

**BEFORE THE HARYANA REAL ESTATE APPELLATE
TRIBUNAL**

Appeal No.04 of 2021
Date of Decision: 17.02.2022

Nimai Developers Pvt. Ltd.
Through its authorized representative, SCO 304, 2nd Floor
Sector 29, Gurugram-122002.

Appellant

Versus

Saroj Singal, H.No.1576, Sector 46, Gurugram-122002,
Haryana.

Respondents

CORAM:

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

Present: Shri Sidharth Gulati, Advocate, learned
counsel for appellant.

Shri Arun Sharma, Advocate, learned counsel
for respondent.

[Through video conferencing]

ORDER:

JUSTICE DARSHAN SINGH (RETD.) CHAIRMAN:

The present appeal has been preferred against the
order dated 21.01.2019 passed by the learned Haryana Real
Estate Regulatory Authority, Gurugram (hereinafter called 'the
Authority'), in complaint bearing No.715 of 2018.

2. Learned counsel for the appellant has contended that the project is 95% complete and the possession is likely to be offered after March, 2022. He further contended that the respondent/allottee is in arrears of more than Rs.22 lacs. The interest awarded in favour of the respondent can be adjusted towards the said amount. He further contended that as far as the refund clause in the impugned order is concerned, the respondent is only entitled for the principal amount as no interest has been awarded by the learned Authority on this amount in the relief clause.

3. On the other hand, Shri Arun Sharma, learned counsel for the respondent has contended that as per the directions given by the learned Authority, the appellant was to deliver possession by September, 2019 failing which the respondent/complainant was entitled to seek refund of the amount along with interest at the prescribed rate i.e. 10.75% per annum. He contended that as much delay has been caused in delivery of possession, so the respondent has become entitled for refund of the amount along with interest. Respondent is an old lady. She is interested to get the refund of the amount along with interest and not the possession of the unit, which is not yet complete in spite of inordinate delay of many years.

and not the possession of the unit, which is not yet complete in spite of inordinate delay of many years.

4. We have duly considered the aforesaid contentions. We are reproducing the relevant paras of the impugned order as under:-

“25. Allotment letter is dated 10.07.2014 whereas the agreement was signed on 12.05.2015. In the interest of justice, it is admissible that where the agreement has not been signed or has been signed at a belated stage, the date of allotment shall be taken from the date of issue of allotment letter. Since the project is registered one vide registration no.7 of 2018 and revised date of possession is September, 2019. If the respondent fails to deliver the possession of the unit on the revised date, then the complainant is entitled for refund of amount along with revised rate of interest. As such, complainant is entitled for delayed possession charges at prescribed rate of interest i.e. 10.75% per annum w.e.f. 10.07.2017 as per the provisions of section 18(1) of the Real Estate (Regulation and Development) Act, 2016 till the handing over possession failing which the complainant is entitled to seek refund of the amount.

Directions of the authority

26. *The authority exercising powers vested in it under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby issues the following directions to the respondent:*

- i. *The respondent is directed to pay 'delayed possession charges' for the amount deposited by the complainant/buyer of Rs.16,18,623/- along with prescribed rate of interest i.e. 10.75% per annum w.e.f. 10.07.2017 as per the provisions of section 18(1) of the Real Estate (Regulation and Development) Act, 2016 till the handing over possession i.e. September, 2019 failing which the complainant is entitled to seek refund of the amount.*
- ii. *The arrears of interest accrued so far shall be paid to the complainant within a period of 90 days from this order and thereafter monthly payment of interest till handing over the possession shall be paid before 10th of subsequent month."*

5. The relevant para of the short order of the learned Authority reads as under:-

"As per clause 26 of the Builder Buyer Agreement dated 12.5.2015 for unit No.621, 6th floor, in Nimai Place, Sector-114, Gurugram, possession was to be handed over to the complainant within a period of 36 months from

the date of sanction of building plans or date of execution of BBA whichever is later. It was a construction linked plan. Complainant has already paid Rs.16,18,623/- to the respondent against a total sale consideration of Rs.51,54,289/-. However, the respondent has miserably failed to deliver the unit in time. The respondent apprised that the project is registered vide registration No.7 of 2018. 70% of the work is complete and the possession of the flat shall be handed over by December, 2019.

