BEFORE THE HARYANA REAL ESTATE APPELLATE TRIBUNAL

Appeal No.140 of 2019
Date of Decision: 27.11.2019

1. Sharad Avasthi s/o Shri Bal Krishan Avasthi, Resident of House No.301, Tower-4/Maurya, Ansal Royal, Heritage, Sector-70, Faridabad.

2. Priyanka Avasthi w/o Shri Sharad Avasthi, Resident of House No.301, Tower-4/Maurya, Ansal Royal, Heritage, Sector-70, Faridabad.

Appellants

Versus

1. M/s Pivotal Infrastructure Pvt. Ltd.
Registered Office: 309, 3rd Floor,
JMD Pacific Square, Sector-15, Part-II, Gurgaon-122001 (Haryana)
Through its Directors:
(i) Mr. Devender Kumar Gupta
(ii) Mr. Rajesh Goyal

2. M/s Ansal Buildwell Ltd.,
Registered Office: 118, UFF, Prakash Deep Building,
7, Tolstoy Marg, Connaught Place,
New Delhi-110001
Through its Directors:
(i) Mr. Gopal Ansal &
(ii) Mr. Gaurav Mohan Puri

Respondents

CORAM:

Justice Darshan Singh (Retd.)	Chairman
Shri Inderjeet Mehta	Member (Judicial)
Shri Anil Kumar Gupta	Member (Technical)

Argued by: Shri Denson Joseph, Advocate, learned counsel for the appellants.
Shri Rohan Gupta, Advocate & Sh. Jatin Goyal, Advocate, learned counsel for the respondent no.1.
(Respondent no.2 given up vide order dated 05.11.2019).

ORDER:

The present appeal has been preferred by the appellants/complainants/allottees against the order dated November 14th, 2018 passed by the learned Haryana Real Estate Regulatory Authority, Panchkula (hereinafter called 'the Authority'), vide which the complaint filed by the appellants/allottees was dismissed.

2. As per averments in the complaint the initial/first allottees had booked the unit by making payment of Rs.2,50,000/- vide cheque dated

27.02.2011. The flat was subsequently transferred in the name complainants on 25.09.2013. It was alleged by the complainants in their complaint that the respondent/promoter fleeced a sum of Rs.2,50,282/- in lieu of the Transfer Fee by transferring the ownership of the unit in favour of the appellants/allottees. The total sale consideration of the unit was Rs.32,92,897/- which was later on revised to Rs.39,58,177/-. The Apartment Buyer's Agreement (hereinafter called 'the Agreement') was executed on 28.05.2012 with the first allottee. As per this agreement, the possession was to be delivered to the appellants/allottees within 42 months from the date of execution of the agreement/start of construction but inspite of repeated requests, offer of possession was given on 07.12.2017 with a considerable delay. The appellants/allottees have claimed the compensation for delay in handing over the possession for 38 months at the rate of Rs.5/- per sq. ft. total Rs.2,82,150/- alongwith interest.

3. It is further pleaded that a sum of Rs.2,19,780/-was wrongly charged on account of enhanced EDC. Similarly, a sum of Rs.72,745.95 and Rs.99,593.14 were illegally charged towards VAT and Service Tax respectively.

4. It is further pleaded that the offer of possession was laded with arbitrary conditions and charges. A respondent/promoter took undue advantage of the dominant position that they were in and were forced to execute an undertaking and to furnish affidavit saying therein that they will relinquish their claim for delay, compensation and other claims and only thereafter the conveyance-deed was executed in their name. The contents of the affidavit are a proof in itself of coercion which every home buyer is subjected to before the registration of the conveyance-deed of the property/unit. The appellants/allottees had already made all the payments demanded from them from time to time as they were under constant fear that if they did not execute the documents and made

payments according to the demand by the respondent/promoter, the allotment will be cancelled. With these pleas, the appellants/allottees claimed the relief mentioned below: -

i) Refund of enhanced EDC of Rs.2,19,780/- alongwith interest @ 18% paid by complainant to the respondent or an affidavit to the effect that the amount collected on account of EDC has been deposited with DTCP, Haryana.

