BEFORE THE HARYANA REAL ESTATE APPELLATE TRIBUNAL

Appeal No.99 of 2020
Date of decision: 13.05.2022

1. Vinay Narwal S/o Sh. Surender Singh Narwal R/o 11, Minar Road, Karnal, Haryana – 132001

2. Subhash Chand S/o Sh. Amar Singh R/o 26-B, Village Prem Khera, Karnal, Haryana – 132001

...Appellants

Versus

JBB Infrastructure Pvt. Ltd., JBB Grand, 509, Ansal Bhawan, KG Marg, Connaught Place, New Delhi

Regional office at: JBB Grand Karnal, Sector 35-36, Karnal, Haryana - 132001

...Respondent

CORAM:

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

Argued by: Shri Rajesh Gupta, Advocate,
Ld. counsel for appellants-allottees.

Shri Indresh Upadhyaya, Advocate,
Ld. counsel for respondent-promoter.

O R D E R:

ANIL KUMAR GUPTA, MEMBER (TECHNICAL):

The present appeal has been preferred by the appellants-allottees against the order dated 06.08.2019 passed by the Ld. Haryana Real Estate Regulatory Authority, Panchkula (hereinafter called as the Ld. Authority), whereby Complaint No.271 of 2018 filed by the appellants/allottees along with other appeals was disposed of by a common order with the following directions: -

"10. After detailed consideration of the submission made by both the parties, the Authority orders as follows:

a. *"Super area of the unit*
   On the basis of the principles laid down in the above para Nos.7, 8 & 9 super area of the 3BHK unit comes to 1821.96 Sq. ft; 2 BHK Unit 1187.91 sq. ft; and 4 BHK unit 2463.77 sq. ft. The respondent is directed to recalculate the amount already received by the respondent is in excess of the payable amount, he shall refund such excess amount to the complainants.
b. *"Fire Fighting charges*
   Authority has examined clause 1.10 of the agreement which, as also reproduced below for reference. It is clear from this clause that firefighting equipment is included in the construction of apartments. Accordingly, the complainants are not liable to pay firefighting charges being levied, as the same is covered under fire fighting system of the said building. This issue stands settled in these terms.
   Clause 1.10 of the agreement.
   "The total price of the said Apartment mentioned in the schedule of payments in Annexure I of this agreement is inclusive of the

cost of providing electric wiring and switches in each Apartment and fire fighting equipment in the common areas within the said Building/said Complex as prescribed in the fire fighting code/regulations under National Building Code (NBC), 1983, amendment No.3 of January, 1997. Power back-up may be provided subject to timely payment of maintenance charges from stand by generator and shall be in addition to normal power back up for the common areas and common services within the said building. The total price of the said apartment does not include the cost of electric fittings, fixture, geysers, electric and water meters etc. which shall be got installed by the Apartment Allottees at his/her own cost. If due to any subsequent legislation/Government order, directives, guidelines or change/amendments in fire Code including the National Building Code or if deemed necessary by the company or any of its nominees at its sole discretion, additional fire safety measure are undertaken, then the Apartment Allottees undertakes to pay within Thirty (30) days from the date of written demand by the Company, the additional expenditure incurred thereon along with other Apartment Allottees in proportion to the super area of his/her Apartment to the total super area of all the Apartments in the said Building/said complex as determined by the company."

c. *"Electric Connection Charges*

Clause 1.11 of agreement has been examined from which it is clear that the complainant undertook to pay the same. Therefore, this issue stand settled in favour of the respondent. The clause 1.11 is reproduced below: -

"The Apartment Allottees has agreed and understood that he/she price and other mentioned charges as per the agreed schedule of payment (As per Annexure-I). The Apartment Allottees has also agreed and understand that he/she shall pay

the charges not specified in the Schedule of Payment including but not limited to fire fighting charges (FFC), Electric Connection Charges (ECC) and Power Backup Charges (PBG) to the company as and when demanded by the Company."

d. *"Maintenance charges*

Clause 14.4 of buyer's agreement deals with the maintenance charges, as reproduced below:

"Fixation of total maintenance charges-the total maintenance charges as more elaborately described in the Tripartite maintenance agreement (draft given in annexure –IV) will be fixed by the maintenance agency on an estimated bases of the maintenance costs to be incurred for the forthcoming financial year. Maintenance charges would be levied from the date of issue of occupation certified for the said complex/date of allotment, whichever is later and the apartment allottee undertakes to pay the same promptly. The estimates of the maintenance agency shall be final and charges shall be recovered on such estimated basis on monthly/quarterly intervals as may be decided by the maintenance agency and adjusted against the actual audited expenses as determined at the end of the financial year and any surplus/deficit thereof shall be carried forward and adjusted in the maintenance bills of the subsequent financial year. The apartment allottee agrees and undertakes to pay the maintenance bill on or before due date as intimated by the maintenance agency.

The Authority directs the respondent to furnish a detailed statement of the amounts collected from the allottees and spent for maintenance of the project in terms of clause 14.4 of agreement to the RWA of the project. The RWA shall consider the said statement and take a reasoned decision regarding the amount payable by the complainants and other similarly placed allottees.

e. *"Refund of paid amount.*

It is an admitted fact that the project in question had received part occupation certificate on 20.06.2017 for which an application was filed on 11.07.2016. The respondent in its reply has stated that fit out possession of the units was offered to complainants in December, 2016/January, 2017. It is clearly shows that the project has been completed and allottees are already residing in the project. Accordingly, the authority is of the considered view that the plea of refund of the money to the complainants cannot be accepted.

f. *"Delay in handing over of possession*

As per clause 10.1 of the agreement dated 15.02.2011, the respondent was duly bound to deliver possession within three years from the date of execution of agreement i.e. 15.02.2014 but fit-out possession was offered to complainant in December, 2016 after applying for Part Occupation Certificate on 11.07.2016, whereas, party occupation certificate was obtained on 20.06.2017 and possession was offered on 22.06.2017. It implies that a valid offer of possession duly supported with occupation certificate was given on 22.06.2017 by the respondent. In this situation for the delay of 3 years and 4 months in handing over the possession, the respondent is liable to pay delay compensation. The Authority has evolved certain principles on the issues of delay compensation in complaint No.113 of 2018- Madhu Sareen Vs. M/s BPTP Ltd. and complaint No.49 of 2018- Parkash Chand Arohi Vs. Pivotal Infrastructure Pvt. Ltd. The respondent shall pay compensation for the delay caused in accordance with the said principles.

g. *"Interest charged on delay payments.*

It is alleged by the complainant that respondent had charged 24 % interest on the delayed payments and the same is unreasonable. As per law laid down by this Authority that it

cannot be more than 9 % (Nine percent) per annum. Respondent shall recalculate this amount accordingly."

