

**115 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

RERA-App1-30-2021(O&M)
Date of decision: 05.07.2022

M/s Pivotal Infrastructure Pvt. Ltd.

....Appellant

Versus

Prakash Chand Arohi

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Tushar Sharma, Advocate for the appellant

Mr. Vijay Sharma, Advocate for the respondent

ANIL KSHETARPAL, J (Oral)

1. Through this appeal filed under Section 58 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as 'RERA Act, 2016'), the appellant assails the correctness of the order passed by the Haryana Real Estate Regulatory Authority on 04.09.2018 as well as the order dated 20.05.2020 passed by the Haryana Real Estate Appellate Tribunal. The respondent is a home buyer whereas the appellant is a promoter. There was an apartment buyers agreement between both the parties on 14.02.2011. As per the aforesaid agreement, the possession of the flat was to be delivered within a period of 42 months on the payment of Rs.30,07,750/-. In order to facilitate its financing from the Bank, both the parties entered into a new agreement dated 29.03.2013. Thereafter, respondent paid a sum of Rs.30,91,384/- upto 01.10.2013. On account of revision of price of the flat, there was an additional demand of more than Rs.19,00,000/-. The respondent filed

a complaint before the Haryana Real Estate Regulatory Authority. The appellant admitted that there was delay of 23 months in delivery of possession of the said flat.

2. There were various disputes between both the parties, however, for the purpose of this appeal only the following three points have been raised:-

a) There is an increase in the super area of the flat which has to be paid by the respondent. Learned counsel representing the appellant while elaborating submits that there were two kinds of common areas in the flat. First one is the common area which is available to everybody and that area includes parks, roads and other common facilities. Whereas the second type of common area is available to the persons living on each floor where the flat is situated. He contends that such common area including a gallery, open space in front of stairs and lift is exclusive to the flat owners of that floor only. Hence, that area on each floor cannot be counted towards the common area for all the buyers of the force at Complex.

b) The General Sales Tax (hereinafter referred to as 'the GST') on the price of the flats has become payable to the Government from 01.07.2017 the appellant is entitled to recover the same as per the said agreement. He submits that the authorities have erred in directing the appellant to take its burden.

c) The authority as well as Tribunal has erred in awarding interest for the delayed delivery of possession at the rate of SBI/MCLR + 2%.

3. Per contra, learned counsel representing the respondent submits that the entire common area as per the agreement is to be divided amongst all the home buyers and it is not permissible to have two different types of common areas. He submits that the common area on each floor is open to all the home buyers/users and it is not restricted to only the residents of that floor. He submits that the appellant cannot be permitted to make a distinction between the common area open to everyone and the limited common area. He further submits that the GST has become payable from 1st July, 2017. As per the apartment buyers agreement, the date of delivery of possession was in August, 2014. If the appellant had delivered the possession on the date agreed upon in August, 2014, no GST would have been payable. He submits that the respondent cannot be burdened with the additional liability which has arisen due to default on the part of the appellant. He further submits that the interest on delayed delivery of possession has been ordered as per Section 18 of the RERA Act, 2016 read with Rule 15 of Haryana Real Estate (Regulation and Development) Rules, 2017.

4. This Court has heard the learned counsel representing the parties at length and with their able assistance perused the paperbook. At this stage, this Bench proceeds to analyze the second and third arguments. Admittedly, on the agreed date for the delivery of possession, GST was not payable. This is an additional liability which has come into force on account of delay in delivery of the possession. Had the appellant delivered the possession, as agreed, the home buyer (respondent) would not have been made liable to pay the amount of

GST. Hence, the additional liability has to be accounted for, by the appellant. Learned counsel representing the appellant, in the alternative, submits that at that point of time, VAT, service tax and other taxes were payable and the home buyers were liable to pay the same. He submits that the home buyer is liable to pay the amount of VAT, service tax and other taxes as payable at the relevant time i.e January 2015. Learned counsel representing the respondent (home buyer) does not dispute that fact. He submits that he will pay VAT and other payable taxes as per the agreement as applicable on January 2015.

5. The next argument is with regard to interest, for which there is a subordinate legislation that fixes the rate of interest. There is an enabling power under Section 18 of the RERA Act, 2016, that specifies the rate of interest by a subordinate legislation. Haryana Government has notified the rules that specify the rate of interest, which has been awarded by the appropriate authorities. Hence, there is no force in the argument of the learned counsel representing the appellant.

6. Now this Bench proceeds to shift its focus to the first argument made by the learned counsel representing the appellant. It is not in dispute that apartment buyers agreement entered into between the appellant and the respondent, does not make a clear distinction between the general common area and the limited common area. The authorities upon analysing the agreement and other documents have ordered that the entire common area is to be calculated by the appellant and then it has to be divided proportionately amongst the unit buyers of the complex. It has been pointed out that the multiple towers are being constructed by

the appellant. In the tower in question as many as 86 Apartments have been built. Moreover, the limited common area on each floor is not exclusively meant for the flat owners of that specific floor. Furthermore, once there is no clear distinction in the apartment buyers agreement, the promoter cannot be permitted to travel beyond the said agreement.

7. Keeping in view the aforesaid facts, the Appeal is disposed of. The respondent and appellant shall remain bound by the stand taken by them before this Court.

8. All the pending miscellaneous applications, if any, are also disposed of.

05.07.2022

rekha

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE