BPTP Ltd.
Vs.
Dharmender Phogat
CM Nos.406 to 408 & 517, 1283 of 2024
In Appeal No.198 of 2024

Present: Mr. Hemant Saini, Advocate, along with
Mr. Himanshu Monga, Advocate,
Ms. Neha Singh, Advocate,
for the appellant.

Mr. Arun Sharma, Advocate
for the appellant.

CM No. 1283 of 2024

It appears that complainants (respondents herein) applied for a flat in a project of the appellant-promoter known as "BPTP Park Generations" situated in Sector 37-D, Gurugram. Both the complainants booked a 3BHK flat (Flat No.T5-103) measuring 1470 square feet in the said project. As per them, they paid booking amount of Rs.5,00,000/- against the total consideration of Rs.67,67,104/-. On 14.11.2011, another demand of Rs.5,73,396/- was raised by the promoter from them. Complainants promptly paid the amount on 25.11.2011 vide cheque No.082090 drawn in Oriental Bank of Commerce. Likewise of payment of other amounts were made by them in due course. A home loan of Rs.45,00,000/- was raised by the complainants from State Bank of India (SBI) against the said flat.

2. The complainants state that possession was not handed over to them well in time. Thus, they had to approach the Authority at Gurugram for seeking possession and Delay Possession Charges (DPC). Their plea was accepted by the Authority and decree in the following terms was passed:-

> *"52. After taking into consideration all the material facts as adduced and produced by both the parties, the authority exercising powers vested in it under*

section 37 of the Real Estate (Regulation And Development) Act, 2016 hereby issues the following directions to the parties in the interest of justice and fair play:

i. The respondent is directed to pay delay interest at the prescribed rate of 10.65% per annum on the amount deposited by the complainants with the promoter from the due date of possession i.e. 29.05.2016 till offer of possession.

ii. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.

iii. The respondent is directed not to charge anything from the complainant which is not the part of the flat buyer's agreement.

iv. The arrears of interest so accrued @ 10.65% per annum so far shall be paid to the complainants within 90 days from the date of this order and thereafter monthly payment of interest till offer of possession shall be paid before 10th of subsequent month."

3. Pursuant to the aforesaid order, complainants preferred Execution Petition before the Adjudicating Officer at Gurugram. After considering the pleas, the Adjudicating Officer passed an order dated 03.08.2023, relevant part thereof reads as under:-

"It is not in dispute that the amount of interest to be paid by JD, was more than outstanding dues against DH. Even, if same were due against the DH. JD was bound to hand over possession of subject unit without insisting on payment of such amount by the DH. Same (JD) could pay amount of interest, after deducting the amount of outstanding dues, even as per its own calculation. Not to hand over possession on said reason, was not inconsonance with order under execution.

Considering all this, offer of the possession even if made by the JD, was not a valid offer of the *possession. Same is thus liable to pay interest till actual handing over of the possession or valid offer of possession."*

4. Appeal No.833 of 2022 was filed against the said order, which was dismissed.

5. It appears, that thereafter, appellant filed an application for recalling of the order dated 03.08.2023. The said application was dismissed vide order dated 06.03.2024. Relevant part thereof reads as under:-

> *"On the basis of above discussion, application of JD is thus dismissed.*
>
> *For same reasons, requests of DH to recall order dated 02.02.2024, through which recovery of decretal amount was stayed is allowed. Let it be clarified to the collector that there is no stay on the recovery of decretal amount, now.*
>
> *Two cheques total amounting Rs.3,17,718/- are paid today to the DH. This amount be deducted from decretal amount.*
>
> *Let a copy of this order be sent to the collector concerned for his information. Another copy be provided to DH, to be served upon the collector."*

6. At this stage, Mr. Saini submits that at the initial stage three accounts of the appellant-BPTP Ltd. were frozen. However, liberty was given by this Appellate Tribunal, on 10.07.2023 to the court below to decide the question of de-frozing of the accounts.

7. The Adjudicating Officer thereafter recorded statement of the appellant in order dated 05.07.2023 and directed de-freezing of two accounts. However, the third bank account i.e. Account No.252500003701 (Indusind Bank, Barakhamba road, New Delhi) was not

de-frozen. Relevant part of the order reproduced hereunder:

> *"So far as attachment of three bank accounts of JD through said order is concerned, according to learned counsel for JD, two of same were not belonging to her client (JD) and this forum (AO) vide order dated 21.11.2022, has already allowed to de-freeze these accounts. In her opinion, present application has become infructuous. She has no objection in attachment of third account as attached through said order.*
>
> *Considering all this, application under consideration is dismissed. Let information in this regard be given to Appellate Tribunal, through its registrar.*
>
> *Learned counsel for DH requests for adjournment to give fresh calculation of amount due against JD. Be filed till next date.*
>
> *As per counsel for DH, his client is ready to take possession, but JD is not ready to hand over the same. Learned counsel for JD did not refute this plea, rather simply stated that this is not a decree for possession. Although according to her, a letter offering possession has already been sent to DH by client(JD)*
>
> *To come on 03.08.2023 for further proceedings."*

8. Learned counsel for the appellant submits that third account, which is subject matter of this application, was not de-freezed in view of that "no objection" given by counsel for the appellant without instructions. He submits that he may be allowed to move a fresh application before the Adjudicating Officer along with appropriate affidavit seeking de-freezing of the third account.

9. Liberty as prayed for is granted. CM No. 1283 of 2024 is hereby allowed.

10. In case, such application is moved within ten days from today, the Adjudicating Officer shall endeavour to

decide the same expeditiously, in any case, not later than one month.

11. List on 07.01.2025.

12. Interim order dated 25.04.2024 to continue till the next date of hearing.

Justice Rajan Gupta
Chairman
Haryana Real Estate Appellate Tribunal

Rakesh Manocha
Member (Technical)

22.10.2024
Manoj Rana