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Neutral Citation:2023:PHHC:118760

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

**RERA-APPL-65-2020 (O&M)
Date of Decision: July 17, 2023**

Unisys Infosolutions Private Limited

...Appellant(s)

Versus

M/s Ultratech Township Developers
Private Limited

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present: Mr. APS Deol, Senior Advocate,
with Mr. Himmat Deol, Advocate,
and Mr. Gurfateh Singh Sandhu, Advocate,
for the appellant.

Mr. Madhur Pawar, Advocate,
for the respondent.

Mr. Kiran Pal Singh, AAG, Haryana.

MAHABIR SINGH SINDHU, J.

“The best investment on Earth is earth”

‘Louis Glickman’

Present appeal has been preferred under Section 58 of the Real Estate (Regulation & Development) Act, 2016 (for short, “the Act of 2016”) against the order dated 25.09.2019 passed by the Haryana Real Estate Regulatory Authority, Panchkula (for short, “the Authority”) as well as the order dated 29.09.2020 of the Haryana Real Estate Appellate Tribunal, Chandigarh (for short, “the Tribunal”).

2. Appellant applied for 3BHK unit i.e. Flat No.202, Prayag, Tower No.4, New World Residency, Karnal, under Construction Linked Payment Plan and filled up Provisional Application Form (for short, ‘PAF’) dated 20.09.2011(A-1), for total sale consideration of Rs.55,63,728/-. As per PAF, the payment schedule agreed between the parties was as under:-

“**PLAN-2 (CONSTRUCTION LINKED PLAN)**”

At the time of Booking	10%
Within 45 days of Booking	15%
On excavation	7.5% + 50% of EDC, IDC+PLC
On casting of raft	7.5% + 50% of EDC, IDC+PLC
On first Slab	7.5%
On second Slab	7.5%
On third Slab	7.5%
On fourth Slab	7.5%
On fifth Slab	7.0%
On sixth Slab	7.0%
On seventh Slab	6.0%
On eighth Slab	5.0%
At the time of offer of Possession	5.0% + Allied charges
Total	100%”

3. In terms of above schedule, the appellant made following payments for the Unit in question:-

Date of Payment	Amount of installment
20.09.2011	Rs.5,00,000/-
14.02.2012	Rs.6,57,323/-
31.03.2014	Rs.6,49,680/-
31.03.2014	Rs.6,10,444/-

01.09.2014	Rs.3,58,969/-
30.09.2014	Rs.3,58,969/-
21.04.2015	Rs.3,00,000/-
13.07.2015	Rs.2,00,000/-
20.10.2015	Rs.3,00,000/-
23.02.2016	Rs.3,00,000/-
07.09.2017	Rs.9,50,653/-
Total	Rs.51,86,038/-

4. On 21.04.2017 (A-2), the appellant received a letter vide which respondent raised a demand of Rs.25,66,749/- (Rs.8,71,723/- being principal and Rs.16,95,026/- as interest). In response thereto, the appellant sent a letter dated 24.04.2017 (A-3), requesting additional time in view of the fact that signing authority was out of station for a period of one month.

5. On 07.06.2017 (A-4), the appellant received another letter indicating update of the project, which also included an intimation to settle the outstanding dues before 30.06.2017. The above letter was followed by communication dated 07.08.2017 (A-5), as a final reminder for payment of Rs.25,64,456/-. In this letter, total outstanding amount was shown as Rs.8,71,723/-, while interest was mentioned as Rs.16,92,733/- (as opposed to Rs.16,95,026/- initially demanded in the letter dated 21.04.2017).

6. It is averred that appellant visited the office of respondent on 07.09.2017, and finally settled the matter; which included accrued interest upto that date and as a result thereof, Cheque No. 006529 dated 07.09.2017 (A-6) for an amount of Rs.9,50,653/- was handed over to the respondent. Additionally, parties agreed that an amount of

Rs.3,77,690/- (equivalent to 5% of the total sale consideration of Rs.55,63,728/-), would be paid by appellant at the time of possession.

7. On 18.06.2018 (A-7), the respondent offered possession of Unit in question, subject to payment of dues @ Rs.26,03,005/- [Rs.7,62,448/- (principal) + Rs.18,40,557/- (interest)]. In response thereto, the appellant objected vide letter dated 04.08.2018 (A-8), while pointing out certain discrepancies against the demand of respondent. Again, the respondent vide letter dated 08.08.2018 (A-9), cautioned for cancellation of the Unit and also said that appellant would be liable to pay compensation @ Rs.21,500/- per month.

8. The appellant vide letter dated 14.08.2018 (A-10), reiterated the final settlement dated 07.09.2017, already arrived at between the parties upon payment of Rs.9,50,653/-, excluding 5% due at the time of possession. The respondent vide letter 07.09.2018 (A-11), while ignoring the request of appellant, intimated that payment of Rs.9,50,653/- has been adjusted towards the principal amount and that appellant had added the words on Cheque "with interest" at their own, as there was no such consensus between the parties, on 07.09.2017.

9. Also transpires that respondent vide letters/notices dated 11.09.2018 (A-12), 10.10.2018 (A-13), and 01.01.2019 (A-14), demanded amount(s) of Rs.26,87,513/-, Rs.26,84,260/- and Rs.27,59,710/-, respectively from the appellant for the Unit in question, but stalemate continued.

10. Feeling aggrieved against the action/inaction of the respondent, a complaint dated 17.01.2019 (A-15) was filed by the appellant before the Authority, claiming following reliefs:-

“(i) This Hon'ble Authority may kindly be pleased to award compensation in favour of the applicant to be paid by the respondent to the tune of Rs. 20 Lakh/- i.e. for the period of delay of 52 months alongwith interest @ 18% per annum from February 2014 till realization.

(ii) This Hon'ble Authority may kindly be pleased to direct the respondent to deliver the possession of the apartment to the applicant upon receiving 5% of the payment of the total consideration or direct the respondent to refund the amount already deposited by the applicant alongwith interest at the rate of 18% p.a. from the dates of payments of installments till its realization.

(iii) This Hon'ble Authority may kindly be pleased to quash and set-aside any other measures and steps threatened to be taken by the Respondent qua the Applicant or the property in question.

(iv) Grant costs and reasonable compensation to the Applicant, as this Hon'ble Authority deems just and proper in the facts and circumstances of the case as per the cases already decided by this Hon'ble Authority.

(v) Grant such other and further reliefs and orders in favour of the Applicant and against the Respondent as this Hon'ble Authority would deem just and proper in the facts and circumstances of the

present case and as also would be warranted in equity.”

11. Upon notice, the respondent filed reply and opposed the complaint, *inter alia*, to the following effect:-

(i) That on the basis of application dated 24.07.2017, Occupation Certificate with respect to the Group Housing Colony admeasuring 6.356 Acres Project at Karnal [Tower T-2, T-3, T-4 & T-7 (EWS)] covered under Licence No.46 of 2011 has been issued by the Director General, Town and Country Planning, Haryana (DTCP) on 17.07.2018 (R-4); hence the project does not fall within the definition of an ‘Ongoing Project’. Reference was also made to Rule 2(o) of the Haryana Real Estate (Regulation and Development) Rules, 2017 (for short, ‘the Rules of 2017’) which came into effect on 28.07.2017 and Section 3 of the Act of 2016, to contend that project in question was outside the purview of the Act of 2016. However, in para 10, it was acknowledged that project is registered under the provisions of Act of 2016 vide registration No.248 of 2017 dated 26.09.2017, valid upto 31.07.2022 (R-5).

(ii) The delay in completion of the project was beyond its control and covered under “force majeure” clause of the PAF. Further submitted that Clause 6 of the PAF talks about 10% as earnest money, whereas, according to Clause 10, sum of 25% of the Basic Sale Price was required to be paid as earnest money at the time of executing the Builder Buyer Agreement.

(iii) The payments were made by the appellant on different dates after considerable delay and as such, interest was levied by the respondent as per agreed terms.

12. After hearing submissions of both sides and taking into consideration material available on record, the Authority vide order dated 25.09.2019 rejected the claim of appellant, while observing as under:-

“7. For the reasons discussed above, the Authority rejects the complainant's plea on the point that the respondent after receiving cheque of Rs.9,50,653/- had agreed to deliver him possession on receiving only 5% of the total sale consideration.

8. The net result of the above discussion is that the complainant is entitled to receive the possession on payment of balance dues and the respondent is duty bound to deliver him possession along with interest on the already paid amount due to delay in delivery of possession. The possession which was agreed to be delivered on 19.02.2014 was actually offered on 18.06.2018. The respondent at the time of offering the possession has not calculated the complainant's outstanding liability after adjusting the delay compensation payable from 19.02.2014 onwards. So, the Authority directs the respondent to send a fresh offer of possession to the complainant along with a detailed statement of all payable and receivable amounts. For preparing such statement of account, the respondent will calculate the interest chargeable from complainant as also the interest payable to the complainant for the delayed period @ 9% per annum. The amount of interest payable as delay compensation will be calculated from the agreed date of possession i.e. 19.02.2014 to the date of fresh offer of possession.

9. The complainant is directed to take possession of the purchased flat after paying the outstanding amount within 30 days of the fresh offer to be given by the respondent. He will be at liberty to file a fresh complaint in order to challenge the propriety and

illegality of any amount reflected in the statement, which according to him was legally not chargeable. However, such right of filing a fresh complaint will not initially save the complainant from discharging the entire liability reflected in the statement of the receivable and payable amounts. In case any of the amount shown in the statement of accounts supplied to the complainant is found unjustifiable by this Authority, the Authority will take a serious note of it against the respondent and will take necessary action in accordance with law”

13. After passing of the above order, the respondent issued a revised statement of account regarding Unit in question vide letter dated 02.11.2019 (A-18).

