

**BEFORE THE HARYANA REAL ESTATE APPELLATE
TRIBUNAL**

Appeal No.09 OF 2023
Date of Decision: 24.08.2023

Green Space Infraheights Pvt. Ltd., registered office at 301-
3011, 3rd Floor Indraprakash Building 21, Barakhamba Road,
New Delhi 10001

Appellant-Promoter

Versus

Pratibha resident of House No.703, Sector 13, Panchkula
(Haryana)

Respondent-Allottee

CORAM:

**Justice Rajan Gupta
Shri Anil Kumar Gupta**

**Chairman
Member (Technical)**

Present: Mr. Manoj Lakhotia, Advocate,
for the appellant.

ORDER:

Rajan Gupta, Chairman (Oral):

The present appeal is directed against the order dated 14.12.2022 passed by the Haryana Real Estate Regulatory Authority, Gurugram (hereinafter referred as, 'the Authority) in Complaint No.442 of 2021. Operative part thereof reads as under:-

“Therefore, respondent company is directed to clear overdue EMIs amounting Rs.4,61,633 by 20.12.2022 failing which an exemplary penalty under Section 63 of the RERA Act, 2016 amounting Rs.25,000/- for each

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day will on imposed on the respondent from 20.12.2022 onwards till the next date of hearing.”

2. Learned counsel for the appellant-promoter has vehemently contended that the penalty imposed by the Authority at Panchkula is unjustified. It appears that respondent-allottee, namely, Pratibha booked plot No.B-0308 in the project floated by the appellant-promoter in the name and style of Shree Vardhman Green Space. The Flat Buyer's Agreement (for short, the Agreement) was signed between the parties on 15.02.2016. The tentative period for delivery of the possession contained in Clause 8(a) of the Agreement is of four years. The construction activity of the project was delayed considerably. As per the appellant, same was delayed due to force majeure conditions and certain other factors. As a result, the respondent-allottee filed a complaint before the Authority at Panchkula.

3. The appellant-promoter filed reply to the complaint. Arguments ultimately were addressed on 20.07.2022. Impugned order was passed on 27.07.2022. It appears that vide order dated 26.04.2022, the Authority gave the view that complainant was entitled to possession of the booked property. Relevant para of the said order is reproduced hereunder:

“4. Factual position of the matter reveals that possession has not yet been offered by respondent and respondent has not even provided any specific timeline for handing over of possession. Since due date of delivery of possession is not mentioned in BBA, therefore, Authority deems it fit to consider it 3 years from the date of execution of BBA which comes to 07.06.2019. Three years has elapsed from such deemed date of delivery but respondent has not offered

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possession to complainant. Moverover, as per Clause 4 of BBA, respondent had agreed to reimburse monthly installment of interest paid by complainant to bank, while the respondent reimbursed till May 2019, but stopped paying thereafter: These are now being paid by complainant to the bank. Therefore, Authority would direct the respondent to clear outstanding monthly interest from May 2019 till date immediately because that is causing additional hardship to the complaint.

Further it is made clear that respondent will be liable to pay monthly interest till the actual date of handing over of possession.

5. Aforesaid view expressed by Authority is tentative in nature subject to final arguments by respondent. Last opportunity is granted to respondent to argue his case failing which Authority will confirm its tentative view expressed in this order.

*6. Case is adjourned to **12.07.2022.***

4. The matter again came up for hearing before the Authority on 20.07.2022, when it directed the appellant-promoter to clear the outstanding EMIs payable to the Bank. It examined the statement of account submitted by the complainant. It, then directed that the outstanding EMIs be reimbursed by the appellant-promoter to the respondent-allottee for the period 10.06.2019 till 11.07.2022 (Rs.4,61,633/-). Needful was to be done within 15 days from the uploading of order dated 20.07.2022, failing which, coercive steps would be taken. The matter came up for hearing before the Authority on 14.12.2022. It, however, transpired that the appellant-promoter had not complied with the order despite availing more than three opportunities to act in terms of the order dated 26.04.2022. It found that the appellant-

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promoter was raising frivolous pleas for not doing the needful. In view of the fact that the respondent-allottee was facing financial hardships due to non payment of EMIs by the appellant-promoter, it gave a direction as reproduced in opening paragraph of this order to clear the dues amounting to Rs.4,61,633/- by 20.12.2022, failing which, penalty under Section 63 of the Act amounting to Rs.25,000/- each day would be payable by the respondent-allottee from 20.12.2022 onwards till the next date of hearing.

5. Learned counsel for the appellant-promoter submits that the penalty imposed by the Authority is totally unjustified as there was no fault on part of the appellant-promoter and the alleged delay in compliance of the order.

6. We are, however, unable to accept this plea as there is nothing on record to show that appellant posed any challenge to orders dated 26.04.2022 or 20.07.2022 passed by the Authority. There is no explanation forthcoming for blatant violation of the orders passed by the Authority.

7. We, thus, find no ground to exonerate the complainant for non-compliance of the order of the Authority. However, taking into account the fact that the amount payable of the appellant-promoter was Rs.4,61,633/- only whereas the penalty imposed by the Authority is on the higher side, same needs to be reduced in proportionate to the default of the appellant-promoter.

8. We, accordingly, direct that the penalty imposed under Section 63 of the Act would be Rs.7,500/- for each day from

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20.12.2022 onwards instead of Rs.25,000/- till 10.01.2023 i.e. total of Rs. 1, 57,500/-

8. No other point was argued before us.

9. The appeal is, thus, partly allowed and the impugned order is modified in the aforesaid terms.

10. No order as to costs.

11. The appellant-promoter has deposited an amount of Rs.6,19,133/- (Rs.1,57,500 as 30% of the penalty and Rs.4,61,633/ payable to the respondent-allottee) due at the time of filing of the appeal as pre-deposit in terms of proviso to Section 43(5) of the Act. The amount of Rs.6,19,133/- along with interest accrued thereon be remitted to the authority. The penalty as per the aforesaid order may be deposited in State Government's account as per section 76 of the Act. The balance amount may be remitted to the allottee, subject to tax liability, according to law.

12. Copy of this order be communicated to appellant /learned counsel for the appellant and the Authority below.

13. File be consigned to the record.

Justice Rajan Gupta
Chairman
Haryana Real Estate Appellate Tribunal

Anil Kumar Gupta
Member (Technical)

24.08.2023
Manoj Rana