BEFORE THE HARYANA REAL ESTATE APPELLATE TRIBUNAL

Appeal No.250 of 2020
Date of Decision: 14.10.2021

Emaar India Limited, Registered Office: 306-308, Square one, C-2 District Centre, Saket, New Delhi-110017.

2nd Address:

Corporate Office Emaar Business Park, MG Road, Sikanderpur, Sector 28, Gurugram-122002, Haryana.

Appellant

Versus

1. Sanjeev Walia, # 730 Wood Duck Court Middletown, 19709 Delaware.
2. Ms. Samriti Walia, # 730 Wood Duck Court Middletown, 19709 Delaware.

Respondents

CORAM:

Justice Darshan Singh (Retd), Chairman
Shri Inderjeet Mehta, Member (Judicial)
Shri Anil Kumar Gupta, Member (Technical)

Argued by: Shri Shekhar Verma, Advocate, ld. counsel for appellant.

Shri Kuldeep Kumar Kohli, Advocate, ld. counsel for respondents.

[The aforesaid presence recorded through video conferencing]

O R D E R:

JUSTICE DARSHAN SINGH (RETD.) CHAIRMAN:

This appeal has been preferred by the appellant/promoter against the order dated 28.01.2020 passed by the learned Haryana Real Estate Regulatory Authority, Gurugram (hereinafter called 'the

Authority'), whereby complaint No.2146 of 2018 filed by the respondents/allottees was disposed of by issuing the following directions: -

> *"i. The respondent is directed to pay the interest at the prescribed rate i.e. 10.20% per annum for every month of delay on the amount paid by the complainants from due date of possession i.e. 17.08.2014 till the offer of possession.*
>
> *ii. The arrears of interest accrued so far shall be paid to the complainants within 90 days from the date of this order and thereafter monthly payment of interest till offer of possession shall be paid before 10th of each subsequent month.*
>
> *iii. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.*
>
> *iv. The respondent shall not charge anything from the complainants which is not part of the buyer's agreement.*
>
> *v. Interest on the due payments from the complainants shall be charged at the prescribed rate @10.20% by the promoter which is the same as is being granted to the complainants in case of delayed possession charges"*

2. As per averments in the complaint filed by the respondents/allottees, they were allotted Unit No.EFP-III-41-0202, 2nd floor, building no.41, Emerald Floors Premier III at Emerald Estate, Sector-65, Gurugram for a total sale consideration of

Rs.1,37,87,563/-. A 'Buyer's Agreement' (hereinafter called 'the agreement') was executed between the parties on 17.05.2012. The payment plan was Construction Linked Payment Plan. The appellant has paid a total sum of Rs.1,23,63,750/-. As per the terms and conditions of the Buyer's Agreement, the possession was to be delivered by 17.08.2014 i.e. 24 months from the date of execution of Buyer's Agreement plus three months' grace period. It was further pleaded that keeping in view the snail paced work at the construction site, the chances of getting physical possession of the unit in near future seemed bleak and consequently resulted in injuries to the interest of the buyers including the respondents/allottees. The respondents/allottees had sought the possession of the unit in fully habitable condition with all amenities and interest for the delayed period till the actual possession of the unit. The following reliefs were sought in the complaint filed before the learned Authority:

i. Direct the respondent to give legal possession of the unit in fully habitable condition with all amenities.

ii. Direct the respondent to pay delay interest on the paid amount from 17.05.2014 according to the Act from the stipulated time of possession till the legal offer of possession.

3. The appellant/promoter contested the complaint on the grounds *inter alia* that the present complaint was not maintainable before the learned Authority as the respondent/allottee sought the relief of possession, compensation and interest. The complaints pertaining to compensation are to be decided by the Adjudicating Officer under Section 71 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter called 'the Act') read with rule 29 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter called 'the Rules'). It was further pleaded that the unit (independent floor) in question was allotted to the respondents/allottees vide provisional allotment letter dated 10.10.2011 and the 'Buyer's Agreement' (Annexure R-22) was executed on 17.05.2012. The respondent has committed default in making the payments of instalments as per the payment plan and even despite issuing various demand letters.

4. It was further pleaded that the respondents/allottees were irregular in remittance of instalments on time and the appellant/promoter was compelled to issue demand notices/reminders etc. (Annexures R 4 to R20) calling upon the respondents/allottees to make payment of the outstanding amount under the payment plan. It was further pleaded that the respondents have completely misconstrued/misinterpreted and miscalculated the time period for completion of the project as determined in the buyer's agreement. As per Clause 11(b)(iv) that in case of any default/delay by the allottees in the payment as per

schedule of payment, the date of handing over the possession shall stand extended accordingly. Since the respondents have defaulted in timely remittance of the payment as per the schedule of payment, the date of delivery of possession is not liable to be determined in the manner sought to be done in the present complaint.

