BEFORE THE HARYANA REAL ESTATE APPELLATE TRIBUNAL

Appeal No.26 of 2021
Date of Decision: 28.10.2022

Pioneer Urban Land and Infrastructure Limited, A-22, Green Park, 3rd Floor, Aurobindo Marg.

…Appellant-Promoter

Versus

Neeru Jain, 360, Udyog Vihar, Phase-IV, Gurugram 122 001

…Respondent-Allottee

CORAM:

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

Argued by: Shri Venket Rao, Advocate,
Ld. counsel for appellant-promoter.

Shri Sukhbir Yadav, Advocate,
Ld. counsel for respondent-allottee.

O R D E R:

Anil Kumar Gupta, Member (Technical):

This appeal has been preferred by the appellant-promoter under Section 44(2) of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as, 'the Act') against order dated 05.11.2020 passed by the Ld. Haryana Real Estate Regulatory Authority, Gurugram (hereinafter called 'the Authority'), whereby complaint

No.2341 of 2019 filed by the respondent-allottee was disposed of by issuing the following directions: -

> *"(i) The respondent is directed to pay interest at the prescribed rate of 9.30% p.a. for every month of delay on the amount paid by the complainant from due date of possession i.e. 03.02.2014 till the offer of possession i.e. 20.11.2018;*
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> *(ii) The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order;*
>
> *(iii) Interest on the due payments from the complainant shall be charged at the prescribed rate @ 9.30% p.a. by the promoter which is the same as is being granted to the complainant in case of delayed possession charges;*
>
> *(iv) The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period;*
>
> *(v) The respondent shall not charge anything from the complaint which is not the part of the agreement.*

2. As per the averment in the complaint, the respondent-allottee was allotted unit No.TE-1201A, Tower A, 13th Floor, measuring 2440 Sq. ft. in the project "Pioneer Park (Presidia), Sector 62, Gurugram (Haryana) being developed by the appellant-promoter. The Buyer's

Agreement (for short, 'the Agreement') was executed between the appellant-promoter and respondent-allottee on 03.07.2010. The total sale consideration of the unit is Rs.1,15,80,498/- (excluding tax, as per schedule of payment). The total amount paid by the respondent-allottee is Rs. 1,02,48,288.05-/ (as per sales customer ledger dated 13.06.2019). As per Clause 9.2 of the Agreement dated 03.07.2010, the possession was to be delivered within a period of 36 months from the date of execution of agreement plus 180 days grace period which comes out to be 03.02.2014.

3. It was further pleaded in the complaint that respondent-allottee made the payment as per the payment schedule of the flat buyers agreement and had already paid more than 90% amount i.e. Rs.1,07,94,877/- till 01.04.2014 along with interest.

4. It was further pleaded that the appellant issued an intimation for possession of apartment and asked to pay Rs. 16,32,470/-. The appellant had increased the super area by 161 sq. ft. without any justification and now the super area of flat is 2440 sq. ft and the appellant demanded Rs. 2,44,000/- as IBMS/IFMS payment but did not disclose the rate of interest on IBMS.

5. It was further pleaded that the appellant sent an email dated 14.05.2019 confirming that all the dues are cleared including stamp duty charges. However, on several visits and repeated emails by the respondent-allottee, the appellant was not ready to provide any information pertaining to super area, carpet area/common area nor gave any clarification on rate of interest on IBMS rate of interest on VAT and advance maintenance charges. The appellant offered the possession of apartment after 58 months of delay from the due date of possession. Therefore, the appellant is liable to pay interest on account of delay from 03.02.2014 till handing over the possession. Further, the appellant illegally demanded advanced maintenance of Rs. 1,17,472/-, VAT of Rs. 2,09,449/-, electric substation charges of Rs. 1,43,960/-, the appellant also did not clarify the rate of interest on IBMS of Rs. 2,44,000/- and charged electric substation charges which were not the part of cost of flat as per FBA. Hence, the respondent-allottee sought the following reliefs in the complaint:

