BEFORE THE HARYANA REAL ESTATE APPELLATE TRIBUNAL

Appeal No. 30 of 2021
Date of Decision: 11.2022

Rajesh Goyal S/o Sh. Ved Prakash, 11, School Road, Jagadhri, Yamuna Nagar (Haryana).

...Appellant-Allottee

Versus

Ansal Housing and Construction Ltd. 606, 6th Floor, Indra Prakash, 21, Barakhamba Road, New Delhi-110001.

...Respondent-Promoter

CORAM:

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

Argued by: Shri Neeraj Gupta, Advocate,
Ld. counsel for appellant-allottee.

Shri Surjeet Bhadu, Advocate,
Ld. counsel for respondent-promoter.

O R D E R:

Anil Kumar Gupta, Member (Technical):

The present appeal has been preferred under Section 44(2) of the Real Estate (Regulation and Development) Act, 2016 (hereinafter called the Act) against order dated 03.11.2020 passed by the Ld. Haryana Real Estate Regulatory Authority, Panchkula (hereinafter called 'the Authority'), whereby complaint No. 434 of 2019 filed by the Appellant was

dismissed. The relevant part of the order 03.11.2020 is reproduced as below:-

> *"The Authority is unable to accept the arguments of the complainant. It observes that the possession of the apartment had been handed over to the complainant on 17.01.2014 and conveyance deed thereof was also executed on 18.03.2015. RERA Act came into force on 01.05.2017 and the complaint has been filed in February, 2019. The complainant did not take recourse to any lawful forum between the year 2014 and 2019. At this late stage the concluded contract cannot be allowed to be reopened. Allowing re-opening of such concluded contract will be against public policy because in that case no contract would ever be considered concluded. Acceptance of the request of the complainant could give rise to unlimited litigation.*
>
> *6. For the foregoing reasons the arguments of the complainant are declined and the complaint is disposed of as dismissed.*
>
> *Files be consigned to the record room and orders be uploaded on the website."*

2. The brief facts of the case are that the appellant has purchased a residential plot no. A-61, measuring 270 Sq. yds. in respondent's project named "Ansal Town", Sector 20, Yamuna Nagar, vide agreement dated 30.05.2011. As per the agreement, the respondent had promised to deliver possession of the plot to the appellant by June, 2013. The appellant had

paid a sum of Rs. 48,47,331/- till June, 2013 to the respondent against the basic sales consideration of Rs. 44,38,250/-. On 17.01.2014, the respondent offered physical possession to the appellant and demanded various other payments including Preferential Location Charges (PLC), Club Charges, Sewerage Treatment Plant (STP) charges, Utility Charges, VAT Charges and additional EDC/IDC. The appellant alleges that the respondent threatened the appellant that the allotment would be cancelled if he does not pay the aforementioned charges. Thereafter, the appellant made the payments and conveyance deed was registered in favour of the appellant on 18.03.2015. The complaint was filed on 3rd February, 2019 by the appellant disputing all illegal demands made by the respondents and prayed for refund of the respective amounts and claimed the following reliefs.

> "(a) *Respondent may be directed to refund the Rs. 1,38,250/- charged as PLC, paid by the Complainant along with interest @ 18% per annum from the date of payment till its actual realization.*
>
> *(b) The respondent may be directed to pay the compensation for delay in possession as per clause 32 of the agreement.*
>
> *(c) Respondent may be directed to provide exact calculations of the EDC/IDC applicable to this villa and refund the extra amount collected from the complainants along with interest @ 18% per annum from the date of payment till its actual realization.*

(d) *Respondent may be directed to provide justification of the amount of Rs. 1,52,075/-, which has been charged in the name of utility charges, as the complainants are unable to understand for which facilities and on what count these charges have been collected and these seem to be unjustified and be directed to refund the extra amount collected from the complainants along with interest @ 18% per annum from the date of payment till its actual realization.*

(e) *Respondent may be directed to provide justification of the amount of Rs. 1,38,250/- collected in the name of VAT and Rs. 1,24,847/- collected from the complainants in the name of service charges, as the complainants do not know whether this amount was legally imposable on them and the same has been paid to the government as Tax or not and be directed to refund the extra amount collected from the complainants along with interest @ 18% per annum from the date of payment till its actual realization.*

(f) *Respondent may be directed to develop Club and set up Sewerage Treatment Plant as early as possible and in case of its failure to do the same within one month, Club Charges and STP Charges collected from the complainants may be directed to be refunded along with interest @ 18% per annum from the date of payment till its actual realization.*

(g) *Respondent may be directed to pay the compensation of Rs. 5,00,000/- for the mental agony and financial loss suffered by the*

Complainant; Rs. 2,00,000/- (Rupees Two Lakh Only) on account of deficiency in the services of Respondent and also Rs. 55,000/- towards the litigation charges; and/or

(h) *Any other relief/s which this Hon'ble Tribunal may deem fit and proper* in the interest of justice."

3. The respondent resisted the complaint on the issue of maintainability and pleaded that inter se obligations between the parties had come to end on execution of conveyance deed i.e. on 18.03.2015 and pleaded that the complainant has now no subsisting claim for recovery of the amounts in question particularly when he had neither raised any objection while paying the amounts nor had reserved any right for its recovery at the time of execution of the conveyance deed. It was also pleaded that the occupancy certificate was obtained on 23.05.2016, prior to the applicability of the Act and therefore, the provisions of the act are not applicable on this project. Also, all the charges from the appellant has been claimed as per the provisions of the agreement and work has been executed as per drawings approved by the competent authority and therefore no refund of any amount is admissible to the Appellant.

4. After hearing both the parties, the Ld. Authority dismissed the complaint on the issue of maintainability and passed the impugned order dated 03.11.2020, the relevant

part of the impugned order has already been reproduced in upper part of this appeal.

5. We have heard Shri Neeraj Gupta, Advocate, Ld. counsel for the appellant and Shri Surjeet Bhadu, Advocate, ld. counsel for the respondent and have carefully gone through the record of the case.

6. Initiating the arguments, ld. counsel for the appellant contended that the appellant is only pressing for the claims (a) & (f) of the complaint and is not pressing any other claim.

7. It was further contended that the rights of the appellant-allottee which had accrued before the execution of conveyance deed subsist even after the execution of the conveyance deed.

8. It was further contended that the Act came into force on 01.05.2016. The Occupation Certificate was issued on 23.05.2016, therefore, the limitation would start from 23.05.2016. The complaint was filed on 03.02.2019, therefore, the appellant is within limitation in filing the complaint.

9. It was further contended that the appellant is also one of the complainants in another complaint bearing no. 813 of 2019 tilted as Rajesh Goyal and others Vs. M/s

Sunrise Estate Management Services, in which similar relief as that of (a) & (f) being pressed in this appeal have also been sought. However, the appellant will withdraw the complaint no. 813 of 2019 and therefore, the matter in this appeal may be decided on merits.

10. He further contended that the respondent builder has illegally charged PLC from the appellant. He contended that the respondent had promised to provide park facing plot, for which he has charged PLC to the tune of Rs. 1,38,250/-. He contended that this amount is clearly indicated in the statement of account (SOA) dated 08.03.2011 placed at Page 85 of the paper book. This SOA clearly shows that the total amount on account of plot being park facing is Rs. 1,38,250/- out of which the appellant had already paid a sum of Rs. 1,31,337.50/-. He contended that the appellant has in all paid the total amount of Rs.1,38,250/- on account of PLC charges in various installments which is evident from the Statement of Account (SOA) issued by respondent and are placed at page 59, 62, 65, 66, 67, 71, 77, 78, 83 and 85 of the paper book. He contended that the plot is park facing is clear from the drawing placed at page 102 of the paper book which indicates a small part in front of the plot allotted to the appellant. Furthermore, the photographs at page 103 of the paper book shows that a large size water harvesting pit exists in this park. Therefore, on account of this reasons, the plot allotted to the appellant does not constitute, a plot facing

park and the amount of Rs. 1,38,250/- charged from the appellant is required to be refunded back to the appellant along with interest. In addition to the above, he contended that the approved drawing of Director Town and Country Planning Haryana DTCP does not show this area to be a green area.

11. He further contended that the respondent has charged Rs. 60,000/- on account of providing club facilities, the appellant has paid Rs. 20,000/- as club fee and Rs. 40,000/- as club security deposit. Since, the respondent has not provided these facilities, Rs. 60,000/- along with interest is required to be refunded back to the appellant.

12. He further contended that the appellant has charged Rs. 27,650/- on account of providing STP, but the same has not been provided till date. Instead, the respondent has made only one septic tank for the whole colony and no STP has been provided.

13. Per contra, ld. counsel for the respondent contended that the appellant along with others group of allottees has filed a similar complaint bearing no. 813 of 2019 claiming similar reliefs as claimed in complaint no 434 of 2019 relating to present appeal. Therefore, the present appeal is required to be dismissed on this ground itself.

14. It was further contended that *inter se* obligations between the parties came to an end on execution of conveyance deed on 18.03.2015. The complaint was filed on 03.02.2019 and therefore has become time barred. Particularly so, when the appellant had neither raised any objection while paying the amount nor have reserved any rights for its recovery at the time of execution of conveyance deed.

15. He further contended that the plot no. A-61, Measuring No. 270 Sq. Yds was allotted to the appellant in the project of the respondent vide agreement dated 30.05.2011. The drawings related to the project was got sanctioned from the Director Town and Country Planning, Haryana, (DTCP). The same plot bearing the same number as was allotted to the appellant has been given and there is no change. The plot allotted to the appellant falls under category of the preferential location as opted by the appellant.

16. He further contended that regarding providing of the club facilities, in the para no. 13 of the written statement, it has been stated that the club facilities shall be provided soon. The respondent had charged the amount as per agreement and nothing more. The construction has been carried out as per the lay out plan sanctioned by the government.

17. It was further contended that the STP has been provided as per the approved sanctioned plans and the STP is working.

18. We have heard the ld. counsel for the parties and have considered the aforesaid contentions of the parties.

19. The appellant purchased a residential plot no. A-61, measuring 270 Sq. yds. in respondent's project "Ansal Town", Sector 20, Yamuna Nagar, vide agreement dated 30.05.2011. As per the agreement, the possession of the plot was to be delivered to the appellant by June, 2013. The appellant had paid a sum of Rs. 48,47,331/- till June, 2013 to the respondent against the basic sales consideration of Rs. 44,38,250/-. The Occupation Certificate was obtained by the respondent for the villa allotted to the appellant on 23.05.2016 and actual possession of the unit was handed over to the appellant on 30.03.2015. The complaint was filed by the appellant on 03.02.2019 and conveyance deed was executed on 18.03.2015. Some of the sections of the Act came into force on 01.05.2016. The whole of the Act particularly section 1 to 19 relevant to the case came into force on 01.05.2017. The appellant did not take any recourse to seeking redressal of his grievances during the period when the possession was handed and till the time of filing of the complaint on 03.02.2019.

20. The conveyance deed is a document for transferring of a title. The execution of conveyance deed does not conclude and end the contract. The contract is concluded or said to have ended when both the parties have fulfilled all the obligations as envisaged in the contract. The limitation would start from the date when both the parties fulfill their respective obligation under the contract. The respondent has exclusively charged Rs. 60,000/- from the appellant for providing facilities of the club. However, the respondent-promoter in the written statement has stated that the club is being constructed in second phase and club facilities shall be provided soon. This means that the club facilities have yet not been provided to the appellant. In addition to the above, there is no specific averment in the written statement by the respondent that STP has been constructed at site for which the respondent has exclusively charged Rs.27,650/-. In the subsequent paras of this appeal, it shall be established by us that the respondent promoter has not provided STP though it has charged an amount of Rs.27,650/- from the appellant. So, the obligations on the side of the respondent are still pending, in such circumstances, it cannot be said that the contract has concluded and has come to an end.

Regarding the applicability of the act in the present case, the para no 37 of the judgement of Hon'ble Apex Court of ***M/s Newtech Promoters and Developers Pvt. Ltd. v. State of***

UP & others 2021 SCC Online SC 1044, is relevant which reads as under:

> *"Looking to the scheme of Act 2016 and Section 3 in particular of which a detailed discussion has been made, all "ongoing projects" that commence prior to the Act and in respect to which completion certificate has not been issued are covered under the Act. It manifests that the legislative intent is to make the Act applicable not only to the projects which were yet to commence after the Act became operational but also to bring under its fold the ongoing projects and to protect from its inception the inter se rights of the stake holders, including allottees/home buyers, promoters and real estate agents while imposing certain duties and responsibilities on each of them and to regulate, administer and supervise the unregulated real estate sector within the fold of the real estate authority.*

Thus, as per the above said observation of the Hon'ble Apex Court, all "ongoing projects" that commence prior to the Act and in respect to which completion certificate has not been issued are covered under the Act. In the present case, only occupation certificate of the villa of the appellant was issued on 23.05.2016 and the completion certificate of the colony was not issued up to filling of the complaint 03.02.2019 or even up to now. The Ld. counsel of respondent during arguments has stated that part completion of the colony has been obtained by the respondent recently and completion

certificate is yet to be obtained. Thus, the provisions of act are squarely applicable in the present case.

(i) **Preferential Location Charges (PLC):-**

The appellant has been allotted plot no. A-61, measuring 270 Sq. yds. in respondent's project named "Ansal Town", Sector 20, Yamuna Nagar, vide agreement dated 30.05.2011. The agreement dated 30.05.2011 was executed for the above said plot and the possession of the same plot has been handed over to the appellant. The only contention raised by the appellant before us is that there is a large sized water harvesting pit in a small park which is facing his unit and therefore, the PLC charges amounting to Rs.1,38,250/- taken by the respondent may be refunded back to him. The appellant has placed a photograph at page 103 of the paper book to show the water harvesting pit and the park. This photograph shows only a part of the park and the concrete cover of the pit. No dimensions of the park as well as of the pit are given and only part of the park is shown in the photo, and therefore, dimensions of the park viz. a viz. water harvesting pit cannot be assessed and secondly the photograph can be deceptive. The photographs can only be relied upon when corroborated with some more concrete evidence. The drawing placed at CP 102 of the paper book shows the park and various houses of the colony. The drawing is unsigned and no dimension of any structure is mentioned on the drawing and thus cannot be relied upon.

Moreover, the rain harvesting pits have to be constructed at a suitable place either on the sides of the roads or in the parks as per field requirement. The appellant could not produce any evidence that the rain harvesting pit has not been constructed as per the sanction approved drawings and plans by the office of Director Town and Country Planning DTCP. Therefore, we are not inclined to give any relief to the appellant on account of preferential location charges (PLC) charged by the respondent. So, the relief sought by the appellant with regards to PLC charges amounting to Rs. 1,38,250/- along with interest is not tenable.

(ii) **Providing of Club Services:**

It is clear from the perusal of the photocopy of the customer ledger dated 11.04.2015 placed at page no. 95 of the paper book that the appellant has paid Rs. 20,000/- as club fee and Rs. 20,000/- as club security deposit. The respondent in its preliminary objections to the complaint at para 13 has submitted that the club facility will soon be completed. The relevant part of said para 13 is reproduced as under:-

> *"That As regard club fee, the project under which the complaint has been allotted the villa has 2 phases. The first phase is complete and in the second phase there are certain amenity property such as club etc. which will be soon completed.* ---------"

It is apparent from the pleadings of the parties that the club structure, even after 7 years of having made the payment and execution of conveyance deed, has yet not been constructed by the respondent. Therefore, the appellant is entitled for refund of the amount of Rs. 60,000/- along with prescribed rate of interest SBI highest MCLR+2% i.e. @ 10.25% p.a. from the date of deposit till realization.

(iii) **Sewerage Treatment Plant (STP):-**

It is apparent from the perusal of the photocopy of the statement of account attached with offer of possession dated 17.01.2014 placed at page no. 83 of the paper book that the appellant has paid Rs.27,650/- towards STP charges. The Occupation Certificate dated 23.05.2016 in respect of the residential house on plot allotted to the appellant has been issued which is placed at page no. 96 of the paper book. The appellant has stated that only a single septic tank has been provided for a whole colony. The provision of STP in a residential colony is a mandatory provision. There is no specific averment by the respondent in reply to the complaint before the authority that the STP has been constructed at site. In para 14 of the complaint, it has been categorically averred by the appellant that there is only one septic tank for whole of the colony and STP has not been constructed. In the written statement, the respondent has only given an evasive reply as *"That the contents of para totally incorrect, false and specifically denied. As respondent has charged the amount as*

per agreement and nothing more. The construction has been carried out as per the layout plan sanctioned by the government. The complainant be put to strict proof of allegations made in this para." There is also no reply to the averment of the appellant in para 14 of the complaint that on the complaint of the appellant to the Town Planner and Pollution Control department, Mr Shailender Arora, Assistant Executive Engineer, visited the site on 30.11.2018 and as per his report there is no STP in the said colony of the respondent.

Therefore, it is quite clear that the STP has yet not been provided by the respondent though it has exclusively charged an amount of Rs.27,650/- for providing STP. Therefore, the appellant is entitled for refund of the amount of Rs.27,650/- along with prescribed rate of interest (SBI highest MCLR+2%) i.e. @ 10.25% p.a. from the date of payment till realization.

21. Consequently, the impugned order dated 03.11.2020 of the Ld. authority is set aside. The appeal is partially allowed and the respondent is directed to refund of the amount of Rs. 60,000/- plus Rs.27650/- along with prescribed rate of interest @ 10.25% p.a. from the respective date of payment till realization.

22. No other points were raised before us.

23. No order to costs.

24. Copy of this order be sent to the parties/Ld.

counsel for the parties and Ld. Haryana Real Estate Regulatory Authority, Panchkula

25. File be consigned to the record.

Announced:
November ,2022

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

Anil Kumar Gupta
Member (Technical)

Rajni Thakur