

**BEFORE THE HARYANA REAL ESTATE APPELLATE
TRIBUNAL**

Appeal No. 685 of 2022

Date of Decision: 13.12.2023

M/s Pivotal Infrastructure Private Limited, Plot No.12, Sector 4, Faridabad HR 121004 and also at 309, 3rd Floor, JMD Pacific Square, Sector-15, Part II Gurugram-122001.

Appellant

Versus

1. Trilok Chand, 898/13, Gandhi Colony, near Agarwal Mandi, Panipat (Haryana) 132103.

Respondent

2. Director of Town and Country Planning, Haryana, DTP Planning Gurugram, HUDA Complex, Sector-14, Gurugram-122001.

Performa Respondent

CORAM:

Justice Rajan Gupta

Chairman

Shri Anil Kumar Gupta,

Member (Technical)

Argued by: Mr. Tushar Sharma, Advocate
for the appellant.

Mr. Sajjal Dhawan, Advocate,
for the respondent no.1.

ORDER:

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 called as 'the Act') by the appellant/promoter against impugned order dated 08.03.2022 passed by the Haryana Real Estate Regulatory Authority, Gurugram (for

short 'the Authority') whereby Complaint No. 5029 of 2020 filed by the respondent/allottee was disposed of with the following directions:

- “i. The respondent is directed to pay interest at the prescribed rate of 9.30% 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 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 shall not charge anything from the complainant which is not part of the builder buyer agreement.”*

2. As per averments in the complaint, the respondent/allottee had applied for a 2 BHK residential unit in the project in the project 'Riddhi Siddhi' Sector-99, Gurugram, of the appellant/promoter by paying booking amount of Rs.1,00,000/-. The unit no.805, 8th floor, Tower-T4, measuring 487 sq. ft. in the said project of the appellant, was

allotted to the respondent/allottee vide allotment letter dated 05.09.2015, for a total sale consideration of Rs.19,98,000/-. An 'Apartment Buyer's Agreement' (hereinafter referred to as 'the agreement') was executed between the parties on 22.01.2016. 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.21,56,822/- 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 to pay interest at prescribed rate on delay possession since due date of possession till date of actual possession.*
- ii. Direct respondent to complete and seek government clearances regarding infrastructure and other facilities including road, water, sewerage, electricity, environmental etc.”*

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

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was granted license bearing no.86 on 09.08.2014 to develop an affordable ground housing residential colony on the land measuring 6.19375 acres situated in the revenue estate of village Kherki Majra Dhankot, Sector-99, Gurugram. The appellant/promoter, thereafter, obtained all the relevant approvals and sanctions to commence the construction of the project. The appellant/promoter obtained the approvals of the building plans vide approvals dated 17.10.2014 and also obtained the environmental clearance vide approvals dated 22.01.2016. The appellant/promoter further obtained the registration under RERA Act, and the appellant/promoter was granted the registration no.236 of 2017 which was valid till 08.08.2019 and the same was extended by the authority up to 31.08.2020. The appellant/promoter was entitled to complete the project till 31.08.2020. However, due to the outbreak of the pandemic Covid-19 in March, 2020, there was a national lockdown imposed as a result all the construction activities were severely hampered. The stoppage of construction activities abruptly had led to slowing down of the construction activities for months which also contributed in the delay in completing the project within the specified time period. Although, the authority had granted six months extension for completing the project, so the appellant/promoter was making

all efforts to complete the development of the project by the end of the year 2021.

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 08.03.2022 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 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 had booked a 2 BHK unit with the appellant/promoter in the project namely 'Riddhi Siddhi, Sector-99, Gurugram under 'Affordable Housing Policy' of Government of Haryana. The total sale consideration of the unit was Rs.19,98,000/- The agreement was executed between the parties on 22.01.2016. 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 and thus the date of delivery of possession was 22.01.2020. The respondent/allottee had paid Rs.21,56,822/- till the filing of complaint. The appellant/promoter had not obtained the 'Occupation Certificate' even up to now and consequently the possession of the unit was not offered to the respondent/allottee.

11. First contention raised by Mr. Tushar Sharma, 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 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 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.5,22,353/- 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. Files be consigned to the record.

Announced:
December 13, 2023

Justice Rajan Gupta
Chairman
Haryana Real Estate Appellate Tribunal

Anil Kumar Gupta
Member (Technical)