

**BEFORE THE HARYANA REAL ESTATE APPELLATE  
TRIBUNAL**

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**Appeal No.1382 of 2019**

**Date of Decision: 13.10.2023**

M/s Pivotal Infrastructure Private Limited, 2<sup>nd</sup> floor, Shubham Tower, NIT Faridabad, Haryana.

Appellant

Versus

1. Mr. Bhupesh Mittal, House No.1482, Sector-3, near Tagore Academy Public School, Faridabad, Haryana.
2. Ansal Buildwell Limited 118, UFF, Parkash Deep Building, 7, Tolstoy Marg, Connaught Place, New Delhi.

Respondents

**CORAM:**

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

**Argued by:** Mr. Karan Kaushal, Advocate,  
for the appellant.

Mr. Bhupesh Mittal-respondent no.1,  
in person.

**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 (hereinafter called as 'the Act') against the impugned order dated 14.11.2018 passed by the Haryana Real Estate Regulatory Authority, Panchkula (for short 'the Authority')

whereby Complaint No. 590 of 2018 filed by the respondent no.1/allottee was disposed of with the following directions:-

*“4. The Authority was apprised by the counsels for the parties that various points relating to the demand raised against the complainant has been already dealt with by this Authority in the previous complaint No.49 of 2018 titled as Parkash Chand Arohi Versus M/s Pivotal Infrastructure Pvt. Ltd. decided on 04.09.2018. So, the learned counsel for the parties have requested that the issues concerning the legality and propriety of various demands and manner about the arriving at calculations under various heads may be decided in terms of the judgment passed in complaint No.49 of 2018 ibid.*

*5. Consequently, the present complaint is disposed of with the directions that the respondent shall re-calculate the various amounts raised in the impugned demand in the manner as already decided in complaint case No.49 of 2018. Parties shall remain bound by the basic principles illustrative in the said judgment and the respondent shall supply all necessary details to complainant after making calculation per decision of said judgment. File be consigned to the record room.”*

2. As per averments in the complaint, an ‘Apartment Buyer’s Agreement’ (for brevity ‘the agreement’) was executed between the parties on 28.05.2012 for an apartment bearing

no.103, first floor, Tower No.12A, measuring 1485 sq. ft super area in the project of the appellant named "Royal Heritage", Sector-70, Faridabad. As per clause 18 of the agreement, the appellant was to deliver possession of the apartment within 42 months from the date of execution of the agreement/start of construction. Thus, the due date of possession of the apartment is 28.11.2015. The respondent no.1/allottee had already paid an amount of Rs.32,13,394.84, which is 95% of the total sale consideration of Rs.32,95,720/-. However, the possession of the unit has yet not been handed over to the allottee, though, the offer of possession has been made on 08.12.2017. With this offer of possession, an additional amount of Rs.6,92,753.16 was received towards the full and final settlement. It was further pleaded that the appellant has charged an amount of Rs.1,26,571.20 towards the enhanced EDC and also imposed interest of Rs.1,11,078/- over the remaining payment of Rs.1,00,000.01. The demand of Rs.40,072.32 was also raised on account of VAT. A sum of Rs.1,52,568.85 was also levied on account unlawful demand as Service Tax. The grievance of the respondent no.1 /allottee is that the appellant has raised illegal demand of Rs.6,92,753.16 under various heads and has not compensated for two years delay in delivery of possession.

3. With these pleadings the allottee has sought the following relief in the complaint:-

- “1. Direct the Opposite Parties to withdraw their contemptuous demand of the balance Enhanced EDC of R100,000.01 together with the interest levy on the same in lieu of the stay on the same by the Hon’ble High Court of Punjab & Haryana.
2. Direct the Opposite Parties to adjust the payment of R1,26,571.20 (which they fleeced on the pretext of EEDC) against the outstanding balance of the Complainant;
3. Direct the Opposite Parties to withdraw the arbitrary interest levy of R2,04,282/- (Two Lakh Four thousand Two hundred Eighty two only);
4. Direct the Opposite Parties to withdraw their arbitrary demand of the VAT of R 40,072.32 as per the Order of the Hon’ble Supreme Court of India;
5. Direct the Opposite Parties to adjust the DELAY COMPENSATION of R 1,78,200.00 (Rupees One lac Seventy Eight thousand Two hundred only) in lieu of the delay of 24 months (upto 28<sup>th</sup> NOV 17) together with an interest @ 24% p.a. for the period 28<sup>th</sup> NOV 17 till such a time that the same has been adjusted by the Opposing Party against the outstanding balance of the