Allotment letter is dated 10.07.2014 whereas BBA was signed on 12.5.2015. In the interest of justice, it is admissible that where BBA has not been signed or has been signed at a belated stage, the date of allotment shall be taken from the date of issue of allotment letter. Since the project is registered one vide registration No.7 of 2018 and revised date of possession is September 2019. If the respondent fails to deliver the possession of the unit on the revised date, then the complainant is entitled for refund of amount along with revised rate of interest. As such, complainant is entitled for delayed possession charges at prescribed rate of interest i.e. 10.75% per annum w.e.f. 10.7.2017 as per the provisions of section 18(1) of the Real Estate (Regulation and Development) Act, 2016 till the handing over

possession failing which the complainant is entitled to seek refund of the amount.

The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order and thereafter monthly payment of interest till handing over the possession shall be paid before 10th of subsequent month.”

6. It is an admitted fact that the project is not still complete and 'Occupation Certificate' has not been issued so far. So, the possession of the unit has not been offered to the respondent/allottee as per the revised date i.e. September, 2019 stipulated by the learned Authority. The respondent/allottee was awarded interest on the delayed possession, and that clause was only applicable if the possession would have been delivered by September, 2019 by the appellant/promoter to the respondent/allottee, as the deemed date of delivery of possession was 10.07.2017. But, it is an admitted fact that the appellant/promoter has failed to deliver possession to the respondent/allottee by the revised date i.e. September, 2019. So, the respondent/allottee has become entitled for the alternative relief granted by the learned Authority in the impugned order.

7. We do not find any substance in the contention raised by learned counsel for the appellant as we have already clarified that first part of the relief clause (i) of the impugned order for payment of delayed interest was only applicable if the possession would have been delivered to the respondent by September 2019. Since, the appellant has utterly failed to perform its obligations, so now the second part of the relief clause (i) of the impugned order i.e. for refund of the amount has become applicable.

8. There is an omission in the relief clause with respect to award of interest. In the relief clause, in para no.26 (i) it is only mentioned that the respondent/complainant is entitled to seek refund of the amount and there is no order with respect to the award of interest in case of refund of the deposited amount. However, in para no.25 of the impugned order and second para of the short order, it is categorically mentioned that the respondent/complainant shall be entitled for refund of the amount along with prescribed rate of interest i.e. 10.75% per annum. It is settled principle of law that the relief clause always follows the findings recorded in the body of the order. So, non-mentioning of the interest in the relief clause is only an omission. The impugned order is to be read as a whole and not in parts.

9. Section 18(i) of the Act reads as under:-

“18. Return of amount and compensation.- (1) *If the promoter fails to complete or is unable to give possession of an apartment, plot or building,—*

(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or

(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,

he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.”

10. The aforesaid provision of law clearly stipulates that where the promoter fails to complete or is unable to give possession of the apartment, plot or building in accordance

Appeal No.04 of 2021

with the terms of the agreement for sale, he shall be liable on demand to the allottee, in case the allottee wishes to withdraw from the project, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed.

11. Rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 also provides that the promoter shall return the entire amount with interest as well as compensation payable.

12. From the aforesaid statutory provisions of law, it comes out that when refund of the amount is ordered, the interest at the prescribed rate will follow. Thus, it is clarified that the respondent/allottee shall be entitled for refund of the amount deposited by her with the appellant/promoter along with prescribed rate of interest i.e. 9.3% per annum prevailing as on today. The interest shall be calculated from the date the appellant/promoter received the amount till the date of its realization. Thus, with the aforesaid clarification in the impugned order, we do not find any merit in the present appeal.

13. Resultantly, the present appeal is without any merits and the same is hereby dismissed.

Appeal No.04 of 2021

14. The amount of Rs.22,26,918/- deposited by the appellant with this Tribunal, along with interest accrued thereon, be remitted to the learned Authority for disbursement to the respondent/allottee as per law and rules. The respondent/allottee shall be at liberty to pursue execution proceedings to claim for the remaining amount.

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

16. File be consigned to the record.

Announced:
February 17, 2022

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

Inderjeet Mehta
Member (Judicial)

Anil Kumar Gupta
Member (Technical)

CL