

M/s B.M. Gupta Developers Pvt. Ltd.
Vs.
Satya Pal Mehndiratta and another
Appeal No.1320 of 2019

Present: Shri Ajay Chhikara, Advocate, ld. counsel for the appellant.
Shri Himanshu Raj, Advocate, ld. counsel for the respondents.

Reply to the application for condonation of delay filed. Previous cost paid.

2. Learned counsel for the respondents states that he has no objection in condonation of delay. In view of his statement at bar, the delay in filing of the present appeal is hereby condoned.

3. Let notice of the main appeal be issued to the respondents. Shri Himanshu Raj, Advocate, appearing on behalf of the respondents accepted the notice.

4. The present appeal has been preferred against the order dated 27.02.2019 passed by the Haryana Real Estate Regulatory Authority, Panchkula (hereinafter called 'the Authority'), whereby the complaint filed by the respondents/allottees has been disposed of with a direction to the appellant/promoter to offer the possession of the booked flat to the complainants within six months, to supply the detailed statement in respect of the payable and receivable amount to the complainants alongwith letter of possession and to pay compensation for delay in delivery of possession equivalent to the interest calculated on the

already paid amount at the rate prescribed in Rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter called 'the Rules').

5. Learned counsel for the appellant contended that the learned Authority has awarded the compensation for delay. The learned Authority had no jurisdiction to grant the compensation to the respondents/allottees. He has drawn our attention to Section 71 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter called 'the Act'). Thus, he contended that the impugned order passed by the learned Authority is without jurisdiction.

6. On the other hand, Shri Himanshu Raj, learned counsel for the respondents/allottees, contended that the word 'compensation' mentioned in the impugned order is just misnomer. The respondents have sought the interest for delayed possession as per Section 18 of the Act. He contended that the Authority had every jurisdiction to grant the interest for delayed possession.

7. Learned counsel for the appellant has further stated that even in the relief clause of the complaint, the prayer was only for grant of delayed interest and he confines to the prayer made in the relief clause.

8. We have duly considered the aforesaid contentions.

9. First para of the relief clause of the complaint reads as under: -

“(i) To hand over the possession of the unit to the complainant along with delayed interest per month from the committed date of possession till the actual delivery of possession according to section 18(1) Real Estate (Regulation and Development) Act, 2016, Section 19(4) of The Real Estate (Regulation and Development) Act, 2016, r/w Rule 15 of Haryana State Real Estate (Regulation and Development) Rules, 2017.”

10. It is evident from para no.(i) of the relief clause reproduced above, that the respondents/allottees have only sought the delayed interest per month from the committed date of possession till the actual delivery of possession according to Section 18(1) and 19(4) of the Act, read with Rule 15 of the Rules. So, in this para, the respondents/allottees have nowhere sought any compensation.

11. The learned Authority has passed the order under Section 18(1) of the Act. The word ‘compensation’ mentioned by the learned Authority in the impugned order is exactly misnomer for delayed interest. The intention of the learned Authority was only to grant the interest to the respondents for causing delay by the appellant/promoter in delivery of possession, on the money deposited by the

respondents/allottees. So, the relief granted by the learned Authority is in fact the interest for delayed possession and cannot be stated strictly to be a compensation to attract Section 71 of the Act. Thus, the word 'compensation' mentioned by the learned Authority in the impugned order is nothing but the interest for delayed possession which the learned Authority had every jurisdiction to grant and it cannot be stated that the respondents/allottees had to approach the Adjudicating Officer for this purpose.

12. In view of the aforesaid discussion, the present appeal has no merits and the same is hereby dismissed. The amount deposited by the appellant/promoter with this Tribunal be transferred to the learned Authority for disbursement to the respondents, being the Executing Court, in accordance with law, after the expiry of period of appeal.

13. File be consigned to records.

Justice Darshan Singh (Retd.)
Chairman,
Haryana Real Estate Appellate Tribunal,
Chandigarh
04.02.2020

Inderjeet Mehta
Member (Judicial)
04.02.2020

Anil Kumar Gupta
Member (Technical)
04.02.2020