

Amit Gupta Vs. Athena Infrastructure Ltd.
Appeal No.79 of 2020

Present: Ms. Vandana Aggarwal, Advocate, Ld. counsel for the appellant.

Shri Ajiteshwar Singh, Advocate, Ld. counsel for the respondent.

{The aforesaid presence is being recorded through video conferencing since the proceedings are being conducted in virtual Court}

The complaint filed by the appellant-allottee for grant of interest for delayed possession was dismissed by Ld. Haryana Real Estate Regulatory Authority, Gurugram (for short, 'the Authority') by passing the short order dated 19.12.2019, which reads as under:-

“Arguments heard.

In this case, conveyance deed has already been executed between the parties and as such, the present complaint does not lie before this authority and the same stands dismissed. He is at liberty to file a complaint before the Adjudicating Officer for compensation, if any.

File be consigned to the registry.”

The only ground taken in the order is that as the conveyance-deed had already been executed, so the complaint was not maintainable.

In our view the approach of the Ld. Authority is erroneous. The Hon'ble Apex Court in case **Wg. Cdr. Arifur Rahman Khan and Aleya Sultana and others vs. DLF Southern Homes Pvt. Ltd. (now known as BEGUR OMR Homes Pvt. Ltd.) and others 2020(3) R.C.R.(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.”

In view of the aforesaid ratio of law laid down by the Hon'ble Apex Court, the allottees will not lose their right to claim interest for delayed possession merely on the ground that the conveyance deed had already been executed. The execution of the conveyance deed cannot extinguish the cause of action which had already accrued to the allottee due to delay in delivery of possession.

Thus, the impugned order passed by the Ld. Authority is not sustainable. Consequently, the present appeal is hereby allowed. The impugned order dated 19.12.2019 is hereby set aside. The case is remanded to the Ld. Authority to pass fresh order in accordance with law.

The parties are directed to appear on 01st February, 2021 before the Ld. Authority.

Copy of this order be communicated to the parties/Ld. counsel for the parties and Ld. Haryana Real Estate Regulatory Authority, Gurugram for information and compliance through e-mail.

File be consigned to the record.

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

Inderjeet Mehta
Member (Judicial)

Anil Kumar Gupta
Member (Technical)

13.01.2021
Manoj