

**BEFORE THE HARYANA REAL ESTATE APPELLATE
TRIBUNAL**

**Appeal No.280 of 2020
Date of Decision: 27.09.2021**

1. Ms. Madhu Garg w/o Mr. Pankaj Garg R/o 508, Ivory Tower, South City-I, Sector-30, Gurugram Haryana-122007.
2. Mr. Pankaj Garg s/o Late Shri Gyan Chand Garg R/o 508, Ivory Tower, South City-I, Sector-30, Gurugram Haryana-122007.

Appellants

Versus

M/s IREO Grace Realtech Pvt. Ltd. C-4 1st Floor, Malviya Nagar, New Delhi-110017.

Respondent

CORAM:

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

Chairman
Member (Judicial)
Member (Technical)

Present: Shri Sanjiv Pabbi, Advocate, learned Counsel for appellants.

Ms. Rupali Shekhar Verma, Advocate, learned Counsel for respondent.

[The aforesaid presence is being recorded through video conferencing]

ORDER:

JUSTICE DARSHAN SINGH (RETD.) CHAIRMAN:

The present appeal has been preferred under Section 44(2) of the Real Estate (Regulation and Development) Act, 2016 (hereinafter called the 'Act') against the order dated 25.02.2020 passed by the learned Haryana Real Estate Regulatory Authority, Gurugram (hereinafter called the 'Authority') whereby Complaint No.

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2299 of 2019 filed by the appellants/allottees was disposed of with the following directions: -

“1. The respondent is directed to pay delayed possession charges at the prevalent prescribed rate of interest of 10.15% p.a. with effect from 27.11.2018 (due date of delivery of possession) till the offer of possession i.e. 12.06.2019 in terms of section 18(1) proviso of the Act read with Rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 within a period of 90 days from the date of this order.

2. The complainants are directed to take possession of the apartment within a period of one month from the date of order after paying outstanding dues, if any with the prescribed rate of interest of 10.15% per annum as awarded to them in the form of delayed possession charges.

3. The respondent is directed not to charge anything from the complainants which is not the part of apartment buyer’s agreement.”

2. As per averments in the complaint, the appellants were allotted apartment no.902, 9th floor, Tower A-10, in the project namely “The Corridors” Sector 67-A, Gurugram, Haryana, for a total sale consideration of Rs.2,58,41,784/-, out of that, the appellants had already paid a sum of Rs.2,24,46,082/-. The ‘Apartment Buyer’s Agreement’ (for short ‘the buyer’s agreement’) was executed on 03.06.2014. As per Clause 13.3 of the buyer’s agreement, the possession was to be delivered within 42 months plus 180 days as grace period from the date of approval of the building plans. It was pleaded that the building plans were approved by the competent

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authority on 23.07.2013 and the respondent was required to deliver the possession to the appellants by 23.01.2017, but the respondent failed to fulfil its obligations within the stipulated period. Hence the complaint wherein the appellants/allottees have claimed the following reliefs: -

“i) Direct the respondent to grant immediate possession of the Apartment bearing no.CD-A10-09-902 to the Complainants along with compensation for delay at a prescribed rate of interest.

ii) May pass any other orders as the Hon’ble Authority deems fit.”

3. The respondent/promoter contested the complaint on the grounds, *inter alia*, that the possession of the unit was supposed to be offered to the appellants in accordance with the agreed terms and conditions of the buyer’s agreement. As per Clause 13.3 of the buyer’s agreement, the possession of the unit was to be delivered within a period of 42 months plus 180 days as a grace period from the date of approval of the building plans and/or fulfilment of the preconditions imposed thereunder subject to the allottees having complied with all the formalities or documentation as prescribed by the respondent/promoter. The respondent/promoter was further entitled for extension of delay period of 12 months from the date of expiry of the grace period as per Clause 13.5 of the buyer’s agreement. It was further pleaded that as per the terms and conditions of the agreement, the due date of handing over the possession was to be computed from the date of grant of last

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precondition and the firefighting scheme was approved on 27.11.2014. So, the due date of handing over the possession comes to 27.11.2018. All other pleas raised in the complaint were controverted. The respondent/promoter by raising certain legal and preliminary objections pleaded for dismissal of the complaint.

