

**BEFORE THE HARYANA REAL ESTATE APPELLATE
TRIBUNAL**

Appeal No.64 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

Brigadier Sushil Kumar Arora and Captain Puneet Arora,
H.No.B-60, Jalvayu Vihar, Sector 30, Gurugram, Haryana.

Respondents

CORAM:

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

Present: Shri Nikhel S. Bahri, Advocate, learned
counsel for appellant.

Shri Sanjeev Kumar Sharma, Advocate,
learned counsel for respondents.

[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.534 of 2018.

2. Learned counsel for the appellant has contended that the project is 95% complete and the possession is likely to

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be offered after March, 2022. He further contended that the respondents/allottees are in arrears of more than Rs.22 lacs. The interest awarded in favour of the respondents can be adjusted towards the said amount. He further contended that as far as the refund clause in the impugned order is concerned, the respondents are 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 Sanjeev Kumar Sharma, learned counsel for the respondents has contended that as per the directions given by the learned Authority, the appellant was to deliver possession by September, 2019 failing which the respondents/complainants were 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 respondents have become entitled for refund of the amount along with interest. Respondent Brig. Sushil Kumar is an old person aged about 83 years. He 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.

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

“27. If the respondent fails to deliver the possession of the unit on the revised date, then the complainants are entitled for refund of amount along with prescribed rate of interest i.e. 10.75% per annum. As such, complainants are entitled for delayed possession charges at prescribed rate of interest i.e. 10.75% per annum w.e.f. 16.03.2017 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.

DECISION AND DIRECTIONS OF THE AUTHORITY:

28. After taking into consideration all the material facts as adduced and produced by both the parties, the authority exercising powers vested in it under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby issue the following direction to the buyer in the interest of justice and fair play:

i. The respondent is directed to pay interest at the prescribed rate of 10.75% per annum on the amount deposited by the complainants with the promoter on the due date of possession i.e. 16.03.2017 till the

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handing over possession failing which the complainants are entitled to seek refund of the amount.

- ii. 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.”*

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 3.7.2014 for unit No.606, 6th floor, in project “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 plan or from the date of execution of BBA whichever is later. As the date of start of excavation work is 16.3.2014 (as per Annexure 14) therefore, the due date of delivery of possession of the unit comes out to be 16.3.2017. It was a construction linked plan. Complainant has already paid Rs.30,90,287/- to the respondent against a total sale consideration of Rs.52,35,620/-. However, the respondent apprised that the project is registered vide registration No.7 of 2018 and 60% of the work is complete. The possession of the flat shall be handed over by September, 2019.

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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 prescribed rate of interest i.e. 10.75% per annum. As such, complainant is entitled for delayed possession charges at prescribed rate of interest i.e. 10.75% per annum w.e.f. 16.3.2017 as per the provisions of section 18(1) of the Real Estate (Regulation & 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 respondents/allottees as per the revised date i.e. September, 2019 stipulated by the learned Authority. The respondents/allottees were 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 respondents/allottees, as the deemed date of delivery of possession was 16.03.2017. But, it

is an admitted fact that the appellant/promoter has failed to deliver possession to the respondents/allottees by the revised date i.e. September, 2019. So, the respondents/allottees have 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 respondents 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.28 (i) it is only mentioned that the respondents/complainants are 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.27 of the impugned order and second para of the short order, it is categorically mentioned that the respondents/complainants 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

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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 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 respondents/allottees shall be entitled for refund of the amount deposited by them 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

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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.

14. The amount of Rs.30,90,287/- deposited by the appellant with this Tribunal, along with interest accrued thereon, be remitted to the learned Authority for disbursement to the respondents/allottees as per law and rules. The respondents/allottees 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)