*Complainant or until the date of settlement or disposal of this complainant;*

6. *Direct the Opposite Parties to refund (together with an interest @ 10%) the sum of R 1,52,568.85 collected by the Opposite Parties as Service Tax from the Complainant(s) in the light of the Judgment of 3<sup>rd</sup> June 2016 of the Hon'ble High Court of Delhi in Suresh Kumar Bansal v. Union of India;*
7. *Direct the Opposite Parties to clear the position of licensing of the land for the major chunk of land parcel not licensed in their name and whereon this project is being developed and to furnish before this Hon'ble Authority and to its satisfaction the corrective steps taken to resolve the same;*
8. *Direct the Opposite Parties to pay a compensation of R5,00,000/- (Rupees Five Lakh Only) to the Complainant(s) for mental agony, time invested in incessant follow-ups with the Opposite Parties and harassment caused to the Complainant(s) as a result of their deliberate acts and omissions on the part of the Opposite Parties;*
9. *Direct the Opposite Parties to pay a sum of R 1,00,000/- (Rupees One Lakh only) to the Complainant(s) as a whole towards litigation costs.*

*SUMMARY CALCULATION – The Total Balance payable as per the statement of account received from the Opposite Party as on 1<sup>st</sup> April 2018 is a total of R 6,92,753.16 (R 4,88,471.16 against various installments and R2,04,282 against interest accrued) which includes the balance EEDC payment together with the interest accrued as mentioned above.*

*Whereas once the aforementioned arbitrary and contemptuous demands amounting to –*

- (i) Towards delay payment R 1,78,200/-*
- (ii) Towards EEDC Collected R 1,26,571/-*
- (iii) Interest accrued thereof @ 24% for 5 yrs  
R 1,51,885.20*
- (iv) Balance EEDC demanded R 1,00,000.01*
- (v) Interest demanded thereto R1,11,078/- (or actual)*
- (vi) Service Tax levied R 1,52,568.85*
- (vii) VAT R 40,072.32*

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TOTAL R 8,60,375.38  
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*are withdrawn/adjusted, the total balance would remain; LAST DEMANDED R 6,92,753.16 – (MINUS) R 8,60,375.38 = R1,67,622.22 which leaves the Complainant with a net CREDIT BALANCE OF ONE LAC SIXTY SEVEN THOUSAND SIX HUNDRED TWENTY TWO AND TWENTY TWO PAISE ONLY.*

*Which if found to the contrary the Complainant is ready to pay as per the directions of this Hon'ble Authority*

- ix. *Direct the Opposite Parties to complete the Finishing of the Complainant's Flat in all respects making it livable and the building, the Project and its neighbourhood approachable without any further delay;*
- x. *Direct the Opposite Parties to deliver the possession of the Complainant's Flat complete in all respects with Registration and Execution of the Conveyance Deed without any further delay in compliance to all of the above directions of this Hon'ble Authority;*
- xi. *Restrain the Opposite Parties from levying any adverse interest/charges for the period starting the date of issue of legal notice i.e. 11<sup>th</sup> May 18 to the date of final Order in this matter by this Hon'ble Authority.*
- xii. *Grant any other and further relief in favor of the Complainant(s) as this Hon'ble Authority may deem fit and proper in the fact and circumstances of the case."*

4. The complaint was resisted by the appellant/promoter by filing reply, wherein it was submitted that the appellant is entitled for demand raised by it as per agreement executed between the parties. Controverting all the pleas raised in the complaint, the appellant/promoter prayed for dismissal of the complaint being without any merits.

5. The Authority after considering the pleas raised by the parties, passed the impugned order dated 14.11.2018, the

relevant part of which has already been reproduced in the opening para of this order.