4. After hearing learned counsel for the parties and appreciating the material on record, the learned Authority disposed of the complaint by issuing directions reproduced in the upper part of this order, vide impugned order dated 25.02.2020.

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

6. We have heard Shri Sanjiv Pabbi, Advocate, learned counsel for the appellants, Ms. Rupali Shekhar Verma, Advocate, learned counsel for the respondent and have carefully gone through the record of the case.

7. There are certain undisputed facts. The offer of allotment of the unit was issued on 07.08.2013. Apartment Buyer's Agreement was executed on 03.06.2014. The building plans were approved on 23.07.2013. The environmental clearance was given on 12.12.2013 (Annexures R-2). The Fire Safety Clearance was granted by the competent Authority on 27.11.2014 (Annexure R-4). Clause 13.3 of the Apartment Buyer's Agreement deals with the delivery of possession.

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8. Learned counsel for the appellants/allottees has contended that as per the Clause 13.3 of the agreement, the possession was to be offered within 42 months from the date of approval of building plans. He contended that the building plans in this case were approved on 23.07.2013, so, the possession should have been offered by 23.01.2017. The fire safety clearance which was provided later on is of no-significance as the construction had already started. Thus, he contended that the learned Authority has wrongly determined the deemed date of possession to be 27.11.2018 i.e. 48 months from the date of fire safety clearance and the impugned order passed by the learned Authority is required to be modified to this extent.

9. On the other hand, Ms. Rupali Shekhar Verma, Advocate learned counsel for the respondent contended that the learned Authority has rightly determined the due date of possession to be 27.11.2018. She contended that as per clause 13.3 of the agreement, the possession was to be delivered within 42 months plus 180 days as grace period from the date of approval of the building plans and/or fulfillment of the preconditions imposed therein. She contended that the environmental clearance and the fire safety clearance were the conditions imposed in the approval of building plans granted by the competent authority. She further contended that environmental clearance was granted on 12.12.2013 and approval of firefighting scheme was granted on 27.11.2014.

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Thus, she contended that the learned Authority has rightly determined the due date of possession.

10. We have duly considered the aforesaid contentions. The short question involved in the present appeal is as to whether the deemed date of offer/delivery of possession is to be determined from the date of approval of the building plans i.e. 23.07.2013 or the approval of the firefighting scheme granted on 27.11.2014.

11. Clause 13.3 of the buyer's agreement dated 03.06.2014 reads as under:

“13.3 Subject to Force Majeure, as defined herein and further subject to the Allottee having complied with all its obligations under the terms and conditions of this Agreement and not having defaulted under any provision(s) of this Agreement including but not limited to the timely payment of all dues and charges including the total Sale Consideration, registration charges, stamp duty and other charges and also subject to the Allottee having complied with all formalities or documentation as prescribed by the Company, the company proposes to offer the possession of the said Apartment to the Allottee within a period of 42 (Forty Two) months from the date of approval of the Building Plans and/or fulfillment

*of the preconditions imposed thereunder (Commitment Period). The Allottee further agrees and understands that the company shall additionally be entitled to a period of 180 days (“**Grace Period**”), after the expiry of the said Commitment Period to allow for unforeseen delays beyond the reasonable control of the Company.”*

12. As per the aforesaid clause of the agreement, the possession of the apartment was to be offered within a period of 42 months from the date of approval of building plans and/or fulfillment of the preconditions imposed thereunder with a grace period of 180 days. Copy of the building plans approval is available at page no. 151 of the paper book (Annexure C-3). The said approval has been granted subject to conditions imposed therein. Clause 17(iv) of the approval dated 23.07.2013 reads as under:

“17(iv) That the colonizer shall obtain the clearance/NOC as per the provisions of the Notification No. S.O. 1533 (E) dated 14.09.2006 issued by the Ministry of Environment and Forest, Government of India before starting the construction/execution of development works at site.”