2. As per averments in the complaint filed by the appellants/allottees, it was pleaded that the authorized representative of the respondent had approached the complainants (appellants herein) in June, 2010 and apprised complainants about the affordable housing project being launched by the respondent under the project namely "JBB Grand Karnal". Thereafter, the authorized representative fixed up a meeting with the appellants at their site office and they were told that all flats have been sold and stated to arrange one for the appellants and appellants had agreed on the assurances given by the respondent that the possession of the flat would be delivered within three years from the date of booking. Flat No.403, Tower T-2/A, 4th Floor, 3BHK approximately super area of 1670 sq. ft. was booked by Smt. Asha Khullar and paid a booking amount of Rs.1,50,000/-. The first instalment of Rs.3,34,300/- and second instalment of Rs.3,79,925/- were paid. Subsequently, the said flat was transferred in the name of the appellants. The total basic price of the apartment @Rs.1450/- per sq. ft. is Rs.24,21,500/- plus External Development Charges @Rs.165/- per sq. ft. i.e. Rs.2,75,550/- plus parking charges of Rs.45,000/- and thus, the total price of the apartment comes out to Rs.27,42,050/- as per schedule of the payment at Annexure I with

the Apartment Buyer's Agreement dated 03.04.2011 (hereinafter called as the Agreement).

3. It was further pleaded that the agreement was drafted in such a manner that respondent's lapses and delays were covered without caring for the rights of the buyers. As per Clause 1.11 of the Agreement, the allottee has to pay the charges, which were not specified in the schedule of payment such as Fire Fighting Charges (FFC), Electric Connection Charges (ECC) and Power Backup Charges (PBC). The agreement is totally one sided and heavily loaded in favour of the respondent. The appellants/allottees had signed the said agreement on the belief and assurances given by the respondent that these charges would be nominal.

4. It was further pleaded that after signing the Agreement, appellants had deposited an amount of Rs.3,79,925/- on 01.06.2011, Rs.2,11,231/- on 10.09.2011, Rs.1,86,290/- on 13.11.2011, Rs.3,72,580/- on 31.01.2012, Rs.1,61,349/- and Rs.1,86,290/- on 13.03.2012 and Rs.1,86,290/- on 25.04.2012 as per demands of the respondent from time to time and further pleaded that the appellants had deposited a total amount of Rs.25,48,180/- against the total price of the apartment of Rs.27,42,050/- till the date of filing of the complaint.

5. It was further pleaded that despite assurances given by the respondent that the possession of the flat would be handed over

to the appellants within three years of the allotment, which was later on extended to January, 2014, the respondent had completely failed to complete the project and deliver the possession.

6. It was further pleaded that the respondent had demanded illegal amounts from the appellants on account of Club Membership, Fire Fighting Charges (FFC) and Power Backup Charges (PBC) vide letter dated 04.07.2004.

7. It was further pleaded that Sh. Devender Singh (since deceased) and appellant - complainant-Subash Chand had filed the complaint before the Ld. District Consumer Disputes Redressal Forum, Karnal (hereinafter called as the District Forum) on 17.08.2015 praying therein to pay the interest on the amount deposited by them and for not raising any illegal demand on account of Fire Fighting Charges (FFC), Power Backup Charges (PBC), Car Parking, Club Membership on the grounds of non-delivery of the possession of the flat within the stipulated period of three years as per the Agreement.

8. It was further pleaded that Sh. Devender Singh vide his Will dated 01.10.2016 had given all rights in favour of appellant - complainant Vinay Narwal with respect to his half share in Apartment No.403, Tower T-2/A in JBB Grand Karnal.

9. It was further pleaded that Sh. Devender Singh expired on 10.10.2016 and due to the sudden demise of Sh. Devender Singh, the legal heirs of Sh. Devender Singh were facing hardship.

10. It was further pleaded that the respondent vide its letter dated 23.12.2016 raised an illegal demand from the appellants on account of Fire Fighting Charges (FFC), Electric Connection Charges (ECC), Power Backup Charges (PBC), Car Parking, Club Membership, Change in Area, EDC and IDC Charges, Cost Escalation of the construction material and interest @15% per annum. These illegal demands raised by the respondent for offer of possession dated 23.12.2016 is nothing, but total abuse of his dominating and dictating position.

11. It was further pleaded that the respondents issued another letter dated 11.02.2017 and demanded another amount on account of cost escalation.

12. It was further pleaded that there is no development at the site and construction work was going on even at the time of filing of complaint at the site of the project. The letter for offer of possession, issued by the respondent, was only to get the illegal amounts from the appellants.

13. It was further pleaded that on 14.03.2017, appellant-Vinay Narwal filed the application for impleading him in the array of complainants by replacing Devender Singh (deceased) having all

rights vested with him with respect to half share of Sh. Devender Singh (deceased) in Apartment No.403, Tower T-2/A, JBB Grand Karnal before the Ld. District Forum, Karnal and another application, for amendment of the prayer clause with regard to refund of the total amount of apartment, deposited with the respondent, was also filed.

14. It was further pleaded that the Director, Town and Country Planning Department, Haryana issued Occupation Certificate with respect to the said project on 20.06.2017. As per the Occupation Certificate, there is no change in the floor area ratio, meaning thereby, there is no increase in the floor area. However, the respondent had raised illegal demand on account of the increase in the area of flat.

15. It was further pleaded that the Ld. District Consumer Forum, Karnal has allowed the application impleading complainant-Vinay Narwal vide its order dated 06.11.2017. The Ld. District Consumer Forum, Karnal dismissed the consumer complaint on the ground of pecuniary jurisdiction as the complainants (appellants herein) wanted refund the total amount of Rs.25,48,180/- along with interest @24% per annum and had given liberty to approach the competent Court vide order dated 05.03.2018.

16. It was further pleaded that the complainants (appellants herein) had suffered mental tension, agony, financial loss due to

deficiency in service in delivering the possession of the allotted apartment within the stipulated period of three years from the date of Agreement and unfair trade practice of the respondent by raising illegal/exorbitant demands under various heads including the change in area, whereas there is no such change in area of the floor as is clear from the Occupation Certificate and sought the following reliefs:-

> *"(i) To direct the respondent to refund the amount of Rs.25,48,180/- along with penal interest at rate of 18 % PA from the different dates of payment of different amounts till the date of payment for their dereliction of duty, deficiency of service by not handing over the possession of the apartment in a stipulated period of three years from the date of agreement and further to pay*
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> *Rs.15,000/- per month from January, 2014 onwards on account of the rent complainants paying for living in a rented accommodation for being their deficiency in handing over the possession of the apartment on time; and.*
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> *(ii) To direct the respondent to pay an amount of Rs.5,00,000/- (Rupees five lacs only) as compensation to the Complainants for loss suffered by the complainants due to unethical and unfair trade practice, harassment, mental agony and abuse of dominant position, misleading and concealing the facts by respondent; and*
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> *(iii) To direct the respondent to pay an amount of Rs.50,000/- (fifty thousand only) as litigation expenses and costs of the complaint; and*

(iv) To complainants may also be awarded any other additional, alternative and consequent relief which this Hon'ble Authority deems fit and proper in the facts and circumstances of the case."

17. The respondent/promoter has contested the complaint on the grounds that appellant No.1-Sh. Vinay Narwal has misled the Ld. Authority and claimed right to an immovable property when none exist and pleaded that he has absolutely no locus standi to file the complaint or act as a representative of the original allottees on the basis of an alleged Will, which prima facie appears to be suspicious and forged document. It was further contended that appellant No.1 has no fear of law and cannot be permitted to continue with the proceedings till such time the alleged Will was probated from a Court of competent jurisdiction.

18. It was further pleaded that there is no privity of contract between the appellants/complainants and the respondent warranting dismissal of the complaint.

19. It was further pleaded that after getting request from various clients, the company offered for fit out possession in December, 2016/January, 2017 and many allottees had taken the possession for fit out and shifted in their flats immediately after receiving the Occupation Certificate on 20.06.2017.

20. It was further pleaded that the appeal is also liable to be dismissed as the possession of the flat can be handed over to the

allottees immediately subject to their due payments to the respondent as per the Agreement between the parties.

21. It was further pleaded that the original allottees and other buyers/investors had neglected to pay their dues as per the Agreement and this collective non-payment on their part is one of the main reason for delay in the project.

22. It was further pleaded that the respondent had performed its part of the Agreement and it is now the original allottees, who have to comply with their part of the Agreement and take possession by settling their accounts.

23. It was further pleaded that the respondent after purchasing the land entirely from its own funds, had planned to construct housing complex under the name "JBB Grand" and after obtaining necessary permissions from the competent authorities, offered for sale of flats.

24. It was further pleaded that more than 60 allottees have paid their dues and more than 40 families are already residing in the complex to their satisfaction.

25. It was further pleaded that the parties have executed an Apartment Buyer's Agreement, which is a valid and subsisting Agreement between the parties and both the parties are bound by the terms and conditions contained therein and both respondent and allottees are under obligation to comply with their respective

obligations. The allottees had agreed to pay the amounts as per the Schedule of Payment and other charges as clearly mentioned in the Agreement. The allottees willfully defaulted in paying their dues to the respondent and as such now become disentitled to seek reliefs as claimed.

26. It was further pleaded that apart from the Schedule of Payment (Annexure I), the appellants were to pay charges, which included Fire Fighting Charges (FFC), Electric Connection Charges (ECC) and Power Backup Charges (PBC) categorically mentioned in Clause 1.11 of the Agreement. In addition, the allottees were/are to pay charges towards enhanced EDC demanded by the Ld. Authority, price escalation, cost towards increase in super area, charges towards increase in security deposits levied by the Government/statutory authorities categorically mentioned in Clause 1.12 of the Agreement and the allottees are under legal obligation to pay under the Apartment Buyer's Agreement.

27. It was further pleaded that the flat is lying ready for delivery and the company is ready to handover the flat to the allottees subject to allottees making the balance payment to respondent by fulfilling their monetary obligations in terms agreed. Also a seller of an immovable property cannot be expected to handover the possession of his property under sale to the buyer without receiving the entire agreed sale consideration.

28. It was further pleaded that the respondent is a debt-free company and has not taken any loan from any financial institution either for purchase of land for the project or for raising construction thereon. The respondent has planned and developed the project at its own cost and as such, was heavily dependent on timely receipt of payments from the allottees for success of the project and all payments demanded by the respondent are in consonance with the Agreement between the parties.

29. It was further pleaded that the respondent has not indulged in any kind of unfair trade practice. It was further contended that as per Agreement under Annexure I "Schedule of Payment", it clearly specifies that other charges will be payable by the allottees as and when demanded by the respondent and both the parties are bound by the terms and conditions enshrined under the Agreement. The respondent out of its goodwill has already compensated the eligible buyers for delay in handing over possession of the flat, despite there being no such thing in the Agreement, which shows that the allegations of the complainants are false and frivolous. He Further pleaded that the respondent is entitled to receive interest of 24% on delayed payment in accordance with Clause 8 of the Agreement, but the respondent, at its own, reduced the interest rate to 15% as the main motive of the company is customers' satisfaction.

30. It was further pleaded that the appellants have wrongly alleged that the construction work is going on even after the issue of Occupation Certificate and also pleaded that the Agreement is not one sided and is also not loaded in favour of the respondent.

31. All other pleas raised by the complainants (appellants herein) were controverted and certain other legal issues were raised and it was pleaded that the appellants/allottees are not entitled for any relief and thus, prayed for dismissal of the appeal.

32. After hearing Ld. counsel for both the parties and appreciating the material on record, the Ld. Authority disposed of the complaint filed by the appellants/allottees vide impugned order dated 06.08.2019 issuing directions already reproduced in the upper part of this order.

33. We have heard Ld. counsel for the parties and have meticulously examined the record of the case.

34. Both the parties have filed their written arguments / submissions.

35. Initiating the arguments, Sh. Rajesh Gupta, Advocate, Ld. counsel for the appellant contended that appellant No.1-Vinay Narwal is the legal heir of Sh. Devender Singh (deceased), who along with appellant No.2-Subash Chand had purchased 3BHK flat bearing No.403, Tower T-2/A, 4th Floor in JBB Grand, Sector 35-36, Karnal Haryana, in their joint name measuring 1670 sq. ft.

@Rs.1450/- per sq. ft. as a basic price (Rs.45,000/- for parking charges and Rs.2,75,550/- as External Development Charges (EDC) totaling Rs.27,42,050/- from Smt. Asha Khullar (original allottee, who had already paid Rs.1,50,000/- plus Rs.3,34,300/- plus Rs.3,79,925/- up to 17.01.2011). The amount, paid by Smt. Asha Khullar, was paid to her and the remaining amount has been paid to the respondent as per the Agreement executed between the parties. The Agreement was executed between Sh. Devender Singh and Sh. Subhash Chand appellant No.2 with the respondent on 03.04.2011.

36. It was further contended that more than 90% of the total cost of the flat as per schedule of payment in the Agreement was paid to the respondent by the said Devender Singh & Subash Chand and rest of the payment was to be paid at the time of handing over the possession after completion of the said project. As per Agreement, the flat was agreed to be handed over by the respondent to the said Devender Singh and Subhash Chand by October, 2014.

37. It was further contended that as the construction was not complete and the possession was not handed over, therefore, Sh. Devender Singh and Sh. Subash Chand filed Consumer Complaint No.196 of 2015 (titled as Devender Singh & Subash Chand Vs. JBB Infrastructure Pvt. Ltd.) under Section 12 of the Consumer Protection Act before the Ld. District Forum, Karnal praying for possession of the said flat. The said complaint was, later on, amended praying for claim of refund of the amount paid. Sh.

Devender Singh, during the pendency of the said complaint, died on 10.10.2016.

38. It was further contended that before the death of Sh. Devender Singh, he, through his registered Will dated 01.10.2016, had transferred all his rights with respect to his half share in the said flat in favour of Sh. Vinay Narwal-appellant No.1 herein. Accordingly, during pendency of the said consumer complaint, appellant No.1 had even submitted an application dated 02.02.2017 (along with death certificate and Will of Sh. Devender Singh) to the respondent requesting for impleading his name as a legal heir of Sh. Devender Singh in view of his said Will and also for refund of the amount paid to the respondent, since Sh. Devender Singh had already died, so now the said flat was of no use for the appellant.

39. It was further contended that the respondent did not file any response to the above-said application dated 02.02.2017 filed by the appellant and therefore, an application dated 14.03.2017 was moved before the Ld. District Forum, Karnal for impleading appellant No.1 as the legal representative being legal heir of Sh. Devender Singh and the said application was allowed by the Ld. District Forum, Karnal vide its order dated 06.11.2017.

40. It was further contended that the said consumer complaint was finally dismissed by the Ld. District Forum, Karnal vide order dated 05.03.2018 on the ground of pecuniary jurisdiction

since the amount, as claimed for refund i.e., Rs.25,48,180/- along with interest @24%, litigation cost and compensation, exceeded the pecuniary jurisdiction of the Ld. District Forum, Karnal. However, the appellants were given liberty to approach the competent Court.

41. It was further contended that even after the death of Sh. Devender Singh, the respondent kept on demanding illegal charges by raising illegal demands in his name, despite of the knowledge of the fact of his death and also it was in the knowledge of the respondents that Vinay Narwal appellant No.1 in this appeal has been recognized as legal heir of Sh. Devender Singh, despite the fact that consumer complaint regarding refund of the amount was pending before the Ld. District Forum, Karnal.

42. It was further contended that the respondent issued a demand notice dated 23.12.2016 showing this letter as offer of possession in order to extract illegal charges. This stands proved from the fact that no Completion Certificate or Occupation Certificate was applied by the respondent or issued by any authority concerned as on 23.12.2016. The part Occupation Certificate for the said project was issued to the respondent from the concerned authority on 20.06.2017 i.e. after seven months of the said demand notice-cum-letter of offer of possession dated 23.12.2016.

43. It was further contended that the respondent again issued a demand notice dated 11.02.2017 to the appellants (in the name of

deceased- Sh. Devender Singh) demanding escalation cost and other illegal charges.

44. It was further contended that after dismissal of the consumer complaint, the appellants preferred Complaint No.271 of 2018 (titled as Vinay Narwal & Anr. Vs. JBB Infrastructure Pvt. Ltd.) before the Ld. Authority, Panchkula raising therein the issues with respect to their grievances i.e. claim of refund on the grounds of delay in delivery of possession of the flat, illegal demands of the respondent on account of Fire Fighting Charges (FFC), Electric Connection Charges (ECC), Power Backup Charges (PBC), Car Parking, Club Membership Charges, Charges for unaccounted increased area, EDC/IDC, cost escalation and interest @15% from the appellants.

