

**BEFORE THE HARYANA REAL ESTATE APPELLATE  
TRIBUNAL**

**Appeal No.728 of 2022  
Date of Decision: 21.12.2023**

M/s Pivotal Infrastructure Private Limited, Plot No.12, Sector  
4, Faridabad, Haryana.

Appellant

Versus

Ms. Saroj Mittal, # 29FF, The White House, Sector 57,  
Gurugram-122003.

Respondent

**CORAM:**

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

**Present:** Mr. Karan Kaushal, Advocate  
for the appellant.

Mr. Anubhav Bansal, Advocate,  
for the respondent.

**ORDER:**

**RAJAN GUPTA, CHAIRMAN:**

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/  
promoter against impugned order dated 08.09.2021 passed by  
the Haryana Real Estate Regulatory Authority, Gurugram (for  
short 'the Authority') whereby Complaint No. 3413 of 2020  
filed by the respondent/allottee was disposed of with the  
following directions:

- "i. The respondent is directed to pay interest at the prescribed rate of 9.30% p.a. for every month of delay from the due date of possession i.e. 05.02.2019 till the offer of possession i.e. 14.03.2020 + 2 months i.e. 14.05.2020 to the complainant as per section 19(10) of the Act.*

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- ii. *The arrears of such interest accrued from 05.02.2019 till 14.05.2020 shall be paid by the promoter to the allottee within a period of 90 days from the date of this order as per rule 16(2) of the rules.*
- iii. *The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.*
- iv. *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 allottee, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.*
- v. *The complainant is directed to take possession of unit within a period of one month from the date of this order.”*

2. As per averments in the complaint, the respondent/allottee was allotted flat no.0201, 2<sup>nd</sup> floor, Tower-T-8, in the project ‘Devaan” Sector-84, Gurugram, of the appellant/promoter under Affordable Housing Policy, 2013 (hereinafter referred to as ‘the Policy, 2013) of Government of Haryana, vide provisional allotment letter dated 27.04.2015. An ‘Apartment Buyer’s Agreement’ (hereinafter referred to as ‘the agreement’) between the parties was executed on 06.07.2015. The total sale consideration of the unit was Rs.19,46,000/-. As per respondent/allottee, she had paid an amount of Rs.20,91,169/- as per the demands raised by the

appellant till the filing of the complaint. As per clause 8.1 of the agreement, possession of the apartment was to be handed over to the respondent/allottee within a period of four years from the date of grant of sanction of building plans for the project or the date of receipt of all the environmental clearances. The date of environmental clearances is 05.02.2015, setting the due date of delivery of possession to 05.02.2019. The Occupation Certificate was obtained on 06.03.2020. The possession of the unit was delayed, therefore, the respondent/allottee filed complaint with the Authority seeking following reliefs:-

- “(i) Direct the respondent to deliver the possession of the apartment to the complainant as per the agreement.*
- “(ii) Direct respondent to pay an interest at the rate of 24% per annum from the date of payments till the date of possession of flat.”*

3. The appellant/promoter resisted the complaint on the ground of lack of jurisdiction of the authority and on other technical grounds. It was pleaded that the appellant/promoter is very well committed to the development of the real estate project and has already received the ‘Occupation Certificate’ vide letter dated 06.03.2020. The appellant/promoter has completed the construction of the project against various factors beyond its control such as ban on construction activity imposed by the NGT from time to time in the months of October, November, delay in permissions and sanctions by the

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Government Authorities. It was pleaded that the respondent/allottee herself breached the terms and conditions of the agreed payment by not paying the due amounts in a timely and agreed manner.

4. While controverting all the pleas in the complaint, the appellant/promoter pleaded for dismissal of the complaint, being without any merit.

5. The Authority after considering the pleadings of the parties, passed the impugned order dated 08.09.2021 which has already been reproduced in the opening para of this order.

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

7. After considering the reasons presented in the application for condonation of delay, it is observed that sufficient cause has been established for condoning the delay of 250 days in filing and 149 days in refiling the appeal. The decision to condone the delay is made in the pursuit of ensuring a fair and just adjudication of the case on its merits.

8. It was contended by learned counsel for the appellant that the project falls under the Policy, 2013. According to this policy, there is no provision holding the appellant responsible for delays in offering possession. The unit's price is fixed as per the policy, and the appellant has no control over determining the unit price independently.

Furthermore, the appellant is obligated to pay the renewal fee to the Town and Country Planning Department under the policy, which underwent an amendment on 17.11.2021. The appellant contends that due to these reasons, the project differs significantly from others in the market developed by different promoters and therefore, the interest imposed in the impugned order, set at 9.3% on the amount paid by the allottee, is deemed excessively high and unreasonable. The appellant asserts that the order was passed in a stereotypical manner and is not legally sustainable.

9. He further contended that the appellant could not complete the project in time due to COVID-19 pandemic and restrictions from the Hon'ble National Green Tribunal (NGT), Delhi for curbing pollution. It was further contended that the impugned order passed by the Authority is in mechanical manner and the same is liable to be set aside.

10. On the other hand, learned counsel for the respondent/allottee contended that the order of the Authority is just and fair and as per the Act and Rules. He asserts that there is no merit in the appeal and the same deserves to be dismissed.

11. We have duly considered the aforesaid pleadings of the parties and have carefully gone through the record of the case.

12. Undisputedly, the respondent/allottee was allotted flat no.201, 2<sup>nd</sup> floor, Tower-T-8, in the project 'Devaan' Sector-84, Gurugram, of the appellant/promoter under the Policy, 2013 of Government of Haryana vide provisional allotment letter dated 27.04.2015. An agreement between the parties was executed on 06.07.2015. The total sale consideration of the unit was Rs.19,46,000/-.The respondent/allottee till the filing of the complaint had paid an amount of Rs.20,91,169/-. As per clause 8.1 of the agreement, possession of the apartment was to be handed over to the respondent/allottee within a period of four years from the date of grant of sanction of building plans for the project or the date of receipt of all the environmental clearances. The date of environmental clearances is 05.02.2015, which sets, the due date of delivery of possession to 05.02.2019. The Occupation Certificate was obtained on 06.03.2020.

13. First contention raised by Mr. Karan Kaushal, learned counsel for the appellant is that is that the grant of interest @ 9.3% p.a. is in mechanical manner, is excessive and it cannot be applied to the projects being constructed under the Policy, 2013 and therefore the impugned order passed by the Authority is liable to be set aside. This plea of the appellant is also untenable. The interest @ 9.3% p.a. awarded by the authority is in terms of Section 18 of the Act and rule 15 of the rules. As per 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 for each month of delay until possession is handed over, at the prescribed rate. The prescribed rate is mentioned in Rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017, as SBI highest Marginal Cost Lending Rate Plus 2%. In view of this, we find no infirmity in the impugned order as it correctly grants the prescribed rate of interest according to Rule 15 of the Rules.

14. The other contention raised is that the appellant could not complete the project in time due to the reason that construction of the project depends upon various approvals, sanctions and permissions from different departments and even after completion of the construction of the project, the developer has to obtain various approvals from different authorities. Besides, the project could not be completed in time due to the restrictions from the Hon'ble National Green Tribunal (NGT), Delhi for curbing pollution. However, the appellant has failed to substantiate any of these claims with supporting evidence indicating that even if a force majeure event occurred for a short duration and it significantly impacted the project's progress due to restrictions by government authorities. Additionally, the appellant has not provided specific details regarding the stage of completion of the project and how the NGT's temporary work stoppage

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orders, if any, for a short period, aimed at addressing pollution, had a substantial and causative effect on the resulting delay. Consequently, based on the appellant's arguments and evidence presented, we find no basis to grant relief on the grounds asserted by it.

15. No other point was argued before us.

16. As a result of our aforesaid discussion, the present appeal filed by appellant/promoter has no merit and the same is hereby dismissed.

17. The amount of Rs.2,47,228/- 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/allottee subject to tax liability, if any, as per law.

18. No order as to costs.

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

20. Files be consigned to the records.

Announced:  
December 21, 2023

Justice Rajan Gupta  
Chairman  
Haryana Real Estate Appellate Tribunal

Anil Kumar Gupta  
Member (Technical)