

Ajit Kumar V/s M/s Supertech Ltd.  
Appeal No. 646/ 2019

Present: Sh. Jaspal Singh Pannu, Advocate, Id. counsel for the appellant.

Sh. Akshat Mittal, Advocate, Id. counsel for the respondent.

Ld. counsel for the appellant is physically present before this Tribunal. Sh. Akshat Mittal, Advocate Id. counsel for the respondent was contacted through WhatsApp Video Conferencing.

The appellant has moved an application for condonation of delay of 96 days in filing the present appeal. As per averments in the application, the respondent has assured the appellant that the dispute will be settled amicably and they will comply with the judgment passed by the Id. Authority in its full letter and spirit. However, the said assurance was only to delay the matter. The appellant was mis-led by the respondent.

In addition to the pleas taken in the application, Id. counsel for the appellant contended that the delay in filing the appeal has occurred as the mother of the appellant suffered an attack.

Notice of the application was given to the respondent and in spite of sufficient opportunity, the respondent did not file the reply and their right to file the reply stands stuck off by this Tribunal vide its order dated 08.01.2020.

We have heard the Id. counsel for the parties.

It is settled principle of law that the Court should adopt the liberal approach in condonation of delay in order to decide the lis between the parties on merits. There is nothing on record to show that the delay of 96 days caused in filing the present appeal was intentional or deliberate, nor the appellant was going to gain anything by causing delay in filing the present appeal. The valuable rights of the parties are involved in the present litigation which deserves to be decided on

merits rather than on technicalities. Thus, in view of the reasons mentioned in the application and the additional plea raised by the ld. counsel for the appellant at the time of arguments, the present application is hereby allowed. The delay of 96 days in filing the present appeal is hereby condoned.

Heard on the main appeal.

Ld. counsel for the appellant contended that the ld. Authority has wrongly declined the claim of the appellant for refund of the amount. He contended that the respondent has miserably failed to complete the project within stipulated time. The work conducted at the spot is even less than 30% and there is no hope of completion of the project. In view of the contentions raised by the ld. counsel for the appellant, the notice of the appeal be issued to the respondent/promoter. Sh. Akshat Mittal, Advocate, ld. counsel for the respondent has accepted the notice.

Ld. counsel for the respondent has contended that the appellant has filed the complaint for refund of the amount. The ld. Authority vide impugned order has directed the respondent to give the delayed possession charges @ 10.75% till the offer of the possession. He contended that some observations were also made by the ld. Authority with respect to refund in para 29 of the impugned order which virtually renders the appeal infructuous.

On the other hand, the ld. counsel for the appellant has pleaded that the appeal should be heard on merits.

We have perused the para 29 of the impugned order which reads as under:

*“ As per the report of the Local Commissioner, only 30% of the project is complete whereas tower H in which flat of the complainant is situated, it is stated that 62% of work is complete (Structural Work). Keeping in view of the facts and circumstances the authority is of the view of the facts and circumstances the authority is of the view that the complainant*

*should wait till June 2020 to get the possession of the booked unit. If the respondent fails to provide the possession of the unit by June 2020, in that case, the complainant is entitled to get refund of total amount with prescribed rate of interest i.e. 10.75 per annum.”*

As per the aforesaid para, the Id. Authority has made it clear that if the respondent failed to provide the possession of the unit by June 2020, in that case the complainant/appellant is entitled to get refund of the total amount with prescribed rate of interest i.e. 10.75% P.A. It is an admitted fact that the respondent/promoter has not offered the possession of the unit to the appellant so far, though the month of June 2020 has already expired. So, as per the observations made by the Id. Authority in para 29 of the impugned order, the appellant has become entitled for refund of the amount alongwith prescribed rate of interest.

Thus, the relief for which the appellant has approached this Tribunal has already been granted to the appellant in view of the observations of the Id. Authority in para 29 of the impugned order. Therefore, the present appeal has been virtually rendered infructuous and the same is hereby disposed as such.

The appellant is at liberty to take the necessary steps to get his grievance redress as per the observations made by the Id. Authority in para 29 of the impugned order in accordance with law.

File be consigned to the records.

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

Inderjeet Mehta  
Member (Judicial)

Anil Kumar Gupta  
Member (Technical)