

**BEFORE THE HARYANA REAL ESTATE APPELLATE
TRIBUNAL**

Appeal No.437 of 2019
Date of Decision: 01.04.2022

1. Rajiv Kohli son of Shri Wazir Chand Kohli;
2. Sangeeta Kohli wife of Shri Rajiv Kohli,

Both the residents of B-38, Ashoka Avenue, Sainik Farms,
New Delhi 110 62

...Appellants

Versus

Supertech Ltd., Registered Office: 1114, 11th Floor, Hemkunt,
Chamber 89, Nehru Place, New Delhi 110019

...Respondent

CORAM:

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

Chairman
Member (Judicial)
Member (Technical)

Argued by: Shri Simarpal Singh Sawhney, Advocate, Ld.
counsel for appellants-allottees.

Shri Akshat Mittal, Advocate, Ld. counsel for
respondent-promoter.

[The aforesaid presence recorded through video conferencing]

ORDER:

Anil Kumar Gupta, Member (Technical):

The present appeal has been preferred against the order dated 13.03.2019 passed by the Ld. Haryana Real Estate Regulatory Authority, Gurugram (hereinafter called the 'Authority'), whereby Complaint No.1603 of 2018 filed by the

appellants-allottees was disposed of with the following directions: -

“(i) Complainant is insisting for refund of the deposited amount which is not feasible as per provisions of law at this moment as there will be irreparable damage to whole project.

(ii) As per clause 1 of the builder buyer agreement dated 4.9.2014 for unit no. 202, tower-W, in project “Supertech Hues”, Sector-68, Gurugram, possession was to be handed over to the complainant within a period of 42 months + 6 months grace period which comes out to be 4.9.2018. However, the respondent has not delivered the unit in time. Complainant has already paid Rs.27,83,160/- to the respondent against a total sale consideration of Rs. 1,04,15,600/. As such, complainant is entitled for delayed possession charges at prescribed rate of interest i.e. 10.75% per annum w.e.f 4.9.2018 as per the provisions of section 18 (1) of the Real

*Estate (Regulation & Development) Act,
2016 till offer of possession.*

*(iii) 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 offer of
possession shall be paid before 10th of
subsequent month.”*

2. As per averments in the complaint, the appellants-allotees booked a flat/unit with the respondent-promoter on 24.07.2013 by paying an amount of Rs.7,00,000/- through cheque dated 24.07.2013 and was promised the unit bearing No.702, 7th Floor, Tower-L, in Project “Supertech Hues”, Sector 68, Gurugram. Further, upon requests of the respondent-promoter another cheque amounting to Rs.4,28,600/- was handed over by the appellants-allotees on 21.12.2013. The booking form was provided by the respondent-promoter on 20.03.2014. In the said booking form, the allotment of the flat was changed from unit bearing No.702, 7th Floor, Tower-L to unit bearing No.202, 2nd Floor, Tower-W, the said change was also communicated to the appellants-allotees vide letter dated 23.06.2014. The payment plan as per the above said booking was construction linked. The date of booking in the above said booking form was mentioned as 12.10.2013. It was further

pleaded that without executing any buyer developer agreement the respondent-promoter raised another demand of Rs.2,04,548/-, the same was also duly paid by the appellants-allottees vide cheque dated 16.06.2014. A Builder Buyer's Agreement (for short, 'the agreement') was executed on 04.09.2014. As per the agreement, the possession of the unit was to be handed over within a period 42 months from the date of agreement. The promised date of possession as per the Agreement is April, 2017, the same had elapsed long time back.

3. It was further pleaded that the respondent-promoter kept on demanding money from the appellants-allottees on the pretexts such as raising the construction at a very fast pace and the appellants-allottees continued to pay the same in good faith but all the demands made by the respondent-promoter were not as per the level of construction.

4. It was further pleaded that the total consideration paid till date is Rs.27,83,160/- against Basic Sale Price (for short, 'BSP') of Rs.89,66,100/- of the unit.

5. It was further pleaded that the appellants-allottees personally visited the office of the respondent-promoter various times during 2013-2018 to enquire about the progress of the construction and requested for handing over of the possession of the said unit. But, on the visits they were shocked to discover

that even the foundation of the tower in which the flat of the appellants-allottees is situated i.e. Tower-W had not been laid down.

6. It was further pleaded that the appellants-allottees had already paid the demanded amount which is more than the amount as per the agreement and till the filing of the complaint, the possession of the unit was not offered by the respondent-promoter to them. The appellants-allottees had on various occasions demanded refund of the entire money paid along with interest @ 18% per annum and appropriate compensation, but the same has not been paid to them by the respondent-promoter.

7. It was further pleaded that almost a period of 62 months has elapsed from the date of booking of the unit and further a period of almost 49 months have gone since the agreement was executed between the appellants-allottees and the respondent-promoter, but the possession of the unit was not offered to them as the project is at very nascent stage, which can be seen from the website of the respondent-promoter which shows the completion date as 31.12.2021.

8. With the aforesaid pleadings, the following relief has been sought by the appellants-allottees in their complaint:

- “I. Direct the respondent to refund the entire amount of Rs. 27,83,160/- to the complainants along with interest as prescribed under the Real Estate Regulatory Act, Haryana Real Estate (Regulation and Development) rules, 2017 and other relevant rules/regulations framed thereunder on the aforementioned sum paid by the complainants to the respondent from the date of such payment and till the date of realization of such amounts.*
- II. Direct the respondent to pay to the complainants compensation for the loss caused to the complainants on account of respondent’s misrepresentation and deficiency of service.*
- III. Any other relief that this hon’ble tribunal deems fit in the facts and circumstances.”*

9. The respondent-promoter contested the complaint on the ground that the project is registered under HRERA vide certificate No.182 of 2017 dated 04.09.2017. The said certificate is valid for a period commencing from 04.09.2017 to 31.12.2021. The possession of the said premises was proposed to be delivered by April 2017 with 06 months grace period which comes out to October, 2017. The construction of the building is delayed for reasons of non-availability of steel and/or cement

or other building materials and/or water supply or electric power and/or slow down strike etc. which is beyond the control of respondent-promoter. Moreover, due to the orders passed by Environmental Pollution (Prevention and Control) Authority, the construction was stopped for few days due to high rise in pollution in Delhi NCR. It was further pleaded that due to stagnation, fall in real estate market, demonetization and GST, the speed of work has slowed which has resulted in delay of delivery of possession as well as financial loss. It was further pleaded that the RERA Act has been enacted to provide housing facilities with modern development infrastructure and amenities to the allottees and to protect the interest of the real estate sector. Thus, the plea of refund claimed by every allottee is not sustainable in the eye of law. With these pleadings the respondent-promoter prayed for dismissal of the complaint.

10. After hearing learned counsel for the parties and appreciating the material on record, the Ld. Authority disposed of the complaint by issuing directions reproduced in the upper part of this order, vide impugned order dated 13.03.2019.

11. Aggrieved with the aforesaid order of the Ld. Authority, the present appeal has been preferred.

12. We have heard Shri Simarpal Singh Sawhney, Advocate, Ld. counsel for the appellants-allottees, Shri Akshat Mittal, Advocate, Ld. counsel for the respondent-promoter and have carefully gone through the record of the case.

13. Initiating the arguments, Ld. counsel for the appellants-allottees contended that the appellants-allottees had booked the flat in question on 24.07.2013 by paying a booking amount of Rs.7,00,000/- through cheque on 24.07.2013. The appellants-allottees paid a further amount of Rs.4,28,600/- through cheque on 21.12.2013. That on the demand of the respondent-promoter another Rs.2,04,548/- was paid by the appellants-allottees vide cheque dated 16.06.2014. It was further contended that the respondent kept on demanding money on the plea for raising construction at a very fast pace and the appellants-allottees continued to pay the same in such way the appellants-allottees had paid a total sum of Rs.27,83,160/- against the BSP of Rs.89,66,100/-. He further contended that as per the agreement dated 04.09.2013, the period of handing over of the possession is of 42 months from April, 2013 + (plus) 06 months grace period i.e. the possession was to be handed over by October, 2017. But, till date, the project is nowhere

near completion and the possession of the unit has not yet been offered to them.

14. Ld. counsel for the appellants-allottees further contended that in the present appeal, the appellants-allottees only press for the grant of relief of refund of the amount deposited by the appellants-allottees with the respondent-promoter along with interest at the prescribed rate from the date of the respective deposits. He further contended that the appellants-allottees are not seeking any relief of compensation in this appeal.

15. He further contended that the respondent-promoter has offered many times an alternative unit in other tower to the appellants, but the same is not acceptable to the them.

16. Ld. counsel for the appellants-allottees relied upon the judgment of Hon'ble Supreme Court of India in ***M/s Newtech Promoters & Developers Pvt. Ltd. vs. State of UP & Ors. Etc. 2022 (1) R.C.R. (Civil) 357***. He further contended that as per the above said judgment, the appellants-allottees are entitled for the refund along with interest as per the provisions of the Real Estate (Regulation & Development) Act, 2016 (for short, 'the Act').

17. Per contra, Ld. counsel for the respondent-promoter contended that the project is registered with HRERA vide Certificate No.182 of 2017 and is valid from 04.09.2017 to 31.12.2021. The completion of the building tower is delayed by reasons of non-availability of steel, cement, other building materials, water supply, electric power and slow down strike etc. which is beyond the control of the respondent-promoter.

18. He further contended that stagnation and fall in real estate market has slowed down the completion of the work, which has resulted in delay of delivery of possession.

19. He further contended that the respondent-promoter is ready to allotted equivalent unit in some of its other tower to the appellants-allottees.