ii) Compensation for delay in possession of 38 months x Rs.5/- per sq.ft. x 1485 sq.ft = Rs 2,82,150/- alongwith interest at the rate of 18%.

iii) Refund of an amount of Rs.2,50,282/- charged by the respondent from the complainants on account of transfer fee alongwith interest @ 18%.

iv) Refund of Rs.72,745.95 on account of amount collected by respondent from the complaints in lieu of VAT alongwith interest.

v) To refund Rs.99,593.14 collected by the respondent from the complainants on account of service tax from the complainant alongwith interest.

vi) Compensation of Rs.24,000/- on account of damages caused to TV and washing machine of the complainants due to erratic power supply.

vii) Directions to the respondents to clear their position regarding licensing of land for major chunk of land parcel not licensed in their name.

viii) To pay compensation of Rs.5,00,000/- to the complainants for mental agony etc.

ix) Compensation of Rs.1,00,000/- to the complainants towards litigation charges.

5. The respondent/promoter has contested the complaint taking plea that every dispute between the parties concerning payable and receivable amounts was finally settled between them before execution of the conveyance-deed and the complainants /allottees had acknowledged the said settlement vide an affidavit-cum-undertaking dated 20.12.2017. It was further pleaded that the Transfer fee and EDC was paid by the appellants in year 2013, thus seeking relief of refund by the complainant of these payments after a period of 5 years is barred by limitation. On these grounds the respondent prayed for dismissal of the complaint.

6. M/s Ansal Buildwell Limited was impleaded as respondent no.2 during the pendency of the present appeal vide order dated 22.10.2019. But the respondent no.2 was given up by learned counsel for the appellants vide his statement dated 05.11.2019 being un-necessary as no relief was claimed against it. Thus, the name of the respondent no.2 was ordered to be deleted from the array of the respondents.

7. After hearing learned counsel for the parties and appreciating the material on record, the complaint filed by the complainants/allottees was dismissed by the learned Authority vide order dated 14.11.2018 by relying upon the affidavit dated 20.12.2017.

8. Aggrieved with the aforesaid order, the present appeal has been preferred by the appellants/allottees.

9. We have heard learned counsel for the parties and have carefully gone through the record of the case.

10. Before proceeding further. It is pertinent to reproduce the statement made by learned counsel for the appellants on 05.11.2019 with respect to restricting the claims of the appellants which reads as under: -

> *"That I give up respondent No.2 M/s Ansal Buildwell Ltd. as unnecessary as no relief has been claimed against respondent No.2. The name of respondent No.2 be deleted from the array of respondents.*
>
> *"In the present appeal the appellant is claiming interest of delayed possession for twenty-two months and for refund for the transfer fees of Rs.2,50,000/- illegally charged by the respondent instead of Rs.74,000/- as per the builder buyers agreement. I give up the reaming claim if any."*

11. Thus, in view of the aforesaid statement made by learned counsel for the appellants, the claim for delayed possession charges and the refund for excess transfer fee shall only be adjudicated upon in this appeal and remaining claims stand given up.

12. Learned counsel for the appellants/allottees contended that the complainants/appellants had booked a flat in the Real Estate project namely 'Ansal Royal Heritage' situated in Sector-70, Faridabad and possession of the said flat has been delivered to them and its conveyance-deed has since been registered in their favour on 28.02.2018.

13. Learned counsel for the appellants further contended that the project was to be completed within a period of 42 months from the date of the start of construction or the execution of the Apartment Buyer's Agreement, whichever is later. He contended that even taking into consideration the date of the execution of the agreement, the said period has expired on 02.02.2016. The offer of physical possession has been given on 07.12.2017. Thus, he contended that there is delay of more than 22 months and the appellants are entitled for delayed possession charges at the rate of Rs.5/- per sq. ft. alongwith interest in terms of Clause 28 of the Agreement dated 03.08.2012.

