BEFORE THE HARYANA REAL ESTATE APPELLATE TRIBUNAL

Appeal No. 24 of 2023

Date of Decision: 06.02.2024

1. Selvaraj Damiyon Raju
2. Mrs. D Prema W/o Mr. Selvaraj Damiyon Raju
   Both R/o H.No. 171/65, Shivaji Nagar G, Sjovako Magar. Gurugram, Haryana.

Appellants

Versus

Forever Buildtech Pvt. Ltd. Regd. Office: 12th floor, Dr. Gopal Das Bhawan, 28 Barakhamba Road, New Delhi-110001.

Respondent

CORAM:

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

Argued by: Mr.Rishab Jain, Advocate, for the appellants.

Mr. Suvir Kumar, Advocate, for the respondent.

O R D E R:

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 referred to as 'the Act') by the appellant/allottees against the order 27.09.2022 passed by Haryana Real Estate Regulatory Authority, Gurugram (for

short 'the Authority') whereby Complaint No. 992 of 2020 filed by the appellant/allottees was disposed of. The operative part of the order is as under:-

> *"i) The respondent-builder is directed to refund the amount of Rs.3,20,537/- as admitted by them to the complainants within a period of one month of the date of order and failing which legal consequences would follow."*

2. Undisputed facts of the present case are that the appellants/allottees were allotted a unit bearing no. E-206 having carpet area of 514 Sq. feet on 24.07.2018 in the project of the respondent/builder named 'The Roselia' in Sector-95 A, Gurugram, under 'Affordable Housing Policy, 2013'. A 'Flat Buyer's Agreement' (for short 'the agreement') was executed between the parties on 06.03.2019. The total sale consideration of the unit was Rs.22,64,810/-. As per clause 5.1 of the agreement, possession of the apartment was to be handed over to the appellant/allottees within a period of four years from the date of approval of building plans for the project or grant of environment clearance, whichever is later. The period of four years for delivery of possession has been calculated by the Authority from the date of approval of building plans i.e. 09.01.2017 as the environmental clearance date was not provided. Thus, the due date of delivery of possession is 09.01.2021. The respondent promoter has not

been granted Occupation Certificate. The appellant/allottees had paid Rs.10,03,796/- till 14.03.2019. However, the respondent/promoter cancelled the allotment of the unit on 06.04.2019 on the ground of non-payment of the demands raised by it.

3. The appellant/allottees' grievance before the Authority was that despite adhering to the payment schedule outlined in the agreement and Affordable Housing Policy of 2013, they had, in fact, paid in excess at the time of unit cancellation compared to the stipulated amount. It was pleaded that the cancellation of the unit due to non-payment of the demand raised by the respondent/promoter was illegitimate, leading them to file a complaint with the learned Authority seeking the restoration of the unit allotted to them.

4. The respondent/promoter contested the complaint, pleading that the appellant/allottees had failed to meet the demand raised in accordance with the Affordable Housing Policy of 2013, later amended in 2019. The unit's allotment was cancelled due to non-payment of the due amount after following the prescribed procedure and providing adequate opportunity. Following the unit cancellation, the amount received from the appellant/allottees was refunded, which they accepted without demur. The unit i.e. E-206 was cancelled

and allotted to another allottee. Consequently, the respondent/promoter pleaded that the complaint was not maintainable.

5. The Authority after considering the pleadings of the parties, passed the impugned order dated 27.09.2022 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. At the outset, the learned counsel for the appellant/allottees submitted that as on 14th March, 2019 the appellant/allottees had already paid an amount of Rs. 10,03,796/- clearing all the outstanding demands and notices issued by the respondent/promoter. He further submitted that the said payment, in fact, is more than that due (Rs.1,54,493/-) as per the terms of clauses of application form, agreement and Affordable Housing Policy, 2013. He contended that the demand letters and reminders were issued by the respondent/promoter on 17.09.2018, 08.10.2018, 19.11.2018, 20.12.2018, 05.01.2019 and by the demand letter dated 14.02.2019, the respondent/promoter demanded a total amount of Rs.14,03,555/-, which was not in terms of the payment plan contained in Clause 17 of the application form and of the agreement. He asserted that the

