

Appeal No. 734 of 2022

- “i. The respondent no.1 is directed to pay interest at the prescribed rate of 9.40% p.a. for every month of delay from the due date of possession i.e. 22.01.2020 till the offer of possession of the subject flat after obtaining occupation certificate from the competent authority plus two months or handing over of possession whichever is earlier.*
- ii. The respondent no.1 is directed to pay arrears of interest accrued within 90 days from the date of order and thereafter monthly payment of interest to be paid till date of handing over of possession shall be paid on or before the 10th of each succeeding month.*
- iii. The complainant is also directed to pay the outstanding dues, if any.*
- iv. The respondent no.1 shall not charge anything from the complainant which is not part of the builder buyer agreement.*
- v. The licence of the said affordable housing scheme had been expired and registration certificate granted by the authority also stands expired on 07.08.2020 after giving covid-19 relaxation and hence the copy of this order be endorsed to the planning branch of the authority for initiating penal proceedings.”*

2. As per averments in the complaint, the respondent/allottee was allotted flat no.1108, 11th floor, Tower-4, in the project ‘Riddhi Siddhi” Sector-99, Gurugram, of the appellant/promoter under Affordable Housing Policy, 2013 of Government of Haryana, vide provisional allotment letter dated 05.09.2015. The total sale consideration of the

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unit was Rs.19,98,000/-. An 'Apartment Buyer's Agreement' (hereinafter referred to as 'the agreement') between the parties was executed on 17.04.2016. 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 22.01.2016. Therefore, due date of delivery of possession comes to 22.01.2020. It was pleaded by the respondent/allottee that till the filing of the complaint, he had paid Rs.20,94,466/- to the appellant/promoter as per the demands raised by the appellant. However, the possession was delayed, therefore, the respondent/allottee filed complaint with the Authority seeking following reliefs:-

“(i) Direct the respondent no.1 to pay interest @ prescribed rate on delayed possession since due date of possession i.e. 21.01.2020 till actual date of possession.”

3. The appellant/promoter resisted the complaint on the ground of lack of jurisdiction of the authority and other technical grounds. It was pleaded that the appellant/promoter is very well committed to the development of the real estate project. The appellant/promoter has in all its bona-fides completed the construction of the project against various factors beyond its control but not limited to the annual bans to construction activity imposed by the NGT from time to time

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in the months of October, November, delay in permissions and sanctions by the Government Authorities. It was pleaded that the completion of the building is delayed by reason due to highly spread of Covid-19. It was pleaded that the respondent/allottee himself 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 taken 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 17.05.2022 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. Learned counsel for the appellant 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.

8. On the other hand, learned counsel for the respondent/allottee contended that the order of the Authority

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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.

9. We have duly considered the aforesaid pleadings of the parties.

10. Undisputedly, the respondent/allottee was allotted flat no.1108, 11th floor, Tower-4, in the project 'Riddhi Siddhi' Sector-99, Gurugram, of the appellant/promoter under Affordable Housing Policy, 2013 of Government of Haryana, vide provisional allotment letter dated 05.09.2015. The total sale consideration of the unit was Rs.19,98,000/-. An agreement between the parties was executed on 17.04.2016. 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 22.01.2016. Therefore, due date of delivery of possession comes to 22.01.2020. However, the possession was delayed despite the fact that the respondent/allottee till the filing of the complaint, had paid Rs.20,94,466/- to the appellant/promoter.

11. First contention raised by Mr. Karan Kaushal, on behalf of the appellant, is that the project could not be completed in time due to COVID-19 pandemic and restrictions from the Hon'ble National Green Tribunal (NGT), Delhi for

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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. Moreover, the appellant has not presented any legal precedents demonstrating that relief has been granted in similar cases related to the COVID-19 pandemic. Additionally, the appellant has not provided specific details regarding the stage of completion of the project and how the NGT's temporary work stoppage 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.

12. The other contention raised on behalf of the appellant is that the impugned order passed by the Authority is in mechanical manner and the same is liable to be set aside. This plea of the appellant is also untenable. 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

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grants the prescribed rate of interest according to Rule 15 of the Rules.

13. No other point was argued before us.

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

15. The amount of Rs.5,47,487/- 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.

16. No order as to costs.

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

18. File be consigned to the records.

Announced:
December 21, 2023

Justice Rajan Gupta
Chairman
Haryana Real Estate Appellate Tribunal

Anil Kumar Gupta
Member (Technical)