

**BEFORE THE HARYANA REAL ESTATE APPELLATE
TRIBUNAL**

**Appeal No. 503 of 2021
Date of Decision: 14.08.2023**

M/s Pivotal Infrastructure Private Limited, 704-705, JMD Pacific Sector-15, Part II Haryana.

Appellant

Versus

1. Mrs. Mitu Sharma, Flt No.B 304, Karor CGHS, Plot No.39C, Sector-6, Dwarka, Delhi.

Respondent

2. Directorate of Town and Country Planning, Haryana, HUDA Complex, Sector-14, Gurugram-122001.

Performa Respondent.

CORAM:

Justice Rajan Gupta	Chairman
Shri Anil Kumar Gupta,	Member (Technical)

Present: Mr. Sakal Sikri, Advocate
for the appellant.

Mr. Rajan Kumar Hans, Advocate,
for the respondent-allottee.

ORDER:

RAJAN GUPTA, CHAIRMAN (Oral):

The present appeal has been preferred under Section 44(2) of the Real Estate (Regulation and Development) Act 2016 (hereinafter called as 'the Act') by the appellant-promoter against impugned order dated 08.10.2022 passed by the Haryana Real Estate Regulatory Authority, Gurugram (for short 'the Authority') whereby Complaint No. 1240 of 2020

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filed by the respondent-allottee was disposed of with the following directions:

- “(a) The respondent is directed to pay interest at the prescribed rate i.e. 9.30% per annum for every month of delay on the amount paid by the complainant from due date of possession i.e. 22.01.2020 till the handing over of physical possession.*
- “(b) The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order and subsequent interest to be paid on/before 10th of every months.*
- “(c) The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.*
- “(d) Interest on the due payments from the complainant shall be charged at the prescribed rate of 9.30% per annum by the promoter which is same as is being granted to the complainants in case of delayed possession charges.”*

2. As per averments in the complaint, the respondent allottee had booked an apartment with the appellant/promoter for a total sale consideration of Rs.19,98,000/- in the project namely 'Riddhi Siddhi , Sector-99, Gurugram. An 'Apartment Buyer's Agreement' (hereinafter referred to as 'the agreement') was executed between the parties on 28.12.2015, for unit bearing no.1003, 10th floor, Tower-T7, in the project of the appellant. As per clause 8.1 of the agreement, possession of

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the apartment was to be handed over to the respondent/allottee within a period of four years from the date of grant of sanction of building plans for the project or the date of receipt of all the environmental clearances. The date of environmental clearances is 22.01.2016. Therefore, due date of delivery of possession is 22.01.2020. It was pleaded by the respondent/allottee that till the filing of the complaint, the appellant had demanded Rs.21,56,822/- and the respondent/allottee had paid 100% of the said amount. The delivery of possession was delayed, therefore, the respondent/allottee filed complaint with the Authority seeking following reliefs:-

- i. To direct the respondent no.1 party to pay interest at the prescribed rate of interest on delayed possession since due date of possession till date of actual possession.
 - ii. Respondent no.1 may kindly be directed to complete and seeking necessary govt. clearances regarding infrastructure and other facilities including road, water and sewerage etc.
3. The Authority issued notice of the complaint to the promoter (appellant herein) by speed post as well as through email. Despite service of the notice, the promoter did not file

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reply to the complaint within the stipulated period. Accordingly, the complaint was decided ex parte.

4. The Authority after considering the pleadings of the parties and material on record passed the impugned order, the operative part of which has already been reproduced in the opening para of this order.

5. We have heard learned counsel for the parties and have carefully examined the record.

6. At the outset, learned counsel for the appellant has contended that copy of the complaint was never dispatched by the authority and no email was received by the appellant as the email address which is mentioned in the impugned order does not belong to the appellant and the address mentioned in the complaint is no more the registered office of the appellant since last three years. He asserted that during the period of Covid Pandemic there was a severe shortage of labour which resulted in delay in completion of the project. He submitted that interest @ SBI highest MCLR plus 2% i.e. 9.30% per annum as awarded by the Authority from the date of possession i.e. 22.01.2020 till the date of handing over of the possession is totally in stereo type manner. He contended that the construction of the project was hindered due to the stoppages owing to 'Environmental Pollution' during winters in Delhi and NCR regions. The Hon'ble National Green Tribunal

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(NGT), Delhi had passed several orders during the period of construction whereby there was complete stoppage of the construction activity in NCR region. With these contentions, the appellant/promoter prayed that the appeal be allowed and the order dated 08.10.2020 passed by the Authority be set aside.

7. On the other hand, learned counsel for the respondent/allottee has 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.

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

9. The brief facts of the case are that the agreement between the parties was executed on 28.12.2015 for allotting unit bearing no.1003, 10th floor, Tower-T7, Riddhi Siddhi, Sector-99, Gurugram, under 'Affordable Group Housing Scheme' of the Haryana Government. The total sale consideration as per agreement was Rs.19,98,000/-. The respondent/allottee had paid an amount of Rs.21,56,822/- at the time of filing of the complaint. As per clause 8.1 of the agreement, the possession of the unit was to be handed over within a period of four years from the date of grant of sanction of building plans for the project or the date of receipt of all the

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environmental clearances. The date of environmental clearances is stated to be 22.01.2016. The Authority has arrived at the conclusion that the due date of delivery of possession is 22.01.2020 and there is no dispute in this regard.

10. The Authority had sent the notice of the complaint to the appellant/promoter by speed post as well as through email. The appellant did not file reply and the complaint was decided ex parte. As per the appellant itself, it has been stated that the first hearing of the complaint was held on 16.04.2020 and then 02.07.2020 and 21.08.2020. However as the email address was wrong and the appellant had shifted its office from the address given in the complaint, so it did not receive the copy of the complaint. During the proceedings before this Tribunal on 05.07.2023, the appellant had asked for an opportunity to file reply to the complaint before this Tribunal. The said permission was granted to file reply to the complaint within three weeks. The appellant, however, chose not to file any reply to the complaint. Thus, the present appeal is being decided on merits.

11. It has been asserted by learned counsel for the appellant that the appellant could not complete the project in time due to COVID19 pandemic and restrictions from the Hon'ble National Green Tribunal (NGT), Delhi for curbing

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pollution. However, the appellant has failed to substantiate any of these claims with supporting evidence indicating that even if 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 NGT's temporary work stoppage orders, if any, for a 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 it.

12. The appellant raised another argument asserting that rate of interest @ SBI highest MCLR plus 2% i.e. 9.30% per annum as awarded by the Authority is in mechanical manner. As per Section 18 of the Act, in the event of delay in delivery of possession, 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 Haryana Real Estate (Regulation and Development) Rules, 2017, as SBI highest Marginal Cost Lending Rate Plus 2%. Consequently, we find no infirmity in the impugned order as it

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correctly grants the prescribed rate of interest according to rule 15 of the rules.

13. No other point was argued before us.

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

15. The amount of Rs.2,00,584/- deposited by the appellant with this tribunal in view of proviso to Section 43(5) of the 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.

16. No order to costs.

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

18. Files be consigned to the record.

Announced:
14.08.2023

Justice Rajan Gupta
Chairman
Haryana Real Estate Appellate Tribunal

Anil Kumar Gupta
Member (Technical)