6. We have heard learned counsel for the appellant, respondent no.1/ allottee – Mr. Bhupesh Mittal, in person and have carefully examined the record.

7. It is contention of the appellant that the authority has wrongly recorded in the impugned order dated 14.11.2018 that the counsel of the Appellant had excepted and replied in affirmative before the authority to the principles laid down in complaint number 49 of 2018 and also the authority has no jurisdiction to adjudicate any penalty or compensation under section 12, 14, 18 and 19 of the Act and the matter could only be adjudicated by the Adjudicating Officer. The further submission of the appellant is that the Authority has wrongly calculated the deemed date of physical possession as 28.11.2015 which is not as per agreed terms of the agreement dated 28.11.2012. The further assertion is that the Authority has granted relief to the allottee by holding the deemed date of physical possession as 28.11.2015, which is not even 42 months from the date of agreement dated 28.11.2012. The further contention raised by learned counsel of the appellant is that the Act cannot be applied retrospectively or retroactively in the absence of any express provision in the Act. He asserted that the interest awarded by the Authority @ SBI highest



Marginal Cost Lending Rate Plus 2% per annum on the amount received prior to the enactment of the Act and Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter called as 'rules'), is not legally valid and is against the provision of the Act and the rules framed thereunder. He contended that the authority has restrained the appellant from demanding GST on account of deemed date of possession having already lapsed prior to coming into effect of GST but the appellant has right to recover Service Tax and VAT as on the deemed date of delivery of possession the appellant was entitled to recover Service Tax and VAT as per applicable rates on entire consideration.

8. With these pleas, he contended that the impugned order dated 14.11.2018 may be set aside and the appeal may be allowed.

9. On the other hand, Shri Bhupesh Mittal-allottee (respondent no.1/allottee) contended that despite the offer of possession was made 08.12.2017, he received possession of the unit on 31.05.2023, following the Tribunal's order dated 19.04.2023. He asserted that the appellant unnecessary delayed the possession to cause him undue distress and he suffered considerable hardship due to the delayed handover of the unit. He contended that there is no merit in the appeal and the same deserves to be dismissed.

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10. We have duly considered the aforesaid contentions of both the parties.

11. The brief facts of the case are that the agreement between the parties was executed on 28.05.2012 for the unit bearing no. 103, first floor, Tower No.12A, measuring 1485 sq. ft. super area in the project of the appellant named "Royal Heritage", Sector-70, Faridabad. The respondent no.1/allottee at the time of filing of the complaint had already paid an amount of Rs.32,13,394.84 of the total sale consideration of Rs.32,95,720/-. The appellant issued offer of possession on 08.12.2017 with a demand of Rs.6,92,753.16 as full and final settlement. However, the said amount was not paid by the respondent No. 1/allottee and he filed complaint for possession opposing the said demand.

12. The appellant has challenged the impugned order dated 14.11.2018, arguing that the authority has incorrectly noted in the order that the counsel of the Appellant had agreed and responded affirmative before the authority to decide the complaint on the principles laid down in complaint number 49 of 2018, even though no such consent was given. The appellant filed an application for rectification of the order dated 14.11.2018 stating that the counsel of the Appellant had never given consent to pass the consensual order. The said

application was disposed of by the authority vide its order dated 21.08.2019 that the applicant even now in the rectification application is not disputing the principal laid down in complaint number 49 of 2018. However, the appeal is now being decided on the merits of issues taken in the grounds of appeal.

13. The appellant has contested that the due date of physical possession has not been wrongly calculated by the authority. We do not find any error in the findings of the Authority with respect to the determination of the due date of the offer of possession of the unit. Admittedly, according to clause 18 of the agreement, the appellant was to deliver possession of the apartment within 42 months from the date of execution of the agreement. As per the record, the agreement was executed on 28.05.2012. Consequently, the due date of possession for the apartment is November 28, 2015. Therefore, the appellant's claim that due date of physical handing over of the possession has been wrongly arrived at by the Authority lacks merit. Nonetheless, it's worth noting that there is a typographical error in recording the date of agreement in the impugned order, and the appellant is unfairly exploiting this error.

14. The Hon'ble Supreme Court in **M/s Newtech Promoters and Developers Pvt. Ltd. v. State of UP & others**

**2021 SCC Online SC 1044**, held that the jurisdiction to adjudicate the complaints regarding delayed possession interest and the obligations arising out the performance the agreement is with the Authority, while matters related to compensation fall under the purview of the Adjudicating Officer. In the present case in hand, the complaint filed by the respondent no.1/allottee is regarding delay possession interest and other obligations cast upon the appellant promoter under the Act rather than compensation. Consequently, it is the Authority and not the Adjudicating Officer, which has the jurisdiction to adjudicate the matter under the Act. Also, as per the above said judgment of the Hon'ble Supreme Court, the provisions of the Act are applicable to the projects which were ongoing at the date of enforcement of the Act. The appellant's project qualifies as an ongoing project as of the Act's enforcement date, the appellant had not obtained the completion certificate from the competent authority. Therefore, the authority has every jurisdiction to adjudicate the complaint filed by the complainant/Respondent No1- allottee. The provisions of the Act being retroactive in nature, will apply to the present project.

15. We also affirm that the authority has correctly applied the prescribed interest rate in accordance with Rule 15 of the rules. In accordance with 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 at the prescribed rate for each month of delay until possession is handed over. The prescribed rate is mentioned in rule 15 of the Rules, as SBI highest Marginal Cost Lending Rate Plus 2%.

16. So far as the contention raised on behalf of appellant regarding GST/VAT is concerned, the authority has relied upon its previous judgment in complaint no.49 of 2018 titled 'Parkash Chand Arohi vs. M/s Pivotal Infrastructure Pvt. Ltd. decided on 04.09.20218. In the instant case, undisputedly the possession of the unit was required to be delivered by 28.11.2015 and the incidence of GST came into operation thereafter on 01.07.2017. So, the allottee cannot be burdened to discharge a liability which had accrued solely due to promoter's own fault in delivering timely possession. Regarding recovery of VAT, the promoter was advised to consult a service tax expert and convey to the allottee the amount which he is liable to pay as per the actual rate of VAT fixed by the government for the period extending up to the deemed date of offer of possession i.e. 28.11.2015.

17. No other point was argued before us.

18. Thus, keeping in view our aforesaid discussion, we find no legal infirmity with the impugned order. The present appeal filed by appellant/promoter deserves to be dismissed. We have observed that the appellant has unduly delayed the possession of the unit to the allottee. The due date for delivery of physical possession of the unit, as per terms of the agreement, was 28.11.2015. However, the offer of possession was made to the allottee on 08.12.2017, accompanied by a demand of Rs.6,92,753.16. At the time of filing of the complaint, the respondent no.1/allottee had already paid Rs.32,13,394.84, which was a substantial portion of the total sale consideration of Rs.32,95,720/-. The actual possession of the unit was handed over to the allottee on 31.05.2023 after our order dated 19.04.2023 in the present appeal. Given that the appellant had received almost the entire consideration and held a dominant position, it is evident that the appellant unreasonably delayed delivering possession of the unit. Furthermore, the appellant's claim of Rs.6,92,753.16 has also been determined to be invalid. In this situation, it is the appellant who is to make payment to the respondent No. 1/allottee, rather than the other way around. Moreover, the appellant also unnecessarily dragged the respondent No.1/allottee into litigation, prolonging it to more than five years. In light of these circumstances, we deemed it fit to

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impose a cost of Rs 1.0 lakh on the appellant payable to the Respondent no. 1/allottee. If this cost is not paid within 90 days from the date of this order, the appellant shall be liable to pay a penalty of Rs 500/- per day from the date of this order till the payment of the cost to the respondent no1/allottee.

19. Consequently, the present appeal is dismissed with the costs as above.

20. The amount of Rs.1,74,450/- 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 no.1/allottee subject to tax liability, if any, as per law.

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

22. File be consigned to the record.

Announced:  
October 13, 2023

Justice Rajan Gupta  
Chairman  
Haryana Real Estate Appellate Tribunal

Anil Kumar Gupta  
Member (Technical)