BEFORE THE HARYANA REAL ESTATE APPELLATE TRIBUNAL

Appeal No. 293 of 2020

Date of Decision: 22.12.2022

Emaar India Ltd. registered office at # 306-308 Square One, C-2 District Centre, Saket, New Delhi-110017. 2nd Address Corporate Office, Emaar Business Park, MG Road, Sikandarpur, Sector 28, Gurugram (Haryana) 122 002

Appellant

Versus

1. Sushil Kumar Bansal

2. Smt. Nirupma Bansal

   Both the residents of House No. A-501, Group Housing-8, Sector-47, Gurugram.

Respondents

CORAM:

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

Argued by: Ms. Rupali Shekhar Verma, Advocate,
Ld. counsel for the appellant.

Shri Kuldeep Kumar Kohli , Advocate,
Ld. counsel for the respondents.

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

Judgment Haryana Real Estate Appellate Tribunal

(further called as, 'the Act') by the appellant-promoter against impugned order dated 04.02.2020 passed by the Haryana Real Estate Regulatory Authority, Gurugram (for short, 'the Ld. Authority') whereby the Complaint No. 5483 of 2019 filed by the respondents-allottees was disposed of with the following directions:

> *"i. The respondent is directed to pay the interest at the prescribed rate i.e. 10.20% per annum for every month of delay on the amount paid by the complainants from due date of possession i.e. 08.05.2013 till the offer of possession i.e. 12.10.2019. the arrears of interest accrued so far shall be paid to the complainants within 90 days from the date of this order.*
>
> *ii. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.*
>
> *iii. The respondent shall not charge anything from the complainants which is not part of the buyer's agreement.*
>
> *iv. Interest on the due payments from the complainants shall be charged at the prescribed rate @ 10.20% by the promoter which is the same as is being granted to the complainants in case of delayed possession charges. "*

Judgment, Harayna Real Estate Appellate Tribunal

2. As per averments of the respondents-allottees in the complaint, it was pleaded that the unit no. EHF-350-T-GF-115, Ground Floor, Building No. Topaz, measuring 1750 sq. ft. (super built up area) + 672 sq. ft. of lawn in the project of the appellant "Emerald Hills-Floors", Sector 65, Gurugram was booked by original allottee Ms. Barkha Bahl, by paying booking amount of Rs. 5 lakhs, on 09.07.2009. The provisional allotment letter was issued on 27.07.2009. The Builder Buyer's Agreement was signed between the original allottee and the appellant on 08.11.2010. The basic price of the unit is Rs. 78,40,000/-. The total sale consideration as per statement of account dated 16.12.2019 is Rs. 90,68,957/-. The said unit was to be delivered within 27 months with a grace period of three months i.e. on 08.05.2013. The unit was purchased by the respondents-allottees from the original allottee on 12.05.2014. The appellant endorsed the unit in the name of the respondents-allottees on 14.05.2014.

3. It was further pleaded that even after making 100% payment of the total sale consideration and a long wait of 5 to 6 years from the time of purchase of the said unit, the same is nowhere near completion and therefore the respondents-allottees filed the complaint seeking following relief:-

> *"Direct the respondent to pay interest at the prescribed rate of the amounts paid by the*

Judgment, Haryana Real Estate Appellate Tribunal

> *complainants from the due date of handing over possession till date of physical handing over of possession."*

4. Per contra, the appellant in its reply to the complaint pleaded that the complaints pertaining to the refund, compensation and interest are to be decided by the Adjudicating Officer under Section 71 of the Act read with rule 29 of the Rules and not by the Authority.

5. It was pleaded that the original allottee executed an indemnity cum undertaking whereby the original allottee admitted and acknowledged that she had defaulted in making payments of instalments as per the payment plan. On the request of the original allottee, the appellant allowed a one-time waiver of the delayed payment charges amounting to Rs. 2,23,108/- which had accrued as on the date , as a one-time goodwill gesture.

6. It was further pleaded that the respondents-allottees executed an affidavit whereby the respondents-allottees admitted and acknowledged that they were not entitled to claim any compensation for delay in handing over possession or any rebate or discount from the appellant and further agreed and undertook not to raise any claim with regard to the same from the appellant.

Judgment, Harayna Real Estate Appellate Tribunal

7. It was further pleaded that as per clause 15 of the buyer's agreement, the compensation for any delay in delivery of possession shall only be given to such allottees who are not in default of their obligations envisaged under the agreement and who have not defaulted in payment of instalments as per the payment plan incorporated in the agreement.

