

**BEFORE THE HARYANA REAL ESTATE APPELLATE
TRIBUNAL**

**Appeal No.412 of 2021
Date of Decision: 21.04.2022**

M/s Lotus Realtech Pvt. Ltd. Corporate Office: 501 Block 'C'
Nirvana Courtyard, Nirvana Country, Gurugram, Haryana.

Appellant

Versus

Smt. Ishita Bansal, House No.568, Sector 16-D, Chandigarh-
160015.

Respondent

CORAM:

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

Chairman
Member (Judicial)
Member (Technical)

Present: Shri Abhishek Singh, Advocate, learned
counsel for the appellant.

Shri Arun Bansal, Advocate, learned counsel
for the respondent.

ORDER:

JUSTICE DARSHAN SINGH (RETD.) CHAIRMAN:

The present appeal has been preferred by the
appellant-promoter under Section 44 of the Real Estate
(Regulation and Development) Act, 2016 (hereinafter called
'the Act') against the order dated 24.11.2020 passed by

learned Haryana Real Estate Regulatory Authority, Gurugram (hereinafter called 'the Authority'), whereby Complaint No.3409 of 2020 filed by the respondent-allottee was disposed of with the following directions:-

- “i. The respondent is directed to pay interest at the prescribed rate i.e. 9.30% per annum for every month of delay on account paid by the complainant after due date of possession i.e. 01.01.2021 till handing over the possession of the unit be paid to the complainant.*
- ii. The interest for delay possession charges shall be paid on or before 10th of each subsequent months.*
- iii. Interest on the delay payments from the complainant shall be charged at the prescribed rate i.e. 9.30% by the promoters which is the same as is being granted to the complainant in case of delayed possession charges.*
- iv. The respondent shall not charge anything from the complainant which is not a part of Buyer Agreement.”*

2. The gist of the facts enumerated in the complaint filed by the respondent-allottee is that the respondent was allotted unit no.1003, 10th floor, Tower-1 in the project namely 'Lotus Homz' Sector-111, Gurugram, vide provisional allotment letter dated 10.12.2015. The total sale

consideration of the said unit was Rs.25,52,315/- excluding taxes. The respondent-allottee paid a sum of Rs.20,05,532/-. The payment plan was as per Affordable Group Housing Policy. No buyer's agreement was executed between the parties. The respondent-allottee was informed the delivery of possession within four years. The allotment of the unit was made in December, 2015 in terms of the application for allotment dated July 2015, as such the possession was to be delivered by December, 2019. The possession of the unit was not delivered as per the terms and conditions of the allotment letter. Hence the complaint.

3. The appellant-promoter contested the complaint on the grounds *inter alia* that the due date for delivery of possession of the unit was June 30, 2020 as per the registration of the project with the learned Authority. However, the period of six months had been extended due to outbreak of Covid-19 by the learned Authority vide its order dated 26.05.2020. So, the possession was to be delivered by December 31, 2020. Thus, the respondent had no cause of action to file the complaint before expiry of the said period. It was further pleaded that the respondent-allottee had not performed her obligations to pay the timely instalments as per the terms and conditions of the allotment. It was further

pleaded that the complaint filed by the respondent-allottee was an abuse of the process of law and the same was filed with the sole object to harass the appellant-promoter.

4. With these pleas, the appellant-promoter pleaded for dismissal of the complaint.

5. After hearing learned counsel for the parties and appreciating the material on record, the learned Authority disposed of the complaint filed by the respondent-allottee by issuing directions as reproduced in the upper part of this order, vide impugned order dated 24.11.2020.

6. Hence this appeal.

7. We have heard Shri Abhishek Singh, Advocate, learned counsel for the appellant, Shri Arun Bansal, Advocate, learned counsel for the respondent and have carefully gone through the record of the case.

8. Learned counsel for the appellant initiating the arguments contended that the learned Authority has categorically held that the complaint was not maintainable as the same was filed even before the due date for delivery of possession. He further contended that the project was already complete much before the stipulated date for delivery of

possession and even the application for issuance of the Occupation Certificate was moved to the competent authority, but the occupation certificate was delayed on account of Covid-19. So, the appellant was not at fault for the delay caused. He further contended that the learned Authority was not justified to grant future interest by presuming that the possession will not be delivered within the stipulated period. Thus, he contended that the impugned order is not sustainable in the eyes of law.

9. On the other hand, Shri Arun Bansal, Advocate, learned counsel for the respondent-allottee contended that the learned Authority has already granted the concession of six months to the appellant-promoter in view of Covid-19. The interest for delayed possession has rightly been awarded by the learned Authority. It was only payable if the possession of the unit would not have been delivered by 01.01.2021. Thus, he contended that the impugned order does not suffer from any legal infirmity.

