

**BEFORE THE HARYANA REAL ESTATE APPELLATE
TRIBUNAL**

**Appeal No.255 of 2019
Date of Decision:05.04.2021**

Ravinder Pal Singh Resident of House No.71 Defence Colony,
Hisar, Haryana-125001.

Appellant

Versus

1. M/s Emaar MGF Land Ltd. Registered Office ECE House,
28 Kasturba Gandhi Marg, New Delhi-110001.
2. Learned Real Estate Regulatory Authority, Gurugram
(through its Learned Chairman), New PWD Rest House,
Civil Lines, Gurugram, Haryana-122001, India.

Respondents

CORAM:

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

Chairman
Member (Judicial)
Member (Technical)

Argued by: Shri Shubhnit Hans, Advocate, Learned
Counsel for appellant.
Shri Shekhar Verma, Advocate, Learned
Counsel for respondent no.1.

ORDER:

JUSTICE DARSHAN SINGH (Retd.) CHAIRMAN:

The present appeal has been preferred under Section 44 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter called 'the Act') against the order dated 13.09.2018 passed by the learned Haryana Real Estate Regulatory Authority, Gurugram (hereinafter called 'the Authority'), vide which Complaint No.349 of 2018 filed by the

appellant/allottee was disposed of with the following directions:-

- “(i) The respondent admitted to hand over the possession of the said unit by 31st December, 2018.
- (ii) The respondent is duty bound to pay the interest at the prescribed rate i.e. 10.45% for every month of delay from the due date of possession i.e. 23.07.2017 till the actual date of handing over of the possession.
- (iii) The respondent is directed to pay interest accrued from 23.07.2017 to 13.09.2018 on account of delay in handing over of possession which shall be paid to the complainant within 90 days from the date of decision and subsequent interest to be paid by the 10th of every succeeding month.
- (iv) The respondent is directed to allow the complainant to visit the project site freely.”

2. As per averments in the complaint, the appellant had booked an apartment in the residential project of the respondent/promoter namely “**Palm Gardens**” situated in Sector-83, Gurugram on 17.02.2014. The appellant has paid a total sum of Rs.52,83,674/-. A ‘Buyer’s Agreement’ (Annexure A-2) was executed on 23.04.2014. The possession of the allotted unit was to be delivered within 36 months plus three months as grace period from the date of the agreement.

The appellant was allotted unit no.PGN-06-1506. The payment plan was the construction linked. The appellant has made the timely payments so that the project does not get delayed but the respondent had not only deprived the appellant of his booked unit but kept on demanding the next scheduled amount continuously even though there was no sign of completion of the project. The appellant had communicated his worries to the respondent/promoter through emails. The possession of the unit was supposed to be delivered in February, 2017. The appellant had already paid 35% of the sale price within 90 days of the booking of unit. Since the milestone of occupation certificate was not hit, the appellant refused to make the further payments. The respondent/promoter has cheated the appellant by misappropriating the money paid by the allottees and not handing over the possession of the apartment. Thus, the appellant has sought the relief of refund of Rs.52,83,674/- along with interest @ 18% per annum from the dates of respective deposits. The appellant has also sought the compensation for mental agony and litigation expenses.

3. Respondent/promoter contested the complaint on the grounds inter alia that as the appellant has sought the relief of compensation and refund, the same is to be decided by the Adjudicating Officer under Section 71 of the Act read with rule 29 of the Haryana Real Estate (Regulation and

Development) Rules, 2017 (hereinafter called 'the Rules') and not by the learned Authority. It was further pleaded that as per the Buyer's Agreement the failure to make the timely payment of the demanded amount will attract interest @ 24% per annum and in the event of failure of the allottees to comply with the terms and conditions of the agreement, the respondent/promoter will have right to forfeit the earnest money i.e. 15% of the total sale consideration. The appellant and the co-allottee had delayed the execution of the buyer's agreement despite having received the same as far back as on 03.03.2014. It was further pleaded that the project in question was being developed over an area of 21.90 acres consisting 12 towers out of which the work already stood completed and occupation certificate in respect of four towers had been received. The respondent/promoter further pleaded that the allegations made by the appellant in the complaint are absolutely frivolous, baseless and there is no merits in the pleas raised by the appellant. With these pleas, the respondent pleaded for dismissal of the complaint.

4. After hearing learned counsel for the parties appreciating the documents placed on record the learned Authority disposed of the complaint filed by the appellant vide impugned order dated 13.09.2018 with the directions reproduced above. The claim of the appellant regarding refund was declined on the ground that the project was almost

complete and allowing refund at this stage will hamper the development of the project. The complainant reserved his right to seek compensation by moving the separate application to the Adjudicating Officer, if required.

