

**BEFORE THE HARYANA REAL ESTATE APPELLATE
TRIBUNAL**

Appeal No.318 of 2019

Date of Decision: 20.12.2022

Emaar MGF Land Ltd. registered office at #2564, Sector 21, Panchkula. 2nd Address Corporate Office, Emaar Business Park, MG Road, Sikandarpur, Sector 28, Gurugram (Haryana) 122 002

Appellant

Versus

1. Ved Prakash Ahuja (now deceased) through his legal heirs:
 - a) Smt. Ved Ahuja wife of Late Shri Ved Prakash Ahuja;
 - b) Smt. Varuna Ahuja daughter of Late Shri Ved Prakash Ahuja;
 - c) Smt. Vishakha Amit Kishore, daughter of Late Shri Ved Prakash Ahuja;
 2. Smt. Varuna Ahuja, daughter of Late Shri Ved Prakash Ahuja.
 3. Smt. Ved Ahuja wife of Late Shri Ved Prakash Ahuja;
- All the residents of House No.D-22, Saket Marg, Street No.13, Saket, Near Kotak Mahindra Bank, New Delhi 110 017.

Respondents

CORAM:

Shri Inderjeet Mehta
Shri Anil Kumar Gupta

Member (Judicial)
Member (Technical)

Argued by: Ms. Tanika Goel, Advocate,
Ld. counsel for the appellant.

Shri Arun Sharma, Advocate,
Ld. counsel for the respondents.

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 10.07.2018 passed by the Haryana Real Estate Regulatory Authority, Gurugram (for short, 'the Ld. Authority') whereby the Complaint No.10 of 2018 filed by the respondents-allottees was disposed of with the following directions:

"27. The Authority, exercising powers vested in it under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby issue directions to the respondent to give interest to the complainants at the prescribed rate of 10.45% on the amount deposited by the complainants for every month of delay from the due date of possession i.e. 31st March, 2011 till 23.02.2018 within 90 days of this order."

2. As per averments of the respondents-allottees in the complaint, it was pleaded that the unit was booked by original allottee Mr. Kasturi Lal Joneja and Ms. Promila Khanna

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bearing unit no. G-606 in the project of the appellant "The Palm Drive", Sector 66, Gurugram in the month of October 2007 by paying booking amount of Rs. 10 lakhs. The original allottee paid further amount of Rs. 25,47,837/-. The original allottee sold the unit to first transferee Mr. Pankaj Kitchloo & Monica Kitchloo in August 2008. The first transferee further paid an amount of Rs. 69,98,141/- from 2009 to 2011. The property was then bought by the second transferee i.e. the respondents/allottees in resale from the first transferee on 04.01.2012. The total amount paid by the allottees up to the date of filing of the compliant is Rs. 1,06,26,524/-. The total sale consideration is Rs. 1,21,29,841/- as per agreement dated 22.02.2008

3. It was further pleaded that the respondents-allottees have been waiting for nearly 8 years and the appellant has offered the possession in March 2018.

4. With the above said pleadings, the respondents-allottees sought the following reliefs in its complaint:

"1. The complainant is seeking compensation in the form of compound interest + penalty on the amount invested with the builder on account of delay in hand over of the possession of the property for over many years.

2. The complainant is seeking interest on the

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excess payment made by him for Rs. 1,55,593/- towards EDC/IDC demand which was his credit balance in the statement of account as on 01.09.2012. towards EDC/IDC demand which was his credit balance in the statement of Account as on 01.09.2012 for which the complainant even sent a request letter.

3. The complainant is seeking a stay on the demand letter and on the penalties as outlined in the intimation of possession letter if he does not take the possession till 26.03.2018 till the case is decided by HRERA.

4. The property under discussion was under the subvention scheme and an amount of Rs. 29,27,598/- was charged to the complainant on 24.11.2011 whereas it was to be charged at the time of possession which is happening now in the year 2018. So, why was the complainant charged in the year 2011. The respondent should pay compound interest w.e.f. 24.11.2011.”

5. The complaint was contested by the appellant on the ground that the ld. Authority has no jurisdiction whatsoever to entertain the present complaint. The appellant had filed a separate application for the rejection of the complaint on the ground of the jurisdiction.

6. It was further pleaded that the complaint for compensation and interest under Section 12,14,18 and 19

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of the Act is maintainable only before the adjudicating officer under rule-29 of the Act read with Section 31 and Section 71, rule -28 & rule-29.

7. It was further pleaded that the Act was enacted for effective consumer protection and to protect the interest of consumers in the real estate sector and not the interest of the investors and in the present case the respondents-allottees are the investors and not consumers.

8. It was further pleaded that the respondents-allottees have not come to the Id. Authority with clean hands and have concealed the material fact. Apart from the property i.e. unit no. G-606, "The Palm Drive" at Sector-66, Gurugram, Haryana, for which the respondents-allottees have filed the present complaint, the respondents-allottees have invested in five more properties of the appellant out of which two are in the same project and another three are in other project of the appellant.

