

**BEFORE THE HARYANA REAL ESTATE APPELLATE
TRIBUNAL**

Appeal No.272, 273 & 274 of 2019

Date of Decision: 19.01.2021

Appeal No.272 of 2019:

Mrs. Manju Arya w/o Mr. Suresh Arya, H.No.218-L, Model
Town, Sonipat, Haryana.

Appellant

Versus

M/s TDI Infrastructure Ltd., Vandana Building, Upper Ground
Floor 11, Tolstoy Marg, Connaught Place, New Delhi-110001.

Respondent

Appeal No.273 of 2019:

Mrs. Manju Arya w/o Mr. Suresh Arya, H.No.218-L, Model
Town, Sonipat, Haryana.

Appellant

Versus

M/s TDI Infrastructure Ltd., Vandana Building, Upper Ground
Floor 11, Tolstoy Marg, Connaught Place, New Delhi-110001.

Respondent

Appeal No.274 of 2019:

Mr. Suresh Arya s/o Shri Hari Chand, H.No.218-L, Model
Town, Sonipat, Haryana.

Appellant

Versus

M/s TDI Infrastructure Ltd., Vandana Building, Upper Ground
Floor 11, Tolstoy Marg, Connaught Place, New Delhi-110001.

Respondent

CORAM:

Justice Darshan Singh (Retd.)
Shri Inderjeet Mehta
Shri Anil Kumar Gupta

Chairman
Member (Judicial)
Member (Technical)

Argued by: Shri Vikas Deep, Advocate, learned counsel for appellants.
Shri Ajay Ghangas, Advocate, learned counsel for the respondent.

ORDER:

JUSTICE DARSHAN SINGH (Retd.) CHAIRMAN:

Vide this order we are going to dispose of all the above mentioned three appeals bearing no.272, 273 and 274 of 2019 filed by the appellants/allottees under Section 44 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter called 'the Act') which have arisen out of the same consolidated order dated 13.12.2018 passed by the learned Adjudicating Officer, the Haryana Real Estate Regulatory Authority, Panchkula (hereinafter called 'the Authority'), vide which three complaints i.e. Complaint No.718/2018 titled as Manju Arya vs. TDI Infrastructure, Complaint No.721/2018 titled as Manju Arya vs. TDI Infrastructure and Complaint No.723/2018 titled as Suresh Arya vs. TDI Infrastructure, filed by the appellants/complainants for grant of compensation, were dismissed.

2. Since in all these three appeals, the facts are almost similar and common question of law and facts is involved; so, we have taken these appeals together for disposal.

3. The appellants had got booked plots with the respondent/promoter in the year of 2005. They paid approximately 90% of the total basic sale price by the year,

2006. It was further pleaded that the respondent/promoter had assured to deliver the possession of the plots within 24 months from the date of booking, after completing all the development works and obtaining the completion certificate. The appellants alleged that there was inordinate delay of about 13 years in delivering the possession of the plots to the appellants. Earlier, the appellants had approached the District Consumer Disputes Redressal Forum, New Delhi, but the said complaints were got dismissed as withdrawn. Thereafter, complaints were filed before the learned Haryana Real Estate Regulatory Authority, Panchkula for grant of relief of possession as well as compensation on account of delay. During the pendency of the said complaints, the possession letters dated 24.05.2018 were issued to the appellants and the said complaints were disposed of by the learned Authority vide orders dated 24.07.2018 directing the appellants to approach the learned Adjudicating Officer for claiming the compensation. It was alleged that the delay in delivery of possession caused loss to the appellants and the respondent/promoter is liable to pay compensation to the appellants. Hence, the complaints.

4. All the three complaints filed by the appellants/allottees were contested by the respondent/promoter on the similar grounds inter alia that the complaints filed by the appellants/allottees were not

maintainable. The learned Adjudicating Officer had no jurisdiction to entertain the complaints. In the written statement filed in Complaint No.723 of 2018, it was also pleaded that the provisions of the Act are not applicable as the project in question was not registered under the provisions of the Act. It was further pleaded that the project in question was not liable to be registered in terms of Section 3 of the Act.