14. On the other hand, dissatisfied with the decision of Authority, the appellant preferred statutory appeal before learned Tribunal, but remained unsuccessful vide order dated 29.09.2020. For reference, the relevant part of aforesaid order is recapitulated as under:-

“7. We do not find any error or illegality in the aforesaid observations of the Ld. Authority. The appellant could not reveal the identification of the employee of the respondent/promoter who had received the cheque and signed the endorsement below the cheque. It is also not known as to what was the designation of the said official and whether he was authorised by the respondent/company to settle the accounts and to waive of the interest which had become due on delayed payments of instalments. To prove all these facts, the burden was upon the appellant but he has miserably failed to discharge his burden. The Ld. Authority has discussed in detail with respect to the authenticity of the endorsement under the photocopy of

the cheque available at page no.65 of the paper book and we have no reasons to differ with.

8. *The fact that there could be no lump sum settlement of payment of Rs.9,50,653/- + 5% of the basic sale price is further substantiated from the fact that the basic sale price of the unit was 55,63,728/-, out of that the appellant/allottee had paid Rs.42,35,385/-. The remainder comes to Rs.13,28,443/-. The 5% of the basic sale price was to be paid at the time of offering the possession. The 5% of the basic sale price comes to Rs.3,77,690/-. The remaining amount comes to Rs.9,50,653/-. It means no interest at all on delayed payment has been taken into consideration. Only the basic sale price has been mentioned in the endorsement at page no.67. This fact is not disputed that as per the agreement between the parties, the respondent/promoter was entitled for interest on delayed payment and the statutory dues as per the basic terms and conditions available at page 57. The respondent/promoter was also entitled to receive the compounded interest not less than 24% per annum on the amount of delayed payment but the Id. Authority has directed the respondent/promoter to charge the interest on delayed payment only @ 9% per annum instead of rate of interest mentioned in the agreement.*

9. *It is further pertinent to mention that the Id. Authority has given the liberty to the complainant to file the fresh complaint to challenge the inaccuracy and illegality of any amount reflected in the statement, which according to him was legally not chargeable. The respondent/promoter has issued the demand notice dated 02.11.2019 (Annexures A5-Colly at page no.145 of the paper book). As per the statement of accounts attached with the said notice, a demand of Rs.11,29,900/- has been raised. If the appellant feels that the said amount has been wrongly charged, the*

appellant can very well avail the remedy provided by the ld. Authority in the impugned order i.e. to file the fresh complaint to challenge these calculations.

10. With these observations, we do not find any merit in the present appeal and the same is hereby dismissed.”

15. Hence, the present appeal.

CONTENTIONS:-

16. ON BEHALF OF APPELLANT:

16.1 Learned Senior counsel contended that project in question was registered with the Authority on 26.09.2017 (R-5) and as such, being an ‘Ongoing Project’ within the meaning of Section 3, the same is governed under the Act of 2016. Reliance in this regard was placed on **M/s Newtech Promoters and Developers Private Limited Vs. State of UP and others, (2021) 9 SCR 909.**

16.2 Further contended that as per Clause 6 of the PAF, upon receiving 10% of the basic cost, the Builder Buyers Agreement was to be executed between the parties. Admittedly, out of total sale consideration of Rs.55,63,728/-, the appellant has already paid an amount of Rs.51,86,038/- (uptill 07.09.2017), but till date, no such agreement has been executed by the respondent; thus, there is a gross violation of Section 13 of the Act of 2016.

16.3 Still further contended that possession of Unit was to be delivered within 30 months from the date of signing the PAF, i.e. 20.09.2011; however, the Occupation Certificate from the competent authority was obtained by the respondent on 17.07.2018 and as such, delay of 07 years is quite evident on their part.

16.4 Also contended that appellant had chosen Construction Linked Payment Plan, but the same did not align with the Schedule agreed between the parties, and despite that, respondent demanded payments based on absolutely incorrect construction stage(s).

16.5 Learned Senior counsel again contended that the Authority as well as learned Tribunal have grossly erred while not accepting the prayer of appellant for return of the amount already paid as well as the compensation to the tune of Rs.20,00,000/- for a delay of 52 months along with interest at the rate of 18% per annum from February, 2014, till its realization and/or to direct the respondent to deliver the possession of Unit in question on receiving 5% of the total sale consideration. Thus, in view of the provisions of Sections 18, 19 & 34 of the Act of 2016, the impugned orders are not legally sustainable.

16.6 Further contended that while passing the impugned order dated 25.09.2019, the Authority assumed the role of a forensic expert, thereby conducting an intricate analysis of the handwriting, i.e. “with interest” on Cheque No.006529 dated 07.09.2017, for an amount of Rs.9,50,653/-. Since as per Section 35 of the Act of 2016, entrusts the Authority with powers of a Civil Court; therefore, instead of recording its own conclusion regarding the above disputed endorsement, the same ought to have been sent for an expert opinion.

16.7 Lastly, contended that act and conduct of the respondent is very much evident from the letters dated 21.04.2017 (A-2) & 07.08.2017 (A-5), wherein the principal amount remained unchanged;

but, the interest component was varied from Rs.16,95,026/- to Rs.16,92,733/-; thus the whole calculation is without any basis.

17. ON BEHALF OF RESPONDENT:

17.1 Learned counsel for the respondent contended that an application for grant of Occupation Certificate was made on 24.07.2017, i.e. prior to coming into force the Rules of 2017, (rules came into force w.e.f. 28.07.2017); thus, in view of Rule 2(o) thereof, the project in question does not fall within the definition of “Ongoing Project”; nor the same is governed under the Act of 2016.

17.2 Further contended that appellant paid installments after considerable delay and as such, rightly held liable to pay interest as per terms and conditions stipulated under the PAF dated 20.09.2011.

17.3 Also contended that mainly, the claim has been made by appellant for compensation on account of delay and as such, the Authority does not have any jurisdiction to entertain the complaint; rather at best, the appellant may, if so advised, approach the Adjudicating Officer under Section 71 of the Act of 2016.

17.4 Again contended that outstanding amount of Rs.26,03,005/- was rightly calculated and moreover, the respondent never agreed to settle the matter finally for an amount of Rs.9,50,653/-; rather the same was paid by the appellant only as a part-payment towards the principal outstanding.

17.5 Lastly submitted that bare perusal of the alleged endorsement on the cheque in question i.e. “with interest” reveals that it

was fabricated by the appellant as merely self-serving and no such commitment was ever made by the respondent.

18. Heard learned counsel for the parties and gone through the records.

19. The points for consideration of this Court would be as under:-

- (I) Whether in view of the facts and circumstances of the present case, project in question can be termed as an 'Ongoing Project' under the Act of 2016?
- (II) Whether the impugned orders dated 25.09.2019 and 29.09.2020, passed by the Authority as well as learned Tribunal, respectively, are legally sustainable?

Point-I

20. Before proceeding further, it would be appropriate to recapitulate the undisputed facts of the case and which are as under:-

DTCP Licence	Department of Town and Country Planning, Haryana issued Licence No.46 of 2011 in favour of the respondent for setting up a Group Housing Colony over an area measuring 6.356 acres in the revenue estate of village Budda Khera & Phoosgarh, Sector 32, Karnal and which was valid upto 22.05.2015.	23.05.2011
Name and location of the project	Group Housing Colony (New World Residency), Sector 32, adjoining Hotel Noor Mahal, Karnal, Haryana, to be developed by M/s Ultratech Township Developers Private Limited.	

Booking	Appellant booked a Unit with respondent after paying Rs.5,00,000/- and filled-up PAF.	20.09.2011
Unit No.	202, T-4 – PRAYAG (3BHK)	
Payment plan	Construction Linked Plan (Plan-2)	
Total sale consideration	Rs.55,63,728/-	
Amount paid as on 07.09.2017	Rs.51,86,038/-	
Penalty clause as per Provisional application form (PAF)	24. The Company shall hand over the Unit to the applicant for his/her occupation and use and subject to the applicant having complied with all the terms and conditions of the Builder Buyers Agreement in the event of his/her failure to take over and/or occupy and use the Unit provisional and/or finally allotted within thirty (30) days from the date of intimation in writing by the company, then the same shall be at his/her risk and cost and the applicant shall be liable to pay the company holding charge @ Rs.5/- per sq. ft. of the area per month for the entire period of such delay. If the company fails to allot the unit within 30 months from the date of execution of Builder Buyers Agreement as authorized then the company shall pay to the applicant compensation @ Rs.5/- per sq. ft. of the area per month for the period of such delay. The adjustment of holding charges or compensation shall be done at the time of conveyancing of the Unit and not	20.09.2011

	earlier. The holding charges shall be distinct charge in addition to maintenance charges, and not related to any other charges as provided in this application and Builder Buyers Agreement.	
Possession	As per PAF, the possession was to be delivered by 14.02.2014.	
Application for grant of occupation certificate	24.07.2017 (R-3)	
Renewal of Licence No.46 of 2011	Renewed by DTCP on 27.07.2017. (upto23.05.2019).	
Application for RERA Registration	Application for registration under the Act of 2016.	28.07.2017
RERA Registration	Regd. No.248-2017 of 26.09.2017 (R-5) for registration of Real Estate Project area 6.356 Acres Group Housing Colony situated in Village Budda Khera & Phoosgarh, Sec-32, Karnal, Haryana by M/s Ultratech Township Developers Pvt. Ltd. under RERA Act, 2016 and HRERA Rules, 2017.	26.09.2017
Occupation Certificate issued by the DTCP	Occupation certificate issued in respect of Tower-T2, T3, T4, T7 (EWS) & LT Panel Room (R-4).	17.07.2018
Date of execution of the Flat Buyer Agreement	No Flat Buyer Agreement has been executed between the parties till date.	

