

**BEFORE THE HARYANA REAL ESTATE APPELLATE
TRIBUNAL**

Appeal No. 42 of 2021

Date of Decision: 09.02.2023

Emaar India Limited Registered Office: 306-308 Square one, C-2 District Centre, Saket, New Delhi-110017.

...Appellant

Versus

1. Mrs. Nirmal Gupta;
 2. Mrs. Jyoti;
- Both residents of H.No. 528/3, Opposite Ghanteshwar Mandir, Rohan Pura, Gurgaon, Haryana.

...Respondents-Allottees

CORAM:

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

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

Shri Sanjeev Sharma, Advocate,
Ld. Counsel for the respondents-allottees,
(Through Whatsapp Video).

ORDER:

ANIL KUMAR GUPTA, MEMBER (TECHNICAL):

The present appeal has been preferred under Section 44(2) of the Real Estate (Regulation and Development) Act 2016 (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. 1103 of 2018 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. 28.06.2012 till the offer of possession i.e. 25.07.2016. 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.”

2. As per averments in the complaint, the unit bearing no. EHP-400-I-042 was booked by M/s Enpeecon (Original allottee) in the project of the appellant “Emerald Hills-Plot, Sector 65, Gurugramm measuring 400 sq. yds. which was changed to 375.45 sq. mtrs. vide offer of possession letter dated 25.07.2016. The Builder Buyer's Agreement (hereinafter called

the 'Agreement') was executed between the parties on 28.12.2009. The total sale consideration as per statement of account dated 24.10.2018 is Rs. 1,62,22,651/- against which the respondents-allottees has paid an amount of Rs. 1,63,98,454/-. The due date of delivery of possession as per clause 8 of the agreement is 30 months from the date of execution of the agreement which comes out to be 28.06.2012. The offer of possession to the respondents-allottees was made on 25.07.2016. The unit was handed over to the respondents-allottees on 31.08.2017 and the conveyance deed was executed on 06.11.2017. The respondents-allottees had purchased a unit from original allottee and therefore, the present respondents-allottees are subsequent allottees.

3. Since the possession of the unit was delayed and therefore, respondents-allottees filed the complaint seeking following reliefs:

“1. Direct the respondent to pay interest at the prescribed rate for every month of delay from due date of possession i.e. 28.03.2012 till the handing over of possession on the amount paid by the complainants.”

4. The complaint was contested by the appellant on the ground of jurisdiction of the Id. Authority and on some other technical grounds.

5. It was also pleaded that the respondents-allottees on

transfer of the plot in question from original allottee had executed an indemnity-cum-undertaking whereby the respondents-allottees had categorically stated that they would not claim any compensation for delay in handing over possession or rebate under a scheme otherwise or any other discount by whatever name from the appellant.

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

7. 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.

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

9. Ld. counsel for the appellant has contended that the issue of the jurisdiction of the learned authority and some other technical grounds taken in the grounds of 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.**

10. It was contended that the present respondents-allottees are the subsequent purchaser and the appellant had

issued a nomination letter in favour of the respondents-allottees vide its letter dated 20.09.2013. The Buyers Agreement between the first purchaser and the appellant was executed on 28.12.2009. The due date of delivery of possession as per clause 8 of the agreement is 30 months from the date of execution of the agreement dated 28.12.2009 which comes out to be 28.06.2012. The offer of possession was issued on 25.07.2016 and the respondents-allottees filed the complaint on 16.10.2018. The unit has been handed over to the respondents-allottees on 31.08.2017 and the conveyance deed was executed on 06.11.2017.

11. It was contended that the present respondents-allottees purchased the property from the previous allottee in resale and nomination letter was issued by the appellant on 20.09.2013, which 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. Thus, interest can only be awarded from 20.09.2013 i.e. the day when the subsequent allottees i.e. the present respondents-allottees stepped into the shoes of the original allottee and relied upon the judgment of the **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.

12. It was further contended that the delayed possession interest on the payments made by the respondents-allottees after they stepped into the shoes of the original allottee i.e. on 20.09.2013 shall be from the date such payments have been made by the respondents-allottees to the appellant.

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

14. 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.

15. 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.

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

17. The undisputed facts of the case are that unit was booked by M/s Enpeecon (Original allottee) bearing unit no.

EHP-400-I-042 in the project of the appellant "Emerald Hills-Plot, Sector 65, Gurugram measuring 400 sq. yds. which was changed to 375.45 sq. mtrs. vide offer of possession letter dated 25.07.2016. The agreement was executed between the parties on 28.12.2009. The due date of delivery of possession as per clause 8 of the agreement is 30 months from the date of execution of the agreement dated 28.12.2009 which comes out to be 28.06.2012. The total sale consideration as per statement of account dated 24.10.2018 is Rs. 1,62,22,651/- against which the respondents-allottees have paid an amount of Rs. 1,63,98,454/-. The unit was purchased by the respondents-allottees from the original allottee and the appellant issued a nomination letter confirming the purchase of the unit vide its letter dated 20.09.2013. The offer of possession to the respondents-allottees was made on 25.07.2016. The unit was handed over to the respondents-allottees on 31.08.2017 and the conveyance deed was executed on 06.11.2017. The complaint was filed by the respondents with the ld. Authority on 16.10.2018.

18. 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 20.09.2013, after the due date of possession i.e. 28.06.2012.

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 and therefore, 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 of M/s Laureate Buildwell Private Ltd (Supra).

19. The relevant part of the above said judgment of the Hon'ble Supreme Court of India 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 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."

20. In the present case, the respondents-allottees had purchased the unit on 20.09.2013 after the due date of handing over of the possession i.e. 28.06.2012, 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 vide nomination letter dated 20.09.2013 issued by the appellant, on the payment made by the original allottee before 20.09.2013.

21. The further argument of the appellant is that the interest at the prescribed rate on the payments which have been made by the respondents-allottees after they stepped into the shoes of the original allottee on 20.09.2013, shall be payable from the date on which the respective payments have been made by them to appellant. It is clarified that the payments made by the respondents-allottees after 20.09.2013 i.e. the date on which they stepped into the shoe of the original allottee shall be paid at the prescribed rate of interest from the date, the respective payments have been made by the respondents-allottees to the appellant-promoter.

22. No other issue was pressed before us.

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23. Thus, keeping in view of our above discussion, the present appeal is partly allowed as per the aforesaid observations and the impugned order is modified accordingly.

24. The amount of Rs. 68,18,882/- 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 as per the aforesaid observations, excess amount may be remitted to the appellant, subject to tax liability, if any, as per law and rules.

25. No order as to costs.

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

27. File be consigned to the record.

Announced:
February 09, 2023

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

Anil Kumar Gupta
Member (Technical)

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