BEFORE THE HARYANA REAL ESTATE APPELLATE TRIBUNAL

Appeal No. 646 of 2022
Date of Decision: September 17,2026

Vikas Mangla, R/o 704: Santosh Apartments, Plot No. 39B, Sector-6, Dwarka, New Delhi-110075.

... Appellant-allottee

Versus

1. M/s BPTP Ltd through its Directors (R1) having registered office at OT-14, 3rd Floor, Next Door Parklands, Sector-76, Faridabad-121004.
2. M/s Countrywide Promoters Pvt. Ltd. through its Directors (R2) having registered office at OT-14, 3rd Floor, Next Door Parklands, Sector-76, Faridabad-121004.

... Respondent-Promoters

CORAM:

Justice Rajan Gupta **Chairman**
Dr. Virender Parshad **Member (Judicial)**

Present: Mr. Bhupendra Pratap Singh, Advocate, for the allottee.

Mr. Hemant Saini, Advocate, and Ms. Neha, Advocate, for the promoters.

O R D E R:

RAJAN GUPTA, CHAIRMAN

Present appeal is directed against the order dated 27.05.2022, passed by the Authority[1] in Complaint No. 2150 of 2018. Operative part thereof reads as follows:

> *"52. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):*
>
> *i. The respondents are directed to pay interest at the prescribed rate of 9.50% p.a. for every month of delay from the due date of possession till the date of offer of possession plus two months to the complainant(s) as per section 19(10) of the Act.*

[1] Haryana Real Estate Regulatory Authority, Gurugram

ii. The arrears of such interest accrued from due date of possession till its admissibility as per direction (i) above shall be paid by the promoter to the allottees respectively within a period of 90 days from date of this order as per rule 16(2) of the rules.

iii. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period against their units to be paid by the respondents.

iv. The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 9.50% by the respondents/promoters which is the same rate of interest which the promoter shall be liable to pay the allottees, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.

v. The respondents shall not charge anything from the complainant(s) which is not part of the builder buyer's agreement save and except in the manner as prescribed in this order. The holding charges shall not be recoverable from the allottees even being part of builder buyer agreement as per the directions of the Hon'ble Supreme Court in civil appeal nos. 3864-3899/2020 decided on 14.12.2020 (supra).

vi. In all the complaints mentioned in the table of para 3 of this order, the due date of possession is prior to the date of coming into force of GST i.e. 01.07.2017. The authority is of the view that the respondents/promoters were not entitled to charge GST from the complainant/allottee as the liability of GST had not become due up to the due date of possession as per the flat buyer's agreements as has been held by Haryana Real Estate Appellate Tribunal, Chandigarh in appeal bearing no. 21 of 2019 titled as M/s Pivotal Infrastructure Pvt. Ltd. vs. Prakash Chand Arohi. Also, the authority concurs with the findings of the committee on this issue and holds that the difference between post GST and pre-GST shall be borne by the promoter. The promoter is entitled to charge from the allottee the applicable combined rate of VAT and service tax as detailed in para 47 of this order.

vii. The promoter is entitled to charge VAT from the allottees for the period up to 31.03.2014 @ 1.05% (one percent VAT + 5 percent surcharge on VAT). However, the promoter cannot charge any VAT from the allottees/prospective buyers for the period 01.04.2014 to 30.06.2017 as the same was to be borne by the promoter-developer only. The respondents-promoters are bound to adjust the said amount, if charged from the allottees with the dues payable by them or refund the amount if no dues are payable by them.

viii. The developer in case bearing no. 5265-2019 and 630-2021 is allowed to charge cost escalation of the

> *allotted units at Rs.233.46 per square feet instead of Rs.306.91 paisa from the allottees and is directed to work out the total cost of the allotted units and adjust accordingly.*
>
> *ix. The membership of the club is optional and the club is not part of common areas to be transferred to RWA. So, the club membership for the allottees of the project be made optional and they should not be forced to pay for the same. However, if any allottee opts out to avail this facility, and approaches the respondents for membership then, he shall pay the charges as decided by the developer. The respondents are directed to refund the amount received under this head if any request in this regard from the allottees is received.*
>
> *53. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.*
>
> *54. The complaints stand disposed off.*
>
> *55. True certified copy of this order be placed in the case file of each matter. There shall be separate decrees in individual cases.*
>
> *56. Files be consigned to registry."*

2. Factual matrix of the case is that the appellant-allottee booked a residential plot bearing no. C-373, measuring 225 square yards, in the project "Amstoria" developed by the respondents in Sectors 102 and 102A, Gurugram in the year 2010. Plot Buyer's Agreement was executed between the parties on 23.08.2011 for basic sale consideration of Rs.1,02,76,885.21/- plus development charges @ Rs.4,400 per sq. yard, club membership fee and other incidental charges, against which, the appellant has paid Rs.95,22,706.71/-. As per the agreement and service plan sanction, the due date of possession was determined as 30.06.2016, being 24 months from the date of sanction of the service plan. Part completion certificate was issued on 03.10.2017 and offer of possession of the plot was made on 27.10.2017. The appellant thereafter raised issues relating to delayed possession charges (DPC), development charges, club membership charges, VAT/GST and other ancillary levies and filed Complaint No. 2150 of 2018 before the Authority seeking, inter alia, DPC, restraining

recovery of holding charges, refund/adjustment of excess levies and direction not to charge GST.

