

**BEFORE THE HARYANA REAL ESTATE
APPELLATE TRIBUNAL**

Appeal No.33 of 2021

Date of Decision: 05.01.2023

ZNR Builders and Developers Pvt. Ltd., Regd./Corporate
Office at 4F/6, and LGF, Ozone Centre, Sector-12,
Faridabad-121006, Haryana.

...Appellant

Versus

Tulsi Ram Sharma son of Sh. Harish Chand resident of
House No.2565 A, Sector-3, Faridabad-121004.

...Respondent

CORAM:

Shri Inderjeet Mehta
Shri Anil Kumar Gupta

Member (Judicial)
Member (Technical)

Argued by: Sh. Rajesh Goswami, Advocate,
Ld. counsel for the appellant.

Shri N.K. Sharma, Advocate,
Ld. counsel for the respondent.

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 21.01.2020 passed by the Haryana Real Estate Regulatory Authority, Panchkula (for short, 'the Ld. Authority') whereby the Complaint No. 701 of 2019 filed by the respondent-allottee was disposed of with the following directions:

"a) The demand on account of EEDC together with interest amounting to Rs. 3,72,180/- raised by the respondent should be withdrawn because this matter is sub judice before the Hon'ble High Court. Any demand in this regard can be raised only after a decision by the Hon'ble High Court. However, in case hon'ble High Court orders the EEDC is payable, the complainant shall be bound to pay the same on demand by the respondent.

b) The Authority directs the complainant to pay the remaining outstanding amount of Rs. 7,78,712/- on account of administrative charges, Labour cess, solar water heater, STP, Firefighting, electricity meter, fencing charge, VAT, service tax, service tax on additional charge, AUS facilities, Stamp duty, registry to respondent within 30 days of uploading of the order."

5. The Authority directs the complainant to pay the outstanding amount of Rs.7,78,712/- along with interest @ 10.45% p.a (from 01.12.2015 to 06.03.2019) which comes to Rs.

10,44,241/- to the respondent. The respondent is directed to pay delay compensation to the complainant from deemed date of possession i.e. 20.03.2014 to actual date of possession i.e. 31.10.2015 which comes to Rs.5,18,861/-. These dues shall be cleared by both the parties within 45 days from the date of uploading of this order. Further, the respondent shall handover physical possession of the flat to the complainant within 15 days from the date of clearance of dues.”

2. As per averments in the complaint, the respondent-allottee booked a flat No.T15-B having an area of approximately 1700 Sq.ft. in the project named Sai Vatika Apartment in Faridabad under an agreement with M/s ZNR builder Pvt. Ltd. The total sale consideration of the flat was Rs.31,30,500/- against which the respondent-allottee had already paid an amount of Rs.30,66,479/-. The Flat Buyer's agreement was executed between the respondent-allottee and appellant-promoter on 21.03.2011. As per agreement, the possession of the said flat was to be delivered within a period of 36 months plus 9 months grace period which comes to 20.03.2014 whereas the letter of offer of possession was issued by the appellant-promoter on 31.10.2015 along with additional demand of Rs.12,58,892/- on account of EDC, VAT, interest, delay

payments etc. The respondent-allottee disputed the above said demand and prayed for possession of the flat.

3. Per contra, the appellant-promoter in its reply to the complaint had pleaded that after receiving occupation certificate, the respondent-allottee was offered possession of the flat on 21.10.2015. However, respondent-allottee did not accept the said offer. The appellant-promoter further pleaded that the completion certificate was received on 23.06.2017 and thereafter, maintenance of the project has also been handed over to the Resident Welfare Association. It was further pleaded that the demand raised by the appellant-promoter at the time of offer of possession was in consonance with the terms and conditions of builder buyer agreement and no demand was raised beyond the agreement. It was further pleaded that the total amount payable by the respondent-allottee on account of VAT charges was Rs.2,00,000/-, however, now the said amount is reduced to Rs.91,000/- as per law to which the respondent-allottee agrees.

4. 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.

5. We have heard, Sh. Rajesh Goswami, Advocate, Ld. counsel for the appellant-promoter and Sh. N.K. Sharma, Advocate, Ld. counsel for the respondent-allottee and have carefully examined the record.

6. Ld. Counsel for the appellant-promoter contended that the appellant-promoter has not applied for registration of its project because at the time when the Act was notified and thereafter adopted by the Government of Haryana, the project of the appellant-promoter was already completed/sold out/delivered. The occupation certificate was already granted by the Competent Authority i.e. the department of Town & Country Planning, Haryana vide memo No.ZP-478/SD(DK)/2015-20774 dated 21.10.2015. It was further pleaded that construction of the project was completed in the year 2014 itself and the appellant-promoter applied for grant of occupation certificate which was issued on 21.10.2015. It was further pleaded that since the appellant-promoter had completely sold out its entire project long back in the year 2011-2012 and was not intending to advertise, market, book, sell or offer for sale, or invite persons to purchase in any manner any apartment in its projects as such, the registration with the RERA Authority was not applied. Therefore, for the

said reasons, the project of the appellant-promoter cannot be termed as ongoing project on the date of commencement of this Act. It was further contended that the occupation certificate was issued and all the flats were delivered to its allottees (except the respondent-allottee). Therefore, the project of the appellant-promoter does not fall in the ambit of Section 3 of the Act, as it is saved by the first proviso of Section 3 of the Act. It was further pleaded that after obtaining occupation certificate in the year 2015, the appellant-promoter has handed over maintenance of the project to the elected Resident Welfare Association.