> *"i. To direct the respondent parties to pay interest at the prescribed rate for every months of delay from due date of possession till the actual handing over the possession on the amount paid by the complainant;*
>
> *ii. To direct the respondent to give interest on IBMS @9% p.a.;*

iii. *To direct the respondent refund Rs. 1,17,472/- illegal demand of advance maintenance and refund Rs. 2,09,449/- against VAT or pay interest on VAT.*

iv. *To direct the respondent refund Rs. 1,43,960/- electric substation charges.*

v. *To direct the respondent to provide detailed super area, carpet area, common area, etc.*

6. Per contra, the appellant contested the complaint on the ground that the appellant has already received the Occupation Certificate for the tower in question and also offered possession to the complainant and therefore, the provisions of the Act are not applicable to the project in question.

7. It was further pleaded that the application for issuance of Occupation Certificate in respect of 10 towers relating with the said unit was made on 13.08.2018. Occupation Certificate for Tower E of Presidia had been received vide memo no. ZP-338-C-Vol-I/SD(BS)/2018/ 31909 dated 20.11.2018.

8. It was further pleaded that the appellant is not liable to deliver the possession of the allotted unit to the complainant until all the obligation duly imposed under Buyer's Agreement dated 03.07.2010 have been fulfilled by the complainant to the complete satisfaction of the developer.

9. It was further pleaded that all the demands have been raised by the appellant are strictly in accordance with the terms and conditions of the buyer's agreement between the parties. There is no default or lapse attributable to the appellant. It is the respondent-allottee who has consciously refrained from obtaining physical possession of the unit by raising false and frivolous excuses.

10. It was further pleaded that the delay caused is due to acute shortage of labour, water and other raw materials and the delay in issuance of additional permits, licenses, sanctions by different departments, severely affecting the real estate and these reasons were not in control of the appellant as well as not at all foreseeable at the time of launching of the project and commencement of construction of the complex. The appellant cannot be held liable for things which are not in control of the appellant.

11. We have heard Shri Venket Rao, Advocate, ld. counsel for the appellant and Shri Sukhbir Yadav, Advocate, ld. counsel for the respondent.

12. Both the parties have submitted the written arguments.

13. Initiating the arguments, ld. counsel for the appellant contended that the appellant had obtained the

occupation certificate and offered possession to the respondent-allottee, which the respondent-allottee chose to ignore and proceeded with the filing of complaint before the ld. Authority praying for the possession of the unit. However, during the pendency of the complaint, the respondent allottee approached the appellant for settlement. Thereafter, the parties amicably arrived at a settlement in furtherance to which the respondent-allottee accepted the delay penalty offered by the appellant, took possession of the unit and entered into the settlement through execution of conveyance deed dated 03.12.2019. By the said settlement, the delay penalty charges were settled once and for all and the respondent-allottee did not have any claim thereafter regarding delay penalty.

14. It was further contended that as per clause 4 of the conveyance deed, it is mentioned that " *the Vendee(s) has no complaint or claim whatsoever and undertakes not to raise any dispute hereto after in connection therewith individually or collectively including but no limited to any claims for delays in handing over possession of the said Apartments".*

15. It was further contended that delay penalty of Rs. 11,07,600/- was accepted by the respondent-allottee in furtherance to which the settlement in the form of

conveyance deed was entered into between the parties. Therefore, the delay penalty was agreed and settled once and for all.

16. It was further contended that during the pendency of the proceedings before the ld. Authority, without seeking permission of the ld. Authority or reserving any rights expressly, the respondent-allottee proceeded to take possession and also executed the conveyance deed, which settled the matter of delay penalty between the parties.

17. It was further contended that both the parties agreed to the terms and conditions and thereafter entered into the conveyance deed. The respondent-allottee even after execution of a conveyance deed and getting the possession along with the delayed charges, the respondent-allottee proceeded with the complaint and the ld. Authority failed to take note of the same.

18. It was further contended that the settlement entered into between the parties was for a consideration, wherein respondent -allottee accepted the offer of possession along with a delay penalty of Rs. 11,07,600/-. The delay penalty was accepted by the respondent-allottee and then only the respondent executed the conveyance deed. The respondent-allottee undertook in the conveyance deed for

not pressing any dispute regarding delay penalty. Despite the fact, the respondent had assurance and proceeded further in the complaint.

19. It was further contended that the respondent-allottee has entered into a conveyance deed, knowingly accepted the benefits of the settlement, i.e, delay penalty and possession and now he is estopped from denying the validity as well as the binding effect of the conveyance deed and the terms entered into.

20. Ld. counsel for the appellant relied upon the judgment of the Hon'ble Supreme Court of India "***Rajasthan State Industrial Development & Investment Corpn. V. Diamond & Gem Development Corpn. Ltd.", (2013) 5 SCC 47."***

21. It was further contended that where a law is made specifically for the benefit of an individual, it can be waived off by him in his personal capacity, if in those right, public interest is not involved. Ld. counsel for the appellant also relied upon the judgment of the Hon'ble Supreme Court "***Krishna Bhadur Vs. Puran Theater (2004) 8 SCC 299"***. It was further contended that in the present case, there is not any element of public interest involved and therefore the above said judgment of the Hon'ble Supreme court of India is squarely applicable in this case.

22. It was further contended that as per Section 18 of the Act, right of getting delayed penalties is an individual right drawn from the failure of the promoter to offer possession within the timelines promised as per the Apartment Buyer Agreement. It is not a right which is affecting public interest. The delay possession charges are the right which is accruing to individual and the respondent-allottee is within his right to waive any such benefit. The respondent-allottee has waived of his right and settled the matter with the appellant through conveyance deed as he had agreed that there exist no complaint and claims from the appellant.

23. It was further contended that the ld. Authority has wrongly denied the various contentions of the appellant without examining the arguments of the appellant by citing the judgment of Hon'ble Supreme Court in the matter of "***Wing. Commander Arifur Rahman Khan and Ors. Vs DLF Southern Homes Pvt. Ltd. 2020 SCC ONLINE 667 (SC).***

24. The appellant had already made a payment of Rs. 11,07,600/- to the respondent-allottee on account of delayed penalty as per the provisions of the agreement. However, while passing the order, the Ld. Authority has granted the relief of delayed possession interest without

adjusting the above said penalty, which would effectively increase the statutory rate of interest, and the rate will be much more than the prescribed rate.

25. Ld. counsel for the appellant with the above said contentions contended for setting aside the order of the ld. Authority for granting of delayed possession interest and allowing the appeal to that extent.

26. Per contra, ld. counsel for the respondent-allottee contended that as per clause 9.2 of the agreement dated 03.08.2010, the possession of the unit was to be delivered within a period of 36 months from the date of execution of the agreement plus 180 days grace period and therefore, the due date of delivery of possession comes out to be 03.02.2014. The respondent-allottee had already paid a sum of Rs. 1,02,48,288.05/- (as per sales customer ledger dated 13.06.2019) against total sale consideration of Rs. 1,15,80,498/- (excluding taxes, as per the schedule of payment). The appellant has failed to deliver the unit by the due date. However, the intimation of possession was offered very late on 20.11.2018.

27. It was further contended that the appellant issued a credit note dated 20.11.2018 of Rs. 11,07,600/- as a penalty against the delay in possession.

28. It was further contended that the appellant issued an intimation of possession letter dated 20.11.2018 of the apartment and asked the respondent allottees to pay Rs.16,32,470/-. It is also contended that the appellant had increased the super area by 161 Sq. ft without any justification.

29. It was further contended that the respondent-allottee sent a grievance letter to the appellant on 03.12.2018 and asked for detailed clarification on super area calculations, interest rate on VAT deposit, delayed possession interest from due date of possession till delivery offer of possession, interest rate of IBMS. Further contended that in the same letter 03.12.2018, it was mentioned *"xxxxx. However, balance payment as per intimation of offer of possession, we are depositing Rs.21,94,201/- as per your demand under protest. However, without prejudice to our right, we can claim back delayed interest amount of Rs.8953943/- calculated up to 20.11.2018."*

30. It was contended that the respondent-allottee paid under protest Rs.10,47,242/- through chaque dated 03.12.2018 against the demand dated 11.12.2018 of the appellant.

