

**BEFORE THE HARYANA REAL ESTATE APPELLATE
TRIBUNAL**

Appeal No. 58 of 2022

Date of Decision: 18.09.2023

M/s Sobha Limited

Registered Office:

Sarjapur-Marathalli Outer Ring Road (OPR) Devarabishanhalli
Bellandur Post Bangaluru-560103, Karnataka.

Regional Office:

5th Floor, Rider House, Plot No.136-P, Sector-44, Gurugram-
122003, Haryana.

Appellant

Versus

1. Ms. Shweta Nagi, F-93, Richmond Park, DLF, Phase-IV,
Gurugram-122009, Haryana.
2. Mr. Arun Kumar Balavachil, F-93, Richmond Park, DLF,
Phase-IV, Gurugram-122009.

Respondents

CORAM:

Justice Rajan Gupta
Shri Anil Kumar Gupta,

Chairman
Member (Technical)

Argued by: Mr. Karanveer Hooda, Advocate,
for the appellant.

Mr. Gaurav Deep Goyal, Advocate,
for the respondents.

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') by the appellant-

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allottee against impugned order dated 16.09.2021 passed by the Haryana Real Estate Regulatory Authority, Gurugram (for short 'the Authority') whereby Complaint No. 2600 of 2021 filed by the respondent/allottees was disposed of with the following directions:-

- "i. The respondents are directed to pay the 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. 20.11.2016 till 10.06.2018 i.e. expiry of 2 months from the date of offer of possession (10.04.2018). 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 complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.*
- 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 respondents/promoters which is the same rate of interest which the promoters shall be liable to pay the allottees, in case of default i.e., the delay possession charges as per section 2(za) of the Act.*

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- iv. The respondents shall not charge anything from the complainants which is not the part of the unit buyer's agreement. The respondents are also not entitled to claim holding charges from the complainants/allottees at any point of time even after being part of unit buyer's agreement as per law settled by Hon'ble Supreme Court in civil appeal no.3864-3889/2020 decided on 14.12.2020."*

2. As per averments in the complaint, it was pleaded that the respondent/allottees entered into a unit buyer's agreement (hereinafter called as 'the agreement') on 20.05.2013 with the appellant/promoter at Gurugram and booked a residential unit bearing no.E-009A, Block-E, measuring built up area of 3493.15 Sq. ft. in the project being developed by the appellant/promoter in the name "International City" Sector-106, 108 and 109, Urban Estate, Gurugram, Haryana. The respondent/allottees in accordance with the terms of the agreement have made all payments in timely fashion as and when demanded by the appellant. The respondent/allottees have paid the entire sale consideration amounting to Rs.4,24,83,420/-. The due date of possession (including six months grace period and six months for changes incorporated in the said unit) as per the agreement elapsed in November, 2017. The Occupation Certificate (for short 'OC')

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was issued by the District Town Planner, Gurugram, vide office memo no.10642 dated 10.11.2017. The respondent/allottees sent several reminders for handing over possession to them but the possession was not given. The respondent/allottees have also paid the Interest Bearing Maintenance Security Deposit (IBMSD) amounting to Rs.6,98,630/- to the appellant as per the final payment request letter dated 04.05.2018, but despite full payment, the unit was not ready. The appellant finally vide email dated 18.06.2019 had intimated the respondent/allottees that the unit was ready for possession. The unit was finally handed over on 16.10.2019. The respondent/allottees served legal notice dated 07.09.2020 to the appellant demanding compensation amounting to Rs.3,31,849/- for 19 months delay in handing over possession of the unit to them.

3. With the aforesaid submissions, the respondent/allottees filed the complaint before the Authority seeking following relief:-

- i. To direct the appellant/promoter to pay delayed possession charges at the rate of Rs.10/- per square foot commencing from 20.11.2017 till the date of delivery of possession, amounting to Rs.6,63,698/- along with pendente lite and future interest @ 12% p.a. in respect of aforesaid unit in accordance

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with the terms and conditions of the agreement.

- ii. To direct the appellant/promoter to pay pendente lite interest @ 12% p.a. in respect of delayed possession charges till date of delivery of vacant, peaceful and physical possession of the aforesaid unit to the complainants.
- iii. To direct the appellant to pay an amount of Rs.1,00,000/- as litigation expenses and Rs.4,00,000/- as compensation towards severe mental agony and harassment caused to the complainants.

4. The complaint was resisted by the appellant/promoter on the ground of jurisdiction of the authority that the project of the appellant is not an 'ongoing project' as per rule 2(1)(o) of the Haryana Real Estate (Regulation & Development) Rules, 2017 (hereafter referred to as 'the rules') and some other technical grounds. It was pleaded that the appellant had already obtained the part completion certificate of the project on 17.10.2014 which is prior to the date of publication of the rules i.e. 28.07.2017. Hence, this project is not an ongoing project as per rule 2(1)(o)(i) and 2(1)(o)(ii) of the rules.