10. We have duly considered the aforesaid contentions.

11. It is an admitted fact that as per Clause 6.1 of the terms and conditions of the allotment letter, the possession of the unit was to be delivered to the respondent-allottee within a

period of four years from the date of grant of sanction of the building plans for the project or the date of issuance of all the environmental clearances, whichever is later. The building plans were approved on 22.10.2014, but the environmental clearance was obtained on 01.07.2016. Therefore, the due date for delivery of possession is to be reckoned from the date of environmental clearances i.e. 01.07.2016. In this way, the due date for delivery of possession comes to 01.07.2020. However, the learned Authority has further granted six months grace period to the appellant on account of Covid-19 treating the same beyond the control of the appellant-promoter. So, the learned Authority has granted six months grace period as force majeure to the appellant-promoter and thereby the date of delivery of possession was determined to be 01.01.2021 and we have no reason to differ with these findings of the learned Authority.

12. No doubt, on the date of filing the complaint, the due date for delivery of possession had not yet arrived. The learned Authority as precautionary measures has awarded the interest to the respondent-allottee at the prescribed rate for every months' delay after the due date of possession i.e. 01.01.2021 till handing over of the possession. The learned Authority was fully competent to pass the said order

anticipating that the rights of the allottees should not suffer. Moreover, this direction was only applicable if the appellant-promoter failed to deliver the possession by 01.01.2021. At the time of arguments, it has been admitted that the possession has been delivered to the respondent-allottee in the month of June, 2021 i.e. after the due date for delivery of possession i.e. 01.01.2021. So, the apprehension of the learned Authority had come true and the appellant-promoter had failed to deliver the possession within the stipulated date as per the terms and conditions of the allotment letter. So we do not find anything wrong in the award of the interest by the learned Authority.

13. Learned counsel for the appellant has vehemently argued that the appellant has already applied for issuance of the occupation certificate and the delay in issuance of the occupation certificate has occurred due to Covid-19 for which no fault can be attributed to the appellant.

14. We have perused Annexure A-1 which shows that the appellant had applied for issuance of the occupation certificate on 01.10.2020. The occupation certificate was issued on 01.06.2021. Clause 6.1 of the terms and conditions of the allotment letter reads as under:-

“6.1) *Subject to the grant of occupation certificate by the competent governmental authority and other situations beyond the control of the Company and subject to the Applicant performing all of his/her obligations under the terms of this Application or the Apartment Buyer’s Agreement, the Company shall offer to handover the possession of the Apartment within a period of 4 (four) years from the date of grant of sanction of building plans for the Project or the date of receipt of all the environmental clearances necessary for the completion of the construction and development of the project, whichever is later.*”

15. As per above clause of the allotment letter, the appellant-promoter was required to hand over the possession of the apartment to the respondent-allottee within a period of four years from the date of sanction of the building plans for the project or the date of receipt of the environmental clearances whichever is later. However, the said period was subject to grant of occupation certificate. The learned Authority has already granted six months grace period to the appellant-promoter as force majeure due to Covid-19 which will cover the period for obtaining the occupation certificate. As per the plain wording of clause 6.1 of the terms and

conditions of the allotment letter, the due date for delivery of possession comes to 01.07.2020 i.e. four years from the date of environmental clearances i.e. 01.07.2016. The appellant had applied for issuance of the occupation certificate on 01.10.2020. By that time, the due date for delivery of possession had already expired. So, the learned Authority was gracious enough to grant six months grace period to the appellant due to Covid-19 treating the same to be a force majeure. We do not want to disturb this discretion exercised by the learned Authority in the absence of any challenge from the side of the respondent-allottee. Thus, we do not find any legal infirmity in the calculation of the due date for delivery of possession and award of the contingent interest for delayed possession by the learned Authority in favour of the respondent-allottee.

16. Thus, keeping in view our aforesaid discussions, the present appeal has no merits and the same is hereby dismissed. However, no order as to costs.

17. The amount deposited by the appellant-promoter i.e. Rs.1,12,930/- with this Tribunal to comply with the provisions of Section 43(5) of the Act be remitted to the learned Haryana Real Estate Regulatory Authority, Gurugram,

along with interest accrued thereon for disbursement to the respondent-allottee as per her entitlement in accordance with law/rules and of course subject to tax liability, if any.

18. The copy of this order be communicated to the parties/learned counsel for the parties and the learned Authority for compliance.

19. File be consigned to the record.

Announced:
April 21, 2022

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

Inderjeet Mehta
Member (Judicial)

Anil Kumar Gupta
Member (Technical)

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