

**BEFORE THE HARYANA REAL ESTATE APPELLATE
TRIBUNAL**

Appeal No.799 of 2022

Date of Decision: 06.10.2023

SS Group Private Limited through its authorised signatory Mr.
Chander Shekhar Sharma, Plot No.77, Sector 44, Gurugram-
122003 (HR)

Appellant

Versus

Pradeep Kapoor, 812, Dr. Mukherjee Nagar, New Delhi-110009

Respondent

CORAM:

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

Argued by: Mr. Aashish Chopra, Sr. Advocate, assisted by
Mr. Yashpal Sharma, Advocate,
for the appellant.

Mr. Nitin Kant Setia, 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 (hereinafter called as 'the Act') against the impugned
order dated 29.08.2022 passed by the Haryana Real Estate
Regulatory Authority, Gurugram (for short 'the Authority')
whereby Complaint No. 241 of 2019 filed by the

respondent/allottee was disposed of with the following directions:-

“24. Hence, the Authority hereby passes this order and issue 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/promoter is directed to refund the entire amount of Rs.54,99,036/- paid by the complainant along with prescribed rate of interest @ 10% p.a. from the date of each payment till the actual date of refund of the deposited amount within 90 days from the date of this order as per provisions of section 18(1) of the Act read with rule 15 of the rules, 2017.

II. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.”

2. As per averments in the complaint, the respondent/allottee booked a unit on 17.07.2012 in the project of the appellant/promoter namely “The Leaf” located at Sector 84-85, Gurugram, Haryana under the construction linked plan for a total sale consideration of Rs.86,24,250/-. The allotment letter was issued by the appellant on 10.09.2012, allotting a unit bearing no.21C, 2 BHK, having a approximate super area of 1575 sq. ft. in Tower-3 in the said

project at the basic rate of Rs.4,650/- per sq. ft. and Preferential Location Charges (PLC) of Rs.150/- per sq. ft., External Development Charges (EDC) of Rs.355/- per sq. ft., Infrastructure Development Charges (IDC) of Rs.35/- per sq. ft. The appellant demanded an amount of Rs.25,28,056/- before the execution of the 'Flat Buyer's Agreement' (hereinafter referred to as 'the agreement'). The agreement was executed between the parties on 16.09.2013. As per the agreement, the possession of the unit was to be handed over within 36 months from the date of execution of the agreement i.e. by 16.09.2016. The respondent/allottee had been paying diligently as per the payment schedule and paid more than Rs.50 lacs for the said unit. It was pleaded that the possession of the unit was being delayed and therefore the respondent/allottee filed complaint seeking following relief:-

- “(a) Direct the Respondent to refund the total amount paid to them amounting to Rs.55,01,955/- (Rupees Fifty Five Lakh One Thousand Nine Hundred and Fifty Five Only) along with interest calculated at the rate of 18% from 16.09/2016, till date of realization; and
- (b) Award pendente lite interest @ 18% per annum from the date of payment of amounts till realization; and

- (c) Grant the cost of litigation of Rs.50,000/- (Rupees Fifty Thousand Only) in favour of the Complainant and against the Respondent; and
- (d) Pass such other or further order(s), which this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case."

3. The complaint was resisted by the appellant/promoter on the ground that the respondent/allottee was neglecting the payment from the very initial stage and last payment was made by him on 09.11.2016 and since then, no payment has been made by the respondent/allottee. On the failure of the allottee to make the payment of the outstanding instalments, the appellant was constrained to raise demand through emails dated 07.04.2018, 07.06.2018, 23.07.2018, 31.07.2018 and 02.07.2019 and demand letters dated 19.03.2018 and 29.06.2019, reminder letters dated 16.11.2012 and 18.09.2018 requesting the respondent/allottee to make the outstanding payments but he did not pay any outstanding dues. It was further pleaded that out of the total sale consideration of Rs.86,24,250/-, the amount actually paid by the respondent/allottee is Rs.54,99,036/- and there is an outstanding amount of Rs.10,73,221/- including interest payable by the allottee as on 22.11.2019. Thus, the

respondent/allottee has failed to make payment of the above said outstanding amount.

4. With these pleadings, it was pleaded that there is no merit in the complaint and the same deserves to be dismissed.

5. The Authority after considering the pleas raised by the parties and the documents placed on the record, passed the impugned order dated 29.08.2022, the relevant part of which has already been reproduced in the opening para of this order.

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, while reiterating the pleadings of its reply to the complaint, contended that the respondent/allottee was making payments as per demands raised up till 09.11.2016. However, when the next demand for payment was raised by the appellant on 29.03.2018 for Rs.4,53,676/- as per the Schedule of Payments, not only did the allottee defaulted in making the said payment but has not even paid any amount since the said date. Resultantly, as on date, the allottee has only paid Rs.54,99,036/- i.e. less than 73% of the total consideration of Rs.86,24,250/-, excluding interest, towards the flat.

9. He further asserted that the appellant even sent repeated reminders through emails dated 07.04.2018,

07.06.2018, 23.07.2018, 31.07.2018 and 02.07.2019, demand letters dated 19.03.2018 and 29.06.2019, reminder letters dated 16.11.2012 and 18.09.2018 requesting the respondent/allottee to make the outstanding payments but he did not pay any outstanding amount. He contended that the allottee up to September, 2018 kept making false promises and giving misleading assurances to the appellant regarding payment of the amount due towards the said flat and had given the projection that he desired to clear the outstanding amount which was due from 29.03.2018. However, the allottee never came forward to clear the amount and has also not paid any amount thereafter. The allottee has, therefore, prima facie acted in contravention of the provisions of section 19(6) of the Act. He contended that the delay in handing over the possession, if any, was only on account of speculative investor-allottees withdrawing from the project and not making payments on time.