5. It was further pleaded that as per Clause 13 of the buyer's agreement, the compensation for delay was only admissible to those allottees who were not in default of their obligations envisaged under the agreement and have not defaulted in the payment of instalments. The respondents/allottees had defaulted in the payment of instalments and thus are not entitled to any compensation or any amount of interest. It was further pleaded that the registration of the project is valid till 23.08.2022, therefore, cause of action, if any, would accrue to the respondents/allottees to prefer the complaint if the appellant/promoter fails to offer possession of the unit within the aforesaid period.

6. It was further pleaded that the provisions of the Act are not retrospective in nature and cannot undo or modify the terms of the agreement duly executed prior to coming into effect of the Act. The provisions of the Act relied upon by the respondents/allottees seeking interest cannot be called into aid in derogation of the provisions of the buyer's agreement. The appellant/promoter has controverted the plea raised by the respondents/allottees that possession was to be delivered by 17.05.2014 as the payments were

made by the respondents/allottees even after May, 2014 and the last payment was received from the respondents/allottees on 02.05.2018. It was further pleaded that the completion of the project was got delayed due to subsequent revision of the National Building Code in the year 2016 for providing two staircases and necessity of seeking fresh fire NOC from the fire department. The appellant also pleaded that the contractor was not able to meet the agreed timelines for construction of the project and that was also the reason for delay.

7. All other pleas raised in the complaint were controverted and it was pleaded that the respondents/allottees were not entitled for any relief in the facts and circumstances of the case and thus prayed for dismissal of the complaint.

8. After hearing learned counsel for both the parties and appreciating the material on record, the learned Authority dispose of the complaint filed by the respondents/allottees vide impugned order dated 28.01.2020 issuing directions already reproduced in the upper part of this order.

9. We have heard learned counsel for the parties and have meticulously examined the record of the case.

10. Initiating the arguments, Shri Shekhar Verma, learned counsel for the appellant contended that the provisions of the Act were not applicable to the case in hand as there can be no retrospective application of the Act and the substantive rights of the

parties cannot be taken away by the new enactment. Thus, he contended that the complaint filed by the respondents/allottees before the learned Authority was not maintainable. He further contended that the rights and obligations already agreed to between the parties before enforcement of the Act cannot be novated without the consent of the parties as per Section 62 of the Indian Contract Act, 1872 and that too in a discriminatory manner.

11. He further contended that if the allottees are entitled to interest at the prescribed rate under the Rules, then the appellant-promoter is also entitled to take the benefit of declaration furnished under Section 4 (2)(*l*)(C) of the Act, wherein the appellant is given the extended time for completion of the project. He further contended that the conjoint reading of Clause 5, 7.1, 7.6 and 9.1 of the Model Agreement, Sections 4(2)(g) and 4(2) (*l*)(C) shows that the promoter is entitled to provide/declare a revised completion date, which may not be in consonance with the date given in the pre-existing agreements. Therefore, an allottee may be entitled to revised prescribed rate of interest only in post RERA period and cannot claim the revised prescribed rate of interest for the pre RERA period. But, this fact has not been taken into consideration by the learned Authority.

12. He further vehemently contended that the learned Authority had no jurisdiction to entertain the complaint filed by the respondents/allottees. He contended that the Act is totally silent as

to what type of complaints shall be entertainable by the Authority and what type of complaints shall lie before the Adjudicating Officer. He contended that as per Section 31 sub-section 2 of the Act, the form, manner and fees for filing complaint under sub-section (1) shall be such as may be prescribed. He contended that as per Section 84(2) (oa) of the Act, the appropriate Government is competent to prescribe the form, manner and fees for filing of complaint under sub-section (2) of section 31 of the Act. But even in this section, the appropriate forum is not mentioned. He further contended that the rules became applicable w.e.f. 28.07.2017. Even the rules are silent as to which complaint will lie to which forum. He further contended that the present complaint was decided by the learned Authority under the un-amended rules as the operation of the amended rules was stayed by the Hon'ble High Court vide order dated 25.11.2019. The said stay order was vacated on 10.09.2020, whereas the impugned order has been passed on 28.01.2020. Learned counsel for the appellant contended that rule 28 prescribes Form 'CRA' for filing complaint before the learned Authority and Form 'CAO' mentioned in Schedule III for filing complaint before the Adjudicating Officer. He contended that as per rule 29 of the rules, the complaint for grant of interest and compensation as provided under Sections 12,14,18 and 19 of the Act shall lie with the Adjudicating Officer and not before the Authority. The complaint will lie before the Authority only with respect to the maters which are beyond the jurisdiction of the Adjudicating Officer.

13. He further contended that the respondents/allottees have filed complaint alleging the violation of the terms and conditions of the Agreement i.e. the delay in delivery of possession. There was no plea in the complaint that the appellant has violated any provision of the Act, rules and regulations. The learned Authority had no jurisdiction to deal with the complaint with respect to the violation of the terms and conditions of the Agreement. To elaborate his contentions, he has drawn our attention to Clause 33 of the Model Agreement for sale (Annexure-A) (rule-8), wherein it is provided that all or any disputes arising out or touching upon or in relation to the terms and conditions of the agreement shall be settled amicably by mutual discussion, failing which the same shall be settled through the Adjudicating Officer. Thus, he contended that the position becomes clear that only the Adjudicating Officer can deal with the complaint with respect to the violation of the terms and conditions of the agreement for sale and the Authority can only deal with the cases where there is violation of the Act, rules and regulations.

14. He further contended that the view taken by this Tribunal in ***Appeal No.74 of 2018 Ramprastha Promoters and Developers Pvt Ltd. Vs. Ishwer Chand Garg***, decided on 29.07.2019, requires to be reviewed. He contended that there is no mention of forum for adjudication in Section 11(4)(a) of the Act for enforcement of obligations and responsibilities of the promoter to the allottees as per the agreement for sale. He further contended that Section 34 will also not confer jurisdiction upon the learned Authority to ensure

the compliance of terms and conditions of the agreement. Similarly, he contended that Section 37 of the Act which provides the powers of the Authority to issue direction will also be of no help to the respondents/allottees as the said provision is applicable only to the directions to be issued for the purpose of discharging its functions by the Authority under the Act, rules or regulations made thereunder. There is no reference at all in these provisions with regard to the terms and conditions of the agreement to sell.

15. He further contended that Section 38 of the Act is also not applicable to the interest provided in Section 18 of the Act. In Section 38 of the Act, the power of the Authority to impose interest is in alternative to the penalty for violation of the provisions of the Act, rules and regulations and not for violation of the terms and conditions of the agreement. He further contended that Section 38 of the Act refers to the penalty or interest, which are further qualified by the word "imposition" indicating that these are inter-changeable and only refer to the penal proceedings and not the proceedings under Sections 18, 19 and 31 of the Act. Thus, he contended that neither the rules nor the provisions of the Act anywhere provide that the complaint with respect to violation of the terms and conditions of the agreement can be entertained and adjudicated upon by the learned Authority.

16. He further contended that the amendment of the rules vide notification dated 12.09.2019 is illegal. Only those provisions

of the rules have been got amended where the Authority was facing the difficulty and in order to overcome the findings given by this Tribunal in ***Sameer Mahawar Vs. M.G. Housing Pvt. Ltd. in Appeal No.6 of 2018*** decided on 02.05.2019.

17. He further contended that the position further becomes clear from Section 71(3) of the Act that only the Adjudicating Officer has the power to grant compensation or interest for violation of the provisions of Sections 12, 14, 18 and 19 of the Act. The respondents/allottees are claiming interest for violation of the provisions of the Act by invoking the provisions of Section 18(1) of the Act. Thus, he contended that the entire scheme of the Act and the rules shows that only the Adjudicating Officer has jurisdiction to deal with the complaints of this nature and the learned Authority had no jurisdiction to adjudicate upon these type of complaints. Thus, the impugned order is void ab-initio.

18. Learned counsel for the appellant has further contended that the provisions of the Act cannot be made applicable retrospectively and cannot undo the terms and conditions of the agreement already executed between the parties prior to the implementation of the Act. To support his contentions, he has relied upon the case ***ZILE SINGH Versus STATE OF HARYANA AND OTHERS (2004)8 Supreme Court Cases 1.***

19. He further contended that the appellant/promoter cannot be burdened with interest on the amount of External Development

Charges (EDC) and Goods and Service Tax (GST) etc. which have been deposited by the promoter with the government/respective departments. That money was never retained by the appellant/promoter, so the appellant cannot be held liable for payment of interest on the said amount.

20. Learned counsel for the appellant lastly contended that the possession has already been offered to the respondents/allottees vide letter of offer of possession dated 19.11.2020. With these contentions, learned counsel for the appellant pleaded that the impugned order is unsustainable in the eye of law. With these pleas, learned counsel for the appellant pleaded that the impugned order is unsustainable in the eye of law.

21. Per contra, learned counsel for the respondents/allottees has defended the impugned order on the ground that the learned Authority had the complete jurisdiction to deal with the complaint wherein the interest for delayed possession and delivery of possession was sought. He contended that in this case, there is no relief for refund or compensation claimed by the respondents in the complaint. It is not disputed that the project is a registered project, thus the provisions of the Act have become applicable which are retroactive in nature. He contended that the combined reading of Sections 11 (4)(a), 34, 37 and 38 of the Act leads to the conclusion that the learned Authority had jurisdiction to enforce the responsibility and obligations of the promoter as per the agreement.

It can issue the necessary directions for fulfilling those obligations and can impose interest in case of failure of the Authority to comply with the terms and conditions of the agreement as those will also be in contravention of the Act being obligations as provided in Section 11(4)(a) of the Act.

22. He further contended that the possession of the unit was offered on 19.11.2020. Even, the Occupation Certificate was granted on 11.11.2020. So, it does not lie in the mouth of the appellant to allege that the provisions of the Act and the rules were not applicable to the case in hand as the relevant provisions of the Act have become applicable w.e.f. 01.05.2017 and the rules were enforced w.e.f. 28.07.2017 whereas possession of the unit has not been offered to the respondents/allottees.

23. He further contended that the appellant cannot get the benefit of extension of time allegedly mentioned in the declaration under Section *4(2) (l) (C)* of the Act and the appellant shall be bound by the terms and conditions of the agreement. He contended that there is huge delay of six years, three months and two days in offering possession as the possession has not been offered vide letter dated 19.11.2020 i.e. during the pendency of the present appeal. He further contended that the Model Agreement for Sale prescribed in Annexure 'A' of the rules shall not be applicable in this case as the agreement between the parties was executed much prior to

enforcement of the Rules. Thus, he contended that the impugned order passed by the learned Authority is perfectly legal and valid.

24. Before proceeding further, it is pertinent to mention that the respondents/allottees have voluntarily participated in the proceedings through their counsel and have addressed the arguments to defend the impugned order. It shows that the respondents have no objection in the disposal of the present appeal on merits.

25. We have duly considered the aforesaid contentions. This fact is not disputed that the project of the appellant is a registered project with the learned Authority. It is also an admitted fact that the buyer's agreement was executed between the parties prior to the enforcement of the Act. It also cannot be disputed that enforcement of the Act will not invalidate the buyer's agreement executed between the parties prior to the enforcement of the Act. So far as the applicability of the provisions of the Act, rules and regulations made thereunder to the pre-RERA agreements is concerned, it will depend upon the determination of the question as to whether the provisions of the Act are retrospective or prospective or retroactive. The Hon'ble Apex Court in case ***State Bank's Staff Union (Madras Circle) Versus Union of India & Ors, AIR 2005 SC 3446*** had laid down as under: -

> *"23. In Advanced Law Lexicon by P. Ramanath Aiyar (3rd Edition, 2005) the expressions "**retroactive" and***

"retrospective" *have been defined as follows at page 4124 Vol.4 :*

*"**Retroactive-Acting** backward; affecting what is past. (Of a statute, ruling, etc.) extending in scope or effect to matters that have occurred in the past. Also termed **retrospective.** (Blacks Law Discretionary, 7th Edn. 1999)*

*'**Retroactivity'** is a terms often used by lawyers but rarely defined. On analysis it soon becomes apparent, moreover, that it is used to cover at least two distinct concepts. The first, which may be called '**true retroactivity'**, consists in the application of a new rule of law to an act or transaction which was completed before the rule was promulgated. **The second concept, which will be referred to as 'quasi-retroactivity', occurs when a new rule of law is applied to an act or transaction in the process of completion.....** The foundation of these concepts is the distinction between completed and pending transaction...." (T.C. Hartley, The Foundation of European Community Law 129 (1981).*

*'**Retrospective**-Looking back; contemplating what is past. Having operation from a past time.*

*'**Retrospective'** is somewhat ambiguous and that good deal of confusion has been caused by the fact that it is used in more senses than one. In general however the Courts regard as **retrospective** any statute which operates on cases of facts coming into existence before its commencement in the sense that it affects even if for the future only the character or consequences of transactions previously entered into or of other past conduct. Thus, a statute is not*

> ***retrospective*** *merely because it affects existing rights; nor is it* ***retrospective*** *merely because a part of the requisite for its action is drawn from a time and antecedents to its passing. (Vol.44 Halsbury's Laws of England, Fourth Edition, Page 8 of 10 pages 570 para 921)."*

26. The Division Bench of the Hon'ble Bombay High Court in ***Neel Kamal Realtors Suburban Pvt. Ltd. & anr. Vs. Union of India and others 2018(1) RCR (Civil) 298 (DB)*** has also reiterated the same ratio of law and laid down as under: -

> *"122. We have already discussed that above stated provisions of the RERA are not* ***retrospective*** *in nature.* ***They may to some extent be having a retroactive or quasi retroactive effect*** *but then on that ground the validity of the provisions of RERA cannot be challenged. The Parliament is competent enough to legislate law having* ***retrospective*** *or* ***retroactive*** *effect. A law can be even framed to affect subsisting/existing contractual rights between the parties in the larger public interest. We do not have any doubt in our mind that the RERA has been framed in the larger public interest after a thorough study and discussion made at the highest level by the Standing Committee and Select Committee, which submitted its detailed reports. As regards Article 19(1)(g) it is settled principles that the right conferred by sub-clause (g) of Article 19 is expressed in general language and if there had been no qualifying provisions like clause (6) the right so conferred would have been an absolute one."*

27. As per the aforesaid ratio of law the provisions of the Act are retroactive or quasi retroactive to some extent but not the

retrospective. The second concept of quasi-retroactivity occurs when a new rule of law is applied to an act or transaction in the process of completion. Thus, the rule of quasi retroactivity will make the provisions of the Act and the Rules applicable to the acts or transactions, which were in the process of the completion, though the contract/agreement might have taken place before the Act and the Rules became applicable. Hence, it cannot be stated that the provisions of the Act and the Rules made thereunder will not be applicable to the agreement for sale executed between the parties prior to the commencement of the Act.

28. There is no dispute to the proposition of law laid down by the Hon'ble Apex Court in ***Zile Singh's*** case (Supra) relied by learned counsel for the appellant that it is a cardinal principle of construction that every statute is prima facie prospective unless it is expressly or by necessary implication made to have a retrospective operation. It was further laid down that the presumption against the retrospective operation is not applicable to curative or declaratory statutes.

29. We have not taken the view that the provisions of the Act are retrospective in nature, rather we have found that the provisions of the Act and the Rules made thereunder are retroactive or quasi-retroactive to some extent as laid down in ***Neel Kamal's*** case (Supra) and have become applicable to the acts or transactions which were in the process of completion on the date of

implementation of the Act or the Rules made thereunder. So, ***Zile Singh's*** case (supra) relied upon by learned counsel for the appellant will not advance his case.

30. In the instant case, though the buyer's agreement was executed between the parties prior to the enforcement of the Act, but the transaction was still incomplete and the contract had not concluded. The buyer's agreement, in this case, was executed on 17.05.2012, the occupation certificate was issued by the competent authority on 11.11.2020, the possession was offered to the respondents/allottees on 19.11.2020 i.e. during the pendency of the present appeal and the relevant provisions of the Act came into force w.e.f. 01.05.2017. Thus, by that time even the occupation certificate was not received by the appellant/promoter and possession was not offered/delivered to the respondents/allottees. So, the transaction was still incomplete and the contract was subsisting. Thus, concept of quasi retroactivity will come into operation and the provisions of the Act, rules and regulations made thereunder became applicable to the buyer's agreements executed between the parties. To support this view, reference can also be made to the cases titled ***M/s Shanti Conductors (P) Ltd. Vs. Assam State Electricity Board 2019(1) Scale 747*** and ***M/s Harkaran Dass Vedpal Vs. Union of India and Ors.*** (Writ Petition No.10889 of 2015 decided on 22.07.2019) by the division bench of the Hon'ble Punjab and Haryana High Court. Consequently, the rights of the parties shall be governed by the provisions of the Act and the rules made thereunder.

31. We do not find any substance in the contentions raised by learned counsel for the appellant that for the pre-RERA period the interest should not be awarded as per the agreement and after the implementation of the Act only it can be awarded at the prescribed rate. Once it is found that the provisions of the Act are retroactive in nature and will be applicable to the transactions which were in the process of completion, as in this case, as a natural consequence the respondents/allottees shall be entitled to the interest at the prescribed rate for the delay in delivery of possession for the entire period. Moreover, the terms of the agreement with respect to the delayed compensation to the respondents/allottees vis-à-vis the rate of interest on the delayed payments and various other conditions are ex-facie one-sided, unfair, unconscious and unreasonable. Such type of dominant terms and conditions of the agreement will not be final and can be ignored to impart the substantial justice. Reference can be made to the authoritative pronouncement of the Hon'ble Apex Court in case **Pioneer Urban Land & Infrastructure Limited vs. Govindan Raghavan, 2019(2) R.C.R. (Civil) 738.**

32. Mere this fact that the unit was allotted to the respondents and buyer's agreement was executed between the parties prior to the commencement of the Act will not take out the dispute beyond the purview of the Act and the dispute between the parties with respect to the fulfillment of obligations and responsibilities by the promoter to the allottees shall be governed by the provisions of the Act, rules and regulations made thereunder.

However, the terms and conditions of the agreements still will be taken into consideration with respect to the matters for which there is no specific provision in the Act or the Rules and the same are not inconsistent/contrary to the provisions of the Act or the Rules.

33. Learned counsel for the appellant has contended that once the respondents are enforcing the provisions of the Act and the rules made thereunder, they cannot seek the original contract to be performed. He relied upon Section 62 of the Indian Contract Act, 1872. This contention of learned counsel for the appellant is again devoid of merits. Section 62 of the Indian Contract Act, 1872 reads as under: -

> *"**62. Effect of novation, rescission and alteration of contract** – if the parties to a contract agree to substitute a new contract for it, or to rescind or alter it, the original contract need not be performed."*

The above provision of law applies where the parties to the contract agree to substitute a new contract for the previous contract or to rescind or alter the provisions of the contract, in those conditions the original contract need not be performed. This provision applies to the willful and deliberate agreement between the parties for novation, rescission or alteration of the contract. Herein, the respondents have not lodged their claim on the basis of novation, rescission or alteration of the contract but on the basis of implication of law which has become applicable to the present

subsisting transaction as neither the possession has been delivered nor the conveyance-deed has been executed.