31. It was further contended that the appellant sent an email dated 14.05.2019, confirming that "You have

cleared all your dues including stamp duty charges for your apartment in Presidia".

32. It was further contended that the appellant issued a statement of account dated 16.05.2019, which shows that the respondent-allottee had paid Rs.1,23,04,155/- as on 08.05.2019.

33. It was further contended that the appellant had refused to hand over the physical possession of the flat to the respondent-allottee without execution of Conveyance Deed. The appellant misused its dominant position and forced the respondent-allottee to execute the conveyance deed before handing over the physical possession of the flat to them.

34. It was further contended that there is no express or implied settlement between the parties. At the time of execution of conveyance deed, the matter was pending before this Tribunal. Moreover, the stamp papers for the conveyance deed were purchased on 25.05.2019.

35. The Ld. counsel for the respondent relied on judgement passed on 14.03.2019 by Hon'ble State Consumer dispute Redressal Commission, U.T., Chandigarh (SCDRC) in Consumer Complaint no. 805 of 2017 titled as

“Madan Lal Kansal and Anr. Versus DLF Homes Panchkula Pvt. Ltd. and Ors”

36. It was further contended that there is a delay of 58 months in delivery of possession of the unit to the respondent- allottee from the schedule date of possession as per agreement and therefore, respondent-allottee is entitled for delayed possession interest from the due date of possession till of possession as per the Section 18 of the Act. Further, it was contended that as per Section 17 of the Act, the appellant-promoter is duty bound to execute the registered conveyance deed in favour of the respondent-allottee.

37. With these contentions, it was contended that the impugned order of the Ld. Authority is correct and is as per the Act and Rules and contended for dismissal of the appeal being without any merits.

38. We have duly considered the aforesaid contentions of the parties.

39. The brief facts of the case are that the respondent- allottee was allotted unit no. TE-1201A, Tower A, 9th floor, measuring 2440 ft.², in the Project “Pioneer Park (Presidia), Sector 62 Gurugram being developed by the Appellant promoter. The Buyer’s agreement was executed

between the parties on 03.08.2010. The total sale consideration of the unit is Rs.1,15,80,498/- (excluding taxes, as per schedule of payment). The total amount paid by the respondent-allottee is Rs.1,02,48,288.05 (as per sales customer ledger dated 13.06.2019). As per clause 9.2 of the agreement, the possession of the unit was to be delivered within a period of 36 months from the date of execution of agreement plus 180 days period which comes out to be 03.02.2014.

40. The only issue raised in this appeal by the appellant is that the parties amicably arrived at settlement in furtherance to which the respondent-allottee accepted the delay penalty offered by the Appellant, took possession of the unit and entered into the settlement through execution of the conveyance deed dated 03.12.2019. By the said settlement the delay penalty charges were settled once and for all and respondent-allottee did not have any claim thereafter regarding the delay penalty. The relevant clause 4 of the conveyance deed relied upon by the appellant is reproduced as below:

> *"That vacant and Peaceful possession of the said apartment (was/has been/shall be handed over and delivered by the vendor to the vendee(s) and the vendee(s) confirms that he (has/will) (taken/take) over the possession of the same,*

after Physical inspection of the said Apartment and after having satisfied himself about the quality of workmanship, materials, specifications, extent of construction, super area, facilities and amenities such as electrification work, sanitary fittings and fixtures used and or provided therein and that the, water and sewerage connections etc. have been made and provided in accordance with the drawings, designs etc. of the said Apartment. ***The Vendee(s) has no complaint or claim whatsoever and undertakes not to raise any dispute hereto after in connection therewith individually or collectively including but not limited to any claims for delay in handing over possession of the said Apartments".***