5. Aggrieved with the aforesaid order, the present appeal has been preferred.

6. We have heard Shri Shubhnit Hans, Advocate, Learned Counsel for appellant, Shri Shekhar Verma, Advocate, Learned Counsel for the respondent/promoter. They have also filed the written arguments. We have meticulously examined the record of the case.

7. Initiating the arguments, learned counsel for the appellant contended that the appellant had booked the apartment with the respondent/promoter in the year 2014 and accordingly executed the Buyer's Agreement (Annexure A-2) on 23.04.2014. The appellant was allotted a unit no.PGN-06-1506 with super area admeasuring 1546.84 sq. mtrs. (carpet area) for a total sale consideration of Rs.1,37,39,911.05. The appellant had paid Rs.52,83,674/- within 90 days of the booking. The deemed date of possession as per agreement was 23.07.2017 including the grace period of three months. He contended that the appellant/promoter had failed to deliver the possession as per the terms and conditions of the agreement and the appellant was compelled to file the

complaint no.349 of 2018 seeking the relief of refund. The learned Authority instead of granting the relief of refund directed the respondent/promoter to pay the interest on the delayed possession and also directed to hand over the possession of the unit to the appellant by 31.12.2018. But, even the said direction of the learned Authority was not adhered to by the respondent/promoter.

8. He further contended that instead of complying with the directions of the learned Authority and offering the possession of the unit, the respondent/promoter further raised the demand of Rs.85,79,866/- vide demand letter in January, 2019. He contended that the respondent even did not adjust the interest awarded by the learned Authority in the said demand.

9. He further contended that the appellant vide email dated 02.04.2019 pointed out the non-compliance of the impugned order dated 13.09.2018 passed by the learned Authority but the respondent failed to revert to the said email. The appellant even visited the site and met the officials of the respondent but even then no concerns of the appellant were addressed by the officials of the respondent. Ultimately, the appellant vide email dated 14.05.2019 (Annexure A-9) apprised the respondent on all the issues and that is why it was not appropriate for him to continue with the project. He

contended that in view of the conduct of the respondent, the appellant has lost the faith in the respondent company. The appellant did not want to continue with the project and is entitled for refund of the amount deposited with interest. To support his contentions, learned counsel for the appellant relied upon case ***Pioneer Urban Land & Pioneer Urban Land & Infrastructure Ltd. Vs. Govindan Raghavan and Ors., (2019) 5 SCC 725.***

10. Per contra, Shri Shekhar Verma, Advocate, learned counsel for the promoter contended that the appellant/allottee had paid only Rs.57,01,278/- including all taxes against the total sale consideration of Rs.1,49,19,250/-, which is just 35% of the total sale consideration. He further contended that the appellant/allottee had no intention to pay the remaining sale consideration and did not deposit any amount towards the sale consideration of the unit after May, 2014.

11. He further contended that the appellant/allottees were mere investor who had invested the money for some quick gains by way of premium on the investment but due to slump in the real estate sector, the price of the unit did not increase and therefore the appellant/allottees intentionally stopped remitting the payment and started seeking refund. He further contended that the project is already complete. The application for issuance of the Occupation Certificate was

moved as early as on 30.03.2018 and 21.12.2018 respectively and the Occupancy Certificate has been issued on 02.05.2019. The offer of possession has already been sent to the appellant on 03.05.2019.

12. He further contended that the present appeal has been preferred by the appellant/allottee after waiting for a long period with sole intention to wriggle out from the contract and to evade taking the possession of the unit in question and making the payment of the remaining sale price along with interest. He has drawn our attention to the email dated April 2, 2019 (Annexure A-4) sent by the appellant wherein he is seeking the compliance of the impugned order passed by the learned Authority and suddenly he changed the mind and filed the present appeal seeking refund.

13. Finally, he contended that the respondent/promoter is ready and willing to comply with the directions of the learned Authority and to hand over the possession of the unit to the appellant/allottees to whom the possession has already been offered. It is the appellant/allottees who are not complying with the terms and conditions of the offer of possession letter. With these contentions, learned counsel for the respondent pleaded for dismissal of the appeal.

14. We have duly considered the aforesaid contentions. It is an admitted fact that the appellant along with his wife

had booked the apartment in the project of the respondent/promoter namely "Palm Gardens" situated in Sector-83, Village Kherki Daula, Tehsil and District Gurugram and apartment no.PGN-06-1506 was allotted to them. The Apartment Buyer's Agreement was executed on 23.04.2014. The possession was to be handed over as per clause 10(a) of the buyer's agreement within 36 months plus three months' grace period from the date of execution of the agreement which comes to 23.07.2017. The basic sale price of the apartment was Rs.1,37,39,911.05 out of that the appellant/allottees had only paid Rs.52,83,674/-.