45. It was further contended that Ld. Authority in order to ascertain the actual super area of the flat in question and other issues of payment of charges vide its order dated 21.11.2018 appointed K.Y. Consultant Pvt. Ltd. (headed by Sh. K.K. Bhugra, retired Chief Engineer, Haryana Urban Development Authority) as expert agency, without consent of either party to the proceedings. Sh. K.K. Bhugra, the expert agency after conducting the requisite measurement of the super area on 08.02.2019, 14.02.2019 and 26.02.2019 submitted his report before the Ld. Authority on 11.04.2019 with copy to both the parties to the case.

46. It was further contended that the calculation of super area of the flat in question as given by the expert in his report is 1880.84 sq. ft., which was disagreed by both the appellants as well as the respondent and the appellants filed their objections on 16.05.2019 stating therein that the actual super area of the flat in question is 1609.922 sq. ft., which was less than as mentioned in the Agreement i.e. 1670 sq. ft. The calculation of the super area of the flat in question given by Sh. K.K. Bhagura is against the terms and conditions of the said Agreement. Even the non-parking area, mentioned in the report by the expert, has not been explained and this area is not correct with specific reference to Part-C of Annexure II. A perusal of Part-C makes it amply clear that no such non-parking area has been mentioned or referred to therein.

47. It was further contended that the Ld. Authority passed the order in Complaint No.271 of 2018, decided it in haste, by passing a common final order dated 06.08.2019 along with other connected complaints with absolutely wrong facts, findings and observations that the appellants have been given the possession of the flat in question and they are living in the said flat, whereas Sh. Devender Singh or the appellants were never given the possession of the said flat.

48. It was further contended that during the pendency of Complaint No.271 of 2018, the appellants came to know about the violations regarding Fire and Life Safety Norms as per the mandate

of National Building Code, 1983 (Part-IV revised in 2005) (in short the NBC) and Zonal Plans of the said project as construction of the two staircases is mandatory in all buildings having height more than 15 mts. and/or floor area more than 500 sq. mts. As per Clause 2.2.5 and Clause 4.6.2 of the National Building Code and Sections 15 and 31 of the Haryana Fire Service Act, 2009, notice for offer of possession without obtaining the Occupation Certificate cannot be permitted. The Occupation Certificate cannot be issued without compliance of the above-said mandatory provisions to the Fire and Life Safety Norms (Part-IV of NBC). The Occupation Certificate has been issued without compliance of the above-stated mandatory provisions and as such, the appellants cannot be supposed to occupy the said flat in the project. Therefore, the appellants filed a separate complaint case No.1627 of 2019 against the respondent before the Ld. Authority, wherein the concerned authorities (Director, Town & Country Planning Department Haryana and Municipal Corporation, Karnal) were, later on, impleaded as necessary parties by filing an application. But the said complaint was dismissed by the Ld. Authority on the ground of jurisdiction vide its order dated 19.12.2019.

49. It was further contended that the project in question was not complete as per schedule given in the Agreement and the possession of the flat was delayed by the respondent for more than three years. For this reason, Sh. Devender Singh requested the

respondent for refund of the amount paid by him along with interest, but the refund of the amount was never paid to him.

50. It was contended that the respondent has demanded unduly excess amount on account of Firefighting charges, Electrical charges, Club membership charges and usage charges, escalation cost, maintenance charges, etc. The respondent was deficient in service and therefore, appellant is entitled for refund of the amount paid along with interest.

51. It was further contended that the super area calculated by the Expert Agency "K Y Consultant Pvt. Ltd." under heading "C. Stilt Floor Common Area" by adding stilt area of 5579 Square feet and per flat area of 62.58 sq ft as basement circular area and area of Entry & Exit Ramp in its report for Particular Tower of T2-E and ordered by Ld. RERA, Panchkula to be included in super area of apartment is based upon surmises and conjectures, whereas there is no area left unallocated under stilt floor area.

52. He contended that the list of common area which are to be included in computing the super area is given in Part A of Annexure II of the agreement. However, in this list the stilts area, circulation area and area of ramps is not mentioned to be included in computing the super area. Therefore, the said area of 5579 square feet and 62.58 Square feet by the Expert of K.Y. Consultant and allowed by the Ld. Authority is not correct. He contended that

the whole of the basement stood allotted/kept reserved as covered parking and covered parking area is specifically excluded from computing the super area as per Part C of Annexure II of the agreement. He further contended that the basement area is also not mentioned, in Part A of Annexure II, to be included in computing the super area. He contended that no other areas of the building/tower can be included in computing the super area other than those mentioned in Part A of Annexure II of the Agreement. Therefore, it was contended that the stilt area of 5579 Square feet and per flat area of 62.58 sq ft as basement circular area and area of Entry & Exit Ramp as ordered by the Ld. Authority to be included in the super area is liable to be set aside and to be excluded in the super area as follows:

5579 Sq. Feet divided by 32 flats	=174.34	(Shown as non-parking area under stilt)
	= 62.58	

	=236.92 Sq Ft	

He contended that, therefore, the total super area of flat to be charged from the appellant-allottee comes to 1584 sq. ft. (1821.96 sq. ft. – 236.92 sq. ft.).

53. With the above-said contentions, the appellants/allottees sought refund of the amount along with interest, compensation and litigation cost.

