

**BEFORE THE HARYANA REAL ESTATE APPELLATE
TRIBUNAL**

**Appeal No. 458 of 2021
Date of Decision: 19.07.2023**

M/s Orris Infrastructure Private Limited, Corporate Office at
J-10/5, DLF, Phase-2, Gurugram-122002.

Appellant

Versus

Mr. Sajjan Kumr, Resident of Flat No.204, 2nd Floor, Tower B
3, Orris Carnation Residency, Sector 85, Gurugram, Haryana-
122004.

Respondent

CORAM:

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

Argued by: Ms. Sanya Thakur, Advocate
for the appellant.

Mr. Ishtneet Bhatia, Advocate
for the respondent.

ORDER:

RAJAN GUPTA, CHAIRMAN (Oral):

The present appeal has been preferred against the order dated 23.01.2020 passed by Haryana Real Estate Regulatory Authority, Gurugram (hereinafter referred to as 'the Authority'), in Complaint No.2067 of 2019, under the provisions of Real Estate (Regulation and Development) Act,

Appeal No. 458 of 2021

2016 (hereinafter called 'the Act') and the rules made thereunder.

2. M/s Orris Infrastructure Private Limited-Promoter (appellant herein), promised to set up a project in the name and style of 'Carnation Residency' Sector 85, Gurugram, and issued a brochure for this purpose. Allottee Sajjan Kumar (respondent herein) submitted his application for one unit measuring 1350 sq. ft. An 'Apartment Buyer Agreement' (for brevity 'the agreement') was executed between the parties on 01.09.2010 (Annexure A-1). Due date of delivery of possession was stated to be 01.03.2014 i.e. thirty six months from the date of execution of the agreement plus six months grace period. However, possession was actually offered on 06.10.2015. The allottee took possession of the unit but remained dissatisfied with the facilities provided in the unit. He also had grouse against the delay in handing over of possession. In the year 2019, he filed the instant complaint before the Authority. First date of hearing was 24.09.2019. The Authority found that due date of possession was to be calculated from the date of agreement i.e. 01.09.2010. As per this calculation, the due date of delivery of possession was 01.03.2014. The Authority allowed six months grace period to the promoter as per clause 10.1 of the agreement.

Appeal No. 458 of 2021

3. After considering facts and circumstances of the case, the Authority came to the conclusion that the promoter had acted in contravention of provisions of the Act and rule 28(2) (a) of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter called the 'Rules'). The Authority further observed that the promoter had failed to fulfill its obligation to hand over the possession by the due date and thus proceeded to award delay possession charges along with prescribed rate of interest. The operative part of the order dated 23.01.2020 passed by the Authority reads as under:-

"11. Hence, the Authority hereby pass the following order and issue the following directions under section 34(f) of the Act:

(i) The respondent is directed to pay interest at the prescribed rate of 10.20% p.a. for every month of delay from the due date of possession i.e. 01.03.2014 till the offer of possession i.e. 06.10.2015 to the complainant within 90 days from the date of decision.

(ii) The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.

12. Complaint stands disposed of.

13. File be consigned to registry."

Appeal No. 458 of 2021

4. Appellant-promoter has assailed the impugned order primarily on two grounds:-

- (i) That the Act is not applicable as the appellant had obtained the 'Occupation Certificate' (OC) prior to coming into force of the Act.
- (ii) That the allottee remained silent for a long period and filed the instant complaint after expiry of the limitation period.

5. Learned counsel for the respondent-allottee has vehemently opposed the aforesaid pleas. According to him, the project was an 'ongoing project', so, the provisions of the Act are applicable. He placed reliance on the judgment of the Hon'ble Supreme Court in ***Newtech Promoters & Developers Pvt. Ltd. vs. State of UP & Ors. Etc. 2022(1) R.C.R. (Civil) 357***. He further submits that the plea of limitation was never raised by the appellant-promoter before the Authority. In this case, the allottee had a continuing cause of action as would be evident from the repeated representations made by him. As his representations did not elicit any response from the promoter, he was left with no option but to approach the Authority with the instant complaint.

Appeal No. 458 of 2021

6. We have heard learned counsel for the parties at length and given due consideration to the arguments raised. We have also perused the record available before us.

7. We find no substance in the plea of learned counsel for the appellant that the provisions of the Act are not applicable to the instant case. There is nothing on record to show that the promoter has been issued the Completion Certificate for the project till now. A query was raised in this regard, but, no clear answer is forthcoming on behalf of the promoter. In view of the judgment in **Newtech Promoters'** case (Supra), the retroactive operation of the Act is established. There being no completion certificate, we are of the view that it is an 'ongoing project' and squarely falls within the ambit of the Act.

8. As regard the issue of limitation, we find no merit in the plea of the appellant. The appellant-promoter in its reply filed before the Authority, has admitted that there were certain defects in the construction. Relevant para of the reply reads as under:-

“j. The complainant did not takeover possession on some minor issues like seepage in a room, sanitary fittings having rusted etc. However, the respondent was not responsible as the

Appeal No. 458 of 2021

seepage was not due to any structural defect but due to the rainy season and the sanitary fittings also rust easily in rainy season particularly when they are not in use. However, the respondent agreed to rectify the same. But the moisture in the walls does not dry so quickly, hence some time was spent. But the complainant made a mountain of a molehill by writing the email dated 20.12.2015 and refused to take over possession.”

9. Perusal of the aforesaid para shows that the grievance of the allottee was genuine and he had continuing cause of action to invoke the jurisdiction of the Authority. Besides, there is nothing on the record to show that the plea of limitation was seriously pressed by the promoter before the Authority.

10. No other legal infirmity has been pointed out in the order passed by the Authority. We, thus, find no merit in this appeal. Same is hereby dismissed.

11. The amount deposited by the appellant-promoter i.e. Rs.7,52,850/- with this Tribunal in view of proviso to Section 43(5) of the Real Estate (Regulation and Development) Act, 2016, along with interest accrued thereon, be sent to the Haryana Real Estate Regulatory Authority, Gurugram, for

Appeal No. 458 of 2021

disbursement to the respondent-allottee subject to tax liability, if any, as per law and rules.

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

13. File be consigned to the record.

Justice Rajan Gupta
Chairman
Haryana Real Estate Appellate Tribunal

Inderjeet Mehta
Member (Judicial)

Anil Kumar Gupta
Member (Technical)

19.07.2023
cl

Judgment-Haryana Real Estate Appellate Tribunal