14. He further contended that the respondent/builder has wrongly charged a sum of Rs.2,50,282/- towards the transfer fee for transferring the flat in the names of the appellants from the names of the original allottees. He contended that the Deputy Commissioner, Gurgaon in his order dated 31.12.2015 has mentioned that the Cooperative House Building, Group Housing and Maintenance Societies cannot charge more than Rs.10,000/- as transfer fee. He further relied upon case **Lt. Col. Raj Singh (Retd.) Vs. Union of India and others, Civil Writ Petition No.14234 of 2010, decided on 09.05.2014** by the Hon'ble Punjab and Haryana High Court wherein the demand of Rs.1,00,000/- on account of transfer fee was held to be illegal. He contended that the excess amount of transfer fee should be refunded to the appellants alongwith interest @ SBI MCLR+2%.

15. He further contended that the complaint filed by the appellants was wrongly dismissed by the learned Authority by relying upon the

affidavit-cum-Undertaking dated 20.12.2017 (Annexure R-6). He contended that the said affidavit/undertaking had to be executed by the appellants under duress and coercion. The execution of these documents was a condition precedent for the delivery of physical possession and execution of the conveyance-deed. The document obtained under duress and coercion cannot be considered to be voluntary waiver of the genuine claims of the appellants and is liable to be ignored. To support his contentions, he relied upon case **M/s Ambica Construction Vs. Union of India, 2007(1) R.C.R. (Civil) 257**.

16. On the contrary, learned counsel for the respondent contended that the offer of possession was given to the appellants on 03.08.2016. The appellants took over the physical possession of the allotted unit on 27.09.2017 and also gave the written acknowledgment thereof after receiving the entire set of keys of the allotted unit on the same date. Thus, he contended that the possession of the unit was already delivered to the appellants/complainants before giving affidavit-cum-undertaking dated 20.12.2017 by them. Thus, it cannot be stated that the said affidavit-cum-undertaking was given by the appellants under any duress or coercion, rather the same was out of their own free will for full and final settlement of their claims. They also received the benefit of waiver of interest amounting to Rs.60,980/-. Thus, the appellants are estopped to raise their claims mentioned in the present complaint as the appellants have already fully and finally settled the matter. He further contended that the appellants have agreed to pay a sum of Rs.8,53,105.21 as full and final settlement of the dues and liabilities through a written acknowledgment dated 27.09.2017 (Annexure R-2) and even the conveyance-deed was executed in their favour on 28.02.2018 after the full and final payment. Thus, he contended that the claims lodged by the appellants are not tenable in the eyes of law.

17. He further contended that the payment of the transfer fee was made in the year 2013 whereas the present complaint has been filed in September, 2018 i.e. after more than five years. Thus, he contended that the claim of the appellants for refund of the transfer fee is barred by limitation.

18. We had duly considered the aforesaid contentions.

19. Before we proceed further, the following facts and dates are recorded as under: -

28.03.2011	Beginning of Excavation/start of construction
03.08.2012	Date of signing of Apartment Buyer's Agreement with the first allottee Ms. Anita and Mr. Kulbir Singh
25.09.2013	Date of signing of Tripartite Agreement between the original allottees, appellants and respondent for transfer of property in the name of the appellants
03.08.2016	Option given by the respondent/promoter for carrying out the fitouts in the apartment to the appellants.
27.09.2017	Letter of the appellants to the Managing Director of the respondent for having collected complete set of the keys of the flat for fitouts.
28.09.2017	Offer by the respondent builder to the appellants/allottees for provisional possession and the acknowledgement of the allottees.
07.12.2017	Offer of possession given by the respondent/promoter to the appellants/allottees
20.12.2017	Date of execution and tendering of affidavit-cum-undertaking by appellants to respondent for full and final settlement
28.02.2018	Conveyance-deed executed

20. From the aforesaid dates, events and documents, it is observed that the keys for the apartment in question were received by the appellants/allottees from the respondent/builder on 27.09.2017 (Annexure R-2) for carrying out the fitouts. The perusal of the letter

dated 28.09.2017 (Annexure R-3) issued by the respondent reveals the offer of possession was provisional for carrying out the fit-out. The Occupation Certificate by the DTCP was issued to the respondent/promoter on 30.11.2017. The offer of possession was given by the respondent/promoter vide its letter dated 07.12.2017. This offer of possession was on the condition of payment of the dues alongwith the Indemnity-cum-Undertaking on the specified performa attached with this letter. The Affidavit-cum-Undertaking for full and final settlement was executed by the appellants/allottees on 20.12.2017 (Annexure R-6). The conveyance-deed was executed on 28.02.2018 (page 160 of the paper-book).

21. The perusal of the aforesaid documents available on record depicts that on 27.09.2017 the possession given to the appellants was only for fitouts, that cannot be considered to be a legal and physical possession. It was only a provisional possession. It is settled principle of law that the legal and physical possession cannot be offered/handed over without obtaining the Occupation Certificate which was obtained in this case on 30.11.2017. So, there can be no question of offering/handing over the legal, actual and physical possession of the unit to the appellants prior to that date. This position further becomes crystal clear from the offer of possession given by the respondent/promoter vide letter dated 07.12.2017 (Annexure C-10). If the possession would have been already offered to the appellants, there was no reason for the respondent/promoter issuing the letter dated 07.12.2017 (Annexure C-10) offering the possession. It is also not believable that the respondent/promoter would had offered the actual, physical possession of the unit to the appellants/allottees without clearance of the dues as mentioned in the statement of account dated 08.12.2017 (at page 140 of the paper-book), attached with the letter offering possession dated

07.12.2017 (Annexure C-10). Thus, there is no escape from the conclusion that the actual, legal and physical possession of the unit was delivered lateron to the appellants in pursuance of the offer of possession letter dated 07.12.2017 (Annexure C-10) after obtaining the affidavit-cum-undertaking (Annexure R-6) dated 20.12.2017 and the dues shown in the statement of accounts. The conveyance-deed was executed on 28.02.2018.

22. Now the question arises as to whether the affidavit-cum-undertaking dated 20.12.2017 (Annexure R-6) is the voluntary act of the appellants or was obtained by the respondent/promoter under duress or coercion. The complaint filed by the appellants has been dismissed by the learned Authority primarily on the ground that the affidavit dated 20.12.2017 was the result of full and final settlement between the parties whereby the appellants have given up their all the claims against the respondent.

23. In our opinion the plea raised by the appellants that they were coerced and were under pressure to give the affidavit/undertaking, seems to be having substance. No doubt, in the letter of offer of possession dated 07.12.2017 (Annexure C-10), there is no reference that the affidavit (Annexure R-6) was to be executed and filed by the appellants. But the only inference which can be drawn from the circumstances leads to the conclusion that the said affidavit was also obtained by the respondent as a condition for delivery of possession.

24. The basic plea raised by the respondent is that the affidavit (Annexure R-6) was given by the appellants as a result of the mutual settlement. The mutual settlement can never be one sided. Learned counsel for the respondent has not been able to point out even a single document on record to show any negotiation for the settlement between the parties. There is no material on the file to show that any request was made by the appellants or the respondent to each other for the settlement

of the claims. Straightway affidavit (Annexure R-6) was obtained alongwith the Indemnity-bond before the delivery of actual and physical possession of the unit. The Indemnity-cum-Undertaking is available at page no.145 of the paper book which has been attested by the Notary Public on 20.12.2017. Affidavit (Annexure R-6) is also attested on the same date. If there would have been no demand of such affidavit-cum-undertaking from the appellants by the respondent, then there was no need to file such affidavit/undertaking by the appellants to obtain possession alongwith the Indemnity-bond.

