

BPTP Ltd.
Vs.
Dharmender Phogat
CM No.406, 407 and 408 of 2024
In Appeal No.198 of 2024

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

Challenge in the present appeal is to order dated 06.03.2024 passed by the Adjudicating Officer, H-RERA, Gurugram, pursuant to order dated 17.5.2019 passed by the Authority at Gurugram. Operative part of the order reads as under:

“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.

2. It appears that pursuant to the aforesaid order, respondent-allottee (Dharmender Phogat) preferred Execution Petition before the Adjudicating Officer. Relevant part of the order dated 03.08.2023 is reproduced hereunder:-

“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.”

3. As per Mr. Saini, thereafter appellant filed an application for recalling order dated 06.3.2024, same was dismissed with the following observations.

“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.”

4. As per learned counsel, the Executing Court travelled beyond the decree passed by the Authority. Pursuant to the decree, cheques for a total amount of Rs. 11,79,574/- were sent to the allottee as Delay Possession Charges (DPC), which were encashed by him. Thereafter, he even took the possession of the unit on 06.03.2024. He submits that in such

circumstances, proceedings now pending before the Assistant Collector, Grade-II, Kadipur, Gurugram, wherein auction of the property is slated to be held on 26.04.2024, is not only unjustified but illegal. He has produced a document to show that auction is slated for 26.04.2024. Document is taken on record.

5. At the outset, a query was put to Mr. Saini, learned counsel for the appellant how the appeal can be entertained in the absence of the pre-deposit. He submits that he has moved an application in this regard. He states that he is ready to submit either of the DDs depending on calculation made by the Registry. He has removed all other objections as well.

6. In view of the prayer made in the application and the amount calculated by the Registry on 23.04.2024, demand draft no.392519 dated 24.04.2024 for an amount of Rs.24,58,266/ be accepted at this stage. Another demand draft no. 392514 dated 23.04.2024 for an amount of Rs.53,50,456/- may be kept in safe custody by the appellant till clarification is received regarding actual payable amount of pre-deposit.

7. Mr. Saini also makes a statement that he has not posed a challenge to impugned order (in the nature of decree passed by the Authority on 17.05.2019). In view of same, he submits that there is no delay in filing the appeal. However, notice of CM No. 407 of 2024 is issued to enable the respondent to reply if necessary.

8. Appeal be registered.

9. Issue notice to the respondent for 29.05.2024.

10. Process be issued for this purpose.

11. Further proceedings pursuant to orders dated 03.08.2023 and 06.03.2024 (Annexures A-1 & A-2) passed by the Adjudicating Officer be kept in abeyance till the next date of hearing.

Justice Rajan Gupta
Chairman
Haryana Real Estate Appellate Tribunal

25.04.2024
Manoj Rana