41. It is an admitted fact that as per the agreement dated 03.08.2010, the appellant was to hand over the possession of the unit to the respondent-allottee by 03.02.2014. The appellant failed to hand over the unit by the due date, obtained the occupation certificate very late on 20.11.2018 and offered possession on the same date i.e. 20.11.2018. The appellant also issued a credit note on 20.11.2018, indicating credit of an amount of Rs.11,07,600/- to the account of the respondent allottee as penalty against delay in possession. The respondent allottee has already paid an amount of Rs.1,02,48,288.05 as on 13.06.2019 against the total sale consideration of

Rs.1,15,80498/- (excluding taxes, as per schedule of payment). As per the demand letter of the appellant attached with the offer of possession dated 20.11.2018, an amount of Rs.16,32,470/- was shown payable by the respondent-allottee. The appellant is to pay interest at the prescribed rate of interest @ 9.3% per annum for the delay period from 03.02.2014 to 20.11.2018 and pay an amount of Rs.45,72,225/- on the amount paid by the respondent-allottee as delayed possession as per the impugned order of the Ld. authority. The appellant on 20.11.2018 has already credited an amount of Rs.11,07,600/- as delay penalty into the account of the respondent-allottee. Thus, on the date of offer of possession an amount of Rs.34,19,582/- on account of delay was payable by the appellant to the respondent-allottee. The respondent allottee on 11.12.2018 paid another amount of Rs 10,47,242/- to the appellant under protest. The appellant through an email dated 14.05.2019 confirmed that the respondent-allottee has cleared all dues including stamp duty charges for the unit allotted to him. Respondent-allottee filed the complaint before the Ld. authority on 04.06.2019. As per the averments at para 9 of the preliminary objections to the maintainability of the complaint, the appellant in its written statement has mentioned that the appellant is not liable to deliver the

possession of the allotted unit to the respondent-allottee until all obligation duly imposed under the agreement have been fulfilled by the respondent-allottee to complete satisfaction of the appellant. The conveyance deed in favor of the respondent-allottee was executed on 03.12.2019. The actual possession of the unit was given on the same date as that of execution of the conveyance deed i.e. on 03.12.2019. The question is that having made whole of the payment, as admitted by the appellant itself vide its email dated 14.05.2019, then why the possession was not being delivered by the appellant to the respondent-allottee. In fact much amount than the total sale consideration of the unit stood paid by the respondent-allottee on the date of offer of possession i.e. on 20.11.2018 as delay possession interest is payable to the respondent-allottee. The simple reason is that the appellant will not handover the possession of the unit to the respondent-allottee unless the conveyance deed is executed with clauses as suits the appellant. The allottee having made whole of the investment is certainly under pressure to have the unit and under such circumstance agrees to execute the conveyance deed with clause such as clause 4 to get possession. The Appellant being in dominant position used the tactic and forced the respondent-allotee to execute such conveyance

deed. Moreover, the perusal of clause 4 of the conveyance deed does not indicate any settlement of delay payment charges against the credit note crediting Rs.11,07,600/- against the claim of delay possession charges as per the provision of Act and rules. It also does not indicate that the respondent-allottee that has waived off his due right of compensation with mere Rs11,07,600/-. The wording of the clause 4 only suggests that the respondent-allottee has no complaint and undertakes not to raise any dispute for delays in handing over possession of the unit. The complaint was filed prior to the execution of the conveyance deed. Therefore, if there would have been any compromise regarding the delay possession charges then the simple wording should have been that the respondent-allottee waives of the amount of delayed possession interest applicable as per the Act with that of Rs.11,07,600/- credited into his account by the Appellant. It is therefore apparent that the appellant got the said conveyance deed executed from the respondent allottee using its dominant position and the same has not been executed by the free will of the respondent allottee.

42. Ld. counsel for the appellant relied upon the judgment of the Hon'ble Supreme Court of India "***Rajasthan State Industrial Development & Investment Corpn. V.***

Diamond & Gem Development Corpn. Ltd.", (2013) 5 SCC 47."