34. On the one hand, the appellant has taken the plea that the provisions of the Act, rules and regulations made thereunder are not retrospective in nature and the same cannot undo or rewrite the terms and conditions of the buyer's agreement. On the contrary, he contended that the conjoint reading of Clause 5, 7.1, 7.6 and 9.1 of the Model Agreement, Sections 4(2)(g) and 4(2) (*l*) (C) of the Act show that the promoter is entitled to provide/declare a revised date of completion of the project in the declaration form. We are unable to subscribe ourselves to these contentions. The declaration for the completion of the project under Section 4(2)(*l*)(C) of the Act is given unilaterally by the promoter to the Authority at the time of getting the real estate project registered. The allottees had no opportunity to raise any objection at that stage, so this unilateral Act of mentioning the date of completion of project by the builder will not abrogate the rights of the allottees under the agreements for sale entered into between the parties. The Division Bench of the Hon'ble Bombay High Court in case ***Neel Kamal Realtors Suburban Pvt. Ltd. & anr. Vs. Union of India and others*** (Supra) has laid down as under: -

> *"Section 4(2)(l)(C) enables the promoter to revise the date of completion of project and hand over possession.* ***The provisions of RERA, however, do not rewrite the clause of completion or handing over possession in***

agreement for sale. *Section 4(2)(l)(C) enables the promoter to give fresh time line independent of the time period stipulated in the agreements for sale entered into between him and the allottees so that he is not visited with penal consequences laid down under RERA.* ***In other words, by giving opportunity to the promoter to prescribe fresh time line under Section 4(2)(l)(C) he is not absolved of the liability under the agreement for sale."***

Recently, in case ***M/s Imperia Structures Ltd. and others Versus Anil Patni and others***, ***Law Finder DocId#1758728***, the Hon'ble Apex Court has laid down as under:-

"33. We may now consider the effect of the registration of the Project under the RERA Act. In the present case the apartments were booked by the Complainants in 2011-2012 and the Builder Buyer Agreements were entered into in November, 2013. As promised, the construction should have been completed in 42 months. The period had expired well before the Project was registered under the provisions of the RERA Act. Merely because the registration under the RERA Act is valid till 31.12.2020 does not mean that the entitlement of the concerned allottees to maintain an action stands deferred. ***It is relevant to note that even for the purposes of Section 18, the period has to be reckoned in terms of the agreement and not the registration. Condition no.(x) of the letter dated 17.11.2017 also entitles an allottee in same fashion. Therefore, the entitlement of the Complainants must be considered in the light of the terms of the Builder Buyer Agreements and was rightly dealt with by the Commission****."*

Thus, as per the ratio of law laid down in the cases referred above, the revised date of completion of the project mentioned in the declaration form under Section 4(2)(*l*)(C)of the Act will not extend the date of delivery of possession as mentioned in the buyer's agreement.

35. There can be no dispute that as per Section 84(2) of the Act, the appropriate government is competent to prescribe the relevant forms for filing the complaint under Section 31(2) of the Act. The relevant forms have been prescribed under rules 28 and 29 of the Rules. The complaint lies to the Authority in form 'CRA' and the complaint lies to the Adjudicating Officer in form 'CAO' prescribed in Schedule III of the Rules. We do not find any substance in the contentions raised by learned counsel for the appellant that the learned Authority had no jurisdiction to deal with complaint filed by the allottees for grant of interest for delayed delivery of possession and it should have been filed before the Adjudicating Officer. The Adjudicating Officer is appointed by the Authority under Section 71(1) of the Act for adjudging the compensation under Sections, 12, 14, 18 and 19 of the Act. The word 'interest' does not figure at all in Section 71(1) of the Act. It only figures in Section 71(3) of the Act which authorize the Adjudicating Officer to award the compensation or interest, as the case may be. It signifies that the interest mentioned in Section 71(3) of the Act is an alternative to the lump sum compensation. The interest mentioned in Section 71(3) is

awarded in lieu of the compensation and is to be adjudged as per factors provided under Section 72 of the Act, whereas the interest payable under proviso to Section 18(1) of the Act is interest simplicitor on the prescribed rate for delay in delivery of the possession where the allottee does not intend to withdraw from the project. The said interest automatically flows from the terms of the agreement and does not involve intricate adjudication. Rule 29 sub-rule (1) of the Act reads as under:-

> ***"29. Filing of complaint and inquiry by adjudicating officer. Sections 12, 14, 18 and 19.-***
>
> *(1) Any aggrieved person may file a complaint with the adjudicating officer for interest and compensation as provided under sections 12, 14, 18 and 19 in Form 'CAO', in triplicate, which shall be accompanied by a fee as mentioned in Schedule III in the form of a demand draft or a bankers cheque drawn on a Scheduled bank in favour of "Haryana Real Estate Regulatory Authority" and payable at the branch of that bank at the station where the seat of the said Authority is situated."*

36. Rule 29(1) of the rules, provides that any aggrieved person may file a complaint with the Adjudicating Officer for interest and compensation as provided under Sections 12, 14, 18 and 19. Sub rule 2 rule 29 provides the procedure to be followed for adjudging the interest and compensation. The words mentioned in rule 29 are the interest and compensation which cannot be segregated and the

only possible interpretation is the compensation alongwith interest or interest in lieu of compensation. Thus, in view of the scheme of the Act and the rules, rule 29 deals with the grant of compensation alongwith interest or the interest in lieu of compensation.