21. Paper-book reveals that on the basis of an application made by the respondent, DTCP issued Licence No.46 of 2011 dated 23.05.2011, for setting-up a Group Housing Colony in the revenue

estate of village Budda Khera & Phoosgarh, Sector 32, Karnal and the same was valid upto 22.05.2015. It is also an admitted fact that appellant applied for allotment of a 3BHK unit i.e. Flat No.202, Prayag, Tower No.4, New World Residency, Karnal, through Construction Linked Payment Plan and filled up the PAF on 20.09.2011 for total sale consideration of Rs.55,63,728/-. Concededly, till date, the appellant has paid an amount of Rs.51,86,038/- but no Builder Buyers Agreement has been executed between the parties regarding the Unit in question.

22. Learned State counsel, in pursuance of the order dated 16.05.2023 passed by this Court, has produced the original records pertaining to project in question from the quarter concerned and perusal of the same reveal that application for 'permission to occupy' was made by the respondent to the DTCP on 24.07.2017 and relevant part of the same reads as under:-

"FORM BR-IV (B)

(See code 25)

***For Building other than Residential and Commercial Buildings
less than 15 metres height
Application for permission to occupy***

From

M/s Ultratech Township Developers PVT. LTD.

ADJOINING NOOR MAHEL HOTEL SEC-32 KARNAL

(NEW WORLD ROYAL RESIDENCY)

To

Director General

Town and Country Planning

Chandigarh, Haryana

Sir,

***We hereby give you notice that the Group Housing Colony in
an area measuring 6.356 acres, Project at Karnal, Sector 32,
Towers T2, T3, T4 & T7 (EWS) sanctioned with Memo No. (ZP-***

772/SD(BS)-2012/9960 dated 08.06.2012) has been completed on 09.05.2017 in all respect according to the sanctioned plans and the structural design made for the same and the suggested modifications have been carried out.

Description of Building : Group Housing developed under (License No.46 of 2011 dated 23.05.2011)
 Block/Building No. : Tower T2, T3, T4 & T7 (EWS)
 City/Town : M/s. Ultratech Township Developers Pvt. Ltd.
 Correspondence Address of Owner : ADJOINING NOOR MAHEL HOTEL
 SEC-32 KARNAL AND H.NO.1162 SEC-13
 KARNAL

1. to 4.

Dated 24-7-2017

Signature of Applicant”

23. Records also reveal that after 04 (four) days, i.e. on 28.07.2017, the appellant applied for registration of project in question before the Authority under the Act of 2016. For reference, relevant part(s) of the application form as well as its enclosures are recapitulated as under:-

“ULTRATECH TOWNSHIP DEVELOPERS PVT. LTD.

Ref: UTD/HRERA/17/87

Dated 28.07.2017

FORM ‘REP-I’

[See rule 3(1)]

APPLICATION FOR REGISTRATION OF PROJECT

To

Haryana Real Estate Regulatory Authority,

Panchkula

Sir,

We hereby apply for the grant of registration of our 6.356 acres land use group housing colony to be set up at Village Budda Khera & Phoosgarh, Sector-32, Karnal-132001, (Haryana). The project is duly licenced by the Department of Town and Country Planning, Haryana vide **Licence no.46 of 2011 dated 23.05.2011.**

1. The requisite particulars are as under:-

(i) Status of the Applicant [individual / company / proprietorship firm / societies / partnership firm / competent authority etc.]:-

(ii) In case of Company:-

S.No.	Item	Details
(a)	Name	Ultratech Township Developers Pvt. Ltd. Company incorporated under the Companies Act, 1956 and existing under the Companies Act, 2016
(b)	Address	Sector-32, Adjoining Hotel Noor Mahal, Karnal-132001, Haryana
(c)	Copy of Registration Certificate	Certificate of Incorporation – As per Annexure-1 Memorandum & Articles of Association- As per Annexure -2
(d)	Main objects	As per Annexure -2
(e)	Contact Details	
(f)	Chairman details	

(iii) to (v)

(vi) Brief details of the projects launched by the Promoter in the last five years, whether already completed or being developed, as the case may be, including the current status of the said projects, any delay in its completion, details of cases pending, details of type of land and payments pending etc.: **As per Annexure – 6**

(vii) to (ix)

2.

3. We enclose the following additional documents and information regarding ongoing projects, as required under **rule 4**, and under other provisions of the Act or the rules and regulations made thereunder, namely.

(i) Estimated Cost.

(ii) Total Receipt & Expenditure Details of Project as on 31.3.2017.

(iii) **Status of Work.**

(iv) Allottees Possession date details.

4.

Dated: 28.07.2017

Place: Karnal

Yours faithfully,

For Ultratech Township Developers Pvt. Ltd.

