

**BEFORE THE HARYANA REAL ESTATE APPELLATE
TRIBUNAL**

Appeal No. 418 of 2021
Date of Decision: 15.01.2024

M/s Cosmos Infra Engineering India Pvt. Ltd. Regd. Office at 4,
Battery Lane, Rajpur Road, Civil Lines, New Delhi.

Appellant

Versus

Abhinandan Kohli, Power of Attorney Holder of Jitender Kohli &
Suman Kohli, House No. 343, Dewan Colony, Karnal, Rurtal Part-
1, Karnal, Haryana-732001.

Respondents

CORAM:

**Justice Rajan Gupta
Anil Kumar Gupta**

**Chairman
Member (Technical)**

Present:

Mr. Rishab Bajaj, Advocate,
for the appellant.

Mr. Narender Pal Bhardwaj, Advocate,
for the respondent.

ORDER:

Rajan Gupta, Chairman (Oral):

Allottees applied for a unit in a project namely
“Cosmos Express 99” situated in Gurugram. The project was in
the nature of a Group Housing Complex. It got a RERA Registration
No. 62 of 2019. Allottees were allotted a plot and due date of
delivery was stated to be on 27.06.2017. As per the complainants
(respondents herein), there was delay of three years, four months
and twenty-two days in handing over the possession of the plot.
By that time, he had remitted an amount of Rs.67,96,953/- to the
promoter. Due to the delay in handing over the possession, the
complainants were constrained to file a complaint before the

Authority at Gurugram in the year 2019. They inter alia prayed for grant of possession and Delay Possession Charges (DPC).

2. The complaint was allowed vide order dated 18.11.2020. Operative part of the impugned order reads as under:

“i The respondent is directed to pay the interest at the prescribed rate i.e. 9.30% per annum for every month of delay on the amount paid by the complainant from due date of possession i.e. 27.06.2017 till the offer of possession. The arrears of interest accrued till date of decision shall be paid to the complainant within a period of 90 days from the date of this order and thereafter monthly payment of interest till the offer of possession shall be paid before 10th of every subsequent month.

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

iii The respondent shall not charge anything from the complainant which is not part of the agreement.

iv Interest on the due payments from the complainant shall be charged at the prescribed rate of interest @9.30% by the promoter which is the same as is being granted to the complainant in case of delayed possession charges”.

3. Aggrieved by the aforesaid order, the appellant-promoter preferred the instant appeal before this Tribunal. At the time of filing the appeal, he made pre-deposit in terms of proviso to Section 43(5) of the Real Estate (Regulation and Development) Act, 2016 (for short, ‘the Act’). Case has been taken up today for hearing. Learned counsel for the appellant mainly contended that benefit of the delay, which occurred due to force majeure conditions prevailing due to onset of covid-19 pandemic has not been given to the appellant-promoter by the Authority and interest @ 9.30% p.a. has been calculated erroneously. Besides,

the appellant-promoter was not afforded proper opportunities of hearing before the impugned order was passed.

4. Learned counsel for the respondents-allottees has, however, submitted that ample opportunity was granted to the appellant-promoter to appear before the Authority for reply to the complaint and for the purpose of rebuttal. He contended that despite opportunities, the appellant-promoter failed to appear before the Authority. Appellant-Promoter was always aware of the pendency of the matter before the Authority. As regards force majeure conditions, he submitted that no such benefit can be granted to the appellant-promoter as per law.

5. We have heard learned counsel for the parties and given careful thoughts to the facts of the case.

6. A perusal of the impugned order shows that the Authority had issued notice of the complaint to the respondent-promoter (appellant herein) by speed post as well as through e-mail. As per the Authority, delivery reports are on record. Despite service, respondent-promoter failed to appear and file reply to the complaint. The Authority, thus, proceeded to decide the complaint ex-parte.

7. Further, perusal of notice issued to the appellant-promoter on 08.01.2020 clearly shows that opportunity was given to the respondent-promoter to appear either personally or through Authorised Representative/Advocates on the next date of hearing and to present its case. The notice explicitly stated that if the appellant-promoter fails to respond within the specified timeframe, their defence would be liable to be struck off, and the

proceedings would be ex-parte. The Authority's proceedings dated January 8, 2020, read as under:

“Subject Complaint titled as Ms. Abhinandna Kohil Vs Cosmos Infra Eng. India and Anr. 1. You are hereby informed that the above-mentioned complaint has been received against you in this Authority. In this regard this notice along with the copy of the complaint and annexure are being sent herewith through speed Post and on your e-mail address. Details of Notice may also be seen on the website of the Authority. A copy of the complaint has already been sent by the complainant to your address through Speed Post as well as through e-mail address and copy of tracking report as a proof of having delivered the complaint through Speed Post as well as delivery confirmation report by e-mail has also been submitted by the complainant. 2. You are hereby directed to submit your written reply in two copies with soft copy as per the prescribed proforma available on the website haryanarera.gov.in of this Authority duly supported by all the relevant documents in your defense within 10 days from the date of receipt of this notice the registry of the HARERA Gurugram. 3. You may present your case before the Authority on the date fixed given above personally or through an authorized representative or through an advocate as per the provisions of Section 56 of the Real Estate Regulation and Development Act 2016. 4. In case your reply is not received by stipulated period then no further opportunity would be given to you. Your defense shall be liable to be struck off and the complaint shall be heard by the Authority in the absence of your defense on merit and matter shall be proceeded ex-parte as per law. Date of Hearing 20.02.2020. Time 10.30 AM Venue Court Room Haryana Real Estate Regulatory Authority Gurugram New PWD Rest House Civil Lines Gurugram 5. Issued as per the order and the seal of the Authority on this 31st day of December 2019 For Secretary HARERA Gurugram”.

8. Thereafter, eleven months lapsed. Complaint was taken up for hearing and order was passed by the Authority on 18.11.2020. As per record, this order was uploaded on the web portal of the Authority on 15.12.2020. Said order is subject matter of challenge herein.

9. In the appeal filed before this Tribunal, grounds taken by the appellant have been perused by us. The appellant has taken all the pleas which it intended to take before the Authority and sufficient opportunity has been granted to the appellant to address arguments on various issues raised by it. This apart, it is evident from the record that appellant-promoter itself was responsible for not filing its response before the Authority below despite sufficient notice. We, thus, feel that this plea that opportunity of hearing has not been afforded to him, no longer survives. It is felt that this is not a case where grave injustice has been caused to the appellant by virtue of its reply not being on record before the Authority below.

10. As already observed above, we have considered all the pleas raised by the appellant in its appeal before this Tribunal. Had we found some substance in the same, we would have considered the remand of the matter to the Authority. However considerable time has elapsed since passing of the impugned order. Hence, it is in the interests of justice to decisively address the matter at the appellate level. Remitting the case back to the authority would be unnecessary, and would be burdensome for the parties. In view of the same, we have taken a conscious decision to decide the issues raised in the appeal on merits.

11. On merits, the argument put forth is that the promoter hasn't been granted the benefits of force majeure conditions due to the Covid-19 pandemic, which were prevailing at that time. The scheduled possession date for the unit as per the agreement was stated as 27th June 2017, whereas the Govt

of India acknowledged the spread of the Covid-19 pandemic in March 2020, well after the deemed date of delivery of the unit. Notably, the appellant-promoter has not provided the details regarding the construction stage at the time of spread of the pandemic and its impact on the project's progress. Also, the appellant has not substantiated its claim with supporting evidence, failing to demonstrate how force majeure conditions due to the Covid-19 pandemic, even if they occurred, significantly impeded the project's progress. Additionally, no legal precedent indicating relief granted in similar Covid-19-related cases has been presented by the appellant. Consequently, we are not inclined to grant relief to the appellant-promoter based on the alleged delay due to force majeure caused by the Covid-19 pandemic. This aligns with our consistent view expressed in various orders, including the most recent one in Appeal no. 685 of 2022, decided on 15th December 2023.

12. Another plea raised by the appellant is that the interest awarded by the Authority has been wrongly calculated @ 9.30%, which is not in consonance with the SBI highest MCLR prevailing on the date of passing of the impugned order. If this plea of the appellant has to be considered, we need to examine the SBI's highest MCLR on the order's issuance date, which was 7.30% during that period. The Authority, following Rule 15 of the Real Estate (Regulation and Development) Rules, 2017, added an additional 2%, resulting in an awarded interest of 9.3% per annum. We find no infirmity in this regard.

13. No other issue was pressed before us

14. Appeal is, thus, without any merit and same is hereby dismissed.

15. The amount of Rs.26,20,253/- deposited by the appellant- promoter in view of proviso to Section 43(5) of the Act, along with interest accrued thereon, be sent to the Authority for disbursement to the respondent/ allottees subject to tax liability as per law.

16. No order as to costs.

17. Copy of this judgment be communicated to both the parties/learned counsel for the parties and the Haryana Real Estate Regulatory Authority, Gurugram.

18. File be consigned to the records.

Justice Rajan Gupta
Chairman
Haryana Real Estate Appellate Tribunal

Anil Kumar Gupta
Member (Technical)

15 .01.2024
Rajni