54. Per contra, Ld. counsel for the respondent/promoter contended that the present appeal is liable to be dismissed on the sole ground that appellant No.1-Vinay Narwal does have any locus to file any complaint before the Courts below or appeal before this Tribunal. Flat No.403, Tower T-2/A, 4th Floor has been allotted to Sh. Devender Singh and till date, Sh. Devender Singh is the allottee of the flat. The complaint as well as the present appeal has been filed by Sh. Vinay Narwal without any locus as there is no privity of contract between the respondent and Sh. Vinay Narwal. Sh. Vinay Narwal, till date, has not made any payment to the respondent nor has shown any document to the respondent, Ld. Authority or even before this Tribunal, which would show or establish that Sh. Vinay Narwal has succeeded or has got transferred Flat No.403, Tower T-2/A, 4th Floor from the original allottee to his name.

55. It was further contended that the appellants did not make the payments in accordance with the provisions of the Agreement till date after receiving repetitive demands from the respondent vide its letters dated 23.12.2016, 04.01.2017 and 11.02.2017 and final possession letter dated 22.06.2017. The internal development works of the flat in question were already complete in the year 2015 and only some parts of the external services were pending at that time. The respondent had applied for Occupancy Certificate in July, 2016 and considered deemed occupancy certificate after two months from the date of apply as per Haryana Building Bye-laws. The final

Occupancy Certificate was received on 20.06.2017. As the possession was offered to the appellants by the respondent, but appellants did not pay the final dues and also did not come forward to receive possession of the flat from the respondent.

56. It was further contended that as per Clause 47 of the Agreement, it was clearly mentioned that, in case of delay, other than Clause 11.1, 11.2 and 39, if the company shall be unable or fail to deliver possession of the apartment to the allottee within three years from the date of execution of the Agreement or within any extended period, then the appellants are required to give a notice to the respondent within 90 days of the expiry of three years or extended period, but the appellants did not follow the same. The main intention of the respondent is to complete the project, but the appellants did not pay timely dues even after the offer of final possession of the flat in question.

57. It was further contended that the flat in question was ready to be handed over in the year 2016 and the respondent had applied for Occupancy Certificate in July, 2016. As per the Haryana Building Bye-laws, respondent is considered deemed receiving of the Occupancy Certificate within two months from the date of application for Occupancy Certificate. As the final Occupancy Certificate was received on 20.06.2017, therefore, the demand letter, issued is in accordance with the above provisions, is totally legal, but the appellants had not paid any due till date.

58. It was further contended that as per provisions of NBC, the respondent had already got approval of all firefighting plans from the concerned authority. After execution of firefighting works at site, respondent got NOC from the concerned authority for all the towers against which Occupancy Certificate was received from the Director, Town and Country Planning Haryana. All the buildings were approved and constructed as per the Building Plans approved from the concerned authority.

59. With the aforesaid contentions, Ld. counsel for the respondent contended for dismissal of the appeal.

60. We have duly considered the aforesaid contentions of Ld. counsel for both the parties.

61. The complaint before the Ld. Authority was filed by Sh. Vinay Narwal and Sh. Subash Chand. The present appeal has also been filed by the same persons. The Agreement was executed with the respondent by Sh. Devender Singh and Sh. Subhash Chand. Sh. Devender Singh expired on 10.10.2016. Sh. Vinay Narwal-appellant No.1 claims that before the death of Sh. Devender Singh, he, through his registered Will dated 01.10.2016, had transferred all his rights with respect to his half share in the said flat in favour of Sh. Vinay Narwal-appellant No.1. Appellant No.2-Sh. Subhash Chand remains the allottee no 2 and his status with respect to the agreement with respondent is undisputed. The copy of the Will dated

01.10.2016 and death certificate of Sh. Devender Singh has not been filed with this appeal. However, we find from the record that the said Will and death certificate of Sh. Devender Singh was attached as Annexure P-5 and P- 6 respectively with the complaint.

62. The issue of locus standi of Sh. Vinay Narwal-appellant No.1 that whether he is the legal heir of Sh. Devender Singh or not, will not affect the merits of the appeal. Moreover, there is no dispute of appellant no. 2. This issue that Sh. Vinay narwal is the legal heir of Sh. Devender Singh or not can very well be decided at the time of execution of the order of this appeal.

63. The appellants have sought refund of the amount along with interest on the ground that the Occupation Certificate issued by the competent authority had become null and void on account of non-compliance of the conditions of the Occupation Certificate. The respondent was to comply with the zoning regulations/zoning plans as per NBC, wherein the provision of two staircases for the buildings which are more than 15 mts. in height or above and all buildings having area more than 500 sq. mts. on each floor, whereas, there is only one staircase in the Tower T-2/A, which makes the building unsafe for inhabitation, which is violation of provisions of NBC. The height of Tower T-2/A is 33.2 mts. and covered area at each floor is 522.28 sq. mts. The floor area at each floor consisting of four flats comes out to 553.69 sq. mts. If the area of corridor, lifts and

staircases is added then the total floor area comes to 580.108 sq. mts.

64. The appellants, with respect to the provision of two stair cases instead of one stair case actually provided by the respondent, had filed a complaint before the Ld. Authority bearing No.1627 of 2017 seeking relief for cancellation of Occupation Certificate dated 20.06.2017 granted to the respondent by the Town & Country Planning. As per order of the Ld. Authority, the appellants had pleaded that the respondent had constructed the project violating the Fire Safety Norms laid under the provisions of NBC and thus, the respondent was not entitled for grant of Occupation Certificate. The violation alleged to have been committed was in respect of statutory requirement contained in Clause 2.2.5 and 4.6.25 of NBC, which mandates that the buildings having Height more than 15 mtrs and floor area of more than 500 sq. mts. shall be provided with at least 2 staircases. The respondent has contested the complaint that out of the total six towers in their project, only two towers, namely, T-3 & T-1A require two staircases because the height of building in those towers is more than 15 mts. and area at each floor is also more than 500 sq. mts., wherein the respondent had already provided two staircases in those towers. In other towers area at each floor is less than 500 Sq. Mtrs, therefore only one stair case has been provided. The said complaint was dismissed by the Ld. Authority vide its order dated 19.12.2019 on the ground that the Ld.