5. It was further pleaded that the proposed estimated time of 42+6 months from the date of the agreement dated 20.05.2013, which comes to 20.05.2017, was only for completing the construction of the unit and applying for the

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OC, which was duly applied on 26.07.2017, and not for handing over possession, as alleged. It was further pleaded that the present complaint has been filed by the respondent/allottees on 02.07.2021 after more than two years of taking possession of the said unit on 16.10.2019 and execution of sale deed on 18.10.2019 and therefore is not maintainable. The appellant after obtaining the OC on 10.11.2017, intimated respondent/allottees vide email dated 10.04.2018 for handing over of the possession after final payment, but the respondent/allottees requested certain modifications in the said unit and after that the respondent/allottees without any objection, demur or dispute, made payments of dues after which unit handover letter dated 18.06.2019 was issued and the respondent/allottees took peaceful physical possession without any objection, demur or dispute.

6. All other pleas taken by the respondent/allottees were controverted and the appellant/promoter sought dismissal of the complaint being without any merit.

7. We have heard learned counsel for the parties and have carefully examined the record of the case.

8. At the outset, learned counsel for the appellant contended that the appellant had already obtained the part completion certificate on 17.10.2014 and applied for OC on

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26.07.2017. Both these dates are prior to the publication of the rules i.e. 28.07.2017 and therefore, the said project is outside the purview of the jurisdiction of the Authority.

9. It was further contended that the respondent/allottees never protested while taking possession of the unit, and even at the time of execution of the sale-deed and therefore, acquiesced their rights to object delay possession charges. It was further contended that even as per the averments of the respondent/allottees in their complaint, they have mentioned the due date of possession as 20.11.2017 (the respondent/allottees themselves gave six months grace period as per the agreement and six months period for carrying of modifications/changes in the said unit as per the request/instructions of the respondent/allottees). However, the Authority without any prayer/arguments/amendments to this effect, on its own, decreased this period to 20.11.2016, which is not maintainable and is also not permissible in law. It was further contended that even as per the averments/relief sought/prayers of the allottees in their complaint, they have sought delay possession charges @ Rs.10/- per sq. ft. commencing from 20.11.2017 till the date of possession i.e. 16.10.2019, but, the learned Authority without any prayer/arguments/amendments to this effect, increased this

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amount to 9.30% per annum as interest on full amount of the unit in question which is beyond the prayer/relief sought by the respondent/allottees, which is not permissible in law. It was further pleaded that the grant of interest/compensation for the loss occasioned due to breaches committed by one party of the contract is squarely governed by the provisions of section 74 of the Contract Act, 1872 and no compensation can be granted de-hors the said section on any ground whatsoever.

10. With these submissions, it was contended that the impugned order dated 16.09.2021 passed by the Authority may be set aside and the appeal may be allowed.

11. Per contra, learned counsel for the respondent/allottees contended that the due date of possession was 20.11.2016 and the offer of possession/hand over was on 18.06.2019, and the conveyance deed was executed on 17.10.2019. It is the admitted case of the appellant that the respondent/allottees have already paid the consideration amount in timely fashion and even paid Interest Bearing Maintenance Security Deposit to the appellant. Despite this, the appellant exploited its position and advantage of the one-sided agreement contrary to the provisions of the RERA Act and the Rules and did not hand over the unit within

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the stipulated time frame, thereby causing huge monetary loss and harassment to the respondent/allottees. It is settled law that the award of compensation should be passed upon the finding of loss and injury and must relate to it.

12. It was further contended that the Authority has given the compensation within the purview of Section 18(1) of the Act and rule 15 of the Rules. He contended that interest has been granted as per Section 18 of the Act, whereas, Rs.10/- per sq. ft. per month of the unit is a compensation for the period of delay and therefore both are different. The respondent/allottees were eagerly waiting for their unit, which after much persistence and follow up was handed over by the appellant to the respondent/allottees on 16.10.2019.

13. He further contended that the OC has been issued on 10.11.2017, which is after the date of publication of the rules and therefore the provisions of the Act are applicable as per the judgment of the Hon'ble Supreme Court in **M/s Newtech Promoters and Developers Pvt. Ltd. v. State of UP & others 2021 SCC Online SC 1044.**

14. He further contended that the impugned order passed by the Authority is just and fair and there is no merit in the appeal and the same be dismissed.

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

16. Undisputedly, the agreement between the parties was executed for the unit bearing no.E-009A, Block-E, measuring built up area of 3493.15 Sq. ft. in the project of the appellant/promoter namely "International City" Sector-106, 108 and 109, Urban Estate, Gurugram, Haryana, on 20.05.2013. As per ledger summary report dated 14.06.2021 attached with the complaint, the respondent/allottees have already paid the entire sale consideration of Rs.4,24,83,419/-. The respondent/allottees have taken over the possession of the unit on 16.10.2019. Clause No.IV. (1) and Article XII (1) of the agreement regarding the period of delivery of possession is reproduced as below:

"IV. COMPENSATION AND POSSESSION:-

1. Subject to timely payments by the Buyer(s), the company shall propose to complete construction/development of the Unit on or before [42] months from the date of signing of this Agreement, subject to further grace period of [6] months to complete the construction of the unit and Force Majeure events as described in Article XII (1). It is however understood between the parties that various books comprised in the residential project shall be complete in phases and handed over accordingly. In the event of

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any default or negligence attributable to the buyer(s) in fulfillment of terms and conditions of allotment, the company shall be entitled to reasonable extension in delivery of possession of the Unit to the Buyer(s). No claim by way of damages/compensation shall lie against the company in case of delay in handing over possession on account of any of the said reasons and the company shall be entitled to appropriate extension of time.”

