

Appeal No. 244 of 2020
Date of Decision: June 03, 2021

M/s Deepak Land Promoters (P) Ltd. Through its Director Shri Pankaj Aggarwal
Registered Office: 158-E, Kitchlu Nagar, Ludhiana (Punjab) - 141001.

.....Appellant

Versus

M/s Ireo Grace Realtech Pvt. Ltd. Registered Office: C-4, 1st Floor, Malviya Nagar,
New Delhi - 110017.

..... Respondent

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

Argued by: Shri Rit Arora, Advocate, Ld. counsel for the appellant.

Shri Shekhar Verma, Advocate, Ld. counsel for the respondent.

ORDER:

JUSTICE DARSHAN SINGH (RETD), CHAIRMAN:

The present appeal has been preferred under Section 44(2) of the Real Estate (Regulation and Development) Act, 2016 (hereinafter called the Act”) against the order dated 25.02.2020 passed by the Ld. Haryana Real Estate Regulatory Authority, Gurugram (hereinafter called the Ld. Authority”) in Complaint No. 3035 of 2019. The complaint filed by the appellant/allottee was disposed of by the Ld. Authority vide impugned order dated 25.02.2020 with the following directions.

i. The respondent is directed to pay delayed possession charges at the prevalent prescribed rate of interest of 10.15% p.a. with effect from 27.11.2018 (due date of delivery of possession) till the offer of possession in terms of section 18(1) proviso of the Act read with Rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017.

ii. The arrears of interest, so accrued from due date of delivery of possession i.e. 27.11.2018 till the date of order i.e. 25.02.2020 be paid by the respondent at the prescribed rate

of interest of 10.15% p.a. to the complainant within 90 days and thereafter monthly interest be paid on or before 10th of each subsequent English calendar month.

iii. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.

iv. The respondent shall not charge anything from the complainant which is not part of the buyer's agreement. Interest on the due payments from the complainant shall be charged at the prescribed rate @10.15% p.a. by the promoter which is the same as is being granted to the complainant in case of delayed possession charges."

2. As per the averments in the complaint, the appellant was allotted Apartment No. 904, 9th Floor, Tower B5 "The Cooridors", Sector 67-A, Gurugram, Haryana for a total sale consideration of Rs. 1,51,55,239.53/-. The Apartment Buyer's Agreement was executed on 27.05.2014 (Annexure A-2). As per the terms of the agreement, the possession was to be offered within a period of 42 months from the date of approval of building plans. It is alleged by the appellant that the due date of possession comes to 23.01.2017. But the respondent had failed to deliver/offer the possession within the stipulated period. Hence the complaint, wherein, the appellant has sought the following reliefs:-

" i) Direct the respondent to deliver the immediate possession of the unit bearing no. CD-B5-09-904 located in the project Ireo Corridors at Sec-67A, Gurugram, Haryana along with complete amenities and prescribed rate of interest from the promised date of delivery until actual possession to the complainant company; and

ii) Direct the respondent company to make the payment of

the monthly interest as installment until the actual delivery of the possession of the apartment to the complainant company; and

iii) Pass an order declaring that any delay penalty charged by the respondent company on the complainant as illegal, arbitrary and unsustainable; and

iv) Pass an order waiving off/setting aside any delay penalty levied by the respondent company especially in view of the fact that the respondent company has failed to deliver the possession of the apartment within the promised time frame to the complaint company.

v) Direct the respondent to pay a lump sum compensation of Rs. 10,00,000/- (Rupees Ten Lakhs only) as compensation for mental agony and harassment caused to the complainants; and

vi) Direct the respondent to pay a sum of Rs. 50,000/- (Rupees Fifty Thousand only) as litigation expenses to the complainants; and

vii) May pass any other orders.”

