

short 'the Authority') whereby Complaint No. 2806 of 2021 filed by the respondent/allottees was disposed of with the following directions:

- “i. 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 complainants from due date of possession i.e. 18.04.2019 till offer of possession (23.07.2019) plus two months i.e. 23.09.2019.*
- ii. The arrears of such interest accrued from 18.04.2019 till the date of order by the authority shall be paid by the promoter to the allottees within a period of 90 days from date of this order and interest for every month of delay shall be paid by the promoter to the allottees before 10th of the subsequent month as per rule 16(2) of the rules.*
- iii. The rate of interest chargeable from the complainants/allottees by the promoter, in case of default shall be charged at the prescribed rate i.e. 9.30% 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 delay possession charges as per section 2(za) of the Act.*
- iv. The respondent shall not charge anything from the complainants which is not the part of buyer's agreement.*
- v. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.”*

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2. As per the averments in the complaint, the respondent/allottees were allotted a unit bearing No.1714, 17th floor in the project of the appellant/promoter, "Ocus 24K" Sector 68, Gurugram, having a super area of 687 sq. ft. Subsequently, this unit was changed to another unit bearing no.1417 admeasuring 733 sq. ft. A 'Buyer's Agreement' (hereinafter called 'the agreement') between the parties was executed on 18.04.2014. As per the payment plan, the total sale consideration of the unit was Rs.67,66,950/-. As per the lodger dated 09.08.2021, the respondent/allottees had paid an amount of Rs.80,95,259/- to the appellant/promoter. The Occupation Certificate was received by the appellant on 17.07.20219. The offer of possession of the unit was issued on 23.07.2019.

3. As the possession of the unit was being delayed, therefore, the respondent/allottees filed the complaint before the authority seeking the following reliefs:-

- i) Direct the respondent to pay the interest @ 24% p.a. for the delay which has to be calculated as and when the 60 months were completed and thereafter the grace period was exhausted. Further, the calculation shall be done on the total amount paid at the above-mentioned interest rate till the date of order pendent-elite.
- ii) To pay a sum of Rs.80,000/- as cost of litigation."

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

5. The learned counsel for the appellant contended that as per clause 11(a) read with clause 14 of the agreement, the appellant/promoter was to offer possession of the unit within a period of 66 months from the date of the said agreement dated 18.04.2014 i.e. on or before 18.10.2019. He submitted that the respondent/allottees had also accepted the above fact in their complaint that the said unit is to be delivered within 66 months from the date of the said agreement.

6. He contended that the Authority has awarded delay possession interest from due date of possession i.e. 18.04.2019 till offer of possession (23.07.2019) plus two months i.e. 23.09.2019. He submitted that if the aforesaid plea is accepted then the appellant is to pay no delay possession interest as the due date for offer of possession is 18.10.2019 which is earlier than the date 23.09.2019 upto which the interest has been awarded.

7. With these contentions, it was prayed that the present appeal may be allowed and the impugned order may be modified accordingly.

8. Per contra, learned counsel for the respondent/allottees contended that the impugned order passed by the Authority is just and fair and is as per the Act and rules. She

asserted that there is no merit in the appeal and the same deserves to be dismissed.

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

10. The respondent/allottees were allotted a unit bearing No.1714, 17th floor in the project of the appellant/promoter, "Ocus 24K" Sector 68, Gurugram, having a super area of 687 sq. ft. Subsequently, this unit was changed to another unit bearing no.1417 measuring 733 sq. ft of super area. The agreement between the parties was executed on 18.04.2014. The total sale consideration of the unit was Rs.67,66,950/-. The respondent/allottees had paid an amount of Rs.80,95,259/- (as per the lodger dated 09.08.2021) to the appellant/promoter. The Occupation Certificate was received by the appellant on 17.07.20219 and it issued the offer of possession on 23.07.2019.

11. The only contention raised by learned counsel for the appellant in this appeal is regarding the entitlement of the appellant/promoter for considering a period of six months over a period of 60 months for arriving at the due date for delivery of possession in terms of clause 11(a) read with clause 14 of the agreement which are reproduced as below:-

"11 (a) Schedule for possession of the Said Unit

The Company based on its present plans and estimates and subject to all just exceptions

endeavors to complete construction of the Said Building/Said Unit within a period of sixty (60) months from the date of this agreement unless there shall be delay or failure due to department delay or due to any circumstances beyond the power and control of the Company or Force Majeure conditions including but not limited to reasons mentioned in clause 11(b) and 11(c) or due to failure of the Allottee(s) to pay in time the Total Price and other charges and dues/payments mentioned in this Agreement or any failure on the part of the Allottee(s) to abide by all or any of the terms and conditions of this Agreement. In case there is any delay on the part of the Allottee(s) in making of payments to the Company then notwithstanding rights available to the Company elsewhere in this contract, the period for implementation of the project shall also be extended by a span of time equivalent to each delay on the part of the Allottee(s) in remitting payment(s) to the Company.”

“14. Failure to Deliver Possession: Remedy

Subject to the terms and conditions of the Agreement, in case of any delay (except for Force Majeure clause 44 and conditions as mentioned in clause 11(b) and 11(c) by the Company in completion of construction of Said Unit beyond 6 months from date of expiry of said 60 months and receiving occupation certificate of the Said Complex and the Allottee(s) not being in default/breach of the terms and conditions set out in the

Application/Agreement, the Company shall pay compensation @ Rs.215.28/- per sq. mtr. (Rs.20/- per sq. ft. approx.) of the Super Area of the Said Unit per month or any part thereof only to the first named Allottee(s) and not to anyone else till the date of grant of occupation certificate. The Allottee(s) agrees and confirms that the compensation herein is a just and equitable estimate of the damages which the Allottee(s) may suffer and the Allottee(s) agrees that it shall have no other right/claims whatsoever. The adjustment of such compensation shall be done only at the (...not legible...) final statement of accounts before the execution of the conveyance deed of the Said Unit to the Allottee(s) first named.”

12. In accordance with the aforementioned provisions stated in Clause 11(a) of the agreement, the appellant is obligated to provide possession of the unit within a 60-month period from the date of agreement. However, upon careful examination of Clause 14, it becomes evident that the allottees are entitled to receive compensation @ Rs 215.28 per square meter (approximately Rs. 20 per square foot of super area) for each month of delay beyond 6 months following the expiration of the stipulated 60-month period. However, instead of the said compensation of @ Rs 215.28/ per sq. mtr (Rs.20/- per sq. ft. approx. of super area), the Authority has awarded a delay possession interest which is accepted by both parties.

Hence, pursuant to Clause 14 of the agreement, the interest for delayed possession, as determined by the Authority, will commence six months after the completion of the aforementioned 60-month period from the date of agreement. It is also observed that the appellant's argument holds merit; the complainants, who are the respondent/allottees herein, have sought interest for delayed possession after the 66-month, encompassing the 6-month period in question. A scrutiny of the relief sought by the respondent/allottees indicates their intention to claim interest for delayed possession after the completion of the specified 60 months and following grace period, although the exact duration of said grace period remains unspecified. Given that the date of the agreement is April 18, 2014 and considering 66 months period as stipulated period for offering the possession of the unit, the interest for delayed possession would start from October 18, 2019. The Authority has awarded interest for delayed possession up to the date of offer of possession plus two months, which is September 23, 2019, a point that is undisputed in the current appeal. Consequently, the respondent/allottees are not entitled to any interest for delayed possession as the stipulated date for offer of possession with 66 months period works out to be October 18, 2019 which is latter than the date up to which the interest has been awarded i.e. September 23, 2019.

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13. No other point was argued before us.

14. Thus, keeping in view our aforesaid discussion, the present appeal filed by appellant/promoter is allowed as per the aforesaid observations and the impugned order is modified accordingly.

15. The amount of Rs.3,25,900/- 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 appellant, 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. File be consigned to the record.

Announced:
August 29, 2023

Justice Rajan Gupta
Chairman
Haryana Real Estate Appellate Tribunal

Anil Kumar Gupta
Member (Technical)