20. We have duly considered the aforesaid contentions.

21. As per the undisputed facts, the appellants-allottees had booked the unit flat with the respondent-promoter on 24.07.2013 by paying the booking amount of Rs.7,00,000/- through cheque dated 24.07.2013 against the unit bearing No.702, 7th Floor, at Tower-L 'Supertech Hues' sector 68, Gurugram. A further sum of Rs.4,28,600/- was paid by the appellants-allottees through cheque dated 21.12.2013. Later on, the flat was changed from the unit bearing No.702, 7th Floor, Tower-L to unit bearing No.202, 2nd Floor, Tower-W through

respondent's letter dated 23.06.2014. Further, an amount of Rs.2,04,548/- was paid through cheque by the appellants-allottees to the respondent-promoter on 16.06.2014. The appellants-allottees continued to pay more amount on the demand of the respondent-promoter and in this way, the appellants-allottees have paid a total amount of Rs.27,83,160/- against BSP of Rs.89,66,100/- of the unit. The agreement was executed between the appellants-allottees and the respondent-promoter on 04.09.2014.

22. As per Clause No.E.24. of the agreement is reproduced as under:

“Clause E.24. – possession shall be given by the developer in 42 months i.e. by April 2017 or extended period...plus the grace period of 6 months...”

Therefore, as per the above said clause of the agreement, the due date of possession comes out to be in October, 2017. The project is registered with the Authority vide Certificate No.182 of 2017 which is valid from 04.09.2017 to 31.12.2021 and therefore the revised date for completion of project as per the registration certificate is 31.12.2021.

23. It is an admitted fact that the respondent-promoter has not been able to deliver the possession to the

appellants-allottees within above said stipulated period as per the terms and conditions of the agreement i.e by October 2017, and even on the date of filing the complaint, the date of filing the present appeal and even till date. The Occupation Certificate (for short, 'OC') for the said Tower in which the unit of the appellants-allottees is situated has yet not been issued and offer of possession has also not been issued by the respondent-promoter to the appellants-allottees. The Ld. Counsel of the respondent has very fairly admitted that the construction of the Tower in which the flat of the appellants is situated is yet not complete and occupation certificate is also yet not issued. So, the fact is that the respondent-promoter has failed to deliver the possession of the unit booked by the appellants-allottees and is far from completion in near date, though a period of more than 4 years and 4 months has elapsed, after the scheduled date of possession of the unit. Even the registration of the project with RERA in which the unit of the appellants is situated has expired on 31.12.2021. The offer of the alternate equivalent unit by the respondent-promoter in another tower of the respondent-promoter is not acceptable to the appellants-allottees. The Hon'ble Apex Court in **M/s Newtech's 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.”

24. In view of the aforesaid observations of the Hon'ble Apex Court, as the respondent-promoter has failed to deliver the possession of the unit in terms of the agreement, the appellant-allottees have unqualified right to seek refund along with interest. In our opinion, the delay caused in delivery of possession is not, at all, attributable to the appellants-allottees. The appellants-allottees have already made the substantial payment of more than Rs.27,83,160/-, against the BSP of Rs.89,66,100/- of the unit.

25. No other point was argued before us by either of the parties.

26. Thus, keeping in view our aforesaid discussions, the respondent-promoter has failed to deliver the possession of the unit allotted to the appellants-allottees within the stipulated date i.e. October, 2017 under the agreement dated 04.09.2014, and even till date. So, the appellants-allottees have certainly become entitled to seek the refund of the amount paid by them to the respondent-promoter along with interest at the prescribed rate, as per Rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (for short, 'the Rules').

27. Consequently, the present appeal is hereby allowed. The relief granted by the Ld. Authority in the impugned order dated 13.03.2019 is hereby modified. It is held that the appellants-allottees are entitled for refund of the amount of Rs.27,83,160/-, along with interest at the rate prescribed as per Rule 15 of the Rules i.e. 9.3% per annum prevailing as on today. The interest shall be calculated from the dates of respective payments received by the respondent-promoter from the appellants-allottees, till the date of realization.

28. Copy of this order be communicated to the parties/learned counsel for the parties and the learned Haryana Real Estate Regulatory Authority, Gurugram for compliance.

29. File be consigned to the record.

Announced:
April 01st, 2022

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

Inderjeet Mehta
Member (Judicial)

Anil Kumar Gupta
Member (Technical)

Manoj Rana

Judgment, HREAT

Appeal No.437 of 2019

Rajiv Kohli and another
Versus
Supertech Ltd.
Appeal No.437 of 2019

Present: None for the appellant.

Shri Akshat Mittal, Advocate,
Ld. counsel for the respondent.

Vide our separate detailed order of the even date, the appeal is allowed and the relief granted by the Ld. Authority in the impugned order dated 13.03.2019 is hereby modified. It is held that the appellants-allottees are entitled for refund of the amount of Rs.27,83,160/-, along with interest at the rate prescribed as per Rule 15 of the Rules i.e. 9.3% per annum prevailing as on today. The interest shall be calculated from the dates of respective payments received by the respondent-promoter from the appellants-allottees, till the date of realization.

Copy of the detailed order be communicated to the parties/learned counsel for the parties and the learned Haryana Real Estate Regulatory Authority, Gurugram.

File be consigned to the records.

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

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Anil Kumar Gupta
Member (Technical)

01.04.2022
Manoj Rana