BEFORE THE HARYANA REAL ESTATE APPELLATE TRIBUNAL

Appeal No. 553 of 2022
Date of Decision: 27.04.2023

M/s Pareena Infrastructure Private Limited, registered office at C-1(7A), 2nd floor, Omaxe City Centre, Sohna Road, Gurugram, Haryana.

Appellant

Versus

1. Rajender Chaudhri
2. Sushma Chaudhri
   Both residents of G-4, First Floor, Block-G, Lajpat Nagar-1, New Delhi.

Respondents

CORAM:

Justice Rajan Gupta	**Chairman**
Shri Inderjeet Mehta	**Member (Judicial)**
Shri Anil Kumar Gupta	**Member (Technical)**

Present: Mr. Neeraj Sheoran, Advocate for the appellant.

Mr. Rajender Chaudhary, One of the respondents in person.

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 31.05.2022 passed by the Haryana Real Estate Regulatory Authority, Gurugram (for short, 'the Authority') whereby the Complaint No. 1574 of 2019 filed by the respondent-allottees was disposed of with the following directions:

> *"i. The respondent is directed to refund the deposited amount of Rs. 1,06,20,290/- ~~and~~ (sic) as received by ~~him~~ it (sic) from the complainants alloottees along with interest at the rate of 9.50% p.a. from the date of deposit till the date of recovery of the amount within 90 days from the date of this order as pre rule 16 of the Haryana Rules, 2017."*

2. As per averments in the complaint, the respondent-allottees had provisionally booked a residential apartment of approx. 1997 sq. ft. in the project named as "Coban Residences" of the respondent situated at Sector 99-A, Gurugram, Haryana for a basic sale price of Rs. 4896/- per sq. ft., and respondent-allottees had paid an amount of Rs. 8,50,000/- through cheque on 27.01.2013 and through RTGS on 01.02.2013 of Rs. 4,50,000/-. The Apartment Buyer Agreement (for short, 'the Agreement') was executed between the parties on 14.12.2013 and thereafter the appellant issued the provisional allotment letter dated 26.12.2013. Respondent-allottees moved an application dated 29.08.2014 to the higher authorities. The appellant revised the basic sale price from Rs. 4896 to Rs. 4690 per sq. ft. Therefore, the respondent-allottees withdrew the complaint before above said higher authorities on 13.02.2015. Thereafter, a fresh agreement was executed between the parties with revised basic sale price from Rs. 4896

to Rs. 4690 per sq.ft. It was further pleaded that respondent-allottees have paid more than 90% of the total sale consideration of the flat till the filing of the complaint. It was also pleaded that as per clause 3.1 of the Apartment Buyer Agreement, the possession of the unit was to be handed over to the respondent-allottees within 48 months from the date of signing of the agreement. The project of the appellant was being delayed and, therefore, the respondent-allottees filed the complaint before the ld. Authority seeking the relief of refund of total amount paid along with interest at 10.75% p.a.

3. The complaint was resisted by the appellant-promoter on the ground of jurisdiction of the ld. Authority and on the ground that the structural work of the tower in which the respondent-allottees flat is situated was at advanced stage of construction. It was submitted that as per clause 3.1 and 5.1 of the agreement, the possession of the unit was to be offered within four years from the start of construction or execution of the agreement, whichever is later with a grace period of six months. Thus, the date of possession is yet to arrive and therefore, the present complaint is pre-mature and is liable to be dismissed on this ground alone. It was also pleaded that the completion of the project is dependent on collective payment by all the allottees. However, numerous allottees have defaulted in payments which has resulted in delay of completion of the project

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

5. The learned authority after hearing the pleadings of both the parties passed the impugned order, the operative part of which has already been reproduced in paragraph No.1 of this order.

6. We have heard learned counsel for appellant and Mr. Rajinder Chaudhri, one of the respondents in person and have carefully examined the record.

7. It was contended by learned counsel for the appellant that the complaint filed by the respondent-allottees was pre-mature as no cause of action was there with the respondent-allottees on the date of filing of the complaint. The due date of possession has been considered in the impugned order as 14.03.2019 whereas as per clause 3.1 read with clause 5.1 of the agreement, the due date of possession is four years from the date of execution of the agreement or date of start of construction whichever is later along with six months of grace period which comes out to be 14.09.2019. It was stated that there are orders of the Hon'ble Supreme Court of India and various other notifications and orders of the National Green Tribunal (NGT) vide which there was a complete ban on construction activity in the NCR area from time to time which hampered the progress of the project. It was also stated that

outbreak of pandemic (Covid-19) also hampered the progress of construction of the project and therefore the project got delayed.

8. With these contentions, it was contended by the learned counsel of the appellant that the present appeal may be allowed and the impugned order dated 31.05.2022 may be set aside.

9. Per contra, Mr. Rajinder Chaudhri, one of the respondents in person, contended that the order passed by the ld. Authority is correct and is as per the Act, Rules and Regulations and sought dismissal of the appeal.