respondent/promoter had wrongly raised the demand by relying upon amendment in Affordable Housing Policy, 2013 carried out on 5th July, 2019 and 16th November, 2021 i.e. much after the cancellation of the unit on 06.04.2019. With these submissions, he prays for the restoration of the unit allotted to the appellant/allottees or else the appellant may be allotted another equivalent unit in any of the projects of the respondent/promoter with compensation.

8. On the other hand, learned counsel for the respondent promoter submits that as per the Affordable Housing Policy, 2013, the promoter was to offer the possession of the units within the validity period of four years of such sanction clearances irrespective of the fact whether the allottee is of the main draw i.e. of first draw or of the redraw. Accordingly, the respondent/promoter is under obligation to offer possession of the unit at the same time to both type of allottees i.e. initial allottees (allottees of the main draw 1st draw) as well as to the subsequent allottees (Allottees of the redraw) irrespective of their different date of allotment. The appellant/allottees were allotted unit in the redraw of unit carried on 24th July, 2018. He asserts that logically the allottees of the redraw are also liable to pay in terms of the allottees of the 1st draw. He contended that the respondent/ promoter allotted units of its project through eight number of

draws from 19.06.2017 to 20.06.2019. The due date of handing over of the units to each of such allottees is the same. Thus, logically allottees of all the draws are to pay in terms of the allottees of the 1st draw to keep the parity between them. He asserts that this principal stand confirmed by the amendment in Affordable Housing Policy, 2013, by notification dated 5th July, 2019. He contended that the demands raised by the respondent/promoter were for the outstanding amount which was at par with the allottees of the initial draw. The appellant/allottees had failed to meet the demand raised in accordance with the Affordable Housing Policy, 2013, later amended in 2019. The unit's allotment was cancelled due to non-payment of the due amount following the prescribed procedure and by providing due opportunity. The amount received from the appellant/allottees has been refunded to them, and they accepted it without objection and the cancelled unit bearing E-206 stands allotted to another allottee. He submits that there is no merit in the appeal and the same deserves to be dismissed.

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

10. Admittedly, the respondent/allottees were allotted a unit bearing no. E-206 having carpet area of 514 Sq. feet in

the project of the respondent/builder named 'The Roselia' in Sector-95 A, Gurugram, under 'Affordable Housing Policy, 2013' in the redraw held on 24th July, 2018. The total sale consideration of the unit was Rs.22,64,810/-. The appellant/allottees had paid Rs.10,03,796/- till 14.03.2019. However, the respondent/promoter cancelled the allotment of the unit on 06.04.2019 on the ground of non-payment of the demands raised by it.

11. The various demands raised by respondent/ promoter from the appellant / allottees are as under:

Date	Payment demanded
17.09.2018	Rs.9,39,901/-
08.10.2018	Rs.10,55,456/-
19.11.2018	Rs.13,58,422/-
20.12.2018	Rs.13,73,210/-
05.01.2019	Rs.13,80,287/-
14.02.2019	Rs.14,03,555/-

12. The schedule of payment in accordance with Clause 17 of the application form and as per the agreement dated 06.03.2019 is as under:

Date	Events	Amount
14.02.2018	At the time of application/booking (5% of the total consideration of unit)	Rs.1,13,240/-

10.08.2018	Within 15 days of Allotment (20% amount of total consideration) A lot of draw was held on 24 July, 2018.	Rs.4,52,962/-
10.02.2019	Remaining six(6) months instalments.	Rs.2,83,101/-
10.08.2019	Remaining six (6) months instalments.	Rs.2,83,101/-
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10.02.2021	Remaining six (6) months instalments.	Rs.2,83,101/-
10.08.2021	Remaining six (6) months instalments.	Rs.2,83,101/-

13. As on 14th March, 2019 appellant/allottees had paid a sum of Rs.10,03,796/- which is in excess (Rs.1,54,493/-) in terms of application form and agreement dated 06.03.2019.

