

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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RERA-APPL-45-2022(O&M)
Date of decision: 19.09.2022

EMAAR INDIA LTD.

..Appellant

Versus

NISHAT HASIN KHAN @ NISHANT HASIN KHAN AND ORS.

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Shekhar Verma, Advocate
for the appellant.

ANIL KSHETARPAL, J(Oral)

Delay application

For the reasons stated in the application for condonation of delay which is supported by an affidavit, the application is allowed, subject to all the just exceptions.

The delay of 24 days in refiling the appeal is condoned.

CM stands disposed of.

Main case

The promoter/colonizer/developer of a real estate project assails the concurrent findings of fact arrived at by the Real Estate Regulatory Authority as well as the Appellate Tribunal.

Admittedly, the respondent is a buyer of an apartment from the appellant. The appellant failed to deliver the possession of the apartment as per the agreement. The delay in the delivery of possession is not in dispute.

The appellant claims that while offering the possession to the respondent, vide letter dated 03.05.2019, he was given credit of the compensation at the agreed rate on account of the delayed possession while offering certain discounts. He submits that the respondent can neither

claim compensation for the delayed delivery of possession after 03.05.2019, nor intimation of the delivery of possession sent by the appellant can be held illegal. He refers to Sub-Section 10 of Section 19 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as “the 2016 Act”), as well as Clause 7 of the Model Agreement.

This Court has considered the submissions made by the learned counsels. Admittedly, the possession of the apartment was to be delivered on 11.01.2016. Vide letter dated 03.05.2019, the appellant offered to deliver possession of the apartment. However, such an offer was subject to certain conditions. As stated in the communication, the apartment owner was required to make payments and execute the required documents by the due date. Along with the communication, Annexure 1 was sent intimating that the respondent is required to pay an additional sum to the colonizer. Thus, the aforesaid offer of the possession was a conditional offer. As per the provision of the 2016 Act, the developer is liable to pay compensation for the delayed delivery of possession at the rates specified in the Act. Admittedly, the respondent was neither paid the aforesaid amount nor any credit was given. As per the calculation made by the Authorities as well as the appellate Tribunal, it is the respondent who is to recover the amount from the appellant and not to pay any further amount.

Hence, the conditional offer of possession subject to payment of the amount was not in accordance with the requirement of law.

The learned counsel representing the appellant contends that the apartment buyer should have paid the amount first and, thereafter, could have filed the complaint claiming the amount as per Section 73 and 74 of the

Contract Act, 1872.

The 2016 Act has been enacted to regulate the real estate sector. The apartment buyer cannot be expected to, at the first instance, pay the wrongly demanded amount in order to take delivery of possession. The compensation for the delayed delivery of possession has been statutory defined.

The Appellate Tribunal has declared the intimation of possession illegal in that context. The appellant should have unconditionally offered to deliver possession of the allotted apartment to the respondent. However, in the present case, the offer of possession was conditional. Once, the respondent has been deprived of the possession on account of wrongs committed by the promoters, he is required to be compensated.

Hence, no ground to interfere is made out.

Dismissed.

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

September 19th, 2022

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**(ANIL KSHETARPAL)
JUDGE**

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