

**BEFORE THE HARYANA REAL ESTATE APPELLATE
TRIBUNAL**

Appeal No.99 of 2022

Date of Decision: 03.11.2023

Chetna Lodha, E 72, Second Floor, Bengali Colony, Mahavir
Enclave near Sulabh Public School, New Delhi-110045.

Appellant

Versus

Magic Eye Developers Private Limited Office, GF – 09, Plaza M-
6, District Centre, Jasola, New Delhi-110025.

Respondent

CORAM:

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

Argued by: Mr. Pranjal P. Chaudhary, Advocate,
for the appellant.

Mr. R.S. Baweja, 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/allottee
against impugned order dated 25.08.2021 passed by the
Haryana Real Estate Regulatory Authority, Gurugram (for
short, 'the Authority'), whereby the Complaint No. 800 of 2021

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filed by the appellant/allottee was disposed of with the following directions:

“33. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the Authority under Section 34(f):

- i. The respondent is directed to pay interest at the prescribed rate of 9.30% p.a. for every month of delay on the amount paid by the complainants from the due date of possession i.e. 19.08.2020 till 07.12.2020 i.e. expiry of 2 months from the date of offer of possession (07.10.2020). The arrears of interest accrued so far shall be paid to the complainants within 90 days from the date of this order as per rule 16(2) of the rules.*
- ii. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e. 9.30% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottees, in case of default i.e. the delayed possession charges as per section 2(za) of the Act.*

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iii. *The respondent shall not charge anything from the complainants which is not the part of the agreement, however, holding charges shall not be charged by the promoter at any point of time even after being part of agreement as per law settled by Hon'ble Supreme Court in civil appeal no.3864-3899/2020 decided on 14.12.2020.*

34. *Complaint stands disposed of."*

2. The factual matrix of the case can be summed up as under: -

That Unit B2-808, measuring 700 sq. ft., in the project of the respondent/promoter 'The Plaza at 106, Sector 106, Gurugram' was provisionally allotted vide allotment letter dated 04.10.2012 to Smt. Ritu Batra wife of Shri Kamal Kant Batra and Shri Sudhir Kumar Bhalla son of Shri Surendra Kaur Bhalla (hereinafter referred as original allottees). The 'Buyer's Agreement' (hereinafter referred as 'the agreement') between the original allottees and the respondent/promoter was executed on 03.06.2013 for a sale consideration of Rs.40,58,000/- plus taxes of Rs.2,44,443/- i.e. total of Rs Rs.43,02,443/-. Subsequently, this unit was transferred to the present appellant/allottee Mrs. Chetna Lodha wife of Sh. Devendra Kumar Lodha, vide addendum agreement dated

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19.02.2020 to the original agreement dated 03.06.2013. The Occupation Certification (OC) was received by the respondent/promoter on 28.11.2019. However, the offer of possession was issued on 07.10.2020. The appellant/allottee filed complaint seeking the following relief:

- (i) *Direct the respondent to pay delayed possession charges at the prescribed interest rate i.e. 10.75% for every month of delay from the due date of possession till the handing over the possession on paid amount.*
- (ii) *Direct to waiver of CAM charges till 31st March 2021 as the builder is committed to waive off common maintenance charges for six months after possession of the units and also not started to provide the facility as committed in buyer builder agreement till now.*
- (iii) *Direct to the respondent to provide for third party audit to ascertain/measure accurate common area maintenance charges per sq. ft.*

3. The respondent/promoter resisted the complaint, controverting all the arguments raised by the appellant/allottee, and prayed for dismissal of the complaint.

4. We have heard learned counsel for the parties and have carefully gone through the record of the case.

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5. The appellant/allottee has submitted in the appeal that the original allottees acknowledged and submitted their undertaking through affidavit dated 31.01.2020 to the respondent/promoter that the respondent had promised to deliver the physical possession of the unit within 15 days from the date of submission of all documents vide letter dated 01.02.2020 (Para-d & Para-g at page 9 & 10 of the appeal). The addendum agreement was executed on 19.02.2020. The unit was handed over to the appellant on 07.10.2020 (Para-l at page 13 of the appeal).

6. Learned counsel for the appellant submitted that the authority while granting the delay possession charges has wrongly granted the grace period of six months on account of Covid-19 pandemic. He asserted that the delay in the project had occurred much prior to the spread of Covid-19 pandemic. The Occupation Certificate was issued to the respondent/promoter on 28.11.2019 i.e. much prior to the spread of Covid-19 pandemic, therefore, there is no effect of delay on account of the Covid-19 pandemic. He contended that even going by order No.9/3-2020 HARERA/GGM (Admn) dated 26.05.2020 issued by the authority; the respondent/promoter is not entitled for the grace period of six months on account of Covid-19 pandemic. The appellant/allottee is entitled for the

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delay possession interest w.e.f. the date of execution of the addendum agreement i.e. 19.02.2020 and not from 19.08.2020, as awarded by the authority. This contention was refuted by learned counsel for the respondent/promoter; he contended that the respondent/promoter is entitled for the grace period of six months on account of Covid-19 pandemic. He further contended that the order passed by the authority is correct and is in accordance with the Act, rules and regulations framed thereunder.

7. We have duly considered the aforesaid contentions of the parties.

8. Admittedly the agreement for the unit in question was executed between the original allottees and the respondent promoter on June 3, 2013. The appellant/allottee purchased the unit from the original allottees and an addendum agreement was executed on February 19, 2020 between the appellant/allottee and the respondent/promoter. The respondent/promoter received the occupation certificate on November 28, 2019. The offer of possession was issued on October 07, 2020. The appellant/allottee took possession of the unit on the same date the offer of possession was made to him i.e. on October 07, 2020. The authority has awarded delay

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possession interest w.e.f August 19, 2020 to December 7, 2020. The only issue pressed before us by the learned counsel for the appellant/allottee is that the authority while granting the delay possession interest has wrongly granted a grace period of six months on account of Covid 19 pandemic. From the pleadings of the parties, we observe that the respondent/promoter received the Occupation Certificate on November 28, 2019, and the parties executed the addendum agreement on February 19, 2020, which was well before the Covid-19 pandemic outbreak. Thus, we firmly believe that the respondent/promoter is not eligible for the six-month grace period due to the Covid 19 Pandemic as the effect of Covid 19 has been acknowledged w.e.f. March 15, 2020. It's important to note that we are not commenting any-thing about the veracity of any of the orders of the authority regarding pandemic-related delays particularly its order dated September 26, 2020. Additionally, the Authority allowed delayed possession interest upto two months after the offer of possession letter was issued on October 7, 2020. As per to the appellant/allottee's own contention, he took possession on the same day the offer was issued. Therefore, granting delayed possession interest for additional two months after the appellant/allottee already took possession is not reasonable.

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This two-month period for delayed possession interest should not be allowed. In light of these findings, the appellant/allottee is entitled to delayed possession interest from February 19, 2020, until October 7, 2020, rather than from August 19, 2020, to December 7, 2020, as per the impugned order.

9. No other point was argued before us.

10. Consequently, the appeal filed by the appellant/allottee is partly allowed and the impugned order is modified in the afore-mentioned terms.

11. No order as to costs.

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

13. File be consigned to the record.

Announced:
November 03, 2023

Justice Rajan Gupta
Chairman
Haryana Real Estate Appellate Tribunal

Anil Kumar Gupta
Member (Technical)