5. It was further pleaded that the offer of possession had already been sent to the appellants/allottees vide letters dated 24.05.2018. However, the respondent/promoter denied that it had ever promised to hand over the possession within 24 months from the date of booking of the units. It was further pleaded that the appellants are indulging in forum shopping and are trying to extract money from the respondent/promoter. It is further pleaded that the respondent/promoter has not made any violation of any act or the rules made thereunder. So, there is no question of granting any compensation to the appellants. With these pleas, the respondent/promoter pleaded for dismissal of the complaints.

6. After hearing learned counsel for the parties, the learned Adjudicating Officer dismissed all the three complaints vide common impugned order dated 13.12.2018. Hence, these appeals.

7. We have heard Shri Vikas Deep, Advocate, learned counsel for the appellants; Shri Ajay Ghangas, Advocate, learned counsel for the respondent and have meticulously gone through the record of the case.

8. Learned counsel for the appellants contended that it is an admitted fact that the appellants have booked the plots in the year 2005. At the time of booking, it was assured that the possession of the plots will be delivered to the appellants/allottees within 24 months but the respondent/promoter issued the letters of offer of possession only on 24.05.2018 i.e., during the pendency of the complaints filed by the appellants before the Haryana Real Estate Regulatory Authority, Panchkula. He contended that there was inordinate delay of more than 13 years in offer of possession, though the appellants have already made the payment of more than 90% of the basic sale price. He contended that huge loss has been caused to the appellants due to this inordinate delay and the appellants are entitled for the statutory compensation i.e., the interest on the amount deposited by them with the respondent/promoter.

9. He contended that mere execution of the conveyance-deed is no ground to extinguish the right of the appellants to claim the compensation which had accrued to them much before the execution of the conveyance-deed.

10. He further contended that it was a plotted colony. The respondent/promoter could have availed the reasonable period of 2 - 3 years for completion of the development works. Even though there is no stipulation in the allotment letter, the respondent/promoter was required to complete the development works within a reasonable period. The appellants are entitled for compensation for the inordinate and unreasonable delay of more than 13 years. To support his contentions, he relied upon case M/s **Fortune Infrastructure (now known as M/s HICON Infrastructure) & anr., 2018 STPL 4215 SC**. Thus, he contended that the learned Adjudicating Officer has wrongly declined the compensation to the appellants.

11. On the other hand, Shri Ajay Ghangas, Advocate, learned counsel for the respondent/promoter contended that there was no specific date of delivery of possession mentioned in the allotment letter. Thus, it cannot be stated that any delay has been caused in the delivery of possession by the respondent/promoter.

12. He further contended that as per Section 11(4)(a) of the Act, the promoter is only responsible for obligations, responsibilities and functions till the execution of the conveyance-deed. He contended that in this case, the conveyance-deed has already been executed, so the appellants

are debarred to claim compensation by virtue of Section 11(4)(a) of the Act.

13. Learned counsel for the respondent/promoter has further contended that the learned Adjudicating Officer has not followed the procedure as prescribed under rule 29 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter called the 'Rules'). Thus, he contended that the learned Adjudicating Officer has rightly dismissed the complaints filed by the appellants and they are not entitled for grant of any compensation.

14. We have duly considered the aforesaid contentions. The complaints filed by the appellants/allottees for grant of compensation have been dismissed on two grounds. Firstly, that the promoter shall be responsible for discharge of its obligations towards the allottees only till the conveyance of all the rights in the purchased property. Secondly, the complainants had not pleaded and proved as to what was the agreed dates of possession.

15. In our opinion, the findings recorded by the learned Adjudicating Officer are factually as well as legally erroneous. As per the information and copies of conveyance-deeds supplied by learned counsel for the appellants, the conveyance-deed for plot no. L-658 pertaining to appeal no.272 of 2019 (Complaint No.718 of 2018) was registered on 01.08.2019 during the pendency of the present appeal.

