

M/s Supertech Ltd.
Vs.
Satish Kumar Sidana and Another
Appeal No.679 of 2019

Present: Shri Akshat Mittal, Advocate, along with Ms. Pushpa Diwas, Manager Legal of the appellant.
Shri Dinesh Kumar Dakoria, Advocate, Ld. counsel for the respondent.

[The aforesaid presence is being recorded through video conferencing since the proceedings are being conducted in virtual court.]

On the last date of hearing, an offer was given by the respondent-allottee for amicable settlement of the dispute. We have directed that some Senior Functionary of the Company should join the proceedings for negotiations for amicable settlement. Ms. Pushpa Diwas, Manager Legal has joined the proceedings through video conferencing. We have held the negotiations for amicable settlement, but the amicable settlement does not appear to be possible.

2. Heard on the appeal.

3. The present appeal has been preferred against the order dated 20.12.2018 passed by the Ld. Authority whereby the complaint filed by the appellant-promoter was stated to be pre-matured. At the same time, it was mentioned that the complainant is entitled for late delivery possession charges at the prescribed rate of interest, i.e. 10.75% after expiry of the date of possession.

4. The only plea raised by the Ld. counsel for the appellant-promoter is that the complaint filed by the respondent-allottee was pre-matured as the due date of possession has not yet elapsed. Ld. Authority has categorically mentioned that the complaint filed by the respondent-allottee was pre-matured. So, the ld. Authority was not competent to award the late delivery possession charges. Hence, the order is contradictory.

5. On the other hand, Ld. counsel for the respondent-allottee contended that the Ld. Authority has passed the conditional order

Appeal No.679 of 2019

that if the possession is not delivered by the due date as per the agreement, the complainant is entitled for late delivery possession charges at the prescribed rate. Thus, he contended that there is no contradiction in the impugned order and the appellant-promoter has unnecessarily filed this appeal to waste the time of the Ld. Tribunal and prolong the proceedings.

6. We have duly considered the aforesaid contentions.

7. The complaint filed by the respondent-allottee has been disposed of by the Ld. Authority by passing the short order which reads as under:-

“Project is registered with the authority.

Arguments heard.

Project is registered with the authority and the revised date of delivery of possession is 31.12.2021.

As per clause 24 of the BBA dated 10.10.2016 for unit No.1103 11th floor, Tower/Block-K, in project “Supertech HUES” village Badshahpur, Sector 68, Gurugram, possession was to be handed over to the complainant by June 2019+6 months grace period which comes out to be 31.12.2019. However, it has been alleged by the complainant that construction work at the site is very tardy and there is no hope and scope for completion of the project. Complainant has already made payment of Rs.32,98,145/- against a total sale consideration of Rs.33,22,231/-. Complainant is interested in getting unit. In view of the circumstances prevailing, he has lost hope for getting his flat. As such, of his own volition, he is ready to shift in another tower which is ready to move in and at the same rate and size. The complainant is entitled for late delivery possession charges at the prescribed rate of interest i.e. 10.75% after the expiry of due date of possession. At the moment, the application is pre-mature. File be consigned to the registry.

*Sd/-
(Member)
20.12.2018*

*Sd/-
(Member)
20.12.2018”*

Appeal No.679 of 2019

8. In the impugned order, the Ld. Authority has mentioned that possession of the unit allotted to the respondent-allottee was to be delivered by June 2019 plus 06 months grace period which comes to 31.12.2019 as per the agreement.

9. The present complaint was filed on 09th September, 2018. So, the Ld. Authority has rightly mentioned that the complaint filed by the respondent-allottee was pre-matured as the due date for delivery of possession has not yet elapsed even as per the terms of the agreement.

10. The Ld. Authority relied upon the assertions of the respondent-allottee that the construction work at the site was very tardy and there was no hope and scope for completion of the project. The respondent-allottee has already made the payment of ₹32,98,145/- out of the total sale consideration of ₹33,22,231/-. The respondent-allottee has even expressed his willingness before the Ld. Authority and even before this Tribunal to shift in another tower which is ready to move in and at the same rate and size. As already mentioned, the appellant-promoter has not shown any response to this proposal of the respondent-allottee.

11. The Ld. Authority was conscious of the fact that there was substantial delay in the completion of the project. Therefore, it has passed the conditional order that respondent-allottee shall be entitled for late delivery possession charges at the prescribed rate of interest i.e. 10.75% after the expiry of due date of possession, while disposing of the complaint filed by the respondent-allottee being pre-matured. The eventuality for payment of the late delivery possession charges would only arise if the appellant failed to deliver the possession by the due date. So, it cannot be stated that the

Appeal No.679 of 2019

impugned order passed by the Ld. Authority is self-contradictory, rather, this order has cut-short the multiplicity of the litigation between the parties. Therefore, we do not find any legal infirmity in the impugned order passed by the Ld. Authority in awarding the late delivery possession charges to the respondent-allottee after the expiry of the due date of possession.

12. It appears that the present appeal has been filed by the appellant-promoter just to prolong the proceedings. Consequently, the present appeal is hereby dismissed with costs of ₹5000/- which shall be recoverable along with late delivery possession charges at the time of the execution of the impugned order.

13. Copy of this order be communicated to the Ld. Counsel for the parties/parties and the Ld. Authority for compliance.

14. 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)

11.08.2020
Manoj