BEFORE THE HARYANA REAL ESTATE APPELLATE TRIBUNAL

Appeal No. 535 of 2021

Date of Decision: 24.03.2023

M/s Pareena Infrastructures Private Limited, C-1(7A), 2nd floor, Omaxe City Centre, Sohna Road, Gurugram, Haryana through its Company Secretary and Legal Manager.

Appellant

Versus

Mr. Hari Ballabh Sharma, # 9, Advocate Ajay Chaudhary House, near Old Kaun, Rangpuri, Mahipalpur, New Delhi-110037.

Respondent

CORAM:

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

Argued by: Shri Neeraj Sheoran, Advocate, for the appellant.

None for respondent.

O R D E R:

INDERJEET MEHTA, MEMBER (JUDICIAL):

Feeling aggrieved by the order dated 02.04.2019, handed down by the learned Haryana Real Estate Regulatory Authority, Gurugram, (hereinafter called 'the Authority'), in Complaint No.26 of 2019, titled "Mr. Hari Ballabh Sharma Vs. M/s Pareena Infrastructure Private Limited", vide which, the

complaint preferred by the respondent/allottee under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter called 'the Act') for refund of the deposited amount was allowed, the appellant/promoter has chosen to prefer the present appeal under Section 44(2) of the Act.

2. As back as on 23.06.2016, the respondent/allottee was allotted a flat no. 308, Tower T5, in Housing Project, "Laxmi Apartments-Affordable Housing Scheme" situated at Village Gopalpur, Sector 99-A, Manesar Urban Complex, Haryana, launched by the appellant/promoter. The total cost of the flat was Rs.17,49,330/- excluding External Development Charges (EDC), Infrastructure Development Charges (IDC) and other charges. At the time of allotment, the respondent/allottee also received a demand letter for Rs.3,49,866/-. An 'Apartment Buyer's Agreement' dated 19.07.2016 (for brevity 'the agreement') was executed between the parties. After execution of the agreement, all the payments demanded by the appellant/promoter were paid by the respondent/allottee and payment receipts in this regard were also issued to the respondent/allottee. Till May, 2018, the respondent/allottee made total payments of Rs.15,70,537/-.

3. However, due to some personal financial issues, the respondent/allottee decided to cancel the allotment, and vide email and letter dated 23.10.2018, he requested to cancel his booking and requested for refund of the deposited amount after deducting earnest money to the tune of Rs.25,000/- as mentioned in the agreement. Since, the request made by the respondent/allottee was not acceded to by the appellant/promoter, so having no other option, the respondent/allottee instituted the complaint.

4. Upon notice, in its reply, the appellant/promoter has resisted the present complaint on the ground of maintainability and suppression of material facts. On merits, it has taken the stand that as per Clause 8.1 of the agreement, the date of possession was to be after four years from the grant of environmental clearance or sanction of building plans, whichever is later. Further, it has been alleged that at the time of execution of the agreement, the respondent/allottee had specific knowledge that environmental clearance was ranted just three months prior to the signing of the agreement, as per which the due date of possession was in the year 2020 and thus, the complaint preferred by the respondent/allottee being pre-mature, is liable to be dismissed. While denying all

other averments, the dismissal of the complaint was prayed for.

5. After hearing the learned counsel for the parties and appreciating the material on the record, the learned Authority vide impugned order dated 02.04.2019 disposed of the complaint with the following observations:-

> *"30. After taking into consideration all the material facts produced by the parties, the authority exercising powers vested in it under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby issue the following directions:-*
>
> - *The respondent is directed to accept the surrender email dated 23.10.2018 of the complainant and refund the deposited amount without interest by deducting Rs.25,000/- and other taxes, if any, paid by the respondent to the government within a period of90 days from the date of this order.*
>
> *31. The order is pronounced.*
>
> *32. Case file be consigned to the registry."*

