BEFORE THE HARYANA REAL ESTATE APPELLATE TRIBUNAL

Appeal No. 122 of 2022
Date of Decision: 16.03.2023

Emaar MGF Land Ltd. registered office at 306-308, Square One, C-2 district Centre, Saket, New Delhi-110 017

2nd Address Corporate Office, Emaar Business Park, MG Road, Sikandarpur, Sector 28, Gurugram (Haryana) 122 002

Appellant

Versus

1. Laddi Praramjit Singh
2. Preetika Chimni

Both resident of C-2B/97C, Janakpuri, New Delhi-110058.

Respondents

CORAM:

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

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

Ms. Sandhya Gaur, Advocate,
Ld. counsel for the respondents.

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 29.07.2021 passed by the Haryana Real Estate Regulatory Authority, Gurugram (for short, 'the Ld. Authority') whereby the Complaint No. 2893 of 2020 filed by the respondents-allottees was disposed of with the following directions:

i. *"The respondent is directed to pay the interest at the prescribed rate i.e. 9.30% per annum for every month of delay on the amount paid by the complainants from due date of possession i.e. 25.11.2013 till 03.03.2020 i.e. expiry of 2 months from the date of offer of possession (03.01.2020). The arrears of interest accrued so far shall be paid to the complainants within 90 days from the date of this order as per rule 16(2) of the rules.*
ii. *Also, the amount of Rs. 7,64,766/- so paid by the respondent to the complainants towards compensation for delay in handing over possession shall be adjusted towards the delay possession charges to be paid by the respondent in terms of proviso to Section 18(1) of the Act.*
iii. *The respondent shall not charge anything from the complainants which is not the part of the buyer's agreement. The respondent is not entitled to claim holding charges from the complainants/allottees at any point of time even after being part of the builder buyer's agreement as per law settled by Hon'ble Supreme Court in Civil Appeal Nos. 3864-3899/2020 decided on 14.12.2020.*

iv. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.

v. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e. 9.30% by the respondents/promoters which is the same rate of interest which the promoter shall be liable to pay the allottee, in case of default i.e., the delayed possession charges as per section 2(za) of the Act."

2. As per averments of the respondent-allottee in the complaint, it was pleaded that the respondents-allottees booked a flat measuring 1450 sq. ft. in the project being developed by the appellant "Palm Hills", in sector 77, Gurugram, Haryana on 05.08.2020 and the respondents were subsequently allotted unit bearing no. PH3-08-0802 vide provisional allotment letter dated 28.08.2010.

3. The buyer's agreement (hereinafter called as 'agreement') was executed between the parties on 05.10.2010. As per clause 11(a) of the agreement, the possession for the said unit was to be delivered within 33 months from the date of start of construction. In addition to the said period, the appellant was also eligible for a grace period of 3 months over and above the said 33 months period. It was pleaded that the said clause is in total contradiction of the understanding between the parties, as at the time of booking the unit, the respondents-allottees were

promised for delivery of the unit in question within 33 months from the date of booking. The appellant after having received substantial sums of money from the respondents-allottees unilaterally changed the timeline of the delivery of possession.

4. It was further pleaded that as per the appellant the date of start of construction of the said project is 25.02.201, even then, the unit in question should have been handed over up to 25.02.2014 by the appellant. It was further pleaded that on 04.05.2020, the appellant offered possession of the unit vide its offer of possession letter dated 03.01.2020, after delay of over 6 years.

5. The respondents-allottees have been requesting the appellant for grant of possession along with compensation in terms of the Act and rules but neither the possession was being given nor the delay possession interest. Therefore, the respondents-allottees filed the complaint before the ld. Authority seeking following reliefs:-

> "i. *Direct the respondent company to pay interest @10.20% per annum on the delay in handing over the possession till realization of the same in view of the violation of section 18 of the Act.*
> ii. *Any other relief which this Hon'ble authority deems fit and proper."*

6. The complaint was contested by the appellant on the grounds that the learned Authority does not have jurisdiction to

adjudicate upon the complaints and on some other technical grounds.

7. It was also pleaded that the respondents-allottees had filed the present complaint seeking interest for alleged delay in delivery of possession of the apartment booked by them. The complaints pertaining to refund, compensation and interest are to be decided by the adjudicating officer under Section 71 of the Act read with rule 29 of the Rules and not by the Ld. Authority.

8. It was further pleaded that the complaint is based on an erroneous interpretation of the Act as well as an incorrect understanding of the terms and conditions of the agreement dated 05.10.2010. The provisions of the Act are not retrospective in nature. The provisions of the Act cannot undo or modify the terms of an agreement duly executed prior to coming into effect of the Act. It is further submitted that merely because the Act applies to ongoing projects which are registered with the authority, the Act cannot be said to be operating retrospectively. The provisions of the Act relied upon by the respondents-allottees for seeking interest cannot be called in to aid in derogation and ignorance of the provisions of the buyer's agreement.

9. It was further pleaded that Mr. Paramjeet Singh Chimni and the respondents-allottees vide application form dated 05.08.2010 applied to the appellant for provisional

allotment of a unit in the project. He and the respondents-allottees in pursuance of the aforesaid application form, were allotted an independent unit bearing no. PH3-08-0802, located on 8th floor, in the project vide provisional allotment letter dated 28.08.2010.

10. It was further pleaded that Mr. Paramjeet Singh Chimni on account of natural love and affection withdrew his name as a co-applicant. He was thus left with no right, title or interest in the unit in question. The name of Paramjit Singh Chimni was deleted on dated 02.07.2019. After withdrawal of the name of Mr. Paramjeet Singh Chimni as a co-applicant, the provisional allotment of the unit in question vested with the respondents-allottees.

11. It was further pleaded that the respondents-allottees persistently defaulted in timely remittance of the instalments to the appellant. The appellant was constrained to issue various demand letters, notices, reminders etc. to the respodnents-allottees requesting them to remit their outstanding dues.

12. It was further pleaded that the respondents-allottees consciously and maliciously chose to ignore the payment schedule issued by the appellant and flouted in making timely payment of the instalment, which was an essential, crucial and an indispensable requirement under the agreement. Furthermore, when the allottees default in their payments as per

schedule agreed upon, the failure has a cascading effect on the operations and the cost of the project increases exponentially and further causes enormous business losses to the appellant. The respondents-allottees chose to ignore all these aspects and willfully defaulted in making timely payments. The appellant despite defaults of several allottees earnestly fulfilled its obligations under the agreement and completed the project as expeditiously as possible. Therefore, there is no equity in favour of the respondents-allottees.

13. It was further pleaded that clause 11 of the agreement provides that subject to the allottees having complied with all the terms and conditions of the agreement and not being in default of the same, possession of the unit shall be handed over within 33 months plus grace period of 3 months, from the date of start of construction. It is further provided in the agreement that time period for delivery of possession shall stand extended on the occurrence of delay for reasons beyond the control of the appellant/promoter. Furthermore, it is categorically expressed in clause 11(b)(iv) that in the event of any default or delay in payment of installments as per the schedule of payments incorporated in the agreement, the time for delivery of possession shall also stand extended. The respondents/allottees have defaulted in timely remittance of the installments. Thus, the time period for delivery of possession of the unit in question

is not liable to be determined in the manner claimed by the respondents/allottees.

14. It was further pleaded that clause 13 of the agreement further provides that compensation for any delay in delivery of possession shall only be given to such allottees who are not in default of their obligations envisaged under the agreement and who have not defaulted in payment of installments as per the payment plan incorporated in the agreement. In case of delay caused due to non-receipt of occupation certificate, completion certificate of any other permission/sanction from the competent authorities, no compensation or any other compensation shall be payable to the allottees. The respondents-allottees have defaulted in payment of installments are thus not entitled to any compensation or any amount towards interest under the agreement. The respondents/allottees by way of instant complaint are demanding interest for alleged delay in delivery of possession. The interest is compensatory in nature and cannot be granted in derogation of the provisions of the agreement.

15. It was further pleaded that there being a number of defaulters in the project, the appellant/promoter itself infused funds into the project and has diligently developed the project in question. The appellant/promoter submitted an application dated 26.04.2017 to the competent authority. The occupation

certificate was thereafter, granted on 24.12.2019 vide memo bearing No. ZP-567-Vol-I/JD(RD)/2019/31934 in favour of the appellant/promoter. Once an application for grant of occupation certificate is submitted for approval in the office of the concerned statutory authority, the appellant/promoter ceases to have any control over the same. The grant of occupation certificate is the prerogative of the concerned authority over which the appellant/promoter cannot exercise any influence. As far as appellant/promoter is concerned, it has diligently and sincerely pursued the matter with the concerned statutory authority for obtaining of the occupation certificate. Therefore, the time period utilized by the concerned statutory authority for grant of occupation certificate is necessarily required to be excluded from the computation of time period utilized by the appellant for implementation and development of the project.

16. It was further pleaded that the appellant/promoter submitted that the project has got delayed on account of reasons which are beyond the power and control of the appellant/promoter. Firstly, the National Building Code was revised in the year 2016 and in terms of the same, all high-rise buildings (i.e. buildings having area of less than 500 Sq. mtrs. and above), irrespective of the area of each floor, are required to have two staircases. Eventually, so as not to cause any further delay in the project and so as to avoid jeopardizing the safety of

the occupants of the buildings in question including the building in which the apartments in question is situated, the appellant/promoter had taken a decision to go ahead and constructed the second staircase and the appellant/promoter succeeded in completing construction of the apartment in question and the occupation certificate in respect thereof has been received on 24.12.2019. Thereafter, possession of the apartment has been offered to the respondents/allottees vide offer of possession letter dated 03.01.2020.

17. It was further pleaded that despite all the adversities faced by the appellant/promoter, the appellant/promoter has succeeded in completing construction of the apartment in question and the occupation certificate in respect thereof has been received on 24.12.2019. Thereafter, possession of the apartment has been offered to the respondents/allottees vide offer of possession letter dated 03.01.2020. The respondents/allottees were called upon to make payment of balance sale consideration and complete necessary formalities so as to enable the appellant/promoter to hand over possession of the apartment to them. Additionally, the appellant/promoter credited an amount of Rs.7,64,766/- to the account of the respondents/allottees as a gesture of goodwill. The respondents/allottees have duly accepted the aforesaid amount in full and final satisfaction of their alleged grievances.

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

19. The Ld. Authority after considering the pleading of the parties and the material on record passed the impugned order, the operative part of which has been already reproduced in para no. 1 in this order.

20. We have heard, Ld. counsel for the parties and have carefully examined the record.

21. Initiating the arguments, it was contended by learned counsel for the appellant that the respondents-allottees booked a unit bearing no. PH3-08-0802, 8th floor, in project "Palm Hills", in sector 77, Gurugram being developed by the appellant and the agreement was executed between the parties on 05.10.2010. As per clause 11(a) of the said agreement, the due date of delivery of possession is 33 months from the date of start of construction with grace period of 3 months. The occupation certificate was applied on 21.12.2019 and the same was issued on 24.12.2019. The offer of possession of the unit was issued by the appellant to the respondents-allottees on 03.01.2020. The possession of unit could not be handed over till now to the respondents-allottees as they have yet not paid the balance amount payable by them.

22. She contended that as per Clause 11(a) of the agreement, the possession of the unit is to be handed over within a period of 33 months plus grace period of 3 months, from the date of start of construction subject to timely payment of instalments and compliance by the respondents-allottees of all the terms and conditions of the agreement. The grace period of three months provided in the agreement cannot be denied merely on account of delay caused in completion of the project. Further grace period of three months is for applying and obtaining the occupation certificate in respect of the Villa/Unit. She asserted that once an application is submitted before the statutory authority, the appellant ceases to have any control over the same. Therefore, the time taken by the concerned statutory authority to issue occupation certificate is required to be excluded from the computation of the time taken for implementation and development of the project. Therefore, no compensation or any interest shall be payable to the allottees in case of delay caused due to delay in granting occupation certificate, completion certificate or any other permission/sanction required from the competent authorities as per the view taken in the judgment passed by this Tribunal in Appeal No. 431 of 2021, Emaar India Ltd. Vs. Dr. Ashok Kumar Vaid.

23. She further contended that the interest payable to the respondents-allottees for delay in delivery of possession on the payment received prior to due date of possession i.e. 25.02.2014 should be calculated from due date of handing over the possession i.e. 25.02.2014 and the interest on payments received after 25.02.2014 should be from the date of receipt of respective payments.

24. She further contended that the respondents-allottees had been defaulters and had deliberately failed to make payments on time. The respondents/allottees shall also be liable to pay interest on the due payments which have been paid with delay at the same rate which is being granted to the respondents/allottees in case of delayed possession charges.

25. It was further contended that the building plans for the apartment/tower in question was approved by the competent authority under the then applicable National Building Code 2005 (NBC 2005) in terms of which buildings having height 15 mtrs. or above but having area of less than 500 sq. mtrs. were required to have only one staircase. Subsequently, NBC 2005 was revised in the year 2016 wherein all high-rise buildings (i.e. buildings having height of 15 mtrs. and above), irrespective of the area of each floors, are required to have two staircases. Furthermore, it was notified vide gazette published on 15.03.2017 that the provisions of NBC 2016

supersede those of NBC 2005. It was further contended that the Fire Department is seeking to retrospectively apply the said provisions and while processing the Fire NOC application, the Fire Department is insisting on two stair cases in all high-rise buildings even in cases where the building plans are already approved to have single staircase. It was further contended that, so as not to cause any further delay in the project and so as to avoid jeopardizing, the safety of the occupants of the buildings in question including the building in which the apartment in question is situated, the appellant has taken the decision to go ahead and construct the second staircase. The Occupation Certificate was applied on 26.04.2017 and subsequently for the second time on 21.02.2019. The Occupation Certificate has been issued on 24.12.2019 and in pursuant to that the possession of the unit has been offered on 03.01.2020. Thus, she contended that the period of delay from 20.04.2017 to 24.12.2019 may not be considered toward delay in the offer of possession. It was further contended that this plea has been taken by the appellant in its reply to the complaint filed by the respondents-allottees but the Ld. Authority has decided the matter without taking any cognizance of this plea.

26. With these contentions, it was contended by the Ld. counsel of the appellant that the present appeal may be allowed

and the impugned order dated 29.07.2021 may be modified accordingly.

27. Per contra, Ld. counsel for the respondents-allottees contended that the despite the orders of the ld. Authority, the possession of the unit has still not been offered to the respondents-allottees and contended that the impugned order passed by the learned Authority is in order and is as per the Act, Rules and Regulations and prays for dismissal of the appeal.

28**.** We have duly considered the aforesaid contentions of both the parties.

29. The undisputed facts of the case are that the respondents-allottees booked a flat measuring 1450 sq. ft. on 05.08.2020 in the project "Palm Hills", in sector 77, Gurugram, Haryana being developed by the appellant. The respondents-allottees were subsequently allotted unit bearing no. PH3-08-0802, vide provisional allotment letter dated 28.10.2010 issued by the appellant. The agreement between the parties was executed on 05.10.2010. As per statement of account dated 09.09.2020, respondents-allottees have paid a total amount of Rs.69,42,842/- against the total sale consideration of Rs.72,66,881/. As per clause 11(a) of the agreement, the due date of delivery of possession is 33 months plus grace period of 3 months for applying and obtaining Completion Certificate/Occupation Certificate in respect of the unit and/or

the project. The said clause 11(a) of the agreement is reproduced as below:-

> *"(a) Time of handing over the possession:-*
>
> *"Subject to terms of this clause and subject to the Allottee(s) having complied with all the terms and conditions of this Buyer's Agreement and not being in default under any of the provisions of this Buyer's Agreement and compliance with all provisions, formalities, documentation etc., as prescribed by the Company, the Company proposes to hand over the possession of the Unit within 33 months from the date of start of construction, subject to timely compliance of the provisions of the Buyer's Agreement by the Allottee. The Allottee(s) agrees and understands that the Company shall be entitled to a grace period of three months, for applying and obtaining the completion certificate/occupation certificate in respect of the Unit and/or the Project."*

30. As per the aforesaid clause of the Agreement, the possession of the unit was to be delivered within 33 months from the date of start of construction and there is a provision of a grace period of three months for obtaining the completion/occupation certificate etc. There is no dispute regarding the date of start of construction which has been reckoned from 25.02.2011. It is well known that it takes time to obtain Occupation Certificate from the concerned authorities after applying the Occupation Certificate. So, the appellant/promoter is entitled to avail grace period so provided

as per the provision in the said clause 11(a) of the Agreement for obtaining the Occupation Certificate. Thus, with inclusion of the grace period of three months as per provision in Clause 11(a) of the Agreement, the total completion period has become 36 months and therefore schedule date of completion comes out to be as 24.02.2014.

31. The other contention of the appellant is that the building plans for the apartment/tower in question was approved by the competent authority under the then applicable National Building Code 2005 (NBC 2005). According to the provisions of NBC 2005 buildings having height of 15 mtrs. but having area of less than 500 sq. mtrs. were required to have only one staircase. Subsequently, NBC was revised in the year 2016 and in accordance with this all high-rise buildings having height of 15 mtrs. and above, irrespective of the area of each floor, are now required to have two staircases. The gazette notification regarding applicability of the provisions of NBC 2016 has been published on 15.03.2017 and the provisions of NBC 2016 supersede the provisions of NBC 2005. Therefore, this has resulted in delay in delivery of possession of the apartment to the respondents-allottees. She contended that though this plea was taken up by the appellant before the Ld. Authority in the reply to the complaint, but the same was not considered by the Ld. Authority while adjudicating the complaint.

32. We have duly considered the aforesaid contention of the appellant. The provisions of two staircases as per NBC 2016 for the building where the buildings plans were already approved with one staircase in accordance with NBC 2005 is not mandatory for issue of fire NOC/ Occupation Certificate. The appellant has not supplied any documentary evidence or the correspondence to show that any of the competent Government authority has ever refused the grant fire NOC or the Occupation Certificate, for the tower in which the unit in question is situated, on account of the requirement of two stair cases as per changed provisions of NBC. Therefore, we observe that in the instant case there is no delay in applying and obtaining the Occupation Certificate on account of any hindrance from the fire department on account of the requirement of two staircases as per provision in NBC 2016. It is also not clear from the pleadings of the appellant as to when their building was ready, when did they apply for Fire NOC and how the delay for grant of occupation certificate have occurred due to the aforesaid reasons for changes in the provisions of NBC. We are not convinced that the revision of NBC 2005 with the NBC 2016 has caused any delay in completion of the project and obtaining the occupation certificate.

33. The argument of the appellant is that the interest at the prescribed rate on the payments, which have been demanded

by the appellant and paid by the respondents-allottees after the due date of delivery of possession i.e. 24.02.2014, shall be payable from the date on which respective payments have been made by the respondents-allottees to the appellant-promoter. This argument of the appellant is logical and therefore, the interest at the prescribed rate on the payments which have been made by the respondents-allottees after the due date of delivery of possession i.e. 24.02.2014 shall be payable from the date on which respective payments have been made by the respondents-allottees to the appellant-promoter.

34. The further argument of the appellant-promoter 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-promoter 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.

35. As per the agreement, the due date of delivery of possession of the unit to the respondents- allottees is 24.02.2014. The offer for possession of the unit was issued by

the appellant on 03.01.2020. As per statement of account dated 09.09.2020, the respondents- allottees have already paid an amount of Rs.69,42,842/- against the total sale consideration of Rs.72,66,881/-. However, the respondents- allottees have yet not been given actual physical possession of the unit in spite of the fact that huge amount, much more than payable by them to the appellant, on account of delay possession interest is payable to them. Therefore, in case the respondents - allottees are still not given possession within one month of this order then the appellant is to pay a cost of Rs.2,000/- per day to the respondents allottees from the date of this order till the actual handing over of the unit. The amount payable to the appellant by the respondents-allottees shall be adjusted from the amount deposited by the appellant with this Tribunal in compliance to Section 43(5) of the Act, at the time of disbursement of the said amount.

36. No other point was argued before us by Ld. counsel for the parties.

37. Consequently, the present appeal filed by the appellant is partly allowed and the impugned order is modified as per the above said observations.

38. The amount of Rs.68,86,773/- 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 as per the aforesaid observations, excess amount may be remitted to the appellant, subject to tax liability, if any, as per law and rules.

39. No order as to costs.

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

41. File be consigned to the record.

Announced:
March 16, 2023

Justice Rajan Gupta
Chairman,
Haryana Real Estate Appellate Tribunal,
Chandigarh

Inderjeet Mehta
Member (Judicial)

Anil Kumar Gupta
Member (Technical)

Rajni