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

11. The undisputed facts of case are that the respondent-allottees were allotted vide provisional allotment letter dated 26.12.2013, a residential apartment no. 504, 5th Floor, Tower T3, measuring 1997 sq. ft. of super area in the project being developed by the appellant-promoter, namely "Coban Residences", Sector 99A, Gurugram. The agreement between the parties was executed on 14.03.2015. The total sale consideration (BSP) of the unit is Rs. 93,65,930/- (as mentioned at clause no. 1.2 of the agreement at page no. 75 of the paper book) and is Rs. 1,18,02,284/- (as per the summary of dues attached with the agreement at page no. 119 of the paper book). The respondent-allottees had paid an amount of Rs. 1,06,20,290/- up to the date of filing of the complaint. As

per clause no. 3.1 of the agreement, the appellant is to handover the said unit to the respondent-allottees within four years of the start of construction or execution of the agreement whichever is later comes out to 14.03.2019 as admittedly the date of agreement is later than the date of start of construction. Also there is no dispute regarding the start date as 14.03.2019 of the project in the present appeal.

12. The appellant is contesting that as per clause 5.1 of the agreement, the appellant is entitled for a grace period of six months for completion of the project. Thus, according to appellant, the due date of possession of the unit with the inclusion of the grace period would come out to be 14.09.2019. The appellant is contending that if the due date of the possession is considered as 14.09.2019, then, the complaint filed by the respondent-allottees on 30.04.2019 is pre-mature. The said clause 5.1 is reproduced as below:-

> *"5.1 In case within a period as provided hereinabove, further extended by a period of 6(six) months if so required by the Developer, the Developer is unable to complete construction of the said flat as provided hereinabove (subject to force majeure conditions) to the Flat Allottee(s), who have made payments as required for in this Agreement, then the Flat Allottee(s) shall be entitled to the payment of compensation for delay at the rate of Rs. 5/- (Rupees Five only) per sq. ft. per month of the super area till the date of notice of possession as provided hereinabove in this Agreement. The flat Allottee(s)*

> *shall have no other claim against the Developer in respect of the said flat and parking space under the Agreement."*

13. From perusal of the above said clause, it would be seen that the period of six months so provided is not a grace period for completion of the project as is being claimed by the appellant. It is for the purpose of paying the compensation to the allottee if the project is delayed upto the period of six months from the due date of possession. The period of four years for handing over of the possession is upto 14.03.2019. The respondent-allottees have filed the complaint on 30.04.2019 and therefore, the complaint filed by the respondent-allottees cannot be considered as pre-mature.

14. The date of agreement executed between the parties is 14.03.2015. The appellant is to handover the possession of the unit to the respondent-allottees within four years from the execution of the agreement i.e. upto 14.03.2019. The appellant could not provide the Occupation Certificate of 'Tower 3' in which the unit of the respondent-allottees is situated despite being given the opportunity. Thus, inevitable conclusion is that tower in which the unit of the allottee is situated is yet not complete. The respondent-allottees cannot be expected to wait endlessly for taking possession of the allotted unit for which they have paid a considerable amount towards the sale consideration. The case of the respondent-allottees is covered

under Section 18(1) of the Act which states that if the allottee wishes to withdraw from the project and demands return of the amount received by the promoter in respect of the unit with interest on failure of the promoter to complete or inability to give the possession of the unit, the allottee is entitled for refund of the amount along with interest. The said case of the respondent-allottees is very well covered by the judgment of Hon'ble Supreme Court of India in *Newtech Promoters and Developers Pvt. Ltd. versus State of U.P. and Others 2021 SCC Online SC 1044*. The relevant part of the judgment which is reproduced as below:

> *"25. The unqualified right of the allottee to seek refund referred under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he*

shall be entitled for interest for the period of delay till handing over possession at the rate prescribed.”

15. The above said judgment in case of M/s Newtech Promoters’ supra is fully applicable in the present facts of the case as the appellant-promoter has failed to complete the unit by the due date of possession as per the terms of the agreement. The appellant-promoter has not been able to produce the Occupation Certificate in respect of Tower T3 where the unit of the respondent-alltotees is situated, despite opportunities granted to it by this Tribunal a period of four years has elapsed from the due date of possesion.

16. It is contention of the appellant that there are number of orders and notifications vide which there was complete ban of construction activities in the NCR area from time to time which hampered the progress of the project. The appellant has not adduced any evidence, documentary or otherwise to establish that such orders of various courts and authorities as alleged by it has effected the progress of its project, also, it has not led any arguments to establish that if at all there was any ban on the construction for a certain period to control pollution by any of the Courts or Authorities, has any effect on the rights of the allottee as enshrined under Section 18(1) of the Act for refund of the paid amount by him, in case, the appellant-promoter is unable to give possession within the stipulated period of the agreement particularly when the

appellant has not been able to produce the Occupation Certificate in respect of 'Tower T3' where the unit of the respondent-allottees is situated.

17. No other point was argued before us by learned counsel for the appellant and Mr. Rajinder Chaudhri, one of the respondents in person.

18. Consequently, we find no merit in the present appeal filed by the appellant-promoter and is, therefore, the same is hereby dismissed.

19. No order as to costs.

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

21. File be consigned to the record.

Announced:
April 27, 2023

Justice Rajan Gupta
Chairman
Haryana Real Estate Appellate Tribunal

Inderjeet Mehta
Member (Judicial)

Anil Kumar Gupta
Member (Technical)

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