14. It is observed that amendment in Affordable Housing Policy was carried out on 5th July, 2019 subsequent to the allotment of the unit on 24th July, 2018, execution of the agreement between the parties on 06.03.2019, and even on the date cancellation of the unit on 06.04.2019. The fundamental principle that agreements must be upheld, is inherent in contract law. Any amendment in the Affordable

Housing Policy after the agreement cannot automatically impose new financial obligations on the appellant/allottees that were not originally agreed upon. The appellant/allottees were allotted a unit in the redraw of units on July 24, 2018, and the demands raised by the respondent/promoter were allegedly for outstanding amounts at par with the initial draw allottees. However, the appellant/allottees argued that they cannot be compelled to pay amounts beyond what was agreed upon in the original agreement.

15. Considering the legal principle of non-retroactivity of Acts, policies and amendments, the Affordable Housing Policy amendment of 2019 cannot be applied retrospectively to alter the financial obligations set forth in the pre-existing agreement. The respondent/promoter, having entered into a binding agreement with the appellant/allottees, cannot unilaterally impose new payment terms based on a subsequent amendment. Therefore, the demands raised by the respondent/promoter citing the Affordable Housing Policy amendment of 2019 are deemed invalid.

16. The retrospective application of amendment to Affordable Housing Policy amendment of 2019 has unjustly impacted the allottees to their detriment, resulting in grave injustice to the innocent allottees, who had already complied

with the conditions of the agreement. It is well known that the promoter and allottees do not stand on the same footing and the concept of unequal bargaining power has to be acknowledged; particularly, in case of affordable housing policy, we do not expect the promoter to be harsh to the allottees as we feel that such allottees invest their savings to have roof over their head in the later years of their life. In fact, the affordable housing policy has been framed by the government with this objective in mind. It is inexplicable why the Authority has not given clear-cut finding on the issue of applicability of the amendment of 2019 in the Policy prospectively or retrospectively. The tendency to avoid such issues and circumvent the same needs to be discouraged. We accordingly, deem it fit to upset the impugned order and reject applicability of the amendment of 2019 in the policy on the allottees with retrospective effect.

17. In view of the conduct of the promoter as highlighted in the foregoing paragraphs and simultaneously recognizing the circumstances surrounding the cancellation of unit, which has already been allotted to another person, we understand the practical challenges associated with reinstating the unit to the appellant/allottees. In light of this, an exemplary cost of Rs 2.0 lakhs is imposed on the respondent promoter, payable to the appellant/allottees.

Besides, the respondent/promoter shall refund any amount retained by it to the appellant/allottees. Also, the appellant/allottees are entitled to interest @ 10.75% per annum on the payment retained by it from the date of receipt of each payment from appellant/allottees or Home Finance Limited (HFL) till refunded. Further, the appellant/allottees are not debarred from claiming compensation as per statutory provision.

18. Alternatively, the respondent/ promoter is provided with the option to allot an equivalent unit as suitable to the appellant/allottees within a period of two months. This allows for a practical resolution that aligns with the original purpose of providing housing to the persons eligible under Affordable Housing Scheme of the Government.

19. If the above order is not complied within two months from the date of passing this order, in that eventuality, the respondent/promoter is liable to pay penalty @ Rs.500/- per day from the date of this order till its compliance.

20. No other issue was argued before us.

21. In view of the above, the appeal is allowed, the impugned order is set aside with the aforementioned directions.

22. Copy of this order be communicated to both the parties/counsel for the parties and the learned Authority.

23. File be consigned to the records.

Announced:
February 06, 2024.

Justice Rajan Gupta
Chairman
Haryana Real Estate Appellate Tribunal

Anil Kumar Gupta
Member (Technical)

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