10. He submitted that the Swamih Investment Fund-I (Special Window for Completion of Construction of Affordable and Mid-Income Housing Projects), vide letter dated 23.07.2020, sanctioned an initial amount of Rs.110 Crores to complete the project which has enabled the appellant to conclude the construction of the building in which the unit of the allottee is situated and the appellant accordingly applied

for grant of Occupation Certificate (OC) on 09.12.2021 which was granted on 09.05.2022.

11. Learned counsel for the appellant further contended that in the matter of Shakti Singh vs. M/s Bestech India Limited, Appeal No.279 of 2019, this Tribunal allowed the promoter to forfeit 10% of the total sale consideration and returned the balance amount with interest as per rule 15 of the Haryana Real Estate (Regulation & Development) Rules, 2017 (hereafter referred to as 'the rules') from the date of passing of the order till realisation. Therefore, if at all, the appellant is to be held liable to refund the amount, the same, at the very minimum has to be on similar lines as those of the case of Shakti Singh (Supra).

12. With these submissions, it was pleaded that the appeal be allowed and the impugned order be set aside.

13. On the other hand, learned counsel for the respondent/allottee contended that the appellant failed to offer the possession of the unit within time as agreed in the agreement. The respondent/allottee is entitled for refund of the amount along with interest from the date of payment of each instalment in terms of Section 18 (1) of the Act. He asserted that the case of the allottee falls within the parameters of the pronouncement 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.*** So, the order passed by the Authority is in accordance with the provisions of the Act and rules framed thereunder and therefore, the appeal deserves to be dismissed.

14. We have duly considered the rival contentions of both the parties.

15. The undisputed facts of case are that the respondent/allottee had booked a unit on 17.07.2012 in the project of the appellant/promoter namely "The Leaf" located at Sector 84-85, Gurugram, under the construction linked plan. The total sale consideration of the unit was Rs.86,24,250/-. The appellant/promoter vide allotment letter dated 10.09.2012, allotted a unit bearing no.21C, 2 BHK, having approximate super area of 1575 sq. ft. in Tower-3 in the said project to the respondent/allottee at the basic rate of Rs.4,650/- per sq. ft. and Preferential Location Charges (PLC) of Rs.150/- per sq. ft., External Development Charges (EDC) of Rs.355/- per sq. ft., Infrastructure Development Charges (IDC) of Rs.35/- per sq. ft. The appellant raised demand of Rs.25,28,056/- before the execution of the agreement which was paid by the allottee. The agreement was executed on 16.09.2013. As per the agreement, the possession of the unit was to be handed over within 36 months from the date of the

execution of the agreement i.e. by 16.09.2016. The respondent/allottee had already paid an amount of Rs.54,99,036/- for the said unit. However, the appellant/promoter failed to deliver possession of the unit within the stipulated period.

16. There is no dispute regarding the fact that as per the agreement executed between the parties, the appellant was to offer the possession of the unit in the month of September, 2016 but the same was not delivered. The allottee filed complaint on 21.01.2019. Thus, on the date of filing of the complaint, there was delay of two years four months and five days in offer of possession. The occupation certificate of the buildings/towers where the allotted unit of the respondent/allottee is situated, was received on 09.05.2022 i.e. after filing of the complaint for refund of the amount paid by the allottee to the promoter. No reason for delay in completion of the unit or issue of Occupation Certificate has been mentioned in the grounds of appeal. Thus, it is observed that the delay in issue of the Occupation Certificate and issue of offer of possession is totally on account of the reasons attributed to the appellant. The respondent/allottee cannot be expected to wait endlessly for getting possession of the allotted unit for which he had paid a considerable amount towards the sale consideration. The case of the respondent/allottee is in

ambit of Section 18(1) of the Act, which states that if the allottee wishes to withdraw from the project and demands return of the amount received by the promoter in respect of the unit with interest on failure of the promoter to complete or unable to give the possession of the unit, the allottee is entitled for refund of the amount along with interest. The said case of the respondent/allottee is fully covered by the judgment of Hon'ble Supreme Court of India in **Newtech Promoters' case (Supra)**, wherein the Hon'ble Supreme Court held as under:

“25. The unqualified right of the allottee to seek refund referred under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period

of delay till handing over possession at the rate prescribed.”

17. The above said judgment in case of **M/s Newtech Promoters'** (*supra*) is fully applicable in the present case as the appellant/promoter has failed to complete the unit by the due date of possession i.e. September, 2016.

18. The appellant has relied upon case of Shakti Singh vs. M/s Bestech India Limited case (*Supra*) decided by this Tribunal. The facts of the present case are different from Shakti Singh's case (*Supra*). In that case the promoter had cancelled the unit on account of non-payment of the due instalments before the allottee had sought refund and filed complaint with the authority for the same. The appellant could not point out any infirmity with the impugned order passed by the Authority. Therefore, in our considered opinion, the respondent/allottee is entitled for refund of the amount along with interest as awarded by the Authority.

19. No other point was argued before us.

20. Consequently, we find no merit in the present appeal filed by the appellant/promoter and therefore, the same is hereby dismissed.

21. No order as to costs.

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22. The amount of Rs.1,00,75,716/- deposited by the appellant/promoter with this Tribunal in view of the proviso to Section 43(5) of the Real Estate (Regulation and Development) Act, 2016, along with interest accrued thereon, be sent to the learned Authority for disbursement to the allottee subject to tax liability, if any, as per law and rules.

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

24. File be consigned to the record.

Announced:
October 06, 2023

Justice Rajan Gupta
Chairman
Haryana Real Estate Appellate Tribunal

Anil Kumar Gupta
Member (Technical)

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