

BEFORE THE HARYANA REAL ESTATE APPELLATE TRIBUNAL

Appeal No.802 of 2022
Date of Decision:13.02.2024

Gnex Realtech Pvt. Ltd. Regd. Office at B-10, Lawrence Road Industrial Area, Delhi 110035.

Appellant-promoter

Versus

1. Vanita Singhal
2. Mr. Sanjay Singhal

Both r/o A-39, Sector-55, Noida, U.P-201301.

Respondent-allottees

CORAM:

Justice Rajan Gupta
Shri Anil Kumar Gupta

Chairman
Member (Technical)

Present: Mr. Vivek Sheoran, Advocate,
for the appellant.

Mr. Rohan Gupta, Advocate,
for the respondents.

ORDER:

Rajan Gupta, Chairman:

Present appeal is directed against order dated 12.08.2022 passed by the Haryana Real Estate Regulatory Authority at Panchkula (for short, the Authority). Operative part thereof reads as under:

“So, Authority concludes that the complainant is entitled to possession of allotted plot along with interest on the already paid amount from the deemed date of possession i.e. 26.12.2008 till the date of passing of this order i.e. 12.08.2022 at the rate of 9.8%. Authority has got calculated interest, which works out to

be Rs.3,90,271/-. Besides the said amount of interest, complainant is also entitled to receive each month's interest on the already paid amount of Rs.10,96,200/- from 13.08.2022 onwards till the delivery of actual possession after obtaining Occupation Certificate. Such interest works out to Rs. 9,124/- per month as calculated by the Authority.

In view of above findings, the complaint is disposed of with a direction that respondent shall pay to the complainant interest of Rs.3,90,271/- within 90 days from the date of uploading of this order and will further pay to the complainant every month's interest of Rs. 9,124/- till actual handing over of possession of the booked plot after receiving Occupation Certificate.

Disposed of. Files be consigned to record room after uploading of this order on the website of the Authority.”

2. The brief facts of the case are that the respondent-allottees booked a plot measuring 116 sq. yds in the appellant's project, named "Asha Bahadurgarh", Phase-III, in the year 2017 by paying a booking amount of Rs.1,00,000/-. Copy of the allotment letter dated 22.12.2017 is on record. The parties entered into the Builder Buyers Agreement (hereinafter called the 'agreement') on 27.12.2017, the total sale consideration of the plot was Rs.15,66,000/-. Against this amount, respondent-allottees paid an amount of Rs.10,96,200/-. Copy of the agreement and receipts etc. are also on record. As per the agreement, the appellant-promoter was supposed to deliver possession of the booked plot to the respondent-allottees by 26.12.2018. Respondent-allottees, however, complained that the project remained incomplete as no electric cabling work was done at the site. Respondent-allottees have paid instalments as per the construction plan, but without

carrying out the work within the time framed, the promoter raised a demand in the year 2019. Relying upon Clause 10.2 of the agreement, respondent-allottees submitted that they were within their right to stop further payments, in the event of default by the appellant-promoter in delivering the possession. Appellant raised a demand of Rs.3,91,500/-, vide demand letter dated 03.08.2021, stating therein that in case amount was not paid, the allotment would be subject to cancellation. Respondent-allottees claim that they made payment on 31.10.2021 vide cheque bearing no. 20408 drawn in the name of the appellant-promoter. The appellant-promoter also acknowledged the same vide e-mail dated 24.11.2021. However, the allotment of the plot was cancelled vide letter dated 05.11.2021. The respondent-allottees, thus, filed complaint before the Authority at Panchkula claiming that allotment was cancelled illegally by the appellant-promoter, despite the fact that they had made substantial payment to the promoter well in time. In this backdrop, the respondent-allottees claim for restoration of the plot in question; to deliver possession of the plot and to pay permissible delay possession charges.

3. Claim of the respondent-allottees was refuted by the promoter. According to appellant-promoter, respondent-allottees themselves defaulted in making payment as per the payment plan. He further stated that construction of the plot was delayed due to reasons beyond its controlled such as demonetization, GST, defaults committed by the allottees in making payments and dispute with the construction agencies etc. According to promoter, various demand letters were sent to the respondent-allottees, but, they failed to pay instalments on time. To buttress his contention,

he annexed copies of e-mail Annexure A-3 along with Appeal. Appellant-promoter also claims that allotted plot was cancelled vide letter dated 05.11.2021 and intimation in this regard this was sent to the allottees.

4. After hearing rival contentions of the parties and perusing the record, the Authority came to the conclusion that the respondent-allottees had paid more than 60% amount of the consideration to the appellant-promoter. Despite having received the substantial amount, the appellant-promoter failed to deliver the possession. It further observed that the only relief given to the promoter was to pay interest for every month of delay till handing over the possession under Section 18 of the Real Estate (Regulation and Development) Act, 2016. The Learned Authority disposed of the complaint with the direction that the appellant-promoter shall pay interest of Rs.3,90,271/- within 90 days of uploading the order and shall also pay every month's interest of Rs.9,124/- till the actual delivery of possession.

5. Learned counsel for the appellant has not been able to find any legal infirmity with the direction given by the authority below. He could not point out that the direction was in contravention of any provision of the Act and rules made there under.

6. Consequently, we find no merit in the present appeal filed by the appellant-promoter and therefore, the same is hereby dismissed.

7. The amount of Rs.7,87,165/- deposited by the appellant/promoter with this Tribunal in view of proviso to Section 43(5) of the Act, along with interest accrued thereon, be sent to the Authority for disbursement to the respondent/allottees as per the

aforesaid observations, excess amount be remitted to the appellant, subject to tax liability, if any, as per law.

8. Copy of this order be forwarded to the parties, their counsel and the learned Authority.

9. Files be consigned to the record.

Announced:
February 13, 2024

Justice Rajan Gupta
Chairman
Haryana Real Estate Appellate Tribunal

Anil Kumar Gupta
Member (Technical)

Rajni