Authority has no jurisdiction to cancel the Occupation Certificate granted to the respondent by the DGTCP. This order has not been impugned in this appeal neither the pleadings of the parties relating to complaint in the said case relating to the issue of two number stair cases have been filed in this appeal. Therefore, the relief of refund of the amount as sought by the appellants on the grounds that the tower in which the flat of the appellants is situated, require two staircases as per the provisions of NBC and Fire Safety Norms and actually there is only one, cannot be considered in this appeal.

65. In addition to the above, the appellant has sought refund of the amount paid by him along with interest on ground of excess super area and its charges, Fire-fighting charges, Electrical charges, Club membership charges and its usage, escalation cost, maintenance charges, etc. There are no pleadings in the grounds of appeal as to how the alleged extra amount being demanded by the respondent on the items mentioned above are illegal or are in violation of the provisions of the Act and terms and conditions of the Agreement. The appellants have also not been able to make out any case as to how the impugned order dated 06.08.2019 is bad in law with respect to the extra amount being charged by the respondent. Therefore, no relief against these issues is being considered. However, regarding super area, certain issues have been raised by the appellants and are discussed as under:-

(a) Ld. counsel for the appellants is contesting that the Stilt floor non-parking area depicted of 5579 Square feet and per flat area of 62.58 sq ft as basement circular area and area of Entry & Exit Ramp in the report of the K.Y. Consultants should not form part of the super area. The common area to be included in the super area is given in Part A of Annexure II of the Agreement and the area of the stilts, circulation area and area ramps of basement are not covered in the Part A of Annexure II to be included in computing the super area. It is also the contention of the appellants-allottees that no other areas of the Tower can be included in the computation of the super area other than those mentioned in 'Part A of Annexure II, 'common areas & facilities.' The Part A of Annexure II is reproduced as below:-

"Annexure – II

JBB Grand

Common Areas & Facilities

"PART A:

List of common Areas & Facilities for use of Apartment within JBB Grand Proportionate area of which is included in the computation of Super Area of the said Apartment.

1. Entrance Lobby and driver's/common toilet at Ground Floor.

2. Staircases and mumties.

3. Lifts.

4. Lift Lobbies including lighting and fire fighting equipments thereof.

5. Common passages/Corridors including lighting and fire fighting equipments thereof.

6. Lifts Machine Room.

7. Overhead Water Tanks.

8. Electrical/Plumbing/Fire/Lift Shafts and service ledges.

9. Club including Gymnasium, swimming pool, toilets/change room, multipurpose rooms, pantry, office & related services/equipment points.

10. Security/Fire Control Room.

11. Services/Maintenance areas/offices of building."

(b) It is also the contention of the appellants-allottees that as per Part C of Annexure II of the Agreement, covered car parking space on stilt floor level is excluded from the computation of the super area of the apartment and also no area in the basement is left after allocation of all the car parkings in the basement. Part C of Annexure II along with Clause 1.9 of the Agreement is reproduced as under:-

"Part C:

Reserved Covered/open parking space within JBB Grand individually allotted for his/her exclusive use and excluded from the computation of Super Area of the said Apartment:

1. Covered car parking spaces on stilt floor level.

2. Covered car parking spaces in basements of towers.

3. Car parking spaces around building(s) for visitors shall be for common use of Apartment in JBB Grand."

(c) Ld. counsel for the respondent-promoter has contended that all the 206 number of car parkings have been allotted/kept reserved in the basement of the tower. He has also stated that no car parking has been allotted at the stilt floor of the tower and in future also, no car parking would be allotted in the stilts. The stilts are being used as the car parking space to be commonly used by all the allottees or by their guests as a common area facility and thus, this has been correctly considered by the expert to be included in the super area and rightly allowed by the Ld. Authority.

(d) During the pendency of the complaint, the parties had not agreed with non-parking area depicted as 5579 square feet in the report of the expert. The appellants-complainants had pleaded that the said non-parking area should not form part of super area in terms of Part C of Annexure II of agreement. Shri Bhugra 'Expert' appointed by the Ld. Authority clarified and part of impugned order in this regard is reproduced as under:

"While clarifying the issue of non-parking area, Sh. Bhugra stated that there is only one basement in the project with entry and exit ramps. Area of basement, though free from FAR, is considered common built up area, therefore a part

of the super area for the purpose of chargeable super built-up area.

"As per the calculation submitted by the respondent, parking area of 206 units have been deleted from the chargeable area in the light of the fact that the respondent has sold total parking lots and rest of the area was distributed over total 206 remaining flats in proportion to FAR area. Respondent argue that this seems to be unjustified as the area covered under parking will also be used as circulation area and as such 32 sq m per parking shall be deducted as per national building code ***(NBC)****. National building code chapter III clause 10.3 (C) which reads as under:-*

"Area for each equivalent car space inclusive off circulation area is 23 Sq m for open parking 28 sq m for ground floor covered parking and 32 sq m for basement

"The rest of the area shall be chargeable in terms of given formula – (FAR area of typical tower X Total common circular area outside tower (A+ B) /(Total FAR area of all towers X No. of units in a typical Tower."

The Ld. Authority by taking into account the clarification provided by Sh. K K Bhugra decided that the calculation submitted in the report of the expert for other non-parking area is correct and

appellants - complaints are liable to pay for the unallotted stilt/basement car parking area as a part of super area.

(e) There is no dispute as far as the quantity of area depicted as non–parking stilt floor area of 5579 Square feet and per flat area of 62.58 sq ft as basement circular area and area of Entry & Exit Ramp as calculated by Sh. K.K. Bhugra of the K.Y. Consultant and allowed by the Learned authority. The dispute is regarding the issue that the said area of 5579 sq. ft. and 62.58 sq. ft. are to be included in the calculation of super area or not.