Similar is the position with respect to plot no. L-573 pertaining to appeal no.274 of 2019 (Complaint no.723 of 2018). So, in both these cases on the date of dismissal of the complaints, no conveyance-deed was actually registered.

16. The conveyance-deed with respect to plot no. L-663 pertaining to appeal no.273 of 2018 (Complaint no.718 of 2018) was registered on 24.05.2017. That too was executed during the pendency of the complaint no.756 of 2015 filed by the appellant before the District Consumer Disputes Redressal Forum, New Delhi which was dismissed as withdrawn on 24.11.2017.

17. Thus, at the time of filing the complaints no.272/2018 and 274/2018 and also on the date of decision i.e., 13.12.2018, no conveyance-deed qua these plots were executed/registered. The conveyance-deeds for these plots were only registered on 01.08.2019 during the pendency of the present appeal. So, the reasoning given by the learned Adjudicating Officer qua these complaints is factually incorrect.

18. As far as appeal no.273 of 2019 is concerned, no doubt, the conveyance-deed was already executed and registered on the date of filing the complaint no.718 of 2018. But, in our view the execution and registration of the conveyance-deed will not absolve of the promoter of the liability which had accrued before the execution and

registration of the conveyance-deed. The moment the delay has occurred in the delivery of possession, the statutory right to claim the compensation had occurred to the appellant which cannot be subsequently extinguished with the execution and registration of the conveyance-deed.

19. The learned Adjudicating Officer has referred to Section 11 sub section 4 (a) of the Act to dislodge the claim of the appellants which reads as under: -

“11. Functions and duties of promoter. —

(4) The promoter shall—

(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be:

Provided that the responsibility of the promoter, with respect to the structural defect or any other defect for such period as is referred to in sub-section (3) of section 14, shall continue even after the conveyance deed of all the apartments, plots or buildings, as the case may be, to the allottees are executed.”

20. As per the aforesaid provision of law, the promoter shall be responsible for all the obligations, responsibilities and functions under the provisions of the Act or the rules and

regulations made thereunder or to the allottees as per the agreement for sale till the conveyance of all the apartments, plots or buildings, as the case may be. This provision does not say that the cause of action which had already accrued to the allottee against the promoter due to non-fulfilment of the obligations as per the agreement for sale shall stand extinguished with the execution of the conveyance-deed. Whatever statutory rights had accrued to the allottee prior to the conveyance-deed, cannot be defeated with the subsequent execution and registration of the conveyance-deed.

21. The Hon'ble Apex Court in case **Wg. Cdr. Arifur Rahman Khan and Ors. Vs. DLF Southern Homes Pvt. Ltd. and Ors. 2020(3) RCR (Civil) 544** has laid down as under: -

“The developer in the present case has undertaken to provide a service in the nature of developing residential flats with certain amenities and remains amenable to the jurisdiction of the Consumer Fora.

Consequently, we are unable to subscribe to the view of the NCDRC that flat purchasers who obtained possession or executed Deeds of Conveyance have lost their right to make a claim for compensation for the delayed handing over of the flats.”

22. Thus, the Hon'ble Apex Court has categorically laid down that the purchasers will not lose their right to claim

compensation for the delayed handing over of the unit on the ground that the possession has been delivered and deed of conveyance has been executed. This authority is squarely applicable to the controversy in hand.

23. Even though this judgment has been rendered by the Hon'ble Apex Court under the Consumer Protection Act, 1986 but the principle of law laid down by the Hon'ble Apex Court in the aforesaid judgment will also be applicable to the cases under the Act. Thus, we are of the considered opinion that mere execution of the conveyance-deed by the respondent/promoter qua plot no.663, Block no.L, TDI City at Kundli, Sonipat, Haryana (Complaint No.718/2018, Appeal No.273/2019) will not extinguish the right of the appellant/allottee to claim the compensation which had already accrued to her much before the execution of the conveyance-deed.

24. In Appeal no.272 of 2019, the plot was booked by the appellant on 19.08.2005. 90% of the basic sale price was paid till 26.12.2006 but the possession was offered on 24.05.2018.

25. In appeal no.273 of 2019 plot was booked on 21.09.2005. 90% of the basic sale price was paid by 07.11.2007 but the possession was not offered till the date of execution of the conveyance-deed dated 25.05.2017. It is also the case of the appellant that even with the execution of the

conveyance-deed, the actual possession was not handed over for want of the occupation certificate.

26. In appeal no.274 of 2019 the plot was booked on 07.01.2008. 95% of the basic sale price was paid up to 07.10.2013 but the possession was offered on 24.05.2018. So, there was substantial delay in handing over of the possession.

27. It is an admitted fact that no agreement for sale was entered into between the parties wherein the date of delivery of possession might have been stipulated. But the promoter cannot indefinitely defer the delivery of possession after receiving the substantial sale price. The promoter is duty bound to deliver the possession within reasonable time. The Hon'ble Apex Court in case **M/s Fortune Infrastructure (now known as M/s Hicon Infrastructure) & anr. 2018 STPL 4215 SC** has laid down as under: -

“15. Moreover, a person cannot be made to wait indefinitely for the possession of the flats allotted to them and they are entitled to seek the refund of the amount paid by them, along with compensation. Although we are aware of the fact that when there was no delivery period stipulated in the agreement, a reasonable time has to be taken into consideration. In the facts and circumstances of this case, a time period of 3 years would have been reasonable for completion of the contract i.e., the possession was

required to be given by last quarter of 2014. Further there is no dispute as to the fact that until now there is no redevelopment of the property. Hence, in view of the above discussion, which draw us to an irresistible conclusion that there is deficiency of service on the part of the appellants and accordingly the issue is answered. When once this Court comes to the conclusion that, there is deficiency of services, then the question is what compensation the respondents/complainants is entitled to?"

28. In view of the aforesaid ratio of law even where no delivery period was stipulated, the reasonable time has to be taken into consideration. In view of the facts and circumstances of that case, the Hon'ble Apex Court deemed it fit to consider three years period as a reasonable time. Thus, in view of the aforesaid authoritative pronouncement of the Hon'ble Apex Court, the learned Adjudicating Officer was not justified to decline the claim of the appellants on the ground that there was no stipulated date of delivery of possession of the plots or that the appellants have failed to prove that they were assured that possession shall be delivered in 24 months.

29. Learned counsel for the respondent has raised the objection that the learned Adjudicating Officer has not followed the procedure as prescribed under rule 29 of the Rules. The learned Adjudicating Officer has summarily disposed of the

complaint by observing that the complaints filed by the appellants were not maintainable as the conveyance-deed was already executed and there is no stipulated date of delivery of possession, but as discussed above said findings of the learned Adjudicating Officer are not legally sustainable. Thus, the quantum of compensation has to be assessed by the learned Adjudicating Officer by following the procedure prescribed under rule 29 of the Rules and the factors enumerated in Section 72 of the Act. Thus, we have no other option but to remand these cases to the learned Adjudicating Officer for adjudging the compensation.

30. Thus, keeping in view our aforesaid discussions, the present appeals are hereby allowed. The impugned order dated 13.12.2018 is hereby set aside. The cases are remanded to the learned Adjudicating Officer, Haryana Real Estate Regulatory Authority, Panchkula for adjudging the compensation by following the procedure as per rule 29 of the Rules and taking into consideration the factors provided in Section 72 of the Act. We leave it to the wise discretion of the learned Adjudicating Officer to determine the reasonable period for delivery of possession keeping into consideration the facts and circumstances of each complaint.

31. We have been informed that very few cases are pending with the learned Adjudicating Officer, Panchkula. So, she will make every effort to dispose of these complaints

expeditiously, preferably within two months from the date of appearance of the parties before her as the appellants/allottees are resorting to litigation to enforce their legal rights since the year 2015.

32. The parties are directed to appear before the learned Adjudicating Officer, Panchkula on 04.02.2021.

33. Copy of this order be communicated to the learned counsel for the parties/parties, the learned Haryana Real Estate Regulatory Authority, Panchkula and learned Adjudicating Officer, Panchkula for compliance.