28.07.2017”

“Annexure-6
Details of the projects launched by the Promoter in the last five years

S. No.	Name of Company	Project Name	Location	Type of Project	Licence No.	Project Start Date	Original time period disclosed to allottee for completion of Work	Proposed date of Completion	Current Progress (% Completion)	Land Area	Remarks
1	Ultratech Township Developers Pvt. Ltd.	New World Residential	Sector-32, Adjoining Hotel Noor Mahal, Karnal – 132001	Residential Flats Group Housing	46 of 2011 dated 23.05.2011	Sep-12	As per Annexure No.	Phase -I Three nos. Towers to be completed by Dec 2017	90%	6.356 Acres Approx	Project already developed NIL

Rule 4 Point 3 (iii)
ULTRATECH TOWNSHIP DEVELOPERS PVT LTD

Status of Project				
Phase-I				
S.No	Tower No	Present Status	Original time period disclosed to allottee for completion of work	Proposed date of Completion
1	Tower-2	* Structure work completed	As per Annexure No. Attached	Dec, 31 2017
		* Plastering & flooring completed		
		*Finishing work in progress		
2	Tower-3	* Structure work completed	As per Annexure No. Attached	Dec, 31 2017
		* Plastering & flooring completed		
		*Finishing work in progress		
3	Tower-4	* Structure work completed	As per Annexure No. Attached	Dec, 31 2017
		* Plastering & flooring completed		
		*Finishing work in progress		
4 to 9	...	...	...	...

23.1 From perusal of the above extract(s), it is quite evident that respondent had furnished contradictory information before the DTCP while applying for occupation certificate viz-a-viz seeking registration of project in question before the Authority. In the application for ‘permission to occupy’ dated 24.07.2017, the respondent

claimed that *“the Group Housing Colony in an area measuring 6.356 acres, Project at Karnal, Sector 32, Towers T2, T3, T4 & T7 (EWS) sanctioned with Memo No. (ZP- 772/SD(BS)-2012/9960 dated 08.06.2012) has been completed on 09.05.2017 in all respect”*. On the other hand, while submitting application dated 28.07.2017 before the Authority for registration of the project under the Act of 2016, the respondent declared the date for completion of the project as *“Dec, 31 2017”*.

24. Although, learned counsel for the respondent raised a plea that in view of the application dated 24.07.2017 (for seeking Occupation Certificate), coupled with the definition of ‘Ongoing Project’ stipulated under Rule 2(o) of the Rules of 2017, the project in question cannot be termed as an ‘Ongoing Project’; but the same is not acceptable for the following reasons:-

- (i) As already noticed, the respondent while making an application for registration under the Act of 2016, claimed that project in question is an ‘Ongoing Project’ and the same would be completed by December 31, 2017.
- (ii) Mere submission of an application dated 24.07.2017 would be of no help to the respondent when ‘Occupation Certificate’ was granted by the DTCP only on 17.07.2018.
- (iii) Moreover, the phrase ‘Ongoing Project’ prescribed under Rule 2(o) of the Rules of 2017 cannot be read in derogation of the definition contained under Section 3 of the Act of 2016, wherein, the first proviso thereof clearly says *“that projects that are ongoing on the date of commencement of this Act*

and for which the completion certificate has not been issued, the promoter shall make an application to the authority for registration of the said project within a period of three months from the date of commencement of this Act”.

- (iv) Sections 3 to 19, 40, 59 to 70 and 79 to 80 of the Act of 2016 came into force w.e.f. 01.05.2017 and till that date, the respondent had not been granted any ‘Completion Certificate’ by the competent authority for project in question.
- (v) Concededly, an application for registration under the Act of 2016 was made by respondent to the Authority on 28.07.2017 and on the basis thereof, registration certificate to the respondent for the project in question was granted on 26.09.2017.
- (vi) Above all, the Hon’ble Supreme Court while dealing with the scope of Section 3 of the Act of 2016, in para 37 of **M/s Newtech Promoters (supra)** opined as under:-

“Looking to the scheme of Act 2016 and Section 3 in particular of which a detailed discussion has been made, all “ongoing projects” that commence prior to the Act and in respect to which completion certificate has not been issued are covered under the Act. It manifests that the legislative intent is to make the Act applicable not only to the projects which were yet to commence after the Act became operational but also to bring under its fold the ongoing projects and to protect from its inception the inter se rights of the stake holders, including allottees/home buyers, promoters and real estate agents while imposing certain duties and responsibilities on

each of them and to regulate, administer and supervise the unregulated real estate sector within the fold of the real estate authority.”

25. In view of the above discussion, there is no hesitation to conclude that project in question was an ‘Ongoing Project’; hence, governed under the Act of 2016. Consequently, point No.(I) is decided accordingly.

Point-II

26. Before delving further on this Point, it would be apposite to refer to Clauses 6 & 24 of the basic Terms and Conditions of “New World Residency” (PAF) and the same are as under:-

“6. The Company and the applicant hereby agree that the earnest money for the purpose of this application and Builder Buyers Agreement shall be 10% of the basic cost of the unit. In case of non-fulfillment of the terms and conditions herein contained and those of the Builder Buyers Agreement as also in the event of failure by the applicant to sign and return to the company the Builder Buyers Agreement within thirty (30) days from the date of its dispatch by the Company.

