter. The appellant-promoter has not been able to prove that there has been any force majeure which has resulted, the delay of 35 days in between 07.10.2010 to 07.03.2015, and, as such, no benefit can be granted to it on account of the reason mentioned at Serial No.b under Clause 4.4 of the ABA relating to force majeure.

37. The other reason mentioned at Serial No.c i.e. loss of 65 working days between 15.08.2012 to 30.11.2012 on account of demobilization of labour from construction site on account of stoppage of work of STP is also of a period before the execution of the agreement. This event has also happened before the execution of ABA and thus, does not have any effect as the due date of handing over of the possession mentioned as October 2018 in this ABA has been fixed by considering this event.

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38. The appellant-promoter against the reason mentioned at Serial no.d has simply mentioned that on account of shortage of sand due to ban on sand mining by the Hon'ble High Court of Punjab and Haryana has affected the construction activity in Gurugram and in the neighbouring states. The appellant-promoter has not produced any order of Hon'ble High Court mentioning that the sand mining is banned. The appellant-promoter has also not provided any credible evidence to prove that there was shortage of sand and how it has adversely affected the constructing activities, as such, no benefit can be granted to the appellant-promoter under Clause 4.4 of the ABA relating to the force majeure.

39. For the reason mentioned at Serial No.e, the appellant-promoter has contended that there was a ban of construction activities in the National Capital Region (NCR) by the National Green Tribunal (NGT) in order to control smog. The appellant-promoter has not provided any evidence to the effect that when that order was passed how that ban has affected the progress or delay in construction of project.

40. For the reason mentioned at Serial No.f, the appellant-promoter has contended that heavy rainfall and waterlogging affected the construction of the project from 29.07.2016 to 01.09.2016. Heavy rainfall is a general nomenclature. To derive the benefit under Clause 4.4 of the

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ABA regarding force majeure, the appellant-promoter has to make at its case by providing the rainfall data, and indicating as to how much rainfall is more than normal rainfall and how it has affected the construction at site of work. In the absence of such facts, the appellant-promoter cannot derive any benefit under the said clause of force majeure.

41. The appellant-promoter stated reasons mentioned at Serial no.i and h that the demonetization on 08.11.2016 and Goods and Services Tax on 01.07.2017 imposed by Government of India has delayed the construction of work. However, the appellant-promoter has not supplied any evidence or document to prove his claim that the imposition of demonetization and GST has actually affected the construction of work and, therefore, no benefit can be granted to the appellant under Clause 4.4 relating to "Force Majeure".

42. The appellant-promoter at Annexure A-5 from Page No.320 to 347 of the paper-book has supplied copy of the news in the various newspapers indicting heavy rains and orders of the various authorities for claiming delay in completion of the project to on account of force majeure reasons under Clause 4.4 of the ABA. These documents has no legal credence. In addition to above, the appellant-promoter has failed to establish how these can be related to the delay which were beyond its control of the appellant to seek relief under Clause

4.4 of the ABA. Thus, the appellant-promoter has not been able to establish any delay in completion of the work on account of the force majeure as contemplated in Clause 4.4 of the ABA and is, therefore, not entitled to any benefit under the said clause of ABA.

43. **Regarding offer of possession letter dated 19.03.2018 and revised possession letter dated 22.05.2019:-** The occupation certificate was issued to the appellant-promoter on 09.03.2018 by the competent authority i.e. Director, Town and Country Planning Department (DTCP). The offer of possession was issued by the appellant-promoter to the respondents-allottees on 19.03.2018. The relevant part of the offer of possession dated 19.03.2018 (i.e. Para No.4 to 6) is reproduced as below:

“XXXX XXXX XXXX

4. **Payment and handover:**

In order to ensure a seamless handover process, we will commence handover of the apartments in phases. The payments are due and payable to us on or before 02-Jun-18. Physical handover of your apartment shall be completed at the site after of all payments, on such date as may be informed to you in advance. Kindly note that all delayed payments attract interest as per applicable law (presently State Bank of India-Marginal Cost of Lending Rate + 2% = 10.35% p.a.) from the due date. We also request you

to note that holding charges @ Rs.5/- per sq. ft. per month for the Apartment/Executive Apartment and Rs.8/- per sq. ft. per month of the executive Floor/Villa will be chargeable in case the possession is not taken by the due date as per the terms of the Agreement.”

XXXX

XXXX

XXXX

6. Possession Process:

We will schedule your site visit for completion of the handover process post receipt of all payments. At the time of possession, the Estate Management Team shall handover keys, documents and other items pertaining to your Apartment, upon execution of the relevant documents. Upon collection and acknowledgement of the keys from the Estate Management team, it will be deemed that you are satisfied with the possession and delivery of your apartment along with amenities. Our Estate Management team will be happy to assist you to facilitate a smooth transition of the possession process.