3. Respondent/promoter contested the complaint on the grounds inter-alia that for the purpose of calculating the time period for delivery of possession, the respondent/promoter was entitled for an extension of a period of 12 months from the end of the grace period as per clause 13.5 of the Apartment Buyer's Agreement. It is further pleaded that as per the terms and conditions of the agreement, the due date to handover the possession is to be computed from the date of grant of the last pre-condition and that the firefighting scheme approval was granted on 27.11.2014. So, the due date to handover the

possession comes to 27.11.2019, as per clause 13.3 and clause 13.5 of the Apartment Buyer's Agreement. All other pleas raised in the complaint were controverted. Respondent/promoter has also raised certain legal and preliminary objections. With these pleas, the respondent/promoter pleaded for dismissal of the complaint.

4. After hearing Id. Counsel for the parties and appreciating the material on record, the Id. Authority disposed of the complaint by issuing direction reproduced in the upper part of this order vide impugned order dated 25.02.2020.

5. Aggrieved with the aforesaid order of the Id. Authority, the present appeal has been preferred.

6. We have heard Sh. Rit Arora, Id. Counsel for the appellant. Sh. Shekhar Verma, Advocate, Id. Counsel for the respondent and have carefully gone through the record of the case.

7. There are certain undisputed facts. The offer of allotment of the unit was issued on 07.08.2013. Apartment Buyer's Agreement was executed on 27.05.2014. The building plan was approved on 23.07.2013. The environment clearance was given on 13.12.2013 (Annexures R-24). The fire Safety clearance was granted by the competent Authority on 27.11.2014 (Annexure R-25). Clause 13.3 of the Apartment Buyer's Agreement deals with the delivery of possession.

8. Id. Counsel for the appellant/allottee has contended that as per the clause 13.3 of the agreement, the possession was to be offered within 42 months from the date of approval of building plan. He contended that the building plan in this case was approved on 23.07.2013, so, the possession should have been offered by 23.01.2017. The fire safety clearance which was provided later on is of no-significance as the construction had already started. Thus, he contended that the Id. Authority has wrongly determined the deemed

date of possession to be 27.11.2018 i.e. 48 months from the date of fire safety clearance and the impugned order passed by the Id. Authority is required to be modified to this extent. He has referred to the order of this Tribunal dated 21.09.2020 in Appeal No. 425 of 2019 titled as **Sudhakar Chawla and others Vs. M/s IREO Grace Realtech Pvt. Ltd.**

9. On the other hand, Sh. Shekhar Verma, Advocate Id. Counsel for the respondent contended that the Id. Authority has rightly determined the due date of possession to be 27.11.2018. He contended that as per clause 13.3 of the agreement, the possession was to be delivered within 42 months plus 180 days as grace period from the date of approval of the building plans and/or fulfillment of the conditions imposed therein. He contended that the environment clearance and the fire safety clearance were the conditions imposed in the approval of building plans granted by the Competent Authority. He further contended that environment clearance was granted on 12.12.2013 and approval of firefighting scheme was granted on 27.11.2014. Thus, he contended that the Ld. Authority has rightly determined the due date of possessions.

10. We have duly considered the aforesaid contentions. The short question involved in the present appeal is as to whether the deemed date of offer/delivery of possession is to be determined from the date of approval of the building plans i.e. 23.07.2013 or the approval of the firefighting scheme granted on 27.11.2014.

11. Clause 13.3 of the Apartment Buyer's Agreement dated 27.05.2014 reads as under:

“13.3 Subject to Force Majeure, as defined herein and further subject to the Allottee having complied with all its obligations under the terms and conditions of this Agreement and not having defaulted under any provision(s) of this

Agreement including but not limited to the timely payment of all dues and charges including the total Sale Consideration, registration charges, stamp duty and other charges and also subject to the Allottee having complied with all formalities or documentation as prescribed by the Company, the company proposes to offer the possession of the said Apartment to the Allottee within a period of 42 (Forty Two) months from the date of approval of the Building Plans and/or fulfillment of the preconditions that the company shall additionally be entitled to a period of 180 days ("Grace Period"), after the expiry of the said commitment period to allow for unforeseen delays beyond the reasonable control of the company."

