

REAL ESTATE APPELLATE TRIBUNAL, PUNJAB
SCO No. 95-98, Bank Square, P.F.C Building, Sector-17-B, Chandigarh

Subject: -

APPEAL NO.10 OF 2022

M/s TDI Infratech Ltd., SCO 144-145, 200 ft International Airport,
Sector 117, TDI City, Sahibzada Ajit Nagar, Mohali, Punjab.

...Appellant

Versus

1. Monika Sharma wife of Sh. Sunil Kumar

2. Sunil Kumar son of Sh. Baldev Singh

Both residents of House No.46, Panchsheel Enclave, Ambala
Road, SAS Nagar, Mohali-Punjab.

....Respondents

Memo No. R.E.A.T./2022/ 458

To,

**REAL ESTATE REGULATORY AUTHORITY, PUNJAB 1ST
FLOOR, BLOCK B, PLOT NO.3, MADHYA MARG,
SECTOR-18, CHANDIGARH-160018.**

Whereas appeals titled and numbered as above was filed before the Real Estate Appellate Tribunal, Punjab. As required by Section 44 (4) of the Real Estate (Regulation and Development) Act, 2016, a certified copy of the order passed in aforesaid appeals is being forwarded to you and the same may be uploaded on website.

Given under my hand and the seal of the Hon'ble Tribunal this 15th
day of September, 2022.



Shanoo Kumar
REGISTRAR

REAL ESTATE APPELLATE TRIBUNAL, PUNJAB

BEFORE THE REAL ESTATE APPELLATE TRIBUNAL, PUNJAB

Appeal No. _____ 10 _____ of 2021

MEMO OF PARTIES

M/s TDI Infratech Ltd., SCO 144-145, 200 ft International Airport, Sector 117, TDI City, Sahibzada Ajit Singh Nagar, Mohali, Punjab.

...Appellant

Versus

1. Monika Sharma wife of Sh. Sunil Kumar _____ of 2021.
2. Sunil Kumar son of Sh. Baldev Singh

Both residents of House No. 46, Panchsheel Enclave, Ambala Road, SAS Nagar, Mohali- Punjab.

...Respondents

5/01/22
DATE: 31.12.2021



Puneet Tuli

Puneet Tuli

Advocate _____ Road,
COUNSEL FOR THE APPELLANT

...Respondents

**BEFORE THE REAL ESTATE APPELLATE TRIBUNAL, PUNJAB
AT CHANDIGARH**

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Sector 117, TDI City, Sahibzada Ajit Nagar, Mohali, Punjab.

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Both residents of House No.46, Panchsheel Enclave, Ambala
Road, SAS Nagar, Mohali-Punjab.

....Respondents

Present: Mr. Munish Gupta, Advocate for Mr. Puneet Tuli,
Advocate for the appellant.

Mr. Chetan, Advocate for the respondents.

...Appellant

CORAM: JUSTICE MAHESH GROVER (RETD.), CHAIRMAN

1. **SH. S.K. GARG DISTT. & SESSIONS JUDGE (RETD.), MEMBER (JUDICIAL)**

2. **ER. ASHOK KUMAR GARG, CHIEF ENGINEER (RETD.), MEMBER (ADMN./ TECH.)**

JUDGMENT: (JUSTICE MAHESH GROVER (RETD.), CHAIRMAN)

1. This appeal is directed against the impugned order dated 20.08.2021 passed by the Real Estate Regulatory Authority, Punjab (hereinafter known as the Authority). A complaint under Section 31 of the Real Estate (Regulation and Development) Act, 2016, (hereinafter called as the Act) read with Rule 36 of the Punjab State Real Estate (Regulation and Development) Rules 2017,



(Regulation and Development) Act, 2014, (hereinafter called as the Act, read with Rule 99 of the Punjab State Real Estate (Regulation and Development) Rules 2017, (hereinafