

BEFORE THE HARYANA REAL ESTATE APPELLATE TRIBUNAL

Appeal No. 597 of 2022
Date of Decision: 27.02.2024

M/s Pivotal Infrastructure Pvt. Ltd., registered office at Plot No.12,
Sector 4, Faridabad HR 121004; second address:-309, 3rd Floor,
JMD Pacific Square, Sector-15, Part-II, Gurugram-122001.

...Appellant-Promoter

Versus

Anand Kumar Pandey resident of A-250, SF, Bunkar Colony,
Ashok Vihar 4, Delhi-110052.

...Respondent-Allottee

CORAM:

**Justice Rajan Gupta
Shri Anil Kumar Gupta**

**Chairman
Member (Technical)**

Present: Mr. Tushar Sharma, Advocate
for the appellant-promoter.

Respondent-allottee in person.

O R D E R:

Rajan Gupta, Chairman (Oral):

Present appeal is directed against the order dated
08.03.2022 passed by the Haryana Real Estate Regulatory
Authority at Gurugram (for short, 'the Authority below')
whereby the complaint preferred by the complainant
(respondent-allottee herein) has been allowed on 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., 05.02.2019 till the offer of possession i.e., 14.03.2020. The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order as per the rule 16(2) of the rules.*
- i. The complainant is also directed to pay the outstanding dues, if any.*

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- ii. *The authority also directs that the amount collected as IFMS from the allottees by the promoter be kept under separate head in the bank and the same be maintained in a transparent manner and be transferred to the association of allottees after a period of 5 years from the date of grant of OC.*
- iii. *The respondent promoter is directed to provide the VAT calculation sheet of the subject unit to the complainant.*
- iv. *The respondent shall not charge anything from the complainant which is not part of the builder buyer agreement. However, holding charges shall also not be charged by the promoter at any point of time even after being part of agreement as per law settled by Hon'ble Supreme Court in civil appeal no. 3864-3899/2020 dated 14.12.2020."*

2. As per complainant, he had applied in the project "Devaan" for allotment of the plot under Affordable Housing Policy 2013. He was successful in the allotment and was allotted unit no.507 (measuring 481 square feet) on 5th Floor, Tower No.T-1 at Sector 84, Gurugram. The Apartment Buyer's Agreement (hereinafter called 'the agreement') was executed on 10.08.2015 of total sale consideration being Rs.19,74,000/-, out of which, complainant paid an amount of Rs.20,47,235/-. Due date of delivery of possession was 05.02.2019. Occupation Certificate was granted to the builder on 06.03.2020 and offer of possession was given on 14.03.2020. The complainant had a grouse that as per clause 8.1 of the Agreement, possession was to be delivered to the complainant within four years from the date of grant of sanction of building plans. He alleged that the project was not completed when he filed the complaint. However, builder got Occupation

Certificate (OC) and offered possession on 19.05.2020. He, thus, invoked the jurisdiction of the Authority at Gruguram seeking directions to the respondent to provide Delay Possession Charges (DPC) @ 15% per annum from the date of completion of project i.e. 05.02.2019 till possession of the plot. He claimed that as per agreement the promoter cannot charge any maintenance charges from the buyers as same has already been paid.

3. Promoter (appellant herein) resisted the claim of the complainant. Relying on the agreement, it stated that the entire transaction was governed by the terms thereof. According to it, promoter had applied for grant of Occupation Certificate in respect of developed building in accordance with terms of the license and conditions of the affordable housing policy within the specified period of 04 years vide letter dated 06.08.2018. Occupation certificate was, however, granted vide letter dated 06.03.2020. Thus, the Directorate, Town and Country Planning, Haryana delayed the grant of Occupation Certificate for which the promoter is not responsible. It had completed the construction of the project well before the expiry of period of 04 years. Despite, grant of Occupation Certificate dated 06.03.2020, possession was offered in May 2020 due to pandemic situation. The builder, thus, claimed that there was no delay on its part for grant of possession.

4. After considering rival contentions of the parties, the Authority below came to the conclusion that promoter was entitled to pay delay possession charges for the period from 05.02.2019 till 14.03.2020.