XXXX

XXXX

XXXX”

44. By the above said offer of possession letter, it was informed to the respondents-allottees that the appellant-promoter commence handover of the apartment in phases. The payment are due and payable to the appellant on or before 02-Jun-2018. The appellant-promoter was to schedule the visit for completion of handover process post receipt of all

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payments. However, with this offer of possession no amount payable by the respondents-allottees was intimated. Vide letter dated 23rd August, 2018, the appellant-promoter informed the respondents-allottees that the unit will be ready by 20th September, 2018 and requested the respondents-allottees to visit their unit on 15th September, 2018 for final inspection and intimation of any snagging for rectification and further ensured that by due date of possession, their unit and apartment lobby will be completely ready. Vide letter dated 11.09.2018, the appellant-promoter intimated the respondents-allottees that the finishing of their apartment has already started and the same will be completed by 16.09.2018 and they may take the possession by 18.09.2018 subject to clearance of the final payment. Vide letter dated 24.09.2018, the appellant-promoter intimated the respondents-allottees that the unit is ready for possession as all the pending work has been completed and it was asked to make the balance payment at the earliest to enable them to schedule the possession at site. In the letter dated 06.08.2018, 21.08.2018 and 22.11.2018, the appellant-promoter intimated the respondents-allottees that the last and final attempt is again made as a final reminder to make payments within 15 days, the details of which were specified in Annexure A attached with

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the said letters. The relevant part of Annexure A is reproduced as below:

Particulars	Due date	Amount due (Rs.)
Installment	02-Jun-18	Rs.2087764/-
IBMS Deposit	02-Jun-18	Rs.335500/-
Advance maintenance	02-Jun-18	Rs.190028/-
Total		Rs.2613292/-

45. Similarly, a letter dated 10.07.2020 a final demand notice was sent by the appellant-promoter to the respondents-allottees intimating that offer of possession-cum-demand letter dated 19.03.2018 and reminders dated 06.08.2018, 21.08.2018 and 22.11.2018 were issued whereupon the respondents-allottees were asked to pay outstanding amount along with applicable interest for delayed payment.

46. However, the respondents-allottees have submitted that they were always willing to pay consideration amount which is evident from the fact that out of total sale consideration of Rs.3,17,48,900/-, respondents-allottees have already paid Rs.3,16,18,366.15, (as per SOA dated 09.12.2020). The outstanding dues are owing to the negligence of the appellant-promoter in not providing the account statement due to which the amount could not be got released from the bank of the appellant-promoter. The respondents-allottees also wanted to avail the Amnesty

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Scheme which was valid upto 30.04.2019, however, due to delay in supply of correct accounts statement, the respondents were unable to avail the amnesty scheme and get the amount released from the bank.

47. As brought out in above para, the respondents-allottees were to pay an amount of Rs.20,87,764/- as a balance of instalment and total amount of Rs.26,13,292/- as on 02.06.2018 intimated by the appellant-promoter vide its letter dated 06.03.2018, 21.08.2018 and 22.11.2018. The respondents-allottees have not provided any evidence or documents to establish their contentions that on account of non-supply of correct accounts statement, the respondents were unable to get the amount released from the bank. Thus, this plea of the respondents-allottees has no legal credence. So, it is very much clear from the above correspondence exchanged between the parties that the appellant-promoter had made their unit ready in all respects for possession on 24.09.2018 as intimated by its letter dated 24.09.2018 of course this was subject to payment of the balance amount by the respondents-allottees. The delay in not handing over the possession after 24.09.2018 is on the part of the respondents-allottees who did not pay the amount required for handing over the possession. By letter dated 22.05.2019, the appellant-promoter has only communicated that the respondents-

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allottees has failed to take the possession and they may come forward to take the possession of the unit.

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

49. Thus, keeping in view our aforesaid discussion, the present appeal filed by appellant-promoter is partly allowed and the impugned order dated 09.07.2021 passed by the Ld. Authority is modified to the extent that the offer of possession shall be considered as 24.09.2018 instead of 25.05.2019, i.e., the appellant-promoter shall pay interest of prescribed rate i.e. 9.3% per annum of every month of delay from due date of possession i.e. 30.10.2017 till 24.11.2018 i.e. expiry of 2 months from the date of offer of possession.

50. The amount deposited by the appellant-promoter i.e. Rs.50,80,544/- with this Tribunal to comply with the provisions of Section 43(5) of the Act be remitted to the Ld. Authority along with interest accrued thereon for disbursement to the respondents-allottees as per their entitlement as per our above said observations and, the surplus amount, may be returned/refunded to the appellant-promoter, in accordance with law/rules and of course subject to tax liability.

51. No order as to costs.

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52. The copy of this order be communicated to the parties/learned counsel for the parties and the learned Haryana Real Estate Regulatory Authority, Gurugram, for information and necessary compliance.

53. File be consigned to the record.

Announced:
November 21, 2022

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

Anil Kumar Gupta
Member (Technical)

Manoj Rana

Judgment-HREAT