15. The appellant/allottee is seeking the refund of the amount deposited by them along with interest @ 18% per annum on the ground that the respondent has not completed the project within the stipulated period and the possession thereof has not been offered in terms of the Buyer's Agreement dated 23.04.2014.

16. As already mentioned as per clause 10(a) of the buyer's agreement dated 23.04.2014, the possession was to be offered to the appellant/allottees within 36 months plus three months grace period from the date of the agreement. In this way, the respondent/promoter was required to offer the possession of the apartment to the appellant/allottees by 23.07.2017. Admittedly, the respondent/promoter has not

been able to deliver or offer the possession of the apartment to the respondent/allottees as per the terms and conditions of the buyer's agreement.

17. Annexure-3 of the buyer's agreement is the Schedule of Payment Plan which is a construction linked and the same is reproduced as under:-

Sr. No.	Linked Stages	Description	Due Date	Total	Service Tax	Total Amount
1.	On Booking and within 45 days from the date of booking	100% of EDC, 20% of Basic, 20% of PLC	04-Apr-14	3233411.50	93293.28	3326704.78
2	Within 90 days of booking	15% of PLC, 15% of Basic	19-May-14	1887000.00	69969.96	1956969.96
3	Application of Occupation Certificate	100% of club membership, 60% of basic, 100% of car park, 60% of PLC	-	7898000.00	297183.84	8195183.84
4	Intimation of possession	5% of PLC, 5% of basic, 100% of lfms	-	721500.00	23323.32	744823.32
Total				13739911.50	483770.40	14223681.90

18. The appellant has paid the first two instalments. The third instalment was to be paid when the application for occupation certificate is moved by the promoter. The respondent has placed on file the copy of the letter dated December 21, 2018 to show that the application for issuance of Part Occupation Certificate with respect to Tower No.6,8,9,10 & EWS (4th Floor & above) was received in the office of Director, Town and Country Planning on 21.12.2018. Tower No.6 is the relevant tower wherein the apartment allotted to appellant and his wife exists. So, the respondent/promoter has moved the application for grant of Occupation Certificate on 21.12.2018 and thereafter they

raised the demand of the third instalment i.e. Rs.85,79,866/- vide letter dated 08.01.2019 (Annexure A-3). The appellant kept mum for about three months after receiving this demand letter and ultimately sent the email dated April 02, 2019 wherein he raised the issue that as per the buyer's agreement, the respondent was required to deliver the possession by 23.07.2017 but as the respondent has not handed over the possession, so the application for Occupation Certificate does not hold good the milestone and there was no reason to pay more money to the respondent. He has also raised the issue regarding the reimbursement of the excess amount paid towards EDC/IDC etc. No payment as per the demand letter dated 08.01.2019 was made by the appellant.

19. The Occupation Certificate was issued by the Director, Town and Country Planning Department, Haryana on 02.05.2019 and the possession was offered to the appellant vide letter dated 03.05.2019 (Annexure A/5). So, the possession was offered to the appellant next day of receiving the Occupation Certificate. Along with the letter of offer of possession, the respondent/promoter has attached the Statement of Account as Annexure-1 and again raised the demand of the amount due. Thereafter, the appellant sent the email dated 14.05.2019 (Annexure A-9) for refund of the amount. It was mentioned by the appellant in the email dated 14.05.2019 (Annexure A-9) that he had exhausted his patience

and had no desire to go ahead to buy the flat. The fact remains that the appellant/allottees had made the payment of only first two instalments i.e. about 35% of the basic sale price. The third instalment was not paid inspite of demand.

20. As already mentioned, the appellant has filed the complaint for refund of the amount but the learned Authority vide impugned order dated 13.09.2018 has declined the claim for refund on the ground that the project was almost complete and allowing the refund at this stage will hamper the development of the project and it will adversely affect the interest of other allottees in the project. The appellant has preferred the present appeal against the order dated 13.09.2018 passed by the learned Authority and has claimed the refund of the amount deposited by him along with interest.

21. Now we have to see as to whether in these circumstances the appellant is entitled for the grant of relief of refund.

22. At the cost of repetition, as per clause 10(a) of the Buyer's Agreement dated 23.04.2014, the possession of the apartment was to be delivered within 36 months plus grace period of three months. In this way, the deemed date of possession comes to 23.07.2017. In the impugned order the learned Authority while declining the relief of refund has categorically mentioned that the project was almost complete.