9. It was further pleaded that the appellant after obtaining the Occupation Certificate on 25.01.2018, has already issued letter of offer of possession on 23.02.2018 for the said apartment along with the final payment request letter with details of all the charges, etc. However,

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even after receiving the notice of possession dated 23.02.2018 & various reminders thereafter, the respondents-allottees have not made any payment whatsoever till date.

10. It was further pleaded that the respondents-allottees have been defaulters, and deliberately failed to make payment of last instalment raised at the time of possession & the current outstanding amount as on 21.04.2018 is Rs. 15,13,380/- towards various instalments, delay payment interest etc.

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

12. 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.

13. We have heard, Ld. counsel for the parties and have carefully examined the record. The appellant has placed on file written submission on 07.12.2022

14. In the written arguments, it is contended that the Buyers Agreement between the first purchaser and the appellant was executed on 12.02.2008. The present respondents-allottees are subsequent purchaser and has

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stepped into the shoes of the first allottee on 08.02.2012. The Occupation Certificate was received on 25.01.2018. The offer of possession was issued on 23.02.2018 and the respondents-allottees filed the complaint on 12.03.2018. The respondents-allottees had actually taken over the possession on 26.12.2018. The respondents-allottees have further sold the property to Mr. Surinder Virmani on 19.07.2019.

15. 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 08.02.2012, 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 08.02.2012 i.e. the day when the subsequent allottee 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.

16. The appellant has made further reliance on the judgment of **Hon'ble Supreme Court in Civil Appeal No. 4910-4941 of 2019 titled as DLF v. D.S. Dhanda decided on 10.05.2019**, and contended that as per the ratio of the aforesaid law the transferee shall be entitled to interest from the due date or from the date of transfer whichever is later.

17. It was further contended that in any case, the delayed possession interest on the payments made after due date of possession shall be from the date such payments have been made by the allottee to the appellant.

18. With these contentions, it was contended that the present appeal may be allowed and the impugned order dated 10.07.2018 is set aside.

19. 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.

20. It was further contended that the impugned order dated 10.07.2018 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.

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

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22. The undisputed facts of the case are that unit was booked by original allottee Mr. Kasturi Lal Joneja bearing unit no. G-606 in the project of the appellant "The Palm Drive", Sector 66, Gurugram, in the month of October 2007 by paying booking amount of Rs. 10 lakhs. The original allottee paid a further amount of Rs.25,47,837/-. The Builder Buyers Agreement was executed on 12.02.2008. The total sale consideration for the unit as per agreement dated 12.02.2008 is Rs. 1,21,29,841/-. The property was further sold to first transferee Mr. Pankaj Kitchloo & Monica Kitchloo in August 2008. The first transferee further paid an amount of Rs. 69,98,141/-. The said unit was then purchased by the respondents-allottees in resale from the first transferee on 04.01.2012. The nomination letter in the name of the respondents-allottees was issued by the appellant on 08.02.2012. The Occupation Certificate was obtained by the appellant-promoter on 25.01.2018. The possession was offered on 23.02.2018. The possession was taken over by the respondents-allottees on 26.12.2018. The complaint was filed by the respondents-allottees with the Id. Authority on 12.03.2018. The total amount paid by the allottees to the appellant till the date of filing of the complaint Rs. 1,06,26,524/-.

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23. It is argument of the appellant that the respondents-allottees are subsequent allottees, who have purchased the property from the first transferee in resale and the appellant issued nomination letter in favour of the respondents-allottees on 08.02.2012, after the due date of possession i.e. 31.03.2011. 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. It is further argument that 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).

24. 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

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date the builder acquired knowledge of the transfer, or acknowledged it.”

25. In the present case, the respondents-allottees had purchased the unit after the due date of handing over of the possession i.e. 31.03.2011, 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 08.02.2012 issued by the appellant.

26. The further arguments of the appellant is that the interest at the prescribed rate on the payments which has been made by the respondents-allottees after they have stepped into shoes of the original allottee i.e. 08.02.2012, shall be payable from the date on which the respective payments have been made. It is clarified that the payments made by the respondents-allottees after 08.02.2012 when they stepped into the shoes of the original allottee shall be paid along with prescribed interest from the date, the respective payments have been made by the respondents-allottees to the appellant-promoter.

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27. The further argument of the appellant is that the respondents-allottees had not made the payments on time and therefore, shall also be liable to pay interest, on the due payments which have been delayed by the respondents-allottees, at the same rate as is being granted to the respondents-allottees in case of delayed possession charges. This argument of the appellant is as per the definition of interest given in the act and therefore is correct. The appellant promoter is entitled to charge the interest at the same rate on the delayed payments as has been awarded to the respondents allottees as delayed possession charges.

28. The appellant has raised the issue of the jurisdiction of the learned authority and some other technical grounds in the grounds of appeal. However, the appellant has not pressed these pleas 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**. So, those issues are not being discussed here.

29. No other issue was pressed before us.

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

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31. The amount of Rs.76,69,861/- 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 respondents-allottees, excess amount may be remitted to the appellant, subject to tax liability, if any, as per law and rules.

32. No order as to costs.

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

34. File be consigned to the record.

Announced:
December 20, 2022

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

Anil Kumar Gupta
Member (Technical)

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