

**BEFORE THE HARYANA REAL ESTATE APPELLATE
TRIBUNAL**

Appeal No. 337 of 2019

Date of Decision: 01.05.2023

Sana Realtors Private Limited, Registered Office: C/o H-69, Upper Ground Floor, Cannaught Place, New Delhi-110001.

Appellant

Versus

Mr. Rajiv Batra, D-53, Ground Floor, Mayfield Gardens, Sector-50, Gurugram.

Respondent

CORAM:

Justice Rajan Gupta
Shri Anil Kumar Gupta,

Chairman
Member (Technical)

Argued by:

Mr. Rohit Kataria, Advocate,
On behalf of Shri Manu K. Bhandari, Advocate,
for the appellant.

Respondent already ex-parte.

ORDER:

RAJAN GUPTA, CHAIRMAN (ORAL):

Complaint bearing No.1783 of 2018 was preferred by allottee - Rajiv Batra (respondent herein) before Haryana Real Estate Regulatory Authority, Gurugram, seeking certain relief. He alleged violation of clause 15 of the 'Flat Buyer Agreement' executed on 20.04.2010 in respect of the unit described in the complaint. He stated that it was an obligation on the part of the promoter (Sana Realtors) to deliver possession by the due date in terms of Section 11(4)(a) of the Real Estate (Regulation and Development) Act, 2016. Promoter - Sana Realtors Private Limited (appellant herein) filed reply contesting the complaint.

2. The complaint was ultimately decided on 14.03.2019 in the following terms:-

Appeal No. 337 of 2019*“DIRECTIONS OF THE AUTHORITY*

31. *After taking into consideration all the material facts as adduced and produced by both the parties, the authority exercising powers vested in it under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby issues the following directions to the respondent in the interest of justice and fair play:*

(i) *It has been stated by the counsel for respondent that they have received occupation certificate on 18.07.2017 and offer of possession too has been sent to the complainant on 27.07.2017.*

(ii) *As per clause 15 of the builder buyer agreement dated 20.04.2010 for unit no.540, 5th floor, in project “Precision SOHO Tower” Sector-67, Gurugram, possession was to be handed over to the complainant within a period of 36 months from the date of execution of buyer’s agreement which comes out to be 20.04.2013. Complainant has already paid Rs.18,49,172/- to be respondent against a total sale consideration of Rs.22,16,550/-. Respondent has offered the possession to the complainant on 27.07.2017.*

(iii) *It has been brought to the notice of the authority that the respondent has already offered possession to the complainant, as such as per provisions of section 19(6) of the Real Estate (Regulation and Development) Act, 2016, the complainant is also liable to pay penal interest at the rate of 10.75% on the balance dues which shall*

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be calculated at the time of delivery of possession.

- (iv) *As such, complainant is entitled for delayed possession charges at prescribed rate of interest i.e. 10.75% per annum w.e.f. 20.04.2013 to 27.07.2017 as per the provisions of section 18(1) of the Real Estate (Regulation and Development) Act, 2016. The amount accrued on account of delayed charges shall be adjusted in the last demand to be raised by the respondent.*
- (v) *Respondent is also directed to change the address of complainant in their record as intimated by the complainant. In view of the prevailing circumstances no holding charges shall be charged by the respondent.*

32. *Complaint stands disposed of.*

33. *Case file be consigned to the registry.”*

3. Aggrieved by the aforesaid order, the promoter-Sana Realtors, preferred instant appeal before this Tribunal after complying with the proviso to Section 43(5) of the Act (ibid).

4. Appeal was registered and notice was issued to the respondent-allottee. However, he failed to appear and on 21.02.2023, the respondent was proceeded ex-parte.

5. Today, when the appeal was taken up for hearing, at the outset, learned counsel for the appellant has submitted that there has been a settlement between the parties. He seeks to place on record the copy of the 'Memorandum of Settlement' dated 21st

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March, 2023. His prayer is allowed. The document is taken on record as 'Mark A'.

6. In view of the above, learned counsel for the appellant submits that he may be allowed to withdraw the present appeal with prayer that the amount deposited by the appellant for complying with the proviso to Section 43(5) of the Act, may be allowed to be refunded to the appellant.

7. The appeal is thus dismissed as withdrawn.

8. The amount deposited by the appellant/promoter i.e. Rs.8,50,000/- with this Tribunal to comply with the proviso to Section 43(5) of Act, along with interest accrued thereon, be sent to the learned Authority for disbursement to the appellant-promoter subject to tax liability, if any, as per law and rules.

9. The copy of this order be communicated to the parties/learned counsel for the appellant and the Haryana Real Estate Regulatory Authority, Gurugram, for compliance.

10. File be consigned to the record.

Justice Rajan Gupta
Chairman
Haryana Real Estate Appellate Tribunal

Anil Kumar Gupta
Member (Technical)

01.05.2023
CL