5. Mr. Tushar Sharma, Advocate, learned counsel representing the appellant-promoter (Pivotal Infrastructure

Pvt. Ltd.) has assailed the order passed by the Authority, primarily on the ground that firstly, the promoter is not liable for payment of interest as the delay has been caused by the Directorate, Town and Country Planning, Haryana in granting OC; secondly, on the ground that due to force majeure conditions the offer of possession was somewhat delayed which is again beyond the control of the promoter.

6. During the course of arguments, he has referred to Clause 9.1 of the agreement. He submits that the condition similar to that contain in Clause 9.1 of the agreement which is reflected in the Rules as well.

7. Respondent-Anand Kumar Pandey, who appears in person has reiterated the stand taken by him before the Authority below.

8. We have heard arguments and given careful thoughts to the facts of the case. Clause 9.1 of the agreement relied upon by the appellant is reproduced below for ready reference:

“9.1 Force Majeure

That the Allottee agrees that the handing over the possession and the sale of the said Apartment to the Allottee is subject to force majeure clause which inter alia include delay on account of non-availability of steel and/or cement and/or other building materials and/or water supply and/or electric power or slow down or strike by workers or due to a dispute with the construction agency employed by the Company or on account of civil commotion or by reason of war or enemy action or terrorist action or any natural calamity including earthquake, floods or any act of God, or as a result of any notice, order, rule or notification of the Government and/or any court of law or other public or competent authority and/or on account of the

government or any competent authority withholding or delaying the grant of any approvals/permissions /certificates/ or for any other reason beyond the reasonable control of the Company, and in any of the aforesaid events the Company shall be entitled to a reasonable extension of time for delivery of possession and/or consummating the sale of the said Apartment to the Allottee.”

9. A perusal of the aforesaid clause, shows that it mainly pertains to force majeure condition as it refers to the Act of God i.e. earthquake, floods etc. It also contains the condition absolving the promoter of any responsibility due to delay caused by Government agency for granting of approval, permission etc. It also states that promoter should be entitled to reasonable extension of time for delivery of possession in any such eventuality.

10. Mere perusal of the aforesaid clause shows that the same is in fine print and self-serving. At the time of execution of Agreement, the allottee had no option but to sign the documents as submitted to him. Such agreements, which are heavily loaded in favour of the promoter and the terms thereof are in fine print, particularly in cases of affordable housing policy, cannot be said to be binding in nature. In this context, the concept of unequal bargaining power is also attracted. The allottee who applies under the affordable housing policy, does so under the impression that he would get a roof over his head as promised in the agreement and may invest his entire savings in the said project. In such circumstances, any delay caused by the Government Agency in providing Occupation Certificate is of no consequence and promoter cannot take benefits of such a clause. Needless to observe that there is nothing on record to show that there was

any restriction from any quarter on completion of construction in time. Mere delay by the Government Agency in granting Occupation Certificate cannot be a ground for absolving the promoter of the lapses committed by it.

11. We are, thus, of view that possibility cannot be ruled out that the Occupation Certificate was not granted before 14.03.2020 for valid reasons. As regards the arguments of force majeure condition, same is not relevant as delay possession charges have been granted till 14.03.2020, i.e. before the approximate date of onset of the Covid-19 pandemic. There is nothing on record to show that there was any impediment in the way of the promoter to strictly comply with the provisions of Agreement. Having dealt with the issues raised before this Bench, we are of the considered view that there is no merit in the present appeal and therefore, the same is hereby dismissed.

12. The amount of Rs.2,10,215/- deposited by the appellant-promoter with this Tribunal in terms of proviso to Section 43(5) of the Real Estate (Regulation and Development) Act, 2016 along with interest accrued thereon, be sent to the Authority below for disbursement of the same to the respondent-allottee, subject to tax liability, if any, as per law.

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

14. File be consigned to the records.

Justice Rajan Gupta
Chairman
Haryana Real Estate Appellate Tribunal

Anil Kumar Gupta
Member (Technical)

27.02.2024/Manoj Rana