BEFORE THE HARYANA REAL ESTATE APPELLATE TRIBUNAL

Appeal No. 31 of 2021
Date of Decision: 05.01.2023

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

Sushil Kumar Bhatia resident of House No. 64, Sector 40, Gurugram-122002.

Respondent

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 Sanjeev Sharma , Advocate,
Ld. counsel for the respondent.

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 (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. 1219 of 2019 filed by the respondent-allottee 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 complainant from due date of possession i.e. 22.06.2012 till the offer of possession i.e. 02.09.2019. The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order.*
>
> *ii. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.*
>
> *iii. The respondent shall not charge anything from the complainant 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 complainant in case of delayed possession charges. "*

2. As per the averments in the complaint, it was pleaded that the unit no. EHF-350-I-FF-017, First Floor,

Block/building no. Ivory, measuring 1750 sq. ft. super area in the project of the appellant "Emerald Floors at Emerald Hills", Sector 65, Gurugram was booked by original allottees Dr. Rajiv Kumar Chhabra and Dr. Anubha Chhabra by paying booking an amount of Rs. 5 lakhs and Rs. 2,86,000/-, on 18.06.2009 and 03.08.2009 respectively. The provisional allotment letter was issued on 23.07.2009. The Builder Buyer's Agreement was executed between the original allottees and the appellant on 22.12.2009. The total sale consideration as per statement of account dated 26.03.2019 is Rs. 83,41,514/-. The original allottees/respondent-allottee paid an amount of Rs. 84,49,837/- as per the statement of account dated 26.03.2019. The said unit was to be delivered within 27 months with a grace period of three months i.e. on 22.06.2012. The unit was purchased by the respondent-allottee from the original allottees and the appellant endorsed the unit in the name of the respondent-allottee on 11.07.2012.

3. It was further pleaded by the respondent-allottee in the complaint that the appellant offered the possession of the unit in question after a delay of almost four and a half year, however no interest for the delayed period was offered by the appellant to the respondent-allottee and therefore, the respondent-allottee filed the complaint seeking following relief:-

> *"Direct the respondent to pay interest for the delayed period of handing over possession from the time as stated under section 2(za)."*

4. Per contra, the appellant in its reply to the complaint pleaded that the complaints pertaining to the compensation 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 allottees approached the appellant sometime in the year 2009 for purchase of independent unit in its project. The original allottees, in pursuance of the application form dated 18.06.2009, was allotted an independent unit bearing no. EHF-350-I-FF-017, located on first floor in the project vide allotment letter dated 23.07.2009. The original allottees were extremely irregular in payment of instalments and consequently, the appellant was compelled to issue reminders and requests for payment. In the year 2012, the original allottees entered into agreement to sell the floor in question in favour of the respondent-allottee. The respondent-allottee had agreed and undertaken to comply with all the terms and conditions of the buyers agreement dated 22.12.2009.

6. It was further pleaded that the respondent-allottee had been irregular regarding the remittance of the instalments

on time. The appellant was compelled to issue demand notices and reminders to make payment of the outstanding amounts payable by him under the payment plan opted by the respondent-allottee.

7. It was further pleaded that as per clause 13(v), in the event of any default/delay by the allottee in payment as per the schedule of payment incorporated in the buyers agreement, the date of handing over of possession shall be extended accordingly, solely on the appellant's discretion till the payment of all outstanding amounts to the satisfaction of the appellant.

8. 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.

9. It was further pleaded that the Occupation Certificate has been issued on 09.06.2016 and offer of possession to the respondent-alloottee have been made on 02.09.2016. The conveyance deed has been executed on 27.02.2018.

10. After controverting all the pleas raised by the

respondent-allottee, the appellant-promoter pleaded for dismissal of the complaint being without any merit.

11. 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.

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

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

14. It was further contended that the agreement was executed between the original allottee Dr. Rajiv Kumar Chhabra and Dr. Anubha Chhabra on 11.07.2012. 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 22.06.2012. The respondent-allottee is the subsequent allottee

who stepped into the shoes of the original allottees on 11.07.2012 when the appellant issued a nomination letter confirming the allotment in the name of the respondent-allottee i.e. after the due date of delivery of possession i.e. 22.06.2012. The respondent-allottee at the time of purchase of the unit was 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 respondent-allottee still chose to buy the unit in the said project.

15. 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 allottee shall be payable from the date when the subsequent allottee stepped into the shoes of the original allottee.

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

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

18. Per contra, Ld. counsel for the respondent- allottee 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.

19. 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.

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

21. The undisputed facts of the case are that the original allottees Dr. Rajiv Kumar Chhabra and Dr. Anubha Chhabra booked unit no. EHF-350-I-FF-017, First Floor, Block/building no. Ivory, measuring 1750 sq. ft. super area in the project of the appellant "Emerald Floors at Emerald Hills", Sector 65, Gurugram by paying booking amount of Rs. 5 lakhs and Rs. 2,86,000/-, on 18.06.2009 and 03.08.2009 respectively. The provisional allotment letter was issued on 23.07.2009. The Builder Buyer's Agreement was signed between the original allottees and the appellant on 22.12.2009. The total sale

consideration as per statement of account dated 26.03.2019 is Rs. 83,41,514/-. The appellant paid an amount of Rs. 84,49,837/- as per the statement of account dated 26.03.2019. The said unit was to be delivered within 27 months with a grace period of three months i.e. on or before 22.06.2012. The unit was purchased by the respondent-allottee from the original allottees and the appellant endorsed the unit in the name of the respondent-allottee on 11.07.2012. The occupation certificate was issued on 09.06.2016 and offer of possession to the respondent-allottee was issued on 08.12.2016. The conveyance deed has been executed on 27.02.2018.

22. It is the argument of the appellant that the respondent-allottee is a subsequent allottee, who has purchased the property from the original allottees in resale and the appellant issued nomination letter in favour of the respondent-allottee on 11.07.2012, after the due date of possession i.e. 22.06.2012. This means that the respondent-allottee at the time of purchase of the unit was 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 respondent-allottee still chose to buy the unit in the said project. It is the further argument of the appellant that the interest can only be awarded from the day when the

respondent-allottee stepped into the shoes of the original allottees 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).,.***

23. 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 good law.* However, with respect to the interest payable to the subsequent allottee, 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 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."

24. In the present case, the respondent-allottee had purchased the unit from the original allottees on 11.07.2012,

when the appellant issued a letter confirming the nomination in favour of the respondent-allottee, after the due date of handing over of the possession i.e. 22.06.2012, 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 respondent-allottee had stepped into shoes of the original allottees after the expiry of due date of handing over of the possession, therefore, respondent-allottee is entitled for delayed possession charges on the payment made by original allottees w.e.f the date of entering into the shoes of the original allottee i.e. 11.07.2012 vide which the nomination letter dated 11.07.2012 was issued by the appellant.

25. The further argument of the appellant is that the interest at the prescribed rate on the payments which has been made by the respondent-allottee after he stepped into shoes of the original allottee i.e. 11.07.2012, shall be payable from the date on which the respective payments have been made. It is clarified that the payments made by the respondent-allottee after the date i.e 11.07.2012, he stepped into the shoes of the original allottee shall be from the date the respective payments have been made by the respondent -allottee to the appellant-promoter.

26. No other issue was pressed before us.

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

28. The amount of Rs. 36,19,910/- 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 respondent-allottee, excess amount may be remitted to the appellant, subject to tax liability, if any, as per law and rules.

29. No order as to costs.

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

31. File be consigned to the record.

Announced:
January 05,2023

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

Anil Kumar Gupta
Member (Technical)

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