The learned Authority directed the respondent/promoter to hand over the possession of the unit to the appellant/allottee by 31.12.2018. The appellant was also awarded interest for the delay in delivery of possession at the prescribed rate. The respondent/promoter had applied for issuance of the Occupation Certificate on 21.12.2018. It shows that the project was complete by 21.12.2018. The Occupation Certificate was issued by the Directorate, Town & Country Planning Department Haryana on 02.05.2019.

23. As per the schedule of payment, on moving the application for Occupation Certificate, the respondent/promoter had issued the demand letter Annexure A/3 raising the demand of Rs.85,79,866/-. After waiting for more than three months, the appellant sent an email Annexure A/4 dated April 02, 2019 to the respondent/promoter resisting the demand on the ground that the respondent has not been able to deliver the possession by 23.07.2017. The issue regarding excess payment of EDC/IDC was also raised. But, it is important to note that in this email dated April 02, 2019, the appellant has not pressed his demand for refund of the amount deposited by him. From the tenor of the email dated April 02, 2019 Annexure A/4 it appears that initially the appellant was satisfied with the relief of interest for delayed possession awarded by the learned Authority and he was just resisting the demand raised by the

respondent. The appellant did not prefer any appeal against the impugned order within the period of limitation. The present appeal has been preferred only on 27.05.2019 i.e. after the issuance of the offer of possession letter dated 03.05.2019 and issuance of the Occupation Certificate on 02.05.2019. In response to the demand letter dated 08.01.2019 in email dated 02.04.2019 Annexure A/4, the appellant has not raised any grievance against the impugned order. It was not mentioned in the email dated 02.04.2019 that he was no more interested in continuing with the project nor any demand for refund was raised. He has just raised some excuses for not making the payment in response to the demand letter dated 08.01.2019 Annexure A/3. The present appeal was filed with a delay of 166 days, though the same was condoned by this Tribunal vide order dated 13.02.2020, but this delay still reflect the conduct of the appellant.

24. As already mentioned, it appears that initially the appellant was satisfied with the impugned order for grant of interest for delayed possession. He only made up his mind to challenge the impugned order and to re-assert his claim for refund after receiving the offer of possession letter dated 03.05.2019. The appellant had made the payment of only first two instalments amounting to Rs.52,83,674/- against the basic sale consideration of Rs.1,37,39,911.05 and the remaining amount was not paid by him inspite of the demand

letters issued by the respondent/promoter. Thus, the appellant himself was at default in making the payment as per the payment schedule.

25. The crux of the aforesaid discussion shows that the Occupation Certificate had already been issued by the competent authority on 02.05.2019. Even the letter of possession has been issued to the appellant by the respondent/promoter on 03.05.2019. The appellant has not taken the steps to file the appeal against the impugned order within the period of limitation. Even no grievance against the impugned order was raised by the appellant in the email dated 02.04.2019 Annexure A/4. It shows that initially he was satisfied with the impugned order and he made up his mind to file the present appeal to claim the relief of refund only after receiving the letter of offer of possession dated 03.05.2019. It is also established that the appellant is himself at default as he has not made the payments after the initial payment of two instalments inspite of demands raised by the respondent/promoter.

26. In **IREO GRACE REAL TECH PVT. LTD. Versus ABHISHEK KHANNA & OTHERS**, **Civil Appeal No.5785 of 2019 decided on January 11, 2021**, the Hon'ble Apex Court held as under:-

“21. Whether the Apartment Buyers are entitled to terminate the Agreement, or refund of the amount deposited with Delay Compensation.

21.1 The issue which now arises is whether the apartment buyers are bound to accept the offer of possession made by the Developer where the Occupation Certificate has been issued, along with the payment of Delay Compensation, or are entitled to terminate the Agreement.

The factum of delay in completing the construction and making the offer of possession is an undisputed fact in this case.

21.2 In the present case, the allottees before this Court in the present batch of appeals, can be categorised into two categories:-

i) Apartment Buyers whose allotments fall in Phase 1 of the project comprised in Towers A6 to A10, B1 to B4, and C3 to C7, where the Developer has been granted occupation certificate, and offer of possession has been made, are enlisted in Chart A;

ii) Apartment Buyers whose allotments fall in Phase 2 of the project, where the allotments are in Towers A1 to A5, B5 to B8, C8 to C11, where the Occupation Certificate has not been granted so far, are set out in Chart B below.

CHART A

.....x x x x x x x x x x x x x.....

CHART B

.....x x x x x x x x x x x x x.....

Chart A allottees

(i) We are of the view that allottees at Serial Nos. 1 and 2 in Chart A are obligated to take possession of the apartments, since the

construction was completed, and possession offered on 28.06.2019, after the issuance of Occupation Certificate on 31.05.2019. The Developer is however obligated to pay Delay Compensation for the period of delay which has occurred from 27.11.2018 till the date of offer of possession was made to the allottees.”

27. In the aforesaid latest judgment the Hon'ble Apex Court has held that where the construction was complete and possession was offered after issuance of the Occupation Certificate, the allottee is obliged to take possession. However, the developer will be obliged to pay delay compensation for the period of delay that had occurred from the due date of possession till the date of offer of possession. Consequently, the relief regarding refund was declined. This authority is fully applicable to the facts of the case in hand.

28. In the instant case also after completion of the project the respondent has moved an application for issuance of the Occupation Certificate on 21.12.2018 which was granted on 02.05.2019 and the letter of offer of possession was issued on 03.05.2019. Thus, as the construction is already complete and the appellant himself is at default, so he is not entitled for the relief of refund.

29. Case ***Pioneer Urban Land & Pioneer Urban Land & Infrastructure Ltd. vs. Govindan Raghavan and Ors.*** (Supra) relied upon by learned counsel for the appellant is quite distinguishable on facts. In that case the due date for

delivery of possession was 04.03.2016 but the possession was offered on 28.08.2018 i.e. with a delay of two years, five months and twenty four days. The allottee had made the payment of Rs.4,48,43,026/- against the total sale consideration of Rs.4,83,25,280/-. So, the allottee had made the substantial payment and there was approximately delay of 2½ years in the offer of possession. Moreover, **IREO GRACE REAL TECH PVT. LTD. Versus ABHISHEK KHANNA & OTHERS** case (supra) is the latest judgment on the subject delivered by three judges bench of the Hon'ble Apex Court. Whereas, ***Pioneer Urban Land & Pioneer Urban Land & Infrastructure Ltd. vs. Govindan Raghavan and Ors.*** (Supra) was decided by the bench consisting of two judges of the Hon'ble Apex Court.

30. Thus, in view of our aforesaid discussion the appellant does not deserve the relief of refund. He has already been granted the interest for delayed possession by the learned Authority in the impugned order.

31. Thus, keeping in view our aforesaid discussion, there is no illegality or irregularity in the impugned order dated 13.09.2018 passed by the learned Authority which can warrant any interference in the impugned order by this Tribunal. Consequently, the appellant/allottee is not entitled for the claim of refund and the same has been rightly declined

by the learned Authority. Resultantly, the present appeal stands dismissed.

32. However, nobody can be forced or compelled to purchase the house, but as the appellant himself is at default in making the payment as per the payment schedule and if he still intends to withdraw from the project out of his own which will amount to the breach of the contract on his part, in that eventuality he will be entitled for refund of the amount paid by him after forfeiting 10% of the basic sale consideration, which will be considered to be the reasonable earnest money amount and after deducting the statutory dues already deposited with the government.

33. In order to claim the alternative relief, the appellant has to exercise the option within one month from the date of uploading of this order on the website of this Tribunal by giving the written option to learned Authority with copy to the respondent/promoter failing which he shall not be entitled to the alternative relief as mentioned above. In case the appellant exercises his option within the stipulated period, the respondent shall submit the statement of account to the learned Authority within two weeks thereafter as per our above observations and will make the payment of the amount due to the appellant as observed/discussed by us in Para 32 of this order within 45 days from the date of the option exercised by

the appellant, failing which the appellant shall be entitled to the prescribed rate of interest on the said amount as per Rule 15 of the Rules i.e. at the SBI highest marginal cost of lending rate plus two per cent (9.3%) per annum from the date of this order till realisation.

34. No order as to costs.

35. Copy of this order be communicated to learned counsel for the parties/parties and the learned Authority.

36. File be consigned to the records.

Announced:
April 5, 2021

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

Inderjeet Mehta
Member (Judicial)

Anil Kumar Gupta
Member (Technical)

CL

Ravinder Pal Singh
Versus
M/s Emaar MGF Land Ltd.
Appeal No.255 of 2019

Present: None.

Vide our separate detailed judgment of the even date, the appeal stands dismissed.

However, the appellant has been granted the alternative remedy of refund of the amount after forfeiting 10% of the basic sale price and the statutory dues already deposited with the Government subject to the conditions provided in Para No.33 of the judgment.

Copy of the detailed judgment be communicated to learned counsel for the parties/parties and the learned Authority.

File be consigned to the records.

Announced:
April 05, 2021

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

Inderjeet Mehta
Member (Judicial)

Anil Kumar Gupta
Member (Technical)