"15. A party cannot be permitted to "blow hot-blow cold", "fast and loose" or "approbate and reprobate". Where one knowingly accepts the benefit of a contract, or conveyance, or of an order, he is estopped from denying the validity of, or the binding effect of such contract, or conveyance, or order upon himself. This rule is applied to ensure equity, however, it must not be applied in such a manner so as to violate the principles of what is right and of good conscience. [Vide Nagubai Ammal v. B. Shama Rao [AIR 1956 SC 593], CIT v. V. MR. P. Firm Maur [AIR 1965 SC 1216], Ramesh Chandra Sankla v. Vikram Cement [(2008) 14 SCC 58 : (2009) 1 SCC (L&S) 706 : AIR 2009 Hon'ble Supreme Court 713], Pradeep Oil Corpn. V. MCD [(2011) 5 SCC 270 : (2011) 2 SCC (Civ) 712 : AIR 2011 Hon'ble Supreme Court 1869], Cauvery Coffee Traders vs. Hornor Resources (International) Co. Ltd. [(20110 10 SCC 420 : (2012) 3 SCC (Civ) 685] and V. Chandrasekaran v. Administrative Officer [(2012) 12 SCC 133 : (2013) 2 SCC (Civ) 136: JT (2012) 9 SC 260].]"

Ld. counsel for the appellant has also relied upon the judgment of the Hon'ble Supreme Court "***Krishna Bhadur Vs. Puran Theater (2004) 8 SCC 299"***.

> *"...A right can be waived off by the party for whose benefit certain requirement or conditions had been provided for by a statute subject to the condition that a public interest is involved therein. Whenever waiver is pleaded it is for the party pleading the same to show that an agreement waiving the right in consideration of some compromise came in to being statutory, however, may also be waived off by his conduct."*

Both the above said judgements relied upon by the appellant are not applicable as there is no compromise made by the respondent – allottee by explicitly waiving of his right of delayed possession interest at the prescribed rate on the amount paid by him i.e. an amount of Rs.45,72,225/- with the amount of Rs.11,07,600/- credited into his account of respondent as delay penalty. The respondent had to sign the conveyance deed containing a clause 4 as he was not getting the possession of the flat without executing such a conveyance deed.

43. The above matter is squarely covered by the judgement passed on 14.03.2019 by Hon'ble State

Consumer Dispute Redressal Commission, U.T., Chandigarh (SCDRC) in Consumer Complaint no. 805 of 2017 titled as "Madan Lal Kansal and Anr. Versus DLF Homes Panchkula Pvt. Ltd. and Ors" where in it is held as under:

> *"46. We also did not find any merit in the argument raised by the opposite parties that the conduct of the complainants while signing the Conveyance Deed constituted a waiver of their claim and failed to pass the criteria laid down under doctrine of waiver through various judgments. In support of their cases, the complainants relied upon wearing the Honorable Supreme Court of India 'P. Dasa Muni Reddy Vs. P. Appa Rao 1974 AIR (Hon'ble Supreme Court) 2089, wherein the Hon'ble Supreme Court of India held in para 13 as under:*
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> *"13. Abandonment of right is much more than mere waiver, acquies-cence or laches. The decision of the High Court in the present case is that the appellant has waived the right to evict the respondent. Waiver is an intentional relinquishment of unknown right or advantage, benefit, claim or privilege which except for such waiver the party would have enjoyed. Waiver can also be a voluntary surrender of a right. The Doctrine of waiver has been applied in cases where landlords claimed forfeiture of lease or tenancy because of breach of some condition in the contract of tenancy. The doctrine which the courts of law will recognize is a rule of judicial policy that a person will not be allowed to take inconsistent positions to gain advantage through the aid of courts. Waiver*

sometimes partakes of the nature of an election. Waiver is consensual in nature. It implies a meeting of the minds. It is a matter of mutual intention. The doctrine does not depend on misrepresentation. Waiver actually requires two parties, one party waiving and another receiving the benefit of waiver. There can be waiver so intended by one party and understood by the other. The essential element of waiver is that there must be a voluntary and intentional relinquishment and an enforcement of the right in question. It cannot be held that there has been a waiver of valuable rights where the circumstances show that what was done was involuntary. There can be no waiver of a non-existent right. Similarly, one cannot waive that which is not one's as a right at the time of waiver. Some mistake or misapprehension as to some facts which constitute the underlying assumption without which parties would not have made the contract may be sufficient to justify the court in saying that there was no consent

"47. In our opinion, Conveyance Deed/Sale Deed is not the settlement deed, which the builder often uses for compromise with the flat buyers. It is a document for transferring of a title. However, in the instant case, a non-specific para was put, which does not talk about the waiver of rights of the complainants for claiming delay compensation. Admittedly, the opposite parties paid part compensation while admitting the dispute with regard to delay compensation. Thus, we have no hesitation to say that the complainants never

showed their willingness to waive of their rights through Sale Deed."

44. We are in agreement with the observation of the Hon'ble State Consumer Dispute Redressal Commission, Chandigarh, that the conveyance deed is not a settlement deed. It is a document for transferring of a title. The appellant being in dominant position got the conveyance deed executed which contained non-specific para 4, which does not talk about waiver of the rights of the respondent-allottee for claiming delay compensation against the part compensation paid by the appellant.

45. In view of aforesaid discussions, it is held that the appellant got the conveyance deed dated 03.12.2019 executed from the respondent-allottee using its dominant position and the same has not been executed by the free will of the respondent allottee. Moreover, the clause 4 of conveyance deed does not indicate any settlement between the parties for delayed possession interest amounting to Rs.45,72,225/- with that against the credit note crediting Rs.11,07,600/- in the account of the respondent-allottee by the appellant. Therefore, the respondent-allottee is entitled for delay possession interest under Section 18 of the Act at the prescribed rate of interest @ 9.3% per annum as per Rule 15 of the Rules for the period 03.04.2014 to

20.11.2018 on the amount paid by the respondent allottee i.e. interest amounting to Rs.45,72,225/- as per the impugned order. The amount of Rs.11,07,600/- already credited by the appellant as penalty against delay in possession through a credit note dated 20.11.2018 to the account of the respondent-allottee is required to be deducted from the delay possession interest of Rs.45,72,225/-. Thus, the balance amount remains to be paid to the respondent-allottee comes out to be Rs.34,64,625/-.

46. No other point was raised before us.

47. We do not find anything wrong in the impugned order dated 05.11.2020 of the Ld. authority. There is no merit in the various contentions raised in the appeal by the appellant. Therefore, the appeal is hereby dismissed as per the above said observations.

48. The amount of Rs.34,64,624.56 deposited by the appellant with this tribunal to comply with provisions of section 43(5) of the act along with interest accrued thereon, be sent to Ld. authority for disbursement to respondent-allottee, subject to tax liability, if any, as per law and rules.

49. No order to costs.

50. Copy of this order be sent to the parties/Ld. counsel for the parties and Ld. Haryana Real Estate

Regulatory Authority, Gurugram.

51. File be consigned to the record.

Announced:
October 28, 2022

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

Anil Kumar Gupta
Member (Technical)

Rajni thakur

Order

Office report perused.

It is ordered that the balance amount payable to the respondent-allottee is Rs. 45,72,225/- minus Rs. 11,07,600/- i.e. Rs. 34,64,625/- which is inadvertently mentioned as 34,19,582/- in para no. 45 of the judgment dated 28.10.2022 in appeal no. 26 of 2021.

Further, the appellant has deposited an amount of Rs. 34,64,624.56 to comply with the provisions of Section 43(5) of the Real Estate (Regulation and Development) Act, 2016 instead of Rs. 34,19,582/- as inadvertently typed in para no. 48 of the above judgment. The same is also corrected accordingly in the judgment. This is purely clerical and typographical mistake. So, the correction has been made in the original order dated 28.10.2022 in red ink.

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

Anil Kumar Gupta
Member (Technical)

06.01.2023
rajni