

M/s Emaar MGF Land Pvt. Ltd. Vs. Priority Agency Pvt. Ltd.
Appeal No.574 of 2019

Present: Shri Kunal Dawar, Advocate, Ld. counsel for the appellant.

Shri Mayank Aggarwal, Advocate, Ld. counsel for the respondent.

(CASE TAKEN UP THROUGH VC)

The present appeal has been preferred by the appellant-promoter against the order dated 22nd October, 2018 passed by the Ld. Haryana Real Estate Regulatory Authority, Gurugram (for short, 'the Authority'), whereby complaint filed by the respondent bearing No.210 of 2018 was disposed of with the following directions:

- "i. As per provisions of Section 18(1) of the Real Estate (Regulation & Development) Act, 2016, the respondent is duty bound to pay the interest at the prescribed rate i.e. 10.45% for every month of delay from the due date of possession i.e. 19.11.2015 till the actual date of offer of possession.*
- ii. The arrears of interest accrued so far shall be made to the complainant within 90 days from the issuance of this order and thereafter monthly payment of interest shall be made before 10th of subsequent month till handing over the possession."*

2. Initiating the arguments learned counsel for the appellant contended that the Ld. Authority had no jurisdiction to entertain the complaint in view of the fact that the Rules framed by the Government of Haryana are under challenge and the matter is pending before the Hon'ble Apex Court.

3. On the other hand, Ld. counsel for the respondent contended that the matter regarding jurisdiction has been settled by the Hon'ble Apex Court in ***M/s Newtech Promoters and Developers Pvt. Ltd. v. State of UP & others 2021 SCC Online SC 1044.***

4. We have duly considered the aforesaid contentions.

5. The only challenge to the impugned order in the present appeal is with respect to the jurisdiction of the Ld. Authority. It has been alleged that the Ld. Authority had no jurisdiction to entertain and try the

complaint filed by the appellant. In the complaint filed by the respondent, the complainant has sought the following reliefs:

- “1. *Complainant seeks direction to the respondent to deliver possession of the apartment/flat booked by the complainant, with immediate effect in terms of the provisions of the RERA r/w HRERA Rules, 2017 and the terms of the Agreement.*
 - 1.1 *The grounds for the said relief have been explained in considerable detail in para 4. The same may be read as part and parcel of the present paragraph as well.*
 - 1.2 *The complainant does not wish to withdraw from the project but seeks a direction against the respondent to handover possession with immediate effect, as promised in the Agreement.*
2. *That complainant be paid compensation at 10.2% p.a. on the total amount paid by the respondent till the date of handing over of possession due to the delay on part of the respondent as per proviso to Section 18(1) of RERA, 2016 r/w Haryana Real Estate (Regulation and Development) Rules, 2017.*
 - 2.1 *The grounds for the said relief have been explained in considerable detail in para 4. The same may be read as part and parcel of the present paragraph as well.*
 - 2.2 *The complainant is entitled to compensation in terms of proviso to Section 18(1) of RERA, 2016 as there has been more than 45 months delay (as of today) in handing over possession of the apartment/flat to the complainant in violation of the terms of the Agreement. Proviso to Section 18(1) of RERA reads as follows:*

“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.”
 - 2.3 *That possession has still not been offered by the respondent to the complainant and there is already a delay of about 45 months (as of today)*

in handing over possession. Thus, compensation in terms of proviso to Section 18(1) of RERA, 2016 is payable in favour of the complainant by the respondent from the date of.

- 2.4 *The complainant as per the terms of the agreement has legitimate expectation to get interest on the amount paid to the respondent from the promised date of delivery of possession to the actual date of handing over of possession and payment of compensation to the Complainant. The rate of interest payable by the respondent to the complainant is 10.2% per annum or as deemed fit by this Hon'ble Authority.*
- 2.5 *The highest MCLR effective from 1st February, 2018 for State Bank of India is 8.1%. As per Rule 15 of the Rules 2017, the interest payable by respondent to the complainant is "State Bank of India highest marginal cost of lending rate plus two per cent" which is 8.1% + 2% which equals to 10.1% of the amount paid.*
- 2.6 *Due to the default on part of the respondent to fulfil its obligations under the contract/ agreement the complainant is entitled to claim interest @ 10.2% per annum as per the HRERA Rules, 2017."*

6. From the aforesaid relief clause, it comes out that the respondent-allottee has basically sought the delivery of possession and interest for delay in the delivery of possession. The Hon'ble Apex Court in case ***M/s Newtech Promoters and Developers Pvt. Ltd. (supra)*** has laid down as under:

"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or

penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. If the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016. Question no. 3: Whether Section 81 of the Act authorizes the authority to delegate its powers to a single member of the authority to hear complaints instituted under Section 31 of the Act?"

7. The aforesaid findings of the Hon'ble Apex Court are a complete answer to the contentions raised by Ld. counsel for the appellant, the Hon'ble Apex Court has categorically laid down that it is the regulatory authority which has power to examine and determine the outcome of a complaint with respect to refund and interest.

8. In view of the aforesaid authoritative pronouncement of the Hon'ble Apex Court, we cannot find any fault with the jurisdiction exercised by the Ld. Authority. Consequently, the contentions raised by Ld. counsel for the appellant are without any substance.

9. However, it is pertinent to mention that during the pendency of the appeal in pursuance of the order dated 29th July 2021 passed by this Tribunal, the appellant has delivered the possession of the unit to the respondent-allottee on 30th October, 2021. The respondent-allottee has also made the payment of the outstanding amount except the holding charges. The respondent-allottee will be liable to pay the holding charges as per terms and conditions of the agreement.

10. Ld. counsel for the appellant has brought to our notice that on the date of filing the appeal, they were required to deposit a sum of Rs.27,23,257/- to comply with the provisions of proviso to Section 43(5)

of the Real Estate (Regulation & Development) Act, 2016 (hereinafter called, 'the Act'), but they have deposited a sum of Rs.32,26,441/-. So, they have deposited excess amount.

11. On the other hand, Ld. counsel for the respondent has contended that the letter of offer sent by the appellant on 07th May, 2019 was not valid as the unit was incomplete. This is not the subject-matter of this appeal. It is to be seen by the Ld. Authority in the execution as to what will be the actual date of offer of possession in order to determine the amount of delayed interest payable to the respondent-allottee in the execution of the order.

12. Thus, keeping in view our aforesaid discussion, the present appeal has no merit and the same is hereby dismissed.

13. The amount of Rs.32,26,441/- along with interest accrued be remitted to the Ld. Authority for disbursement to the respondent-allottee as per its entitlement in accordance with law and rules.

14. Copy of this order be sent to the parties/Ld. counsel for the parties and Ld. Haryana Real Estate Regulatory Authority, Gurugram for compliance.

15. File be consigned to the record.

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

Inderjeet Mehta
Member (Judicial)

Anil Kumar Gupta
Member (Technical)

23.02.2022
Manoj Rana