37. Section 72 of the Act reads as under: -

> **"72. Factor to be taken into account by the adjudicating officer-**
>
> While adjudging the quantum of compensation or interest, as the case may be, under section 71, the adjudicating officer shall have due regard to the following factors, namely: —
>
> (a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default:
>
> (b) the amount of loss caused as a result of the default;
>
> (c) the repetitive nature of the default;
>
> (d) such other factors which the adjudicating officer considers necessary to the case in furtherance of justice.

38. Section 72 of the Act makes implicit the factors to be taken into account by the Adjudicating Officer in order to adjudge the quantum of compensation or interest. It shows that the interest mentioned in section 71 is not the interest at the prescribed rate. Rather it has to be determined keeping in view the factors

mentioned in section 72 of the Act. Thus it cannot be concluded that section 71 of the Act or rule 29 covers the interest simplicitor claimed by the allottee for causing delay in the delivery of possession. Consequently, there is no specific bar to the Authority to deal with the cases seeking the direction for the delivery of possession and interest simplicitor for delayed possession.

39. Section 11 (4) of the Act reads as under: -

> (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.
>
> (b) be responsible to obtain the completion certificate or the occupancy certificate, or both, as applicable, from the relevant competent

authority as per local laws or other laws for the time being in force and to make it available to the allottees individually or to the association of allottees, as the case may be;

(c) be responsible to obtain the lease certificate, where the real estate project is developed on a leasehold land, specifying the period of lease, and certifying that all dues and charges in regard to the leasehold land has been paid, and to make the lease certificate available to the association of allottees;

(d) be responsible for providing and maintaining the essential services, on reasonable charges, till the taking over of the maintenance of the project by the association of the allottees;

(e) enable the formation of an association or society or co-operative society, as the case may be, of the allottees, or a federation of the same, under the laws applicable:

Provided that in the absence of local laws, the association of allottees, by whatever name called, shall be formed within a period of three months of the majority of allottees having booked their plot or apartment or building, as the case may be, in the project;

(f) execute a registered conveyance deed of the apartment, plot or building, as the case may be, in favour of the allottee along with the undivided proportionate title in the common areas to the association of allottees or

competent authority, as the case may be, as provided under section 17 of this Act;

(g) pay all outgoings until he transfers the physical possession of the real estate project to the allottee or the associations of allottees, as the case may be, which he has collected from the allottees, for the payment of outgoings (including land cost, ground rent, municipal or other local taxes, charges for water or electricity, maintenance charges, including mortgage loan and interest on mortgages or other encumbrances and such other liabilities payable to competent authorities, banks and financial institutions, which are related to the project): Provided that where any promoter fails to pay all or any of the outgoings collected by him from the allottees or any liability, mortgage loan and interest thereon before transferring the real estate project to such allottees, or the association of the allottees, as the case may be, the promoter shall continue to be liable, even after the transfer of the property, to pay such outgoings and penal charges, if any, to the authority or person to whom they are payable and be liable for the cost of any legal proceedings which may be taken therefor by such authority or person;

(h) after he executes an agreement for sale for any apartment, plot or building, as the case may be, not mortgage or create a charge on such apartment, plot or building, as the case may be, and if any such mortgage or charge is

made or created then notwithstanding anything contained in any other law for the time being in force, it shall not affect the right and interest of the allottee who has taken or agreed to take such apartment, plot or building, as the case may be."

40. The aforesaid provisions of law provide that the promoter shall be responsible to fulfil the obligation towards the allottees as per the terms and conditions of the agreement for sale. Once this obligation has been incorporated in the substantive provision of the Act, its non-compliance may invite the violation of the provision of the Act. As per section 34(f) the Authority is competent to ensure the compliance of the obligations casted upon the promoter under this Act and the Rules and Regulations made thereunder. As per section 11(4)(a) it is the statutory obligation of the promoter to fulfil his obligations and responsibilities towards allottees as per agreement for sale. So, the Learned Authority can enforce the compliance of said obligations under section 34(f), which are not expressly prohibited to be taken cognizance of by the Authority under the Act and the rules made thereunder. Section 37 of the Act also provides that Authority may issue directions as it may consider necessary to the promoters or allottees or real estate agents for the purpose of discharging its functions under the Act or rules or regulations made thereunder. Thus for awarding the interest under section 18(1) of the Act due to non-fulfilment of the obligations/responsibilities as per the terms and conditions of the agreement by the promoter, the

Authority will be competent to award interest simplicitor at the prescribed rate by taking the aid of the provision of section 11(4)(a), 34(f) and 37 of the Act read with rules 28 and 29 of the rules.