25. It is admitted fact that the promoter is always in dominant position as the allottee generally parts with his hard-earned money for the need of house. Moreover, if after the issuance of offer of possession, the allottee does not obtain possession, he becomes liable for payment of the holding charges. In order to avoid all these things, the allottees have to succumb to the pressure of the promoters to fulfil their conditions. The letter dated 16.12.2017 available at page 154 of the paper-book shows that the respondent has charged interest for delayed payment @ 18% per annum for the first 90 days and then @ 24% per annum beyond the period of 90 days. The total interest recovered has been shown Rs.3,15,765/-. Out of that the waiver of only Rs.60,980/- has been allowed. Still a sum of Rs.2,54,058/- has been shown to be recoverable towards interest on delayed payments. The waiver of interest availed by the appellants cannot be equated at all with the claims of the appellants i.e. the delayed possession charges and recovery of the excess amount of transfer fee.

26. As already mentioned, the mutual settlement is always bilateral and not unilateral. The affidavit-cum-undertaking given by one party cannot constitute the mutual settlement. There is nothing on the record to show that the said undertaking was ever endorsed or accepted by the respondent/promoter, as in this affidavit it is also mentioned that now nothing remains to be payable by them to the Company in respect of any

penalty/interest outstanding. But the statement of accounts dated 13.02.2018 available at page 207 of the paper-book shows that a sum of Rs.2,59,704/- has been shown to be due against the appellants towards interest as on 13.02.2018. It means even after filing of the affidavit, the interest due has been computed by the respondent/promoter against the appellants. If any settlement would had actually taken place between the parties vide affidavit (Annexure R-6), there could be no question of further interest after 20.12.2017. Thus, the affidavit dated 20.12.2017 (Annexure R-6), cannot be stated to be the result of mutual settlement between the parties, rather, it is proved that the same has been obtained by the respondent/promoter alongwith the Indemnity-bond in order to deliver the actual, legal and physical possession of the unit to the appellants and execution of the conveyance-deed in their favour. Consequently, the affidavit dated 20.12.2017 (Annexure R-6) cannot be stated to be a voluntary action on the part of the appellants. Hence, the genuine claims of the appellants cannot be defeated on the basis of the affidavit (Annexure R-6). Reference can be made to case M**/s Ambica Construction Vs. Union of India (Supra),** wherein the Hon'ble Apex Court has laid down as under: -

> "*17. From the submissions made on behalf of the respective parties and in particular from the submissions made on behalf of the appellant, it is apparent that unless a discharge certificate is given in advance, payment of bills are generally delayed. Although, Clause 43(2) has been included in the General Conditions of Contract, the same is meant to be a safeguard as against frivolous claims after final measurement. Having regarding to the decision in the case of Reshmi Constructions's (supra), it can no longer be said that such a clause in the contract would be an absolute bar to a contractor raising claims which are genuine, even after the submission of such No Claim Certificate*."

27. Thus, in view of the aforesaid ratio of law laid down by the Hon'ble Apex Court, the genuine claims of the appellants for delayed possession charges and refund of excess transfer fee cannot be declined on the basis of the affidavit dated 20.12.2017 (Annexure R-6).

28. Firstly, we take up the claim regarding delayed possession charges. Clause 28 of the 'Apartment Buyer's Agreement' is reproduced as below: -