As per the aforesaid condition, the clearance/NOC was to be obtained from the Ministry of Environment & Forest, Government of India before starting the construction/execution of the

development works at the site.

13. Copy of the environmental clearance is available on record as Annexure R-2 in the additional documents. Part-B of this clearance contains the general conditions. Condition No.VI of the Part-B of the environmental clearance reads as under.

“[vi] All other statutory clearances such as the approvals for storage of diesel from Chief Controller of Explosive, Fire Department, Civil Aviation Department, Forest Conservation Act, 1980 and Wildlife (Protection) Act, 1972, Forest Act, 1927, PLPA, 1900, etc. shall be obtained, as applicable by project proponents from the respective authorities prior to construction of the project.”

The above-mentioned condition shows that the respondent was required to obtain the clearance from the Fire Department in addition to clearance from other departments. The Fire Fighting Scheme for this project was approved by Director Haryana Fire Service, Panchkula on 27.11.2014. Copy of the same is Annexure R-4 in the additional documents filed by the respondent.

14. Thus, from the aforesaid documents available on record, it comes out that the last preconditions i.e. Fire Fighting Scheme was approved by the competent authority on 27.11.2014.

15. The similar question, as to from which date the due date of delivery of possession is to be computed i.e. whether from the date of approval of the building plans or the fulfilment of the preconditions imposed thereunder, came for consideration before the Hon'ble Apex Court in case titled as **IREO GRACE REALTECH PVT. LTD. Vs. ABHISHEK KHANNA & OTHERS, AIR 2021 SC437**, wherein it was laid down as under: -

“18. Determination of the date for handing over Possession

The first issue which has been raised by the Appellant - Developer as also the Apartment Buyers, is the relevant date from which the 42 months' period is to be calculated for handing over possession. Clause 13.3 of the Agreement states that the Developer proposed to offer possession of the apartment to the allottee within a period of 42 months from the date of approval of the Building Plans and/or fulfillment of the pre-conditions imposed thereunder, referred to as the Commitment Period. The Company would be entitled to a further –Grace Period of 180 days' after the expiry of the Commitment Period for unforeseen delays beyond the reasonable control of the Company. This would work out to 42 + 6 months i.e. 48 months.

18.1 The point of controversy is whether the 42 months' period is to be calculated from the date when the Fire NOC was granted by the concerned authority, as contended by the Developer; or, the date on which the Building Plans were approved, as contended by the Apartment Buyers.

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18.2 Section 15 of the Haryana Fire Safety Act, 2009 makes it mandatory for a Builder/Developer to obtain the approval of the Fire Fighting Scheme conforming to the National Building Code of India, and obtain a No Objection Certificate before the commencement of construction. Section 15 is extracted herein below for ready reference:

15. Approval of Fire Fighting Scheme and issue of no objection certificate.—(1) Any person proposing to construct a building to be used for any purpose other than residential purpose or a building proposed to be used for residential purpose of more than 15 meters in height, such as group housing, multi-storeyed flats, walk-up apartments, etc. **before the commencement of the construction, shall apply for the approval of Fire Fighting Scheme conforming to National Building Code of India,** the Disaster Management Act, 2005 (53 of 2005), the Factories Act, 1948 (Act 63 of 1948) and the Punjab Factory Rules, 1952, and issue of no objection certificate on such form, along with such field as may be prescribed.

(2) The Director or any officer duly authorised by him in this behalf, may take cognizance of any application and issue such instructions and orders regarding the building plan and for construction by issuing a provisional no objection certificate before the construction is taken up.

Explanation. —In case any person proposes to increase the number of floors on any building already constructed in such a manner that it shall qualify for being termed as a high rise building, shall before construction, apply for no objection certificate.

(3) The provisional no objection certificate shall be issued within 60 days of submission of application along with such fee, as may be prescribed, giving all the details of the construction being undertaken as well as the rescue, fire prevention and fire safety details required to be incorporated during the period of construction.

(4) During the process of construction, the inspection of the construction may be conducted and

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the advice about any additions, deviations, modifications that are required to be carried out from the precaution and prevention point of view, may be tendered. Such advice shall be made on a prescribed proforma and handed over to the party concerned.

(5) On completion of the construction of the high-rise building, a no objection certificate shall be obtained. In the absence of such certificate, the owners shall not occupy, lease or sell the building."

(emphasis supplied)

18.3 Clause 13.3 of the Apartment Buyer's Agreement provides that the 42 months' period has to be calculated from the date of approval of the Building Plans and/or fulfilment of the pre-conditions imposed thereunder.

18.4 The Building Plans sanctioned by the Directorate of Town and Country Planning, Haryana contained the Terms & Conditions of Approval, which included a provision for Fire Safety contained in Clause (3). The Developer was directed to submit Fire Safety Plans indicating the complete Fire Protection Arrangements, and means of escape/access for the proposed building with suitable legend and standard signs.

Clause 3 of the Building Plans contained a provision for Fire Safety, which reads:

"3. FIRESAFETY

On receipt of the above request the Commissioner, Municipal Corporation, Gurgaon after satisfying himself that the entire fire protection measures proposed for the above buildings are as per NBC and other Fire Safety Bye Laws, and would issue a NOC from Fire safety and means of escape/access point of view. This clearance/NOC from Fire Authority shall be submitted in this office along with a set of plans duly signed by the Commissioner, Municipal Corporation, Gurgaon within a period of 90 days from the date of issuance of sanction of building plans. Further, it is also made clear that no

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permission for occupancy of the building shall be issued by Commissioner, Municipal Corporation, Gurgaon unless he is satisfied that adequate fire fighting measures have been installed by you and suitable external fire fighting infrastructure has been created at Gurgaon, by Municipal Corporation, Gurgaon. A clearance to this effect shall be obtained from the Commissioner, Municipal Corporation, Gurgaon before grant of occupation certificate by the Director General."

18.5 On receipt of the Fire Plans, the Commissioner, Municipal Corporation, Gurgaon, after satisfying himself with the entire fire protection measures as in conformity with the National Building Code, 2005 (NBC) and the Fire Safety Bye-Laws, would issue an NOC for Fire Safety. This NOC/Clearance was required to be submitted before the Municipal Corporation, within a period of 90 days' from the issuance of the sanctioned Building Plans.

18.6 Clause 17(iv) of the sanctioned Plan stipulated that the Developer shall obtain an NOC from the Ministry of Environment & Forests, before starting the construction/execution of development works at site.

"17 (iv) That the Developers shall obtain the clearance/NOC as per the provisions of the Notification No. S.O. 1533(E) dated 14.09.2006 issued by Ministry of Environment and Forest, Government of India before starting the construction/execution of development works at site."

(emphasis supplied)

18.7 The Environmental Clearance granted by the Ministry of Environment & Forest Government of Haryana on 12.12.2013 required the Developer to submit a copy of the Fire Safety Plan approved by

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the Fire Department, before commencing construction of the project.

General Condition (vi) under Part B of the Environmental Clearance stipulated that the Developer shall obtain all other statutory clearances, including the approval from the Fire Department, prior to construction of the project.

Clause (vi) provides that :

“(vi) All other statutory clearance such as the approvals for storage of diesel from Chief Controller of Explosive, Fire Department, Civil Aviation Department, Forest Conservation Act, 1980 and Wildlife (Protection) Act, 1972, Forest Act, 1927, PLPA 1900 etc. shall be obtained as applicable by project proponents from the respective authorities prior to construction of the project.”

(emphasis supplied)

18.8 We are of the view that it was a mandatory requirement under the Haryana Fire Safety Act, 2009 to obtain the Fire NOC before commencement of construction activity. This requirement is stipulated in the sanctioned Building Plans, as also in the Environment Clearance.

18.9 The 42 months' period in Clause 13.3. of the Agreement for handing over possession of the apartments would be required to be computed from the date on which Fire NOC was issued, and not from the date of the Building Plans being sanctioned.

18.10 In the present case, the Developer obtained approval of the Building Plans from the Directorate, Town and Country Planning, Haryana, on 23.07.2013. The Developer applied for issuance of Fire NOC for the Fire Fighting Scheme of the Group Housing Colony within the 90 days' period before the Director, Fire Service, Panchkula.

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The Commissioner vide letter dated 30.12.2013 raised 16 objections with respect to the proposed Fire Fighting Plan.

The Developer vide letter dated 22.01.2014 responded to the objections, submitting that the objections had been cured, and requested that the approval of the Fire Fighting Scheme be granted on a priority basis.

The Fire Department informed the Developer vide letter dated 28.03.2014 that the deficiencies in the application for Fire NOC had not been cured. The Developer was granted a further period of 15 days to cure the defects, failing which, its application would be deemed to be rejected.

The Developer submitted revised drawings as per the NBC Fire Scheme along with its letter dated 18.08.2014. This letter was received in the office of the Municipal Corporation on 13.10.2014, as per endorsement on the said letter.

18.11 On 27.11.2014, the Director, Haryana Fire Service granted approval to the Fire Fighting Scheme subject to the conditions mentioned therein. The computation of the period for handing over possession would be computed from this date. The Commitment Period of 42 months plus the Grace Period of 6 months from 27.11.2014, would be 27.11.2018, as being the relevant date for offer of possession.”

16. The aforesaid judgment rendered by the Hon'ble Apex Court relates to the same project i.e. "The Corridors" developed in Sector 67-A, Gurugram, of the respondent/promoter. By taking note of exactly similar clauses of the apartment buyer's

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agreement and statutory provisions, the Hon'ble Apex Court has categorically laid down that the commitment period of 42 months plus the grace period of six months is to be computed from 27.11.2014 i.e. date of grant of approval of the Fire Fighting Scheme and the due date for offer of possession will be 27.11.2018. In the impugned order, the learned Authority has also computed the due date of offer of possession from the date of approval of Fire Fighting Scheme dated 27.11.2014 and the due date of delivery of possession has been worked out to be 27.11.2018.

17. Learned counsel for the appellants has tried to distinguish **Abhishek Khanna's** case (supra) on the ground that in that case payments were not made by the allottee, whereas in the instant case, almost the entire sale consideration has already been paid by the appellants/allottees. But, we are afraid to accept this plea of learned counsel for the appellants. This factual difference is no ground to make any distinction in the consequential legal effect. In the case *ibid*, the Hon'ble Apex Court while interpreting the relevant clauses i.e. clause 13.3 of the buyer's agreement, Section 15 of the Haryana Fire Service Act, 2009 and general condition (iv) under Part-B of the environmental clearance dated 12.12.2013, has taken the considered view that computation of the period for handing over of the possession would be from the date of approval of the fire fighting scheme i.e. 27.11.2014. Thus, the payment or non-

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payment of the instalments by the allottee will not be a ground to take any different view to determine the due date of delivery of possession.

18. Thus, in view of our aforesaid discussion, we do not find any illegality in the due date of delivery of possession i.e. 27.11.2018 determined by the learned Authority, which is fully in consonance with the aforementioned observations of the Hon'ble Apex Court in **Abhishek Khanna's** case (supra).

19. Consequently, the present appeal is without any merits and the same is hereby dismissed. However, no order as to costs.

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

21. File be consigned to the record.

Announced:
September 27, 2021

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

Inderjeet Mehta
Member (Judicial)

Anil Kumar Gupta
Member (Technical)