8. It was further pleaded that the Occupation Certificate has been issued on 18.09.2019 and offer of possession to the respondents-allottees have been made on 12.10.2019.

9. After controverting all the pleas raised by the respondents-allottees, the appellant-promoter pleaded for dismissal of the complaint being without any merit.

10. The Ld. authority after considering the pleadings of the parties passed the impugned order, the relevant part of which has already been reproduced in the upper part of this appeal.

11. We have heard, Ld. counsel for the parties and have carefully examined the record.

12. Ld. counsel for the appellant contended that the pleas taken in the grounds of appeal regarding the jurisdiction

Judgment, Haryana Real Estate Appellate Tribunal

of the 'Authority' and some other technical grounds in the grounds of the appeal are not being pressed on account of the Judgment of Hon'ble Apex Court in the case **M/s New Tech Promoters and Developers Pvt. Ltd. v. State of UP & others 2021 SCC online SC 1044**.

13. It was further contended that the agreement was executed between the original allottee Ms. Barkha Bahl on 08.11.2010. As per clause 13(i) of the said agreement the due date of delivery of possession is after 27 months from the date of execution of the agreement plus grace period of 3 months which comes out to 08.05.2013. The respondents-allottees are the subsequent allottees who stepped into the shoes of the original allottee on 14.05.2014 when the appellant issued a nomination letter confirming the allotment in the name of the respondents-allottees i.e. after the due date of delivery of possession i.e. 08.05.2013. The respondents-allottees at the time of purchase of the unit were aware of the fact that the due date of delivery of possession has already elapsed and the project is running behind schedule. However, despite the knowledge of the said fact that the project is delayed the respondents allottees still chose to buy the unit in the said project.

Judgment, Harayna Real Estate Appellate Tribunal

14. She contended that it has been held in the judgment of the Hon'ble Supreme Court of India in case "***Wing. Commander Arifur Rahman Khan and Ors. Vs DLF Southern Homes Pvt. Ltd. 2020 SCC ONLINE 667 (SC).,*** that the delayed possession interest to the subsequent allottees shall be payable from the date when the subsequent allottees stepped into the shoes of the original allottee.

15. She contended that the respondents – allottees have entered into the shoes of the original allottee after the due date of possession, therefore the delayed possession interest on the payments made by them to the appellant should be from the dates of respective payments made by them to the appellant.

16. With these contentions, it was contended that the present appeal may be allowed and the impugned order dated 04.02.2020 is set aside.

17. Per contra, Ld. counsel for the respondents- allottees contended that this Tribunal has passed orders in various appeals deciding similar issues and, therefore, this appeal may be decided in accordance with orders passed in those appeals.

18. It was further contended that the impugned order dated 04.02.2020 passed by the Ld. Authority is perfectly in order, is as per the Act, Rules and Regulations and contended for dismissal of the appeal being without any merits.

Judgment, Harayna Real Estate Appellate Tribunal

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

20. The undisputed facts of the case are that unit was booked by original allottee Ms. Barkha Bahl unit no. EHF-350-T-GF-115, Ground Floor, Building No. Topaz, measuring 1750 sq. ft. (super built up area) + 672 sq. ft. of lawn in the project of the appellant “Emerald Hills-Floors”, Sector 65, Gurugram by paying booking amount of Rs. 5 lakhs on 09.07.2009. The provisional allotment letter was issued on 27.07.2009. The Agreement was signed between the original allottee and the appellant on 08.11.2010. The basic price of the unit is Rs. 78,40,000/-. The total sale consideration as per statement of account dated 16.12.2019 is Rs. 90,68,957/-. The total amount paid by the respondents-allottees as per statement account of dated 16.12.2019 is Rs. 90,56,348/-. The said unit was to be delivered within 27 months plus a grace period of three months i.e. on 08.05.2013. The unit was purchased by the respondents-allottees from the original allottee on 12.05.2014. The appellant issued an endorsement letter on 14.05.2014 confirming the nomination in the name of the respondents-allottees. Occupation certificate has been issued on 18.09.2019 and offer of possession to the respondents-allottees have been made on 12.10.2019.