> *"That the Company shall endeavour to complete the construction of the said Apartment(s) within a period of 42 months from the date of execution of the Buyers' Agreement or within 42 months from the date of start of construction of the said Building whichever is later, subject to timely payment by the Allottee(s) of sale price, stamp duty and other charges due and payable according to the payment plan applicable to him/her/it or as demanded by the Company and subject to conditions as specified in this agreement. The Company on obtaining the certificate for occupation/completion and use from the competent authorities shall hand over the said Apartment to the Allottee for his/her/its occupation and use and subject to the Allottee having complied with all the terms and conditions of this Agreement. In the event of its/his/her failure to take over and/or occupy and use the Apartment(s) provisional and/or finally allotted within 30 days from the date of intimation in writing by the Company, then the same shall lie at its/his/her risk and cost and the Allottee shall be liable to pay to the Company compensation @ Rs.5/- per sq. ft. of the Super Area per month for the entire period of such delay. If the Company fails to complete the construction of the said* ***Apartment within 42 months as aforesaid then the Company shall pay to the Allottee compensation @ Rs.5/- per sq. ft. of the Super Area for the said apartment per month for the period of such delay****. The adjustment of compensation shall be done at the time of conveyance of the Apartment(s) and not earlier. The compensation shall be a distinct charge in addition to maintenance charges, and not related to any other charges as provided in this Agreement."*

29. The Apartment Buyer's Agreement was executed by the first allottee on 03.08.2012, which is later date from the date of start of the work i.e. 28.03.2011. Therefore, the period of 42 months for completion of the said apartment would be considered from signing the agreement with the original allottees i.e. from 03.08.2012. Thus, the scheduled completion period of 42 months expired on 02.02.2016. Therefore, the appellants/allottees are entitled for compensation on account of delay in handing over the possession for a period w.e.f. 03.02.2016 till the date of offer of possession i.e. up to 07.12.2017.

30. We are not expressing our opinion as to whether the appellants are entitled to the delayed possession charges as per the terms and conditions of the Apartment Buyer's Agreement or as per Rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 as the appellants in this case have only claimed the delayed possession charges as per the agreement i.e. @ Rs.5/- per sq. ft. for the area of the unit measuring 1485 sq. ft which comes to Rs.1,63,350/- (1485 x 5 x 22 months). It is not disputed that the appellants have availed the waiver of the interest of delayed payments to the extent of Rs.60,980/-. Once they are making claim for delayed possession charges, they are required to restore the waiver of the interest amount. So, the concession of Rs.60,980/- availed by the appellants is required to be deducted. The remaining recoverable amount for delayed possession charges comes to Rs.1,02,370/-.

31. The next claim pressed by the appellants is for the refund of excess amount of the transfer fee. Clause 43 of the Apartment Buyer's Agreement is reproduced as under: -

> *"43. It is specifically clarified by the Company to the Allottee that the Apartment in "Royal Heritage" being allotted herein by way of this Agreement is non-transferable in nature by the Allottee and the provisional/final allotment that may be made by the Company shall not be assigned, transferred, nominated or conveyed by the Allottee in any manner without prior written consent of the Company, which consent may be given or denied by the Company in its sole discretion and shall always be subject to applicable laws and notifications or any direction of the government in force and shall also be subject to such terms, conditions and* ***transfer charges of Rs.50 per sq.ft or as the Company may imposed from time to time in this regard****. The Allottee shall be solely responsible and liable for all legal, monetary or any other consequences that may arise from such nominations. Further, the Allottee agrees to pay all fees, charges, stamp duty and other expenses to the Company and/or the competent authorities payable on account such nomination/transfer/assignment of allotted Apartment(s). However, in the event of any imposition of such further instructions at any time after the date of this Agreement to restrict nomination/transfer/assignment of the allotted Apartment(s) by any authority, the parties will have to*

comply with the same and the Allottee has specifically noted the same."

32. In view of the above said clause in the Apartment Buyer's Agreement, the appellants/allottees were required to pay Rs.50/- per sq. ft. as a transfer fee to the respondent/promoter. Thus the respondent is entitled to Rs 50 per sq.ft x 1485 sq. ft = Rs 74,250/- Any amount charged in excess of Rs.74,250/- is required to be justified by the respondent/promoter. The respondent/promoter was unable to produce any document to convince us on what ground the respondent/promoter charged the transfer fee thrice the rate mentioned in the agreement. As per agreement, the respondent was entitled for transfer charges at the rate of Rs.50/- per sq. ft. but the respondent has actually charged the transfer charges at the rate of Rs.150/- per sq. ft. which is highly exorbitant and unjustified. The respondent being in commanding position has exploited the need of the respondent for house and has unduly charged the excess amount to enrich itself without any justification and cogent reason. Such unjustified charging of the transfer fee is illegal and cannot be sustained in the eyes of law.