24. The Company shall hand over the Unit to the applicant for his/her occupation and use and subject to the applicant having complied with all the terms and conditions of the Builder Buyers Agreement in the event of his/her failure to take over and/or occupy and use the Unit provisional and/or finally allotted within thirty (30) days from the date of intimation in writing by the company, then the same shall be at his/her risk and cost and the applicant shall be liable to pay to the company

holding charge @ Rs.5/- per sq. ft. of the area per month for the entire period of such delay. If the company fails to allot the unit within 30 months from the date of execution of Builder Buyers Agreement as authorized then the company shall pay to the applicant compensation @ Rs.5/- per sq. ft. of the area per month for the period of such delay. The adjustment of holding charges or compensation shall be done at the time of conveyancing of the Unit and not earlier. The holding charges shall be distinct charge in addition to maintenance charges, and not related to any other charges as provided in this application and Builder Buyers Agreement.”

27. Further discernible from records that respondent was granted registration certificate under the Act of 2016, by the Authority on 26.09.2017, subject to following terms and conditions:-

***“HARYANA REAL ESTATE REGULATORY AUTHORITY,
HUDA COMPLEX, SECTOR- 6, PANCHKULA-134109***

***FORM ‘REP-III’
[See rule 5(1)]***

***REGISTRATION CERTIFICATE OF PROJECT
(Regd. No.248 of 2017 dated 26.09.2017***

To

*Ultratech Township Developers Pvt. Ltd.
Sector-32, Adjoining Hotel Noor Mahal,
Karnal 132001*

Memo No.HRERA-289/2017/1200 Dated 26.09.2017

Subject: Registration of Real Estate Project Area 6.356 Acres Group Housing Colony situated in Village Budda Khera & Phoosgarh, Sec-32, Karnal, Haryana by Ultratech Township Developers Pvt. Ltd. under RERA Act, 2016 and HRERA Rules, 2017

Ref: Your application dated 31.07.2017 and 19.09.2017

Your request for registration of Area 6.356 Acres Group Housing Colony situated in Village Budda Khera & Phoosgarh, Sec-32, Karnal, Haryana with regard to License no.46 of 2011 dated

23.05.2011 issued by the Director, Town and Country Planning Department, Haryana, has been examined vis-à-vis the provisions of the Real Estate (Regulation and Development) Act, 2016 and HRERA Rules, 2017 and accordingly a registration certificate is herewith issued with following terms and conditions:-

(i) The Promoter shall comply with the provisions of the Act and the rules and regulations made there under;

(ii)

(iii) The registration shall be valid for a period commencing from 26.09.2017 to 31.07.2022;

(iv) to (vii)

(viii) The Promoter shall not accept a sum more than ten percent of the cost of the apartment, plot or building as the case may be, as an advance payment or an application fee, from a person without first entering into a written agreement for sale with such person and register the said agreement for sale, under any law for the time being in force;

(ix)

(x) The promoter shall return the amount with interest in case, allottee wishes to withdraw from the project due to discontinuance of promoter's business or promoter fails to give possession of the apartment/plot in accordance with terms and conditions of agreement for sale in terms of sub-section(4) of Section-19. The promoter shall return the entire amount with interest as well as the compensation payable. The rate of interest payable by the promoter to the allottee or by the allottee to the promoter, as the case may be, shall be the State Bank of India highest marginal cost of lending rate plus two percent. The promoter shall adhere the provisions of The Real Estate (Regulation and Development) Act, 2016 and its Rules 2017 issued by the State Government.

(xi) to (xiv)

Executive Director
HARYANA REAL ESTATE REGULATORY AUTHORITY"

28. Here, it would be pertinent to make a reference of Section 13 of the Act of 2016, and which reads as under:-

“13. No deposit or advance to be taken by promoter without first entering into agreement for sale.—(1) A promoter shall not accept a sum more than ten percent of the cost of the apartment, plot, or building as the case may be, as an advance payment or an application fee, from a person without first entering into a written agreement for sale with such person and register the said agreement for sale, under any law for the time being in force.

(2) The agreement for sale referred to in subsection (1) shall be in such form as may be prescribed and shall specify the particulars of development of the project including the construction of building and apartments, along with specifications and internal development works and external development works, the dates and the manner by which payments towards the cost of the apartment, plot or building, as the case may be, are to be made by the allottees and the date on which the possession of the apartment, plot or building is to be handed over, the rates of interest payable by the promoter to the allottee and the allottee to the promoter in case of default, and such other particulars, as may be prescribed.”

From bare reading of Section 13(1) (*ibid*), it is more than clear that “a promoter shall not accept a sum more than ten percent of the cost of the apartment, plot, or building as the case may be, as an advance payment or an application fee, from a person without first

entering into a written agreement for sale with such person and register the said agreement for sale, under any law for the time being in force”.

Still further, Section 13(2) talks about the form of agreement, development of project, construction of building or apartment as well as the manner of payment to be made by the allottee and the date of possession, etc. but respondent did not adhere to the same.

29. *A Fortiori*, in the present case, it is duly established that out of total sale consideration of Rs.55,63,728/-, the appellant has already paid more than 90% of the cost of the Unit in question, i.e. Rs.51,86,038/-. However, till date the respondent has even failed to execute the Builder Buyers Agreement; thus, there is a complete negation of the provisions of Section 13 (*ibid*).