34. The original order be attached with appeal no.272 of 2019 and certified copies be attached with appeals no.273/2019 and 274/2019.

35. File be consigned to the records.

Announced:
January 19th, 2021

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

Inderjeet Mehta
Member (Judicial)

Anil Kumar Gupta
Member (Technical)

Mrs. Manju Arya
vs.
M/s TDI Infrastructure Ltd.
Appeal No.272 of 2019

Present: None.

Vide our separate detailed consolidated judgment of the even date, the present appeal stands allowed along with other connected appeal nos. 273/2019 and 274/2019. The impugned order dated 13.12.2018 is hereby set aside. The case is remanded to the learned Adjudicating Officer, Haryana Real Estate Regulatory Authority, Panchkula, for adjudging the compensation by following the procedure as per rule 29 of the Haryana Real Estate (Regulation and Development) Rules, 2017 and taking into consideration the factors provided in Section 72 of the Real Estate (Regulation and Development) Act, 2016. We leave it to the wise discretion of the learned Adjudicating Officer to determine the reasonable period for delivery of possession keeping into consideration the facts and circumstances of the complaint.

The parties are directed to appear before the learned Adjudicating Officer, Panchkula on 04.02.2021.

Copy of the detailed judgment be communicated to the learned counsel for the parties/parties and the learned Haryana Real Estate Regulatory Authority, Panchkula and learned Adjudicating Officer, Panchkula for compliance.

The original judgment be attached with appeal no.272 of 2019 and certified copies be attached with appeals no.273/2019 and 274/2019.

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)

January 19, 2021

CL

Mrs. Manju Arya
Vs.
M/s TDI Infrastructure Ltd.
Appeal No.273 of 2019

Present: None.

Vide our separate detailed consolidated judgment of the even date, the present appeal stands allowed along with other connected appeal nos. 272/2019 and 274/2019. The impugned order dated 13.12.2018 is hereby set aside. The case is remanded to the learned Adjudicating Officer, Haryana Real Estate Regulatory Authority, Panchkula, for adjudging the compensation by following the procedure as per rule 29 of the Haryana Real Estate (Regulation and Development) Rules, 2017 and taking into consideration the factors provided in Section 72 of the Real Estate (Regulation and Development) Act, 2016. We leave it to the wise discretion of the learned Adjudicating Officer to determine the reasonable period for delivery of possession keeping into consideration the facts and circumstances of the complaint.

The parties are directed to appear before the learned Adjudicating Officer, Panchkula on 04.02.2021.

Copy of the detailed judgment be communicated to the learned counsel for the parties/parties and the learned Haryana Real Estate Regulatory Authority, Panchkula and learned Adjudicating Officer, Panchkula for compliance.

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)

January 19, 2021
CL

Judgment - Haryana Real Estate Appellate Tribunal

Suresh Arya
Vs.
M/s TDI Infrastructure Ltd.
Appeal No.274 of 2019

Present: None.

Vide our separate detailed consolidated judgment of the even date, the present appeal stands allowed along with other connected appeal nos. 272/2019 and 273/2019. The impugned order dated 13.12.2018 is hereby set aside. The case is remanded to the learned Adjudicating Officer, Haryana Real Estate Regulatory Authority, Panchkula, for adjudging the compensation by following the procedure as per rule 29 of the Haryana Real Estate (Regulation and Development) Rules, 2017 and taking into consideration the factors provided in Section 72 of the Real Estate (Regulation and Development) Act, 2016. We leave it to the wise discretion of the learned Adjudicating Officer to determine the reasonable period for delivery of possession keeping into consideration the facts and circumstances of the complaint.

The parties are directed to appear before the learned Adjudicating Officer, Panchkula on 04.02.2021.

Copy of the detailed judgment be communicated to the learned counsel for the parties/parties and the learned Haryana Real Estate Regulatory Authority, Panchkula and learned Adjudicating Officer, Panchkula for compliance.

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)

January 19, 2021
CL

Judgment - Haryana Real Estate Appellate Tribunal