Judgment, Haryana Real Estate Appellate Tribunal

21. It is argument of the appellant that the respondents-allottees are subsequent allottees, who have purchased the property from the original allottee in resale and the appellant issued nomination letter in favour of the respondents-allottees on 14.05.2014, after the due date of possession i.e. 08.05.2013. This means that the respondents-allottees at the time of purchase of the unit were aware of the fact that the due date of delivery of possession has already elapsed and the project is running behind schedule. However, despite the knowledge of the said fact that the project is delayed the respondents allottees still chose to buy the unit in the said project. It is further argument that the interest can only be awarded from the day when the respondents- allottees stepped into the shoes of the original allottee as per the judgment of the Hon'ble Supreme Court in case "***Wing. Commander Arifur Rahman Khan and Ors. Vs DLF Southern Homes Pvt. Ltd. 2020 SCC ONLINE 667 (SC).,.***

22. It has been held in case of ***Hon'ble Supreme Court (Full Bench) in Civil Appeal No. 7042 of 2019 tilted as M/s Laureate Buildwell Private Ltd. v. Charanjeet Singh" decided on 22.07.2021,*** that *the decision in* **HUDA Vs. Raje Ram 2008 (17) SCC 407,** *which was applied in Wg. Commander Arifur Rehman (supra) cannot be considered as a*

Judgment Harayna Real Estate Appellate Tribunal

good law. However, with respect to the interest payable to the subsequent allottees held as under, the relevant part of the judgment in case of *M/s Laureate Buildwell Private Ltd. (Supra)* is reproduced as below:-

> *"31. In view of these considerations, this court is of the opinion that the per se bar to the relief of interest on refund, enunciated by the decision in Raje Ram (supra) which was applied in Wg. Commander Arifur Rehman (supra) cannot be considered good law. The nature and extent of relief, to which a subsequent purchaser can be entitled to, would be fact dependent. However, it cannot be said that a subsequent purchaser who steps into the shoes of an original allottee of a housing project in which the builder has not honoured its commitment to deliver the flat within a stipulated time, cannot expect any – even reasonable time, for the performance of the builder's obligation. Such a conclusion would be arbitrary, given that there may be a large number- possibly thousands of flat buyers, waiting for their promised flats or residences; they surely would be entitled to all reliefs under the Act. In such case, a purchaser who no doubt enters the picture later surely belongs to the same class. Further, the purchaser agrees to buy the flat with a reasonable expectation that delivery of possession would be in accordance within the bounds of the delayed timeline that he has knowledge of, at the time of purchase of the flat. Therefore, in the event the purchaser claims*

Judgment, Harayna Real Estate Appellate Tribunal

> *refund, on an assessment that he too can (like the original allottee) no longer wait, and face intolerable burdens, the equities would have to be moulded. It would no doubt be fair to assume that the purchaser had knowledge of the delay. However, to attribute knowledge that such delay would continue indefinitely, based on an a priori assumption, would not be justified. The equities, in the opinion of this court, can properly be moulded by directing refund of the principal amounts, with interest @ 9% per annum from the date the builder acquired knowledge of the transfer, or acknowledged it."*

23. In the present case, the respondents-allottees had purchased the unit on 14.05.2014, when the appellant issued a letter confirming the nomination in favour of the respondents-allottees, after the due date of handing over of the possession i.e. 08.05.2013, therefore, from the ratio of the above said law laid down in M/s Laureate Buildwell Private Ltd (Supra), it is held that since the respondents-allottees had stepped into shoes of the original allottee after the expiry of due date of handing over of the possession, therefore, respondents-allottees are entitled for delayed possession charges w.e.f the date of entering into the shoes of the original allottee i.e. 14.05.2014 vide nomination letter dated 14.05.2014 issued by the appellant.

Judgment : Haryana Real Estate Appellate Tribunal

24. The further arguments of the appellant is that the interest at the prescribed rate on the payments which has been made by the respondents-allottees after they have stepped into shoes of the original allottee i.e. 14.05.2014, shall be payable from the date on which the respective payments have been made. It is clarified that the payments made by the respondents-allottees after the date i.e 14.05.2014, they stepped into the shoes of the original allottee shall be from the date the respective payments have been made by the respondents -allottees to the appellant-promoter.

25. No other issue was pressed before us.

26. Thus, keeping in view of our above discussion, the present appeal is partly allowed as per the aforesaid observations.

27. The amount of Rs. 36,17,690/- deposited by the appellant-promoter with this Tribunal as pre-deposit to comply with the provisions of proviso to Section 43(5) of the Act, along with interest accrued thereon, be sent to the Ld. Authority for disbursement to the respondents-allottees, excess amount may be remitted to the appellant, subject to tax liability, if any, as per law and rules.

28. No order as to costs.

Judgment, Harayna Real Estate Appellate Tribunal

29. Copy of this judgment be communicated to both the parties/learned counsel for the parties and the learned Haryana Real Estate Regulatory Authority, Gurugram.

30. File be consigned to the record.

Announced:
December 22,2022

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

Anil Kumar Gupta
Member (Technical)

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Judgment, Harayna Real Estate Appellate Tribunal