33. The receipt dated 25.09.2013, at page 200 of the paper book, reveals that a transfer fee of Rs. 2,22,750.00 and Service Tax of Rs 27,532.00 with total of Rs 2,50,282.00 has been charged from the appellants. The service tax at this stage cannot be adjusted by the respondent and therefore shall have to be borne by the appellants. Thus, the respondent is required to refund Rs 2,22,750.00 minus (–) Rs 74,250.00 = Rs 1,48,500.00 towards the excess transfer fee.

34. Learned counsel for the respondent has raised the plea that the transfer fee was paid on 25.09.2013 and the complaint was filed by the appellants in September, 2018 i.e. after about five years of the said period and the claim lodged by the appellants is barred by limitation. But we do not find any substance in this plea as per our aforesaid discussions. The respondent has illegally charged the transfer fee at the

rate of Rs.150/- per sq. ft. instead of Rs.50/- per sq. ft. mentioned in the agreement. Charging of such an exorbitant transfer fee is illegal and arbitrary action on the part of the respondent. The Division Bench of the Hon'ble Andhra Pradesh High Court in case **N.V. Ramaiah versus State of A.P. and others, 1986 AIR (A.P.) 361** has laid down that the starting point of limitation is the date of decision declaring the levy of fee as illegal and invalid. The transfer charges paid by the appellants are being declared illegal, unjustified, arbitrary through this judgment of ours. So, the claim lodged by the appellants cannot be stated to be barred by limitation.

35. Thus, keeping in view of our aforesaid discussions, learned Authority had fallen in error by dismissing the complaint filed by the appellants by relying upon the affidavit dated 20.12.2017 (Annexure R-6). In view of our aforesaid discussions, the said affidavit is not a voluntary act on the part of the appellants, rather, they have to file this affidavit under duress and coercion in order to obtain the delivery of legal, actual and physical possession and execution of the conveyance-deed. So, this affidavit has no legal consequences and cannot form the basis to ignore the genuine claim lodged by the appellants.

36. Consequently, the present appeal is hereby allowed, the impugned order dated November 14th, 2018 passed by the learned Authority is hereby set aside. The complaint filed by the appellants/allottees is hereby partly allowed. The appellants/allottees are entitled to recover a sum of Rs.1,02,370/- on account of delayed possession charges and Rs.1,48,500/- on account of refund of the excess amount of the transfer charges. The appellants shall be further entitled to interest at the prescribed rate as per rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 i.e. @ 10.35% per annum from the date of this order till realisation.

37. No order to costs.

38. File be consigned to records.

Justice Darshan Singh (Retd.)
Chairman,
Haryana Real Estate Appellate Tribunal,
Chandigarh
27.11.2019

Inderjeet Mehta
Member (Judicial)
27.11.2019

Anil Kumar Gupta
Member (Technical)
27.11.2019

Sharad Avasthi & anr Vs. M/s Pivotal Infrastructure Pvt. Ltd.

Appeal No.140 of 2019

Present: Shri Denson Joseph, Advocate, learned counsel for the appellants.
None for respondent no.1.
(Respondent no.2 given up vide order dated 05.11.2019).

Vide separate detailed order of the even date, the appeal is accepted, the impugned order dated November 14th, 2018 passed by the learned Authority is set aside and the complaint filed by the appellants/complainants is partly allowed.

A copy of detailed order be communicated to the parties concerned and learned Haryana Real Estate Regulatory Authority, Panchkula.

File be consigned to records.

Justice Darshan Singh (Retd.)
Chairman,
Haryana Real Estate Appellate Tribunal,
Chandigarh
27.11.2019

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