(f) The stilts are being used as a common facility for all the allottees for car parking for their guests. The stilt floor area and circulation area and area of ramps for entry and exit at the basement is not mentioned in list of common areas to be included in computation of super area as given in Part 'A' of annexure II of the agreement. However, as per the provisions of Part 'C' of Annexure II, the reserved covered/open parking space individually allotted for exclusive use on stilt floor and basement are excluded for computation of Super area. This means apart from the exclusively allotted space at the stilt and at the basement for car parking to the allottees, rest of the area at the stilt floor and basement is to be included in super area. Thus, the opinion of the expert that stilts are built up non-parking area, circulation area and area of ramps for entry and exit at the basement are built areas and are to be included in computation of super area gets strength from the implication of

part 'C' of annexure II of the agreement. In view of our aforesaid observation, the order of the authority with respect to inclusion of stilt area, circulation area and area of ramps for entry and exit of vehicles at the basement is allowed to be added in computing the super area of the unit of the appellants is in order and no interference is required. Thus, there is only very little difference between the super area as per the respondent or as per the orders of the Ld. Authority whose order has been found to be correct. Thus no case is made out for refund on this account too.

66. The basic relief sought by the allottee in the complaint filed by him is the refund of the entire amount deposited by him along with interest. In the impugned order the Ld. Authority has declined the relief of refund. The relevant part of the impugned order is reproduced as under:-

> *"It is an admitted fact that the project in question had received part Occupation Certificate on 20.06.2017 for which an application was filed on 11.07.2016. The respondent in its reply has stated that fit-out possession of the units was offered to complainants in December, 2016/January, 2017. It clearly shows that the project has been completed and allottees are already residing in the project. Accordingly, the Authority is of the considered view that the plea of refund of the money to complainants cannot be accepted."*

67. The Agreement between the appellants and the respondent was executed on 03.04.2011. As per Clause 10.1 of the

Agreement, the schedule period for possession of the said apartment was three years from the date of execution of the Agreement. Thus, the schedule date of possession of the apartment comes to 03.04.2014. The respondent issued letter dated 23.12.2016 in the name of Sh. Devender Singh-allottee No.1 mentioning therein that the respondents are going to handover the apartment for fit out possession/possession and asked for submission of certain documents along with the due balance amount, as per Statement of Account, which is shown to be Rs.7,23,478/-. However, the appellants have contended that the demand of the amount was illegal under the garb of offer of possession as the project was not complete. In continuation of the letter dated 23.12.2016, the respondent issued another letter dated 11.02.2017 in the name of Sh. Devender Singh-allottee No.1 (who had expired since long) asking for another amount on account of cost escalation as per Clause 1.12 of the Agreement and also asked for clearing dues along with cost escalation in two installments. A letter dated 02.02.2017 was written by Sh. Vinay Narwal-appellant No.1 to the respondent asking for refund of the total amount deposited with the respondent along with interest on account of non-delivery of possession of the apartment within three years from the date of Agreement dated February, 2011. However, there is no mention of this letter anywhere in proceedings of the complaint. The appellants have attached the copy of Occupation Certificate dated 20.06.2017 issued

by the Director, Town & Country Planning Department Haryana to the respondent with respect to this project as Annexure P-11 with the complaint. However, no offer of possession has been issued to the appellants/allottees after issue of the Occupation Certificate.

68. In the latest judgment ***M/s Newtech Promoters & Developers Pvt. Ltd. vs. State of UP & Ors. Etc.*** (Supra), which is the authoritative landmark judgment of the Hon'ble Apex Court with respect to the interpretation of the provisions of the Act, the Hon'ble Apex Court has dealt with the rights of the allottees to seek refund as referred under Section 18(1)(a) of the Act. The Hon'ble Apex Court 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."

69. As per the aforesaid ratio of law, the allottees have unqualified right to seek refund referred under Section 18(1)(a) and Section 19(4) of the Act, which is not dependent on any contingencies. The right of refund of payment has been held to be as an unconditional absolute right to the allottees, 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. The rights of the parties have crystallized on 24.07.2018 with the registration of the complaint. Even upto the date of filing of the complaint on 24.07.2018, the respondent had not issued the offer of possession after issue of Occupation Certificate, which was received by the respondent on 20.06.2017. Thus, the present allottees have unqualified and unconditional absolute right to seek the refund as the promoter has failed to deliver the possession of the unit by 03.04.2014 the stipulated date as per the buyer's agreement dated 03.04.2011.

70. Thus, keeping in view our aforesaid discussion, the impugned order dated 06.08.2019 passed by the Ld. Authority qua Complaint No.271 of 2018, declining refund to the appellants/allottees, is not sustainable. Consequently, the appeal filed by the allottees is hereby allowed, the impugned order dated 06.08.2019, to the extent of declining the refund to the

appellants/allottees, is set aside. Appellants are entitled for refund of the entire amount paid by them i.e. Rs.27,42,050/- along with interest at the prescribed rate i.e. 9.3% per annum prevailing as on today, as per Rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017. The interest shall be calculated from the dates of respective deposits by the allottee, till the date of realization.

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

72. File be consigned to the record.

Announced:
May 13, 2022

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

Inderjeet Mehta
Member (Judicial)

Anil Kumar Gupta
Member (Technical)

GVT

Vinay Narwal & Anr. V/s JBB Infrastructure Pvt. Ltd.
Appeal No.99 of 2020

Present: None.

Vide our separate detailed order of the even date, the appeal filed by the allottees is allowed and the impugned order dated 06.08.2019, to the extent of declining the refund to the appellants/allottees, is set aside. Appellants are entitled for refund of the entire amount paid by them i.e. Rs.27,42,050/- along with interest at the prescribed rate i.e. 9.3% per annum prevailing as on today, as per Rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017. The interest shall be calculated from the dates of respective deposits by the allottee, till the date of realization.

Copy of this order along with detailed order be conveyed to all the concerned parties.

File be consigned to the records.

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

Inderjeet Mehta
Member (Judicial)

Anil Kumar Gupta
Member (Technical)

13.05.2022
GVT