12. As per the aforesaid clause of the agreement, the possession of the apartment was to be offered within a period of 42 months from the date of approval of building plans and or fulfillment of the pre-conditions imposed thereunder with a grace period of 180 days. Copy of the building plan approval is available at page no. 236 of the paper book (Annexure A-23). The said approval has been granted subject to conditions imposed therein. Clause 17(iv) of the approval dated 23.07.2013 reads as under:

"17(iv) that the colonizer shall obtain the clearance/NOC as per the provisions of the Notification No. S.O. 1533 (E) dated 14.09.2006 issued by the Ministry of Environment and Forest, Government of India before starting the construction/execution of development works at site."

As per the aforesaid condition, the clearance/NOC was to be obtained from the Ministry of Environment & Forest, Government of India before starting the construction/execution of the development works at the site.

13. Copy of the environment clearance is available at page no. 244 of the paper book (Annexure R-24). Part B of this clearance contains the general conditions. Condition number VI of the part B of the environment clearance reads as under.

*“vi All other statutory clearances such as the approvals for storage of diesel from Chief Controller of Explosive, **Fire Department**, Civil Aviation Department, Forest Conservation Act, 1980 and Wildlife (Protection) Act, 1972, Forest Act, 1927, PLPA, 1900, etc. shall be obtained, as applicable by project proponments from the respective authorities prior to construction of the project.”*

The above-mentioned condition shows that the respondent was required to obtain the clearance from the Fire Department in addition to clearance from other departments. The Fire Fighting Scheme for this project was approved by Director Haryana Fire Service, Panchkula on 27.11.2014. Copy of the said approval is available at 255 of the paper book (Annexure R-25).

14. Thus, from the aforesaid documents available on record, it comes out that the last pre-conditions i.e. Fire Fighting Scheme was approved by the competent authority on 27.11.2014.

15. In Sudhakar Chawala and others vs. M/s IREO Grace Realtech Private Limited (Supra), we have taken a view that the deemed date of the delivery of possession is to be determined from the date when the excavation work has started which was considered to be the date of starting the construction after obtaining the approvals but the Hon'ble Apex Court in the latest judgment titled as **IREO RealTech Pvt. Ltd. vs. Abhishek Khanna and Others Civil Appeal NO. 5785 of 2019** decided on January 11, 2021 dealing with the same issue has laid down as under:

18. Determination of the date for handing over Possession

The first issue which has been raised by the Appellant - Developer as also the Apartment Buyers, is the relevant date from which the 42 months' period is to be calculated for handing over possession. Clause 13.3 of the Agreement states that the Developer proposed to offer possession of the apartment to the allottee within a period of 42 months from the date of approval of the Building Plans and/or fulfillment of the pre-conditions imposed thereunder, referred to as the -Commitment Period. The Company would be entitled to a further -Grace Period of 180 days' after the expiry of the Commitment Period for unforeseen delays beyond the reasonable control of the Company. This would work out to 42 + 6 months i.e. 48 months.

18.1 The point of controversy is whether the 42 months' period is to be calculated from the date when the Fire NOC was granted by the concerned authority, as contended by the Developer; or, the date on which the Building Plans were approved, as contended by the Apartment Buyers.

18.2 Section 15 of the Haryana Fire Safety Act, 2009 makes it mandatory for a Builder/Developer to obtain the approval of the Fire Fighting Scheme conforming to the National Building Code of India, and obtain a No Objection Certificate before the commencement of construction. Section 15 is extracted hereinbelow for ready reference:

"15. Approval of Fire Fighting Scheme and issue of no objection certificate.—(1) Any person proposing to construct a building to be used for any purpose other than residential purpose or a building proposed to be used for residential purpose of more than 15 meters in height, such as group housing, multi-storeyed flats, walk-up apartments, etc. before the commencement of the construction, shall

apply for the approval of Fire Fighting Scheme conforming to National Building Code of India, the Disaster Management Act, 2005 (53 of 2005), the Factories Act, 1948 (Act 63 of 1948) and the Punjab Factory Rules, 1952, and issue of no objection certificate on such form, alongwith such field as may be prescribed.

(2) The Director or any officer duly authorised by him in this behalf, may take cognizance of any application and issue such instructions and orders regarding the building plan and for construction by issuing a provisional no objection certificate before the construction is taken up.

Explanation. –In case any person proposes to increase the number of floors on any building already constructed in such a manner that it shall qualify for being termed as a high rise building, shall before construction, apply for no objection certificate.

(3) The provisional no objection certificate shall be issued within 60 days of submission of application along with such fee, as may be prescribed, giving all the details of the construction being undertaken as well as the rescue, fire prevention and fire safety details required to be incorporated during the period of construction.

(4) During the process of construction, the inspection of the construction may be conducted and the advice about any additions, deviations, modifications that are required to be carried out from the precaution and prevention point of view, may be tendered. Such advice shall be made on a prescribed proforma and handed over to the party concerned.

(5) On completion of the construction of the high-rise building, a no objection certificate shall be obtained. In the absence of such certificate, the owner shall not occupy, lease or sell the building.”

(emphasis supplied)

18.3 Clause 13.3 of the Apartment Buyer’s Agreement provides that the 42 months’ period has to be calculated from the date of approval of the Building Plans and/or fulfilment of the pre-conditions imposed thereunder.

18.4 The Building Plans sanctioned by the Directorate of Town and Country Planning, Haryana contained the Terms & Conditions of Approval, which included a provision for Fire Safety contained in Clause (3). The Developer was directed to submit Fire Safety Plans indicating the complete Fire Protection Arrangements, and means of escape/access for the proposed building with suitable legend and standard signs.

Clause 3 of the Building Plans contained a provision for

Fire Safety, which reads :

"3. FIRE SAFETY

On receipt of the above request the Commissioner, Municipal Corporation, Gurgaon after satisfying himself that the entire fire protection measures proposed for the above buildings are as per NBC and other Fire Safety Bye Laws, and would issue a NOC from Fire safety and means of escape/access point of view. This clearance/NOC from Fire Authority shall be submitted in this office along with a set of plans duly signed by the Commissioner, Municipal Corporation, Gurgaon within a period of 90 days from the date of issuance of sanction of building plans. Further, it is also made clear that no permission for occupancy of the building shall be issued by Commissioner, Municipal Corporation, Gurgaon unless he is satisfied that adequate fire fighting measures have been installed by you and suitable external fire fighting infrastructure has been created at Gurgaon, by Municipal Corporation, Gurgaon. A clearance to this effect shall be obtained from the Commissioner, Municipal Corporation, Gurgaon before grant of occupation certificate by the Director General."

18.5 On receipt of the Fire Plans, the Commissioner, Municipal Corporation, Gurgaon, after satisfying himself with the entire fire protection measures as in conformity with the National Building Code, 2005 (-NBC) and the Fire Safety Bye-Laws, would issue an NOC for Fire Safety. This NOC/Clearance was required to be submitted before the Municipal Corporation, within a period of 90 days' from the issuance of the sanctioned Building Plans.

18.6 Clause 17(iv) of the sanctioned Plan stipulated that the Developer shall obtain an NOC from the Ministry of Environment & Forests, before starting the construction/execution of development works at site.

"17 (iv) That the Developer shall obtain the clearance/NOC as per the provisions of the Notification No. S.O. 1533(E) dated 14.09.2006 issued by Ministry of Environment and Forest, Government of India before starting the construction/execution of development works at site."

(emphasis supplied)

18.7 The Environmental Clearance granted by the Ministry of

Environment & Forest Government of Haryana on 12.12.2013 required the Developer to submit a copy of the Fire Safety Plan approved by the Fire Department, before commencing construction of the project.

General Condition (vi) under Part B of the Environmental Clearance stipulated that the Developer shall obtain all other statutory clearances, including the approval from the Fire Department, prior to construction of the project.

Clause (vi) provides that :

“(vi) All other statutory clearance such as the approvals for storage of diesel from Chief Controller of Explosive, Fire Department, Civil Aviation Department, Forest Conservation Act, 1980 and Wildlife (Protection) Act, 1972, Forest Act, 1927, PLPA 1900 etc. shall be obtained as applicable by project proponents from the respective authorities prior to construction of the project.

(emphasis supplied)

18.8 *We are of the view that it was a mandatory requirement under the Haryana Fire Safety Act, 2009 to obtain the Fire NOC before commencement of construction activity. This requirement is stipulated in the sanctioned Building Plans, as also in the Environment Clearance.*

18.9 *The 42 months' period in Clause 13.3. of the Agreement for handing over possession of the apartments would be required to be computed from the date on which Fire NOC was issued, and not from the date of the Building Plans being sanctioned.*

18.10 *In the present case, the Developer obtained approval of the Building Plans from the Directorate, Town and Country Planning, Haryana, on 23.07.2013. The Developer applied for issuance of Fire NOC for the Fire Fighting Scheme of the Group Housing Colony within the 90 days period before the Director,*

Fire Service, Panchkula.

The Commissioner vide letter dated 30.12.2013 raised 16 objections with respect to the proposed Fire Fighting Plan.

The Developer vide letter dated 22.01.2014 responded to the objections, submitting that the objections had been cured, and requested that the approval of the Fire Fighting Scheme be granted on a priority basis.

The Fire Department informed the Developer vide letter dated 28.03.2014 that the deficiencies in the application for Fire NOC had not been cured. The Developer was granted a further period of 15 days' to cure the defects, failing which, its application would be deemed to be rejected.

The Developer submitted revised drawings as per the NBC Fire Scheme alongwith its letter dated 18.08.2014. This letter was received in the office of the Municipal Corporation on 13.10.2014, as per endorsement on the said letter.

18.11 On 27.11.2014, the Director, Haryana Fire Service granted approval to the Fire Fighting Scheme subject to the conditions mentioned therein. The computation of the period for handing over possession would be computed from this date. The Commitment Period of 42 months plus the Grace Period of 6 months from 27.11.2014, would be 27.11.2018, as being the relevant date for offer of possession.”

16. In view of the aforesaid ratio of law laid down by the Hon'ble Apex Court the commitment period of 42 months plus the grace period of six months is to be computed from 27.11.2014 i.e. date of grant of approval of the Fire Fighting Scheme and the due date for offer of possession will be 27.11.2018. We are bound by the aforesaid observations of the Hon'ble Apex Court. In the impugned order, the ld.

Authority has also computed the due date of offer of possession from the date of approval of Fire Fighting Scheme dated 27.11.2014 and the due date of delivery of possession has been worked out to be 27.11.2018. Thus, we do not find any illegality in the due date of delivery of possession determined by the Id. Authority which is fully in consonance with the aforementioned observations of the Hon'ble Apex Court in IREO Real Tech Pvt. Ltd. vs. Abhishek Khanna and Others case (Supra).

17. Consequently, in view of our aforesaid discussions, the present appeal is without any merit, the same is hereby dismissed. However, no order as to costs.

18. Copy of this order be communicated to the Id. Counsel for the parties/parties and the Id. Authority.

19. 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)

June 03, 2021
Rajni

M/s Deepak Land Promtoers Pvt. ltd.

Vs.

M/s Ireo Grace Realtech Pvt. Ltd.

Appeal No. 244 of 2020

Present: None.

The judgment has been pronounced. The appeal stands dismissed vide our detailed order of even date.

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)

June 03, 2021
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