

In the High Court of Punjab and Haryana, at Chandigarh

RERA Appeal No. 61 of 2022

Date of Decision: 16.12.2022

DSS Buildtech Pvt. Ltd.

... Petitioner(s)

Versus

Jagir Singh and Another

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Ashwarya Sinha, Advocate
for the appellant(s).

Anil Kshetarpal, J.

1. The Promoter, after having received the amount from the various home buyers, has failed to carry out any construction work except excavation of the site. The authorities constituted under the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as “the 2016 Act”) have ordered refund of the amount along with interest as provided under the Rules. This appeal has been filed under Section 58 of the 2016 Act.

2. Heard the learned counsel representing the appellant at length and with his able assistance, perused the paper-book. .

3. The learned counsel representing the appellant admits that the promoter has committed a default in not carrying out any development work for the last more than six years. However, he contends that the interest on the defaulted amount is required to be calculated by excluding the grace period of 180 days. He further contends that in the appeal filed by the Promoter, the

Haryana Real Estate Appellate Tribunal (hereinafter referred to as “the HREAT”) has passed an order against the appellant calculating the amount of interest from a date which is prior to the date from which the interest was ordered to be calculated by the Haryana Real Estate Regularity Authority, Gurugram (hereinafter referred to as “the HRERA”).

4. In the present case, as per the Apartment Buyers Agreement dated 09.05.2016, the possession was required to be delivered on completion of the project within a period of 48 months from the date of receiving the last of all the approvals, required for commencement of the project, from the Competent Authority or from the date of signing the agreement whichever is later.

5. It is the case of the appellant that the final approval/consent was received on 12.11.2016. The home buyer has paid certain amount on issuance of the allotment letter as well as on entering into an Apartment Buyers Agreement. The question is with regard to the entitlement of refund and interest in such circumstances particularly when the Promoter has not even started developing the project for the last six and a half years.

6. The HRERA calculated interest for 48 months from 12.11.2016 and thereafter, excluded 180 days of grace period on account of the COVID-19 pandemic. However, the HREAT has concluded that since the appellant did not begin the construction at all, therefore, the aforesaid grace period shall not be excluded.

7. This Court has considered the submissions of the learned counsel, however, find no substance therein on account of the following reasons:-

i) The appellant, after having received the amount way

back in the year 2016, has failed to start construction of the tower.

ii) The grace period of 180 days is only for those who could not complete the work which had already begun but had to be stopped because of the COVID-19 pandemic.

iii) The HREAT has plenary powers to pass appropriate orders, to ensure justice, in the peculiar facts and circumstances of the case. Though the provisions of the Code of Civil Procedure, 1908 (hereinafter referred to as “CPC”), are not strictly applicable, however, the principles enshrined in Order XLI Rule 22 and 33 CPC do enable the HREAT to do justice between the parties. There is no reason to take a view that the appellant will be entitled to exclusion of grace period while calculating the amount of interest in the facts of the present case.

8. Keeping in view the aforesaid facts, no ground is made out to interfere with the impugned order dated 01.12.2022 passed by the HREAT. Hence, the present appeal is dismissed.

9. The miscellaneous application(s) pending, if any, shall stand disposed of.

(Anil Kshetarpal)
Judge

December 16, 2022
“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No