6. Hence, the present appeal.

7. We have heard learned counsel for the appellant and have also perused the case file.

8. To condone the delay of 858 days in filing the present appeal, against the impugned order dated 02.04.2019,

which was uploaded on the website of the learned Authority on 24.04.2019, the appellant has preferred an application under Section 5 of the Limitation Act, 1963 read with Section 44 of the Act, alleging therein that on the basis of the observations made by the learned Authority in the impugned order, the other buyers/allottees are now contemplating to launch legal proceedings against the appellant by taking benefit of the findings pertaining to the due date of delivery of possession and the same would cause an irreparable loss and would affect the interest of the appellant. Further, it has been submitted that the delay in filing the appeal has been caused due to Covid-19 pandemic and due to the reasons beyond the control of the appellant/applicant.

9. Initially, on behalf of the respondent, Shri Amit Kumar Srivastav, Advocate, had put in appearance on 08.03.2022, but, thereafter none put in appearance on his behalf and thus no reply to the aforesaid application of condonation of delay, on behalf of respondent/allottee has been filed.

10. The reason for non-appearance of the respondent/allottee, is on account of the fact that during the execution proceedings, which were initiated by the

respondent/allottee to execute the impugned order, the amount as was asked for by the respondent/allottee, was paid to him by the appellant/promoter. In this regard, observations have been made in the interlocutory order dated 31.01.2022 of this Tribunal and the relevant observations of the said order are as follows:-

> *"As per the order dated 03.08.2021, it has been mentioned that an amount of Rs.14,59,876/- has been paid by the appellant to the respondent and the said execution proceedings has been dismissed as fully satisfied. Since, the execution preferred by the respondent against the impugned order has been dismissed as fully satisfied by paying an amount of Rs.14,59,876/-, so, there is nothing to be paid by the appellant to the respondent and in this way the compliance of Section 43(5) of the Real Estate (Regulation and Development) Act, 2016, stands complied with."*

11. Section 44(2) of the Act is as follows:-

> *"(2) Every appeal made under sub-section (1) shall be preferred within a period of sixty days from the date on which a copy of the direction or order or decision made by the Authority or the adjudicating officer is received by the appropriate Government or the competent authority or the aggrieved person and it shall be in such form and accompanied by such fee, as may be prescribed:*

> *Provided that the Appellate Tribunal may entertain any appeal after the expiry of sixty days if it is satisfied that there was sufficient cause for not filling it within that period."*

12. From the aforesaid provision, it is explicit that this Tribunal can entertain any appeal after the expiry of 60 days if it is satisfied that there was "sufficient cause" for not filing the appeal within the stipulated period. The expression 'sufficient cause' has been elaborately dealt with by the Hon'ble Supreme Court in ***Civil Appeal No.6974 of 2013*** titled ***'Basawaraj and another vs. Special Land Acquisition Officer,*** vide judgment dated 22.08.2013, and the relevant portion of the said judgment is as follows:-

> *"9. Sufficient cause is the cause for which defendant could not be blamed for his absence. The meaning of the word "sufficient" is "adequate" or "enough", inasmuch as may be necessary to answer the purpose intended. Therefore, the word "sufficient" embraces no more than that which provides a platitude, which when the act done suffices to accomplish the purpose intended in the facts and circumstances existing in a case, duly examined from the view point of a reasonable standard of a cautious man. In this context, "sufficient cause" means that the party should not have*

> *acted in a negligent manner or there was a want of bona fide on its part in view of the facts and circumstances of a case or it cannot be alleged that the party has "not acted diligently" or "remained inactive". However, the facts and circumstances of each case must afford sufficient ground to enable the Court concerned to exercise discretion for the reason that whenever the Court exercises discretion, it has to be exercised judiciously. The applicant must satisfy the Court that he was prevented by any "sufficient cause" from prosecuting his case, and unless a satisfactory explanation is furnished, the Court should not allow the application for condonation of delay. The court has to examine whether the mistake is bona fide or was merely a device to cover an ulterior purpose."*

13. Keeping in view this aforesaid well established proposition of law, this Tribunal has to arrive at the conclusion that what was the "sufficient cause" which means an adequate and enough reason, which prevented the applicant/appellant to approach this Tribunal within limitation. The expression "sufficient cause" mentioned in the Act is analogous as provided in Section 5 of the Limitation Act, 1963.

14. The impugned order dated 02.04.2019 was uploaded on the website of the Authority on 20.04.2019 and as per the proviso to Section 44(2) of the Act, the appellant/applicant had to file the appeal before this Tribunal on or before 23.06.2019, whereas, the present appeal has been preferred on 28.10.2021.

15. The stand taken by the appellant/applicant in the application for condonation of delay that on the basis of the observations made by the learned Authority in the impugned order, the other buyers and allottees are now contemplating to launch legal proceedings against the appellant by taking benefit of finding pertaining to the due date of delivery of possession, cannot be attached any legal credence because firstly, by no stretch of imagination this aforesaid stand can fall within the ambit of "sufficient cause" and secondly, it is simply speculation on the part of the appellant/applicant that other allottees would launch proceedings against it and in fact nothing has been placed on the file to show that after expiry of more than 2½ years of handing down the impugned order, any of the other allottees has initiated any proceedings against the appellant/applicant.

16. Though, the appellant/applicant has taken this stand that due to Covid-19 pandemic and due to the reason beyond the control of the appellant/applicant, it could not file the appeal within the stipulated period, but the same also does not fall within the ambit of "sufficient cause". In its application, no specific reasons and details regarding the circumstances which were beyond the control of the appellant/applicant have been mentioned. Further, the extension in the limitation of filing the suits, petitions and applications, before the Civil Court/Tribunal and other judicial or quasi judicial forms due to Covid-19 pandemic situation was for the first time granted by the Hon'ble Supreme Court of India, vide order dated 23.03.2020 which was subsequently extended by the Hon'ble Supreme Court vide various other orders on account of continuity of Covid-19 pandemic situation, and ultimately that was finally extended up to 31.05.2022. Though, the appellant/applicant had filed the present appeal on 28.10.2021, but the benefit of aforesaid extension of the time of limitation by the Hon'ble Supreme Court is not available to the appellant/applicant because the limitation for filing the appeal against the impugned order, as referred above, had already ended on 23.06.2019, and aforesaid extension of limitation was only available to those

orders/judgments whose limitation had not expired till 15.03.2020.

17. Faced with the situation, in his last desperate attempt, learned counsel for the appellant/applicant while drawing the attention of this Tribunal towards para no.27 of the impugned order, wherein the due date of delivery of possession has been held to be 15.03.2020, has submitted that though said date of possession is correct, but for the adjudication of the controversy in the present case, these observations were not required at all. This submission of learned counsel for the appellant/applicant is also devoid of merits because while dealing with the complaint of the respondent for refund of the deposited amount, the learned Authority by taking into consideration all facts and circumstances of the case had arrived at this conclusion that the due date of possession is 15.03.2020. Since, there is no illegality and irregularity regarding this due date of possession, as admitted by learned counsel for the appellant/applicant, so the submission of learned counsel for the appellant/applicant that the same was not required to be adjudicated, is in fact misconceived. Accordingly, in the given facts and circumstances of the present case, the appellant/applicant has miserably failed to establish

"sufficient cause" to condone the delay of 858 days in filing of the present appeal.

18. Thus, as a consequence to the aforesaid discussions, the application preferred by the appellant/applicant for condoning the delay of 858 days in filing of the present appeal, containing no merits deserves dismissal and is accordingly dismissed. Consequently, the present appeal also stands dismissed being barred by limitation.

19. Copy of this order be communicated to the parties/learned counsel for the parties and the learned Authority for compliance.

20. File be consigned to the record.

Announced:
March 24, 2023
CL

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

Anil Kumar Gupta
Member (Technical)