

**BEFORE THE HARYANA REAL ESTATE APPELLATE
TRIBUNAL**

**Appeal No.105 of 2022
Date of Decision: 18.01.2024**

Chetna Lodha, E 72, Second Floor, Bengali Colony, Mahavir
Enclave near Sulabh Public School, New Delhi-110045.

Appellant

Versus

Magic Eye Developers Private Limited Office, GF – 09, Plaza M-
6, District Centre, Jasola, New Delhi-110025.

Respondent

CORAM:

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

Present: Mr. Pranjal P. Chaudhary, Advocate,
for the appellant.

Mr. R.S. Baweja, Advocate,
for the respondent.

ORDER:

Rajan Gupta, Chairman (Oral):

Present appeal is directed against order dated 25.08.2021 passed by the Haryana Real Estate Regulatory Authority, Gurugram (for short, 'the Authority'). Appellant-allottee applied for a commercial space in the project named "The Plaza" at 106, Sector-106. Builder Buyer's Agreement (hereinafter referred as 'the agreement') between the parties was executed on 18.02.2020. The total sale consideration of the unit

Appeal No. 105 of 2022

was Rs.41,50,600/-. Due date of delivery of possession as per clause 7.1 of the agreement was 18.08.2020. Admittedly, offer of possession was made by the respondent-promoter vide letter dated 07.10.2020. Complainant filed the instant complaint in March 2021 seeking direction to the respondent-promoter to pay Delay Possession Charges (DPC) at the prescribed rate i.e. 10.75% p.a. for every month of delay from the due date of possession till handing over of the possession and has also sought to waive off Common Area Maintenance (CAM) Charges till 31st March 2021 with certain other reliefs.

2. Respondent-promoter filed reply in rebuttal. After considering rival contentions and perusing the respective documents produced by the parties, the Authority disposed of the complaint with the following directions:

“21. Hence, the authority hereby passes this order and issues 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 is directed to pay interest at the prescribed rate of 9.30% p.a. for every month of delay on the amount paid by the complainants from the due date of possession i.e. 18.08.2020 till 07.12.2020 i.e. expiry of 2 months from the date of offer of possession (07.10.2020). The arrears of

Appeal No. 105 of 2022

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 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 allottees, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.

(iii) The respondent shall not charge anything from the complainants which is not the part of the agreement, however, holding charges shall not be charged by the promoter at any point of time even after being part of the agreement as per law settled by hon'ble Supreme Court in civil appeal no. 3864-3889/2020 decided on 14.12.2020.

22. Complaint stands disposed of.

23. File be consigned to registry.”

3. Limited plea raised by the appellant-allottee in the instant appeal is that the respondent-promoter could not have been granted exemption/grace period on account of Covid-19 pandemic. According to her, Authority has erred in granting this concession to the respondent-promoter. It is also on record that Occupation Certificate was received by the promoter on 28.11.2019 i.e. much prior to the spread of Covid-19 pandemic. It is the stand of the appellant-allottee that pandemic cannot be

Appeal No. 105 of 2022

taken into account for the purpose of delay. He has relied upon the judgment dated 03.11.2023 delivered by this Tribunal in ***Appeal No. 99 of 2022 titled as Chetna Lodha Versus Magic Eye Developers Private Limited.***

4. Learned counsel for the respondent does not dispute ratio of the judgment in the said case.

5. As we are considering only on the limited plea with regard to the concession of the grace period given to the promoter on account of Covid-19 outbreak, we feel that the short issue can be decided in light of our judgment in case of Chetna Lodha (*Supra*). From the pleadings of the parties, we observe that respondent-promoter received Occupation Certificate on November 28, 2019 and parties executed the agreement on 18.02.2020, which was well before the outbreak of Covid-19 pandemic. Admittedly, the appellant-allottee took a possession on 07.10.2020 i.e. on the date of offer of possession itself. Thus, we are of the considered view that the respondent-promoter is not eligible for six months' grace period on account of Covid-19 pandemic as granted by the Authority. It is undisputed that the date of start of pandemic has always been taken to be 15.03.2020. Thus, we hereby hold that the allottee is entitled to Delay Possession interest w.e.f. 18.02.2020 till

Appeal No. 105 of 2022

07.10.2020. The order under challenge is modified to this extent.

6. No other point was argued before us.

7. Consequently, the present appeal filed by the appellant/allottee is partly allowed and the impugned order is modified in the above terms.

8. No order as to costs.

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

10. File be consigned to the records.

Justice Rajan Gupta
Chairman
Haryana Real Estate Appellate Tribunal

Anil Kumar Gupta
Member (Technical)

18.01.2024
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