

**BEFORE THE HARYANA REAL ESTATE APPELLATE
TRIBUNAL**

**Appeal No.637 of 2019
Date of Decision: 09.03.2022**

Ravinder Aggarwal son of Shri B.K. Aggarwal, House No.E-34,
First Floor, East of Kailash, New Delhi-65.

Appellant

Versus

M/s IREO Grace Realtech Pvt. Ltd., 5th Orchid Centre, Golf
Course Road, Sector-53, Gurugram, also at near Village
Behrampur, Sector-59, Gurugram.

Respondent

CORAM:

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

Chairman
Member (Judicial)
Member (Technical)

Present: Shri Nitin Kant Setia, Advocate, learned
counsel for the appellant.

Ms. Mehak Sawhney, Advocate, learned
counsel for the respondent (through V.C.)

ORDER:

JUSTICE DARSHAN SINGH (RETD.) CHAIRMAN:

The appellant-allottee filed complaint before the
learned Haryana Real Estate Regulatory Authority, Gurugram
(hereinafter called the 'Authority') for refund of the amount
paid by him along with interest, on the ground that the unit

allotted to him was not constructed within the stipulated period.

2. The complaint was contested by the respondent-promoter primarily on the ground that the construction could not start due to the defaulters in the towers. The appellant also did not make the payment as per the payment plan in spite of repeated reminders and ultimately his allotment was cancelled on 05.03.2015 and the amount deposited by the appellant-allottee was forfeited.

3. The learned Authority, on appreciating the contentions raised by the parties, directed the respondent-promoter to forfeit 10% of the total sale price and refund the balance amount deposited by the appellant along with interest at the prescribed rate.

4. We have heard Shri Nitin Kant Setia, Advocate, learned counsel for the appellant; Ms. Mehak Sawhney, Advocate, learned counsel for the respondent and have carefully gone through the record of the case. Learned counsel for the parties have also filed their written submissions.

5. Shri Nitin Kant Setia, Advocate, learned counsel for the appellant has contended that though the unit was allotted to the appellant on 07.08.2013, more than eight years have

passed, but still the construction is not complete. The appellant has already paid a sum of Rs.47,11,034/-. He contended that what to talk of completion of the construction, the construction has not even started, as per the admission of the respondent-promoter in the written statement. Thus, he contended that the learned Authority was not justified to order forfeiture of 10% of the sale consideration and the appellant is entitled for refund of the entire amount along with interest at the prescribed rate. To support his contention, learned counsel for the appellant has relied upon case **Sidhartha Aggarwal vs. IREO Grace Realtech Pvt. Ltd., Consumer Complaint No.1182 of 2017**, decided by the Hon'ble National Consumer Disputes Redressal Commission, New Delhi on 10.01.2019 and **"Newtech Promoters & Developers Pvt. Ltd. Vs. State of U.P. and others" 2021 SCC OnLine SC 1044**.

6. On the other hand, learned counsel for the respondent has contended that the appellant was himself defaulter in making the payment as per the payment plan. The respondent had raised the demand when the excavation of the project started, vide letter dated 18.03.2014 (at page 70 of the paper book). Even the reminders were issued, but, the appellant-allottee did not make the payment. So, ultimately his allotment was cancelled vide letter dated 05.03.2015

(Annexure R-6), and the amount paid by him was forfeited as per the terms and conditions of the application form for allotment. She contended that the appellant has not even executed the buyer's agreement. She further contended that the construction could not be completed within the stipulated period as there were number of defaulters in this tower. Thus, she contended that the appellant is not entitled for refund of the amount.

7. We have duly considered the aforesaid contentions.

8. It is an admitted fact that the unit was allotted to the appellant on 07.08.2013. This fact is also not disputed that the appellant-allottee had deposited a sum of Rs.47,11,034/-, even before the date of allotment i.e. up to May, 2013. It is also not disputed that the unit allotted to the appellant has not been constructed so far, though a period of more than eight years has passed. The Hon'ble Apex Court in case ***M/s Fortune Infrastructure (Now known as M/s Hicon Infrastructure) & Anr. Vs. Trevor D'lima & Ors., 2018(5) SCC 442*** has laid down as under:-

15. *Moreover, a person cannot be made to wait indefinitely for the possession of the flats allotted to them and they are entitled to seek the refund of the amount paid by them, along*

with compensation. Although we are aware of the fact that when there was no delivery period stipulated in the agreement, a reasonable time has to be taken into consideration. In the facts and circumstances of this case, a time period of 3 years would have been reasonable for completion of the contract i.e., the possession was required to be given by last quarter of 2014. Further there is no dispute as to the fact that until now there is no redevelopment of the property. Hence, in view of the above discussion, which draw us to an irresistible conclusion that there is deficiency of service on the part of the appellants and accordingly the issue is answered. When once this Court comes to the conclusion that, there is deficiency of services, then the question is what compensation the respondents/complainants is entitled to?

9. As per the aforesaid ratio of law laid down by the Hon'ble Apex Court, if there is no delivery period stipulated in the agreement, a time period of three years would be reasonable for completion of the contract.

10. Learned counsel for the appellant has relied upon the case titled as **Sidhartha Aggarwal vs. IREO Grace Realtech Pvt. Ltd.** (Supra). It is not disputed that the said case also relates to this very tower i.e. tower D-5, "The

Corridor” Sector 67-A, Gurugram. In that case, the agreement was executed and possession was to be delivered within 42 months with grace period of 180 days. Meaning thereby, the possession was to be delivered within four years. Even if the said clause is relied upon in the present case, as the unit allotted to the appellant is also situated in the same tower, the due date for delivery of possession will come to 27.11.2018 i.e. four years from the date of fire NOC. But, there is no sign of completion of the project even though more than three years have passed since the aforesaid due date of completion of the project.

11. The plea raised by the respondent that the construction could not be completed as there were various defaulters in this tower, cannot be a ground to condone such a substantial delay in the completion of the project. In para no.3.5 of the reply, there is a categorical admission on the part of the respondent that the construction of the unit has not started. This written statement might have been filed by the respondent before the learned Authority after 05.10.2018, as the affidavit accompanying the written statement has been attested on 05.10.2018. So, by October, 2018, even the construction of the unit allotted to the appellant had not started. Learned counsel for the respondent could not dispute

the contention raised by learned counsel for the appellant that the construction of Tower D-5 is not yet complete.

12. The respondent was party to **Consumer Complaint No.1182 of 2017 titled Sidhartha Aggarwal vs. IREO Grace Realtech Pvt. Ltd.** (Supra), wherein the allotment of the same tower was concerned. In that case also, the respondent has taken the plea that sufficient number of applicants have not made booking in the tower, so, the construction could not commence. But that plea raised by the respondent-promoter did not find favour with the Hon'ble National Consumer Disputes Redressal Commission and the complaint was disposed of with a direction to the respondent-promoter to refund the entire principle amount along with compensation in the form of simple interest @ 10% per annum from the date of payment till the date of refund. We also concur with the decision arrived at by the Hon'ble National Consumer Disputes Redressal Commission. As if there is some deficiency of booking in the tower and some of the allottees are defaulters, the allottees who had already made the payment/part payment, cannot be made to suffer.

13. Recently, the Hon'ble Apex Court in **Newtech Promoters & Developers Pvt. Ltd. Vs. State of U.P. and others'** case (Supra) has laid down as under:-

“25. The unqualified right of the allottee to seek refund referred under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed.”

14. In the instant case also, we cannot attribute the delay in completion of the construction within the stipulated period to the appellant-allottee. The appellant has already made the payment almost to the extent 20% of the sale price even before the date of allotment. If the appellant has failed to execute the buyer's agreement as per the stipulation in the application form, that has not caused any prejudice to the rights of the respondent as this non-compliance on the part of

the appellant will not resist or cause any obstruction in the start of the construction. If, there was any default or delay in making the payment, the allottee can be made liable for delayed payment/penal interest for the same, but in our view that cannot be a ground to give right to the promoter to delay the completion of the construction.

15. During the course of arguments, we have put the pointed out query to learned counsel for the respondent and in response thereto, she stated that this tower is still only at the stage of basement. Moreover, this tower was to have 14 floors. So, even a single floor of this tower has not been constructed so far, in spite of the fact that more than eight years have passed since the date of allotment. The Hon'ble Apex Court has categorically laid down in case ***M/s Fortune Infrastructure (Now known as M/s Hicon Infrastructure) & Anr. Vs. Trevor D'lima & Ors (Supra)***, that the allottee cannot be made to wait indefinitely for the completion of the construction. Thus, in these circumstances, in our view, the learned Authority was not justified to order to forfeit 10% of the sale price due to utter failure of the promoter to complete the project within the stipulated period. The appellant-allottee is entitled for refund of the entire amount paid by him along with interest at the prescribed rate prevailing as on today.

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16. Thus, keeping in view our aforesaid discussion, the present appeal is hereby allowed. The impugned order passed by the learned Authority is modified. It is held that the appellant-allottee is entitled for refund of the amount of Rs.47,11,034/- already paid by him to the respondent-promoter, along with interest at the prescribed rate as per Rule 15 of the Rules i.e. 9.3% per annum prevailing as on today. The interest shall be calculated from the respective dates, the respondent received the amount till the date of realization.

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

18. File be consigned to the record.

Announced:
March 09, 2022

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

Inderjeet Mehta
Member (Judicial)

Anil Kumar Gupta
Member (Technical)