“XII (1) FORCE MAJEURE

- 1. For the purpose of this Agreement the Force Majeure events means and includes any cause beyond the reasonable control of the Company which prevents or impedes the due performance of this Agreement, and which, by due effort, the Company is unable to void or overcome through its effort. Force Majeure shall include, but not be limited to, events like earthquakes, typhoons, cyclones, floods, lightning, landslides, fire, explosions, plague, epidemic, lockouts, wars, rebellion, riot, strikes, civil commotion, invasion, act of foreign enemies, hostilities, civil war, any act of God, Governmental restrictions, shortage of steel and cements, inability to procure or general shortage of energy, equipment, facilities, materials or supplies, failure of transportation, shortage of labour, strikes and lock-outs, change in law, or any other acts or delays of the Governmental Authority/local*

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bodies or any other act or delay beyond the reasonable control of the Company.”

17. It is the argument of the appellant that the respondent/allottees in their complaint have themselves mentioned the due date of possession as 20.11.2017 (six months grace period as per the agreement and six months period for carrying modifications/changes in the unit), therefore, the due date of delivery of possession should be considered as 20.11.2017. The agreement was executed on 20.05.2013, the 42 months of delivery of possession period comes out to be 20.11.2016. The above said clauses provide a grace period of 6 months to complete the construction of the allotted unit and force majeure events. The appellant is not seeking any relief against the provision of force majeure or other events mentioned therein. The appellant in our considered view is entitled for six months grace period as per the provisions in the above said clauses of the contract for completing the construction. Further in the complaint the respondent/allottees themselves have sought compensation after the grace period of six months and six months for changes incorporated in the unit by the appellant on the instructions of the respondent/allottees. Thus, the due date of delivery of possession comes out to be 20.11.2017, which is also as per the pleadings of the respondent/allottees instead of

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20.11.2016 as considered by the Authority in the impugned order. Delay possession charges would be restricted in accordance with the above said observations.

18. Further, arguments of the appellant is that the provisions of the Act are not applicable as the appellant had obtained the part completion certificate on 17.10.2014 and applied for OC on 26.07.2017, which is prior to the enforcement of the Rules i.e. 28.07.2017. The appellant's argument that it obtained the part completion certificate on 17.10.2014 does not appear to be valid, because it received the Occupation Certificate on 10.11.2017, as completion/part completion certificate is issued after issuance of the OC. As per the judgment of the Hon'ble Supreme Court in case **M/s Newtech Promoters**' case (Supra), the provisions of the Act are applicable to the projects which were ongoing as on the date of enforcement of the Act. The appellant's project qualifies as an 'ongoing project' as of the Act's enforcement date i.e. 01.05.2017, 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 respondent/allottees. The provisions of the Act being retroactive in nature, will apply to the present project.

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19. It is the argument of the appellant that the respondent/allottees had sought the relief of compensation for delayed possession charges at the rate of Rs.10/- per sq. ft. amounting to Rs.6,63,698/- along with *pendente lite* and future interest @ 12% p.a. in accordance with the terms and conditions of the agreement, however, the Authority granted relief much beyond it was sought in the complaint and granted relief of interest @ 9.30% p.a. for every month of delay on the amount paid by the complainants. From the perusal of the reliefs sought by the respondent/allottees in the complaint, it is seen that the allottees have sought delay possession charges and some *pendente lite* interest till the date of delivery of physical possession of the unit. It is observed that the Authority has provided the relief of interest @ 9.30% per annum as per Section 18 of the Act and in accordance with rule 15 of the rules. Therefore, we do not find any legal infirmity in the order of the Authority as the same is in accordance with the Act and the Rules.

20. No other point was argued before us.

21. Consequently, the appeal filed by the appellant/allottee is partly allowed as per observations made in para 17 above and the impugned order is modified accordingly.

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22. The appellant has deposited the amount of Rs.61,37,516/- with this tribunal in view of proviso to Section 43(5) of the Act, 2016. The said amount, along with interest accrued thereon, be remitted to the learned Authority. The amount admissible to the respondent/allottees as per our above said observations be disbursed to respondent/allottees and the balance amount be disbursed to the appellant subject to tax liability, if any, as per law.

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

24. File be consigned to the record.

Announced:
September 18, 2023

Justice Rajan Gupta
Chairman
Haryana Real Estate Appellate Tribunal

Anil Kumar Gupta
Member (Technical)