

**BEFORE THE HARYANA REAL ESTATE APPELLATE
TRIBUNAL**

APPEAL NO. 733 of 2022
Date of Decision: 02.08.2023

M/s Pivotal Infrastructure Pvt. Ltd., Plot No. 12, Sector-4,
Faridabad, Haryana.

...Appellant-Promoter

Versus

Mr. Rajinder Singh, Palm Vihar Colony, Near Lux Academy,
Adjacent to Sector-23, Bhiwani, Haryana.

...Respondent-Allottee

CORAM:

Justice Rajan Gupta
Shri Inderjeet Mehta
Shri Anil Kumar Gupta

Chairman
Member (Judicial)
Member (Technical)

Present: Mr. Anmol Jindal, Advocate
for the appellant.

Mr. Ishwar Singh Sangwan, Advocate,
for the respondent.

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 17.05.2022 passed by the Haryana Real Estate Regulatory Authority, Gurugram (for short 'the Authority') whereby Complaint No. 4126 of 2021 filed by the appellant- promoter was disposed of with the following directions:

“i. The respondent is directed to pay interest at the prescribed rate of 9.40% p.a. for every month of delay from the due date of possession i.e. 22.01.2020 till the offer of possession of the subject flat after obtaining occupation certificate from the competent authority plus two months or handing over of possession whichever is earlier.

ii. The respondent is directed to pay arrears of interest accrued within 90 days from the date of order and thereafter monthly payment of interest to be paid till date of handing over of possession shall be paid on or before the 10th of each succeeding month.

iii. The complainant is also directed to pay the outstanding dues, if any.

iv. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e. 9.40% by the respondent/promoter 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.

v. The respondent shall not charge anything from the complainant which is not part of the builder buyer agreement.

2. As per averments in the complaint, the respondent-allottee had booked an apartment on 23.02.2015 vide application no. 1003 on 28.02.2015 by paying initial amount of Rs. 1,05,000/- and till date of filing of the complaint, the respondent- allottee had paid a total amount of Rs.

21,54,903.38/- including interest amounting to Rs. 1,39,903.38/- as per the demands of the appellant-promoter. Respondent-allottee also availed loan from Dewan Housing Finance Corporation Limited, Vipul Agora, M.G. Road, Gurugram at a variable rate of interest @9.9% per annum. Appellant-promoter issued an allotment letter in respect of the said apartment in favor of the appellant on 05.09.2015. As per clause no. 5(iii)(b) of the Apartment Buyer's Agreement (hereinafter called 'the agreement') the Appellant-promoter was to handover the possession of the unit within 4 years. However, appellant-promoter failed to complete the project, therefore, the respondent-allottee filed the complaint before the Authority claiming the following reliefs: -

“(i) Direct the respondent to deliver the possession of the apartment with penalty for delay the possession at the prevailing rate by the authority.

“(ii) Direct the respondent to pay the interest on the principal amount @ 18% p.a. from the date of payment till realization.

“(iii) Direct the respondent to execute the conveyance deed of the subject apartment.

“(iv) Direct the respondent to pay a cost of litigation amounting Rs. 2,00,000/-.”

3 The complaint was resisted by the appellant-promoter on the grounds of maintainability. It was pleaded that

its project "Ridhi Sidhi" is registered with the Authority with Registration Certificate No. 236 of 2017 dated 19.09.2017. The said project is being developed under the Scheme of Affordable Group Housing Policy Scheme 2013 (amended in year 2019). As per clause 5(iii)(b) of the affordable housing scheme and as per the agreement, the possession of flats is to be offered within a period of 4 years from the date of sanctioning of building plan or from the date of issuance of environment clearance certificate. The building plan was sanctioned on 17.10.2014 and the date of environmental clearance is 22.01.2016. Thus, according to said terms, the date of environmental clearance being later i.e 22.01.2016, thus, the proposed date of handing over the possession comes out to be January 2020.

4. It was further pleaded that the completion of the unit delayed due to spread of corona virus and lockdown announced by the Government of India w.e.f. March 24th, 2020. All the workers/ labours have gone back to their hometown and the appellant suffered shortage of labour and therefore the construction of the project got delayed. Thus, corona virus pandemic has adversely affected the construction of the project. It was further pleaded that National Green Tribunal has passed the order dated 09.11.2017, completely prohibiting to carry on construction by any person, private or government authority in the entire N.C.R till 17th November, 2017. The Haryana State

Pollution Control Board, Panchkula also passed the order dated 29.10.2018 in furtherance of directions of Environment Pollution (Prevention and Control) Authority dated 27.10.2018, and directed to remain close the construction activities involving excavation, civil construction (excluding internal finishing work/work where no construction material was used) in Delhi and other NCR Region/Districts from 1.11.2018 till 10.11.2018. In the year 2019, the Commissioner, Municipal Corporation Gurugram vide order dated 11.10.2019, issued notification prohibiting to carry out construction work from 11.10.2019 till 21.12.2019. It is specifically mentioned in the said order that construction activities to be completely stopped during this period. Thus, in view of the aforesaid order/notification passed by various Government Authorities, the construction was stopped due to rise in Pollution in Delhi NCR including the State of Haryana. In addition to above, Additional Chief Secretary, Environment and Climate Change Department, vide its memo no. 1 of 2021 dated 02.12.2021, has directed to stop carrying out construction activities due to high rise in pollution. On account of aforesaid reasons, construction activities were completely banned during the afore said period and therefore the project got delayed.

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

6. 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 opening para of this order.

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

8. Learned counsel for the appellant-promoter reiterates the pleadings submitted before the Authority and submits that during the period of Covid Pandemic there was a severe shortage of labour which resulted in delay in completion of the project. He further submits that respondent-allottee had delayed each and every payment whereas he was to pay every demand raised by the appellant promoter in time linked manner in accordance with the agreement. An amount of Rs. 9,446.64/- is still outstanding towards interest on account of delay in payment of due installments. The appellant was obligated to complete the project within a period of 4 years from the date of approving of building plan or grant of environment clearance, whichever is later. However, the said period was subject to timely payments and force majeure situations.

9. He submits that the interest rate of 9.4% per annum, as awarded by the Authority, is completely unjustified and illegal. It lacks any basis or rationale given the specific facts of the present matter and, therefore, is not sustainable. The project in question falls under the Affordable Housing Policy, governed by the provisions of the Haryana Development and Regulation of Urban Areas Act 1975 (herein afterwards called as 'Act of 1975') and the related rules and these do not impose any liability on the appellant to pay interest to the respondent for any delay in delivering possession. He asserts that the prescribed interest rate under rule 15 of the Haryana Real Estate Regulation and Development Rules of 2017 (hereinafter referred to as 'rules') is excessive and does not apply appropriately in the present case, considering the unique facts and circumstances. In the event that this Tribunal still concludes that the respondent is entitled to interest, it should be granted at a reasonable rate, taking into account the grounds, facts, and circumstances of the matter.

10. With these contentions, appellant-promoter prayed that the appeal may be allowed and the impugned order dated 17.05.2022 may be set aside.

11. On the other hand, learned counsel for the respondent-allottee contended that the order of the Authority is

just and fair and as per the Act and rules. He asserts that there is no merit in the appeal and the same deserves to be dismissed.

12. We have duly considered the aforesaid pleadings of the parties.

13. The brief facts of the case are that the respondent allottee booked an apartment in the appellant's project on 28.02.2015 by making an initial payment of Rs. 1,05,000/-. The parties entered into an agreement on 10.09.2015 for apartment no. 802, situated on the 8th floor of Tower 8 in the project called "Ridhi Siddhi" located in Sector 99, Gurugram, Haryana for a total sale consideration of Rs. 19,98,000/-. The appellant is developing this project under the Affordable Group Housing Policy. Up to the time of filing the complaint, the respondent-allottee had already paid a total amount of Rs. 21,54,903/-. As per the agreement and clause 5(iii)(b) of affordable housing policy "all flats in a specific project shall be allotted in one go within four months of sanction of building plans or receipt of environment clearance whichever is later and possession of the flats shall be offered within the validity period of 4 years of such sanction/clearance." The building plan was sanctioned on 17.10.2014, and the environment clearance was obtained on 22.01.2016. Thus, the due date of possession, calculated from the date of environment clearance (as it is the later of the two),

is determined to be 22.01.2020. However, the appellant-promoter has not yet obtained the Occupation Certificate for the said tower in which the appellant's unit is situated.

13. The appellant has lodged a challenge against the impugned order, asserting that the inability to complete the project in time and the resulting delay were due to the COVID-19 pandemic and government-issued restrictions from the environment control authorities aimed at curbing pollution. However, the appellant has failed to substantiate any of these claims with supporting evidence indicating that a force majeure event occurred and it significantly impacted the project's progress. Moreover, the appellant has not presented any legal precedents demonstrating that relief has been granted in similar cases related to the COVID-19 pandemic. Additionally, the appellant has not provided specific details regarding the stage of completion of the project and how the pollution control authority's temporary work stoppage orders for a very short period, aimed at addressing pollution, had a substantial and causative effect on the resulting delay. Consequently, based on the appellant's arguments and evidence presented, we find no basis to grant relief on the grounds asserted by the appellant.

14. The appellant raises another argument, asserting that the prescribed interest rate stated in rule 15 of the rules

should not be applicable in this case as the unit was allotted under the Affordable Housing Policy governed by the 'Act of 1975' and claims that the prescribed interest rate of 9.4% per annum is too excessive. However, this argument is not valid because the 'Act of 1975' does not address the contractual relationship between the promoter and allottee in the event of a delay in delivery of possession of the unit. The RERA Act, on the other hand, is a special enactment designed to provide speedy resolutions to disputes between allottees and promoters concerning real estate matters. In this particular case, the matter falls squarely under the purview of the RERA Act. Furthermore, since the appellant itself registered its project with the Authority under the RERA Act, the provisions of this Act become applicable. It is important to note that the RERA Act is a central statute and holds precedence over state laws. Section 18 of the RERA Act clearly states that in the event of a delay in delivering the unit, if the allottee chooses not to withdraw from the project, the promoter is obliged to pay interest for each month of delay until possession is handed over, at the prescribed rate. The prescribed rate is mentioned in rule 15 of the rules as SBI highest Marginal Cost Lending Rate Plus 2%. Consequently, we find no issues with the contested order as it correctly grants the prescribed rate of interest according to rule 15 of the rules.

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14. No other point was argued before us.

15. Thus, keeping in view our aforesaid discussion, the present appeal filed by appellant-promoter has no merit and the same is hereby dismissed.

16. The amount of Rs.5,59,956/- deposited by the appellant with this tribunal to comply with the provisions of proviso to section 43(5) of the Real Estate (Regulation and Development) Act, 2016, along with interest accrued thereon, be sent to the learned Authority for disbursement to the respondent-allottee subject to tax liability, if any, as per law.

17. No order to costs.

18. Copy of this order be sent to the parties/Ld. counsel for the parties and Ld. Haryana Real Estate Regulatory Authority, Gurugram.

19. Files be consigned to the record.

Announced:
August 02, 2023

Justice Rajan Gupta
Chairman
Haryana Real Estate Appellate Tribunal,

Inderjeet Mehta
Member (Judicial)

Anil Kumar Gupta
Member (Technical)