M/s Alpha Corp Development Pvt. Ltd.
V/s
Neelam Rani and Another
Appeal No.226 of 2020

Present: Shri Alok Jain, Advocate, Ld. counsel for the appellant-promoter.

Shri Munish Kapila, Advocate, Ld. counsel for the respondent-allottee.

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

The present appeal has been preferred against the interim orders dated 06th November, 2019, 18th December, 2019 and 11th February, 2020 passed by the Ld. Haryana Real Estate Regulatory Authority, Panchkula.

2. Though, various grievances have been raised in the grounds of appeal, but at the time of arguments Ld. counsel for the appellant-promoter has cut-short the controversy and raised the contentions mentioned below:-

i. As the completion certificate was already issued for this project in July, 2015 and even the possession was offered immediately thereafter, so, the provisions of the Act will not be applicable.

ii. The complainant had already approached the Hon'ble National Consumer Disputes Redressal Commission, New Delhi (for short, 'National Commission'), so the present complaint is not maintainable.

iii. That the Ld. Authority has given some observations in the impugned orders indicating that appellant-promoter was responsible for delay in offering the possession and it has been even observed that compensation payable to the respondent-allottee should be worked-out.

3. These contentions were rebutted by Shri Munish Kapila, Ld. counsel for the respondent-allottee. He has pleaded that it is yet to be decided

by the Ld. Authority as to whether there was any delay in offer of possession and as to whether the respondent-allottee was entitled for delayed compensation. This decision is to be taken by the Ld. Authority on merits while disposing of the complaint finally.

4. He has further contended that the complaint filed before the Hon'ble National Commission relates to some other plot. Hence, there is no bar to the present complaint.

5. He further contended that as various obligations are yet to be fulfilled like actual delivery of possession and execution of conveyance-deed etc., so, the provisions of the Act will become applicable.

6. Faced with this situation, Ld. counsel for the appellant-promoter in view of the latest pronouncement of the Division Bench of our Hon'ble High Court in case bearing CWP No.38144 of 2020 titled as Experion Developers Pvt. Ltd. v. State of Haryana and others decided on 16th October, 2020 has not pressed the contentions with respect to the maintainability of the complaint on account of the pendency of the petition before the Hon'ble National Commission and with respect to the applicability of the provisions of the Act to the present project. Thus, these issues require no expression of opinion and determination by this Tribunal.

7. With respect to the remaining contentions of Ld. counsel for the appellant-promoter, it is pertinent to mention that in the impugned order dated 06.11.2019, in para no.5 the Ld. Authority has mentioned that the Ld. counsel for the promoter submitted that her client is ready to deliver possession to the complainants of their respective plots provided they deposit all outstanding dues along with interest. In the last para, a direction has been issued to the appellant-promoter for endeavouring an amicable settlement of

dispute by offering a reasonable compensation to the complainant towards the delay in offering possession.

8. Again, in para no.4(i) of the impugned order dated 11.02.2020 it has been observed that relationship between the parties is till subsisting since it is an admitted fact that the respondent-allottee has not given possession of the plot to the complainant. Ld. counsel for the appellant-promoter has raised his contentions with respect to these observations made by the Ld. Authority expressing apprehension that the Ld. Authority has pre-judged the case and had observed that the appellant-promoter had not delivered the possession and has been directed to pay the reasonable compensation.

9. As already mentioned, Shri Munish Kapila, Advocate, Ld. counsel for the respondent-allottee has very fairly pleaded that the question with respect to the delay in offer of possession and consequent payment of the delayed compensation is yet to be decided by the Ld. Authority on merits of the case.

10. Thus, in order to safeguard the interest of the appellant-promoter, it will be suffice to mention that anything observed by the Ld. Authority in the impugned orders with respect to the delay in offering/delivering possession of the plot to the respondent-allottee and directions for payment of reasonable compensation by way of amicable settlement of the dispute, will not prejudice the mind of the Ld. Authority to adjudicate the question regarding payment of interest for any delay in delivery of the possession. It is obvious that in order to determine as to whether, the appellant-promoter is liable for payment of any interest for delayed possession or not, the Ld. Authority has to first determine as to whether there was any delay in offering the possession of the plot to the respondent-allottee. If so, whether the delay was attributable to the appellant-promoter and if these

questions are decided against the appellant-promoter, then, the Ld. Authority will proceed to determine the quantum of interest payable to the respondent-allottee for delayed possession.

11. The present appeal stands disposed of accordingly.

12. Copy of this order be communicated to the Ld. counsel for the parties/parties and Ld. Haryana Real Estate Regulatory Authority, Panchkula for compliance.

13. 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)

29.10.2020
Manoj