

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RERA-APPL-32 of 2021 (O&M)

Date of Decision:01.03.2021

M/s Alpha Corp. Development Private Limited

.....Appellant.

Versus

Vibha Gandhi

..... Respondent

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Harsh Bunker, Advocate
For the appellant.

Respondent-Vibha Gandhi in person
with Mr. Munish Chhabra

LISA GILL, J(Oral).

This matter is being taken up for hearing through video conferencing due to outbreak of the pandemic, COVID-19.

Appellant has filed this appeal challenging order dated 01.02.2021, passed by the learned Haryana Real Estate Appellate Tribunal, whereby matter has been remanded to the Haryana Real Estate Regulatory Authority (for short 'Authority'), only to the extent that possession of the flat in question is directed to be handed over to the allottee, subject to deposit of Rs.2,00,000/- by her, though final settlement of accounts shall be subject to final decision of the complaint.

It is matter of record that complaint, was filed by the respondent-allottee being aggrieved of possession of the flat not being delivered to her within the stipulated time. Subsequently amended complaint filed is attached as Annexure P-5. Various reliefs including possession of the flat, interest on delayed possession were sought. Complaint was contested by the present appellant.

The said complaint was decided *ex parte* on 10.12.2019, while observing that the present appellant was unrepresented despite matter being called twice. It is held by the Authority that the complainant is entitled for delayed charges from 06.05.2016 to 13.10.2017, at the prescribed rate of interest i.e. 10.20 % per annum. Following relief was afforded to the complainant:-

- “i. The respondent is directed to pay delayed possession charges at prescribed rate of interest i.e. 10.20 % per annum w.e.f., 06.05.2016 to 13.10.2017 as per the provisions of section 18 (1) of the Real Estate (Regulation & Development) Act, 2016.
- ii. The complainant is directed to take over the possession of the unit within a period of 30 days by making the requisite payments to the respondent failing which the respondent shall be entitled to charge holding charges.
- iii. Interest on the du payments from the complainant shall be charged at the prescribed rate of interest i.e. 10.20 % p.a., by the promoter which is the same as is being granted to the complainant in case of delayed possession.
- iv. Complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- v. The promoter shall not charge anything from the complainant which is not part of the apartment buyer's agreement.”

The said order was challenged by the appellant before the Haryana Real Estate Appellate Tribunal, *inter alia* on the ground that it was wrongly proceeded against *ex parte*.

Appeal filed by the petitioner was allowed by the Haryana Real Estate Appellate Tribunal, vide order dated 01.02.2021. While remanding the matter before the Authority, it was directed that learned Authority will ensure that possession of the apartment allotted to the respondent/ allottee,

be delivered to her within two weeks of her depositing a sum of Rs.2,00,000/- with the appellant/promoter while leaving final settlement of the accounts subject to final decision of the complaint.

Aggrieved from the part of order directing handing over the possession of the apartment, present appeal has been filed.

Learned counsel for the appellant submits that it is a sum of about Rs.18,74,000/-, which is outstanding towards the appellant and it is patently unjust on the part of the Appellate Tribunal to have directed handing over possession of the flat without the complete requisite payment being made. At the time of issuance of notice of motion, statement on behalf of the appellant that it is not averse to handing over possession of the apartment in question, in case, respondent deposits a sum of Rs.5 lakh and surety of rest of the amount, was recorded.

Respondent has appeared in person and submits that the flat was agreed to be allotted for a sum of Rs.45,99,629/- out of which Rs.43,17,465/-, stood deposited. Pursuant to order dated 01.02.2021, a sum of Rs.2,00,000/- has also been deposited. It is further submitted that appellant before the Appellate Tribunal had stated that it was to recover a sum of Rs.7,28,099/- from the allottee and now the amount magically seems to have been swollen to Rs.18,74,327/- as per the calculation provided. It is submitted that in the given circumstances, possession be handed over to the respondent immediately.

Learned counsel for the appellant however seeks to explain that calculation as mentioned in order dated 01.02.2021, would be the subject matter of adjudication before the Authority as appellant has raised separate demand on the basis of agreement between the parties. Calculation sheet has been circulated on the e-mail created for the purpose of video conferencing

with a copy thereof to the respondent seeking to explain the breakup of the amount of Rs.18,74,327/-.

During the course of hearing, learned counsel for the appellant has proposed that a sum of Rs.3,02,193/- calculated towards the basic sale price 5% of the basic, interest free maintenance security @ Rs.75/- per sq. ft. along with GST and electricity charges of Rs.80,911/- at least, be deposited and possession of the premises shall be handed over.

Respondent-Vibha Gandhi, submits that without prejudice to her rights, she would deposit another sum of Rs.1,00,000/- by 6th of March, 2021, and would necessarily deposit the amount, if any, as per final adjudication of the complaint filed by her. She further submits that there never has been and never would be any delay in the proceedings before the learned Authority at her end.

Keeping in view the facts and circumstances as above, it is directed that in case, respondent deposits another sum of Rs.1,00,000/- within one week, peaceful possession of the apartment in question be handed over to her within two weeks thereafter in terms of order dated 01.02.2021.

With the abovesaid modification in order dated 01.02.2021, present appeal is disposed of.

01.03.2021

s.khan

**[LISA GILL]
Judge**

Whether speaking/reasoned : Yes/No.
Whether reportable : Yes/No.