41. Section 38 of the Act also empowers the Authority to impose penalty or interest in respect of any contravention of obligations casted upon the promoter, allottees and real estate agent under this Act and Rules and Regulation made thereunder. As already discussed the obligations/responsibilities of the promoter towards the allottees as per the terms and conditions of the agreement are also the statutory obligation in view of section 11(4)(a) of the Act. The Hon'ble Bombay High Court in **Neelkamal's Case (supra)** has laid down as under: -

> *"Insofar as Section 38 is concerned, the Authority is empowered to impose penalty or interest in respect of contravention of obligations cast upon the promoter/allottees under the Act or the Rules and the Regulations made thereunder. Thus, the Authority can also impose penalty or interest on the allottees for contravention of the obligations cast upon them.* ***At the same time, the Authority can impose penalty or interest on the promoter on account of contravention of obligations cast upon him."***

Even, in view of the aforesaid observations of Hon'ble Bombay High Court in **Neelkamal's case (supra),** the Authority is empowered to impose interest for non-compliance of the obligations casted upon him by virtue of Section 38 of the Act.

42. Learned counsel for the appellant has relied upon Clause 33 of the Model Agreement for sale (Annexure-A) (rule-8) to contend that any dispute arising out of the terms and conditions of the agreement is to be settled by the Adjudicating Officer. This plea is again misconceived. Firstly, the buyer's agreement between the parties is not as per the Model Agreement for sale (Annexure-A). Secondly, annexures/schedules appended to the Rules cannot override the substantive provisions of the Act.

43. Learned counsel for the appellant has contended that this Tribunal should revisit its view in ***Appeal No.74 of 2018 titled as "Ramprastha Promoters and Developers Pvt. Ltd. Vs. Ishwer Chand Garg***" decided on 29.07.2019. On the query made by this Tribunal learned counsel for the appellant has very fairly stated that this judgment passed by this Tribunal has not been so far set-aside by any higher forum. Moreover, we have no reason to differ with our observations/findings recorded in the aforesaid case.

44. The plea raised by learned counsel for the appellant that there is absence of mentioning the forum for adjudicating the complaints in the provisions of the Act, is also of no substance. The conjoint and careful reading of Sections 11(4)(a), 34(f), 37 and 38 of the Act read with rules 28 and 29 of the Rules indicates that the learned Authority has every jurisdiction to get the obligations/responsibilities of the promoter as per the terms and conditions of the agreement fulfilled which includes the award of interest for delay in delivery of possession.

45. Learned counsel for the appellant has also contended that the appellant/promoter cannot be burdened with interest on the amount of external development charges and Goods and Service Tax etc. This plea raised by learned counsel for the appellant deserves outright rejection on the ground that no such plea has been taken by the appellant either in the reply to the complaint or in the grounds of appeal. Moreover, there is no material on record to show as to how demand for external development charges was raised by the government, how much development charges were actually deposited by the appellant, when the said amount of external development charges was collected from the respondents/allottees and when the said amount was further deposited with the government. Similar is the position with respect to the Goods and Service Tax. Furthermore, if the project would have been completed within the stipulated period as per the terms and conditions of the agreement, there was no question of imposition of GST as the GST was levied w.e.f. 01.07.2017.

46. Thus, keeping in view our aforesaid discussion, we do not find any illegality in the impugned order passed by the learned Authority. Consequently, the present appeal is without any merits and the same is hereby dismissed.

47. The amount deposited by the appellant/promoter i.e. Rs.79,01,757/- with this Tribunal to comply with the provisions of Section 43(5) of the Act be remitted to the learned Haryana Real

Estate Regulatory Authority, Gurugram for disbursement to the respondents/allottees in accordance with law.

48. The copy of this order be communicated to learned counsel for the parties/parties and the learned Authority for compliance.

49. File be consigned to the records.

Announced:
October 14, 2021

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

Inderjeet Mehta
Member (Judicial)

Anil Kumar Gupta
Member (Technical)

CL

Appeal No. 250 of 2020

Present: Sh. Yashvir Balhara, Advocate for Sh. Shekhar Verma, Advocate, Ld. counsel for the appellant. (in person)

Sh. Kuldeep Kumar Kohli, Advocate, Ld. counsel for the respondent.

(The Court proceedings conducted through VC)

Vide our separate detailed order of the even date, the appeal is dismissed.

The amount deposited by the appellant/promoter i.e. Rs.79,01,757/- with this Tribunal to comply with the provisions of Section 43(5) of the Real Estate (Regulation and Development) Act, 2016 be remitted to the learned Haryana Real Estate Regulatory Authority, Gurugram for disbursement to the respondents/allottees in accordance with law.

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

File be consigned to record.

Announced:
October 14, 2021

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

Inderjeet Mehta
Member (Judicial)

Anil Kumar Gupta
Member (Technical)

CL