7. It was further pleaded that even before the notification of the Act and its applicability in the State of Haryana and framing of the Haryana Real Estate (Regulation and Development) Rules, 2017 (herein after called the "the Rules"), the appellant-promoter applied for grant of completion certificate on 01.04.2016 to Directorate of Town & Country Planning, Haryana which stands issued on 23.06.2017.

8. It was further contended that out of 273 dwelling units/apartments 265 persons have got executed sale deeds in their favor and remaining are in process of execution of sale deed and have duly deposited their all

dues. It is only in the present case that the respondent-allottee has not taken possession of his flat and has filed the complaint against the appellant-promoter.

9. With the aforesaid contentions it was pleaded that appeal may be allowed and the impugned order dated 21.01.2020 is set aside.

10. On the other hand, the Ld. Counsel for the respondent-allottee contended that the completion certificate to the project of the appellant was issued on 23.06.2017 whereas the Act came into force w.e.f 01.05.2017, therefore, the provisions of Section 3 of the Act are fully applicable on the appellant-promoter as on the date of grant of completion certificate, the project of the appellant-promoter was an ongoing project. To support his contention, he relied upon the Judgement of Hon'ble Supreme Court of India in case of **"M/s Newtech Promoters and Developers Pvt. Ltd. Vs. State of UP & others etc. 2021 SCC Online SCC 1044"** and contended that as per the ratio of the said Judgement, the provisions of the Act are fully applicable to the project of the appellant.

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

12. The admitted facts of the case are that the respondent-allottee booked a flat No.T15-B having an area of approximately 1700 Sq.ft. in the project named Sai Vatika Apartment in Faridabad under an agreement with M/s ZNR builder Pvt. Ltd. The total sale consideration of the flat was Rs.31,30,500/- against which the respondent-allottee has already paid an amount of Rs.30,66,479/-. The Flat Buyer's agreement was executed between the respondent-allottee and appellant-promoter on 21.03.2011. As per agreement, the possession of the said flat was to be delivered within a period of 36 months plus 9 months grace period which comes out to 20.03.2014 whereas the letter of offer of possession was issued by the appellant-promoter on 31.10.2015. The occupation certificate for the said unit was issued on 21.10.2015 and the completion certificate of the project was issued on 23.06.2017.

13. The only issue to be decided in this appeal is whether the project of the appellant-promoter is ongoing project and the provisions of the Act are applicable or not.

14. It will be relevant to reproduce the relevant para 37 and 52 of the Judgment of the Hon'ble Supreme Court of India in case M/s Newtech Promoters' case (Supra)

“37. Looking to the scheme of Act 2016 and section 3 in particular of which detailed discussion has been made, all “ongoing projects” that commences prior to the Act to which the completion certificate has not been issued are covered under the Act. It manifests that the legislative intend 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 stakeholders, including allottees/ homebuyers, 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.

“52. The Parliament intended to bring within the fold of the statute the ongoing real estate projects in its wide amplitude used the term “converting and existing building or a part thereof into apartments” including every kind of developmental activity either existing or upcoming in future under Section 3(1) of the Act. The intention of the legislature by necessary implication and without any ambiguity is to include those projects which are ongoing and in case where completion certificate has not been issued within fold of the act.

15. Admittedly, the occupation certificate for the said unit was issued on 21.10.2015 and the completion

certificate of the project was issued on 23.06.2017. The Act was enforced on 01.05.2017. Thus, when Act became operational on 01.05.2017, the completion certificate to the project of the appellant was not issued. It can be easily held, from the aforesaid ratio of the law and for the aforementioned reason of issue of completion certificate after the enforcement of the Act, that the project of the appellant is an ongoing project and therefore the provisions of the Act are applicable on the inter se rights between the appellant- promoter and the respondent - allottee and also the matter falls well within the jurisdiction of the Ld. Authority. Thus, there is no merit in the contention of the appellant, that the provisions of the act are not applicable on the project of the appellant and the Ld. Authority has no jurisdiction to adjudicate the compliant, as the completion certificate was issued after the enforcement of the Act.

16. No other issue was pressed before us.

17. In view of the aforesaid findings, the appeal filed by the appellant is hereby dismissed.

18. No order as to costs.

19. The amount of Rs.5,18,861/- 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.

20. No order as to costs.

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

22. 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)