3. The respondent-promoters contended before the Authority that the Plot Buyer's Agreement duly entitled them to recover development charges, club membership fee, cost escalation, electrification and STP charges etc., and that the offer of possession dated 27.10.2017 was validly issued upon achieving requisite development milestones. It was further contended that VAT and service tax had been charged strictly in accordance with the applicable statutory schemes and that the complainant was bound by the contract to pay all dues raised at the time of offer of possession. The respondents asserted that they were not liable to pay any delay possession charges beyond what was provided in the agreement and resisted the claims for refund of various charges.

4. After considering rival contentions of the parties, the Authority disposed of the complaint vide the impugned order, operative part whereof has been reproduced in para 1 of this order.

5. Aggrieved by the impugned order, the appellant-allottee has preferred the instant appeal before this Tribunal. The main grievance of the appellant is that the Authority has erred in computing the due date as 24 months from sanction of the service plan instead of 24 months from the date of execution of the agreement. Further, the Authority while granting delayed possession interest from the due date of possession till the date of offer of possession plus two months, failed to extend such delayed possession charges till the actual handing over of possession which, in the appellant's case, took place only in the year 2022. It is contended that in view of continued delay and the fact that the appellant remained out of possession even after the offer dated 27.10.2017, the appellant

is entitled to DPC at the prescribed rate from the due date of possession i.e., 23.08.2013 till the date of actual handing over of possession on 07.01.2022, and not merely till the offer of possession plus two months granted by the Authority.

6. Per contra, ld. counsel for the respondent-promoters argued that a valid offer of possession was made to the allottee on 27.10.2017 after the grant of part completion certificate to the project along with signing of indemnity deed-cum-undertaking dated 02.12.2017 by the allottee for vacant possession, thus DPC cannot be extended beyond the said date.

6. We have heard the learned counsel for the parties and carefully examined the record of the case.

7. It is evident from the record that as per the service plan sanction and the terms of the Plot Buyer's Agreement, the due date of possession was 30.06.2016. An offer of possession was made on 27.10.2017 after the grant of part completion certificate to the project on 03.10.2017, whereas actual possession of the plot was handed over to the appellant only in the year 2022 i.e., on 07.01.2022.

9. The respondents have not placed on record any material to show that the appellant unreasonably withheld taking possession post offer of possession which could justify curtailing the period for which DPC is payable. On the contrary, the record indicates that issues relating to excess charges, GST, VAT and other levies were being adjudicated during this period and that the Authority has, in the impugned order itself, directed adjustment/refund of certain levies. In such circumstances, the mere issuance of an offer of possession in October 2017 cannot absolve the promoter of their liability for delayed possession charges till actual handing over of possession, which undisputedly occurred only in 2022.

10. During the course of arguments, none of the parties have referred to part CC. Indemnity deed furnished by the allottee has no value. In fact, valid possession can be considered, which was granted to the allottee pursuant to the order dated 24.03.2022 passed by the Authority. The said order is reproduced hereunder:

> *The counsel for the complainant drew the attention of the authority towards the order of this authority dated 03.09.2019 and 06.04.2021 in the present matter wherein the respondent was directed to submit calculation sheet based on which the development charges have been asked from the allottees. He further submitted that the same information was also sought by the "High Powered Committee" constituted by this authority w.r.t. the subject project.*
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> *The counsel for the complainant brought to the notice of this authority that the possession of the subject unit had been handed over to the complainant on 07.01.2022 after the intervention of the "High Powered Committee". Therefore, the delayed possession charges are payable till 07.01.2022 in the present matter.*
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> *The report of the High-Powered Committee has been received and the same has already been up-loaded on the website of the Authority.*
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> *It has been stated on behalf of the respondent by Shri Venket Rao Advocate that objections to the report of the above-mentioned committee are to be filed and the same could not be filed due to lack of annexures with the report. Let the annexures of the report be also uploaded on the website of the authority. The registry is directed to do the needful today itself.*
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> *Objections, if any, to the report of the Committee be filed by both the parties within a week with an advance copy to the other side.*
>
> *Part arguments heard. Matter to come up on 12.04.2022 for further proceedings."*

11. The factum of grant of possession pursuant to the aforesaid order remains uncontroverted.

12. In view of the above, the impugned order is modified to the extent that in the case of the appellant-allottee in Complaint No. 2150 of 2018, the respondents-promoters shall pay delayed possession charges at the prescribed rate of 9.50% per annum on the amounts

deposited by the appellant, for every month of delay from the due date of possession i.e., 30.06.2016 till the date of handing over of actual physical possession of the plot i.e., 07.01.2022. The arrears of such interest shall be paid to the appellant within 90 days from the date of uploading of this order.

13. The appeal is partly allowed in above terms.

14. Copy of this order be sent to the parties/their counsel and the Authority for compliance.

15. File be consigned to records.

Justice Rajan Gupta
Chairman
Haryana Real Estate Appellate Tribunal

Dr. Virender Parshad
Member (Judicial)

September 17, 2026/mk