

**BEFORE THE HARYANA REAL ESTATE APPELLATE
TRIBUNAL**

Appeal No.133 of 2023

Date of Decision: 30.11.2023

Hari Ballabh Sharma, Resident of Flat No.B401, Tower-B,
Infinium Towers, TP-13, Channi Jakat Naka, Vadodara-
390024.

Appellant

Versus

M/s Pareena Infrastructure Private Limited, C-7A, 2nd Floor,
Omaxe City Centre Mall, Sohna Road, Sector-49, Gurugram,
Haryana 122103.

Respondent

CORAM:

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

Argued by: Mr.Ajay Kumar Singh, Advocate
for the appellant.

Mr.Amit Chaudhary, Advocate,
for the respondent.

ORDER:

ANIL KUMAR GUPTA, MEMBER (TECHNICAL)

The present appeal has been filed under Section 44
(2) of the Real Estate (Regulation and Development) Act 2016,
(further called as, 'the Act'). The appellant/ allottee challenges
the order dated January 5, 2023, in Complaint No.
CR/3701/2021, passed by the Adjudicating Officer of the
Haryana Real Estate Regulatory Authority in Gurugram,
hereafter referred to as 'the Authority.' The above order has

arisen consequent to the execution of the Authority's order dated April 2, 2019, in complaint number 26 of 2019 which is also challenged in this appeal. The operative part of the order dated April 2, 2019 is as follows:

“30. After taking into consideration all the material facts produced by the parties, the authority exercising powers vested in it under section 37 of the Real Estate (Regulation and Development) Act, 2017 hereby issue the following directions:-

· The respondent is directed to accept the surrender email dated 23.10.2018 of the complainant and refund the deposited amount without interest by deducting Rs.25,000/- and other taxes, if any, paid by the respondent to the government within a period of 90 days from the date of this order.

31. The order is pronounced.

32. Case file be consigned to the registry.”

2. The factual matrix of the case can be summed up as under: -

The appellant/allottee paid an amount of Rs.87,467/- to the respondent/promoter for booking of a flat in its residential project namely “Laxmi Apartments” situated at Village Gopalpur, Sector 99-A, Gurugram, Manesar, Urban Complex, Haryana, under Affordable Housing Policy” of Government of Haryana. The draw of lots for allotment of flats was held by the respondent/promoter on June 23, 2016 and

the appellant/allottee was allotted a flat bearing no.308, Tower-T-5, measuring 424.833 sq. ft. in the said project vide respondent/promoter's letter dated June 24, 2016 for a total cost of Rs.17,49,330/- excluding External Development Charges (EDC), Infrastructure Development Charges (IDC) and other charges. An 'Apartment Buyer's Agreement' (hereinafter referred to as 'the agreement') was executed between the parties on 19.07.2016. The appellant/allottee till May, 2018, made a total payment of Rs.15,70,537/-. The appellant/allottee through email and letter dated 23.10.2018 requested the respondent/promoter to cancel his booking after deduction of earnest money of Rs.25,000/- and sought refund of the remaining amount. The appellant/allottee made a complaint to the District Town and Country Planning, Gurugram for cancellation of the said flat vide its letter dated 15.11.2018. However, the respondent/promoter did not cancel the unit and also did not refund any amount to the appellant/allottee.

3. Aggrieved with the above, the appellant/allottee filed the complaint seeking following relief:-

“Direct the respondent to refund the entire amount of Rs.15,70,537/- to the complainant alongwith interest after deduction of earnest money as per rule.”

4. After hearing the learned counsel for the parties and appreciating the material on the record, the learned Authority

passed the order dated April 2, 2019. The operative part of which is already reproduced in para 1 of this order.

5. It is pleaded by the appellant/allottee that after the said order, the respondent/promoter did not make any payment to him as per the order of the Authority. However, after passing of two years from the date of order dated 02.04.2019, he received the payment from the respondent/promoter in March 2021 after deduction of various charges and also the respondent did not pay any interest for the period it delayed the payment. The appellant/allottee claims that he is entitled for the interest amounting to Rs.3,14,107/- calculated @ 10% per annum on the amount of refund of Rs.15,70,537/- from the order of the Authority i.e. April 2, 2019 till March 2021 i.e. when he received the payment.

6. Aggrieved with the above, the appellant/allottee filed complaint no.CR/3701/2021 before the Adjudicating Officer seeking following reliefs:-

- “(a) Direct the respondent to pay Rs.3,14,107/- to the complainant with interest for the delay in payment beyond 90 days from the order.*
- (b) award a compensation of Rs.5 lakhs in favour of the complainants and against the respondent.*

- (c) *award cost of litigation of Rs.60000/- in favour of the complainants against the respondent;*
- (d) *pass such other and further order(s) as this Hon'ble Authority may deem fit and proper in the facts and circumstances of the present case."*

7. The said complaint was dismissed vide Adjudicating Officer's order dated 05.01.2023 with the following observations:-

" It is not disputed rather admitted by the complainant that order/decreed passed by the authority referred above, has already been satisfied in execution. Through complaint in hands, the complainant wants Rs.3,14,107/- and litigation expenses etc contending that the respondent has delayed payment of refund of amount (decretal amount in above referred case) beyond 90 days, of order passed by the authority. Relief as claimed by complainant was part and parcel by order/decreed passed by the Authority as referred above. It is a principle of public policy that there should be an end of litigation. I do not think it proper to entertain this complaint on the reason that relief claimed in this complaint was part and parcel of order passed by the authority. The complainant had remedy to claim interest for delay in payment, during execution of aforementioned order/decreed, passed by the authority. Fresh complaint in this regard is not maintainable. Same is thus dismissed.

Both of parties to bear their own costs."

8. The appellant/allottee is aggrieved of the fact that the respondent/promoter did not make the payment to him as per the order of the Authority and forced him to file execution petition. The respondent/promoter eventually made the payment in March, 2021. The appellant contends that he is entitled to interest for the period of delay in payment of refund of Rs. 15,70,537/- from the date of the Authority's order (April 2, 2019) until March 2021, spanning two years @ 10% per annum which comes out to Rs. 3,14,107/-.

9. We have carefully gone through the record of the case and have duly considered the contentions of both the parties.

10. Undisputedly, the appellant/allottee was allotted a flat bearing no.308, Tower-T-5, measuring 424.833 sq. ft. through a draw of lots held on 03.06.2019 by the respondent/promoter under the "Affordable Housing Policy" of the Government of Haryana for a total cost of Rs.17,49,330/- excluding External Development Charges (EDC), Infrastructure Development Charges (IDC) and other charges. This flat is situated in the residential project namely "Laxmi Apartments" at Village Gopalpur, Sector 99-A, Gurugram, Manesar, Urban Complex, Haryana. This was confirmed vide respondent/promoter's letter dated 24.06.2016. An agreement was executed between the parties on 19.07.2016. The appellant/allottee till May, 2018, made a total payment of

Rs.15,70,537/-. The appellant/allottee through email and letter dated 23.10.2018 requested the respondent/promoter to cancel his booking after deduction of earnest money of Rs.25,000/- and sought refund of the remaining amount as per the agreement and Affordable Housing Policy of Government of Haryana.

11. The Authority in the complaint no. 26 of 2019 filed by the appellant/allottee passed an order dated April 2, 2019 directing the respondent/promoter to accept surrender email dated 23.10.2018 of the complainant (appellant), and refund the deposited amount without interest by deducting Rs.25,000/- and other taxes, if any, paid by the respondent to the government with in a period of 90 days from the date of its order. However, the respondent/promoter failed to comply with the specified timeframe mentioned in the order dated April 2, 2019, and instead made the refund in March 2021. There is no evidence on record to indicate that the respondent/promoter paid any taxes to the government and it suffered any losses on this account. The Authority's order qua the respondent/promoter has attained finality. The respondent/promoter has unjustly retained the refund amount as ordered by the authority. It appears that the Authority in its order dated 02.04.2019 has directed the appellant/promoter to refund the amount within 90 days of the order, but still it omitted to pass consequential order as

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regards the rights of the appellant/allottee in the eventuality of non-payment within said period of 90 days. In this view of the matter, we deem it fit to grant interest to the appellant/allottee for the unjust delay in releasing the payment till March, 2021. Consequently, the plea of the appellant/allottee for grant of interest of Rs. 3,14,107/- for the delay in payment beyond 90 days period till March, 2021 is legal and bonafide. We, thus, direct that the said amount be paid to the appellant/allottee forthwith without any further delay. The appeal is disposed of accordingly.

12. No order as to costs.

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

14. File be consigned to the record.

Announced:
November 30, 2023

Justice Rajan Gupta
Chairman
Haryana Real Estate Appellate Tribunal

Anil Kumar Gupta
Member (Technical)