30. Apart above, it is discernible that appellant had laid claim before the Authority to the following effect:-

- (i) Compensation to the tune of Rs.20,00,000/- on account of delay of 52 months along with interest @ 18% per annum from February, 2014 till its realisation.
- (ii) To direct the respondent to deliver the possession of Unit in question upon receiving 5% of the total consideration; Or
To direct the respondent to refund the amount already deposited along with interest @ 18% per annum, from the date of payment till its realization.
- (iii) To quash and set aside any measures/steps threatened by the respondent qua Unit in question.
- (iv) To grant cost and reasonable compensation in the facts & circumstances of the case.

- (v) To grant any other relief and/or pass such orders in favour of the appellant and against respondent.

31. Still further, it would be noteworthy to recapitulate the relevant part of Section 18 of the Act of 2016, and which read as under:-

“Section 18 - Return of amount and compensation

(1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building,—

(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or

(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,

he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.

(2)

(3) If the promoter fails to discharge any other obligations imposed on him under this Act or the rules or regulations made thereunder or in accordance with the terms and conditions of the agreement for sale, he

shall be liable to pay such compensation to the allottees, in the manner as provided under this Act.”

A bare perusal of the above legal provisions clearly reveal that if the promoter failed to complete or is unable to give possession of an apartment etc., he shall be liable on demand to the allottee, the amount received with interest at such rate as may be prescribed, including compensation.

32. Again, Section 19 of the Act of 2016, *inter alia*, lays down that if the promoter fails to comply or is unable to give possession of the apartment, plot or building as the case may be in accordance with the terms of agreement for sale, the allottee shall be entitled to claim the refund of amount paid, along with interest at such rate as may be prescribed and compensation provided under the act. For reference, Section 19(4) reads as under :-

“19. Rights and duties of allottees.—(4) The allottee shall be entitled to claim the refund of amount paid along with interest at such rate as may be prescribed and compensation in the manner as provided under this Act, from the promoter, if the promoter fails to comply or is unable to give possession of the apartment, plot or building, as the case may be, in accordance with the terms of agreement for sale or due to discontinuance of his business as a developer on account of suspension or revocation of his registration under the provisions of this Act or the rules or regulations made thereunder.”

33. Moreover, an identical issue has already been decided by Hon'ble Supreme Court [**M/s. Newtech Promoters (supra)**], wherein, it was held that regulatory authority has the power to examine and determine the complaint as regards refund of the amount and interest thereon and/or interest for delayed delivery of possession. For reference, para 86 of the judgment is extracted hereunder:-

“From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like ‘refund’, ‘interest’, ‘penalty’ and ‘compensation’, a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. If the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016.”

34. Although, respondent opposed the prayer of appellant emphatically on the premise that Authority did not have jurisdiction to entertain the complaint for the relief claimed and even suggested that appellant may avail remedy before the Adjudicating Officer, under Section 71 of the Act of 2016, if so advised; but, in view of the discussion made hereinabove, the contention has no force in the eyes of law, hence rejected.

35. Above all, Section 34 the Act of 2016 deals with the function of the Authority and which reads as under:-

“34. Functions of Authority.— *The functions of the Authority shall include-*

(a) *to register and regulate real estate projects and real estate agents registered under this Act;*

(b) to (e)

(f) *to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder;*

(g) *to ensure compliance of its regulations or orders or directions made in exercise of its powers under this Act;*

(h) *to perform such other functions as may be entrusted to the Authority by the appropriate Government as may be necessary to carry out the provisions of this Act.”*

36. Legal provisions extracted above, *inter alia* mandate the Authority to ensure compliance of the Act of 2016, as well as rules & regulations framed thereunder. The Authority so established is a quasi

judicial body, empowered to enforce the legal provisions governing the new as well as ongoing project(s). The Authority is a statutory body vested with the powers of Registration, Regulation and Resolution between the Builder-Buyers. Same is the position in present case; wherein, the project in question, registered with the Authority, is found to be an ongoing project; hence governed under the Act of 2016.

Unfortunately, the Authority, while deciding the complaint, neither adverted to the point in controversy of ‘Ongoing Project’; nor it examined the consequences for non-execution of the Builder Buyers Agreement between the parties. Even learned Tribunal also did not take into consideration this aspect of the matter; rather miserably failed to discharge its duties under the Act of 2016, as well as rules framed thereunder.

37. In view of the above discussion, there is no hesitation to hold that the Authority as well as learned Tribunal failed to address the core issues and passed the impugned orders in slipshod manner(s); hence the same are legally unsustainable.

38. As a result thereof, there is no option, except to allow the appeal.

39. Consequently, the appeal is allowed; both the impugned orders, dated 25.09.2019 and 29.09.2020, passed by the Authority as well as learned Tribunal, respectively, are hereby set aside.

40. The matter is remanded back to the Authority with the directions to re-examine the same and pass fresh order in accordance with law, expeditiously.

41. Pending application(s), if any, shall stand disposed off.

July 17, 2023
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(MAHABIR SINGH SINDHU)
JUDGE

Whether speaking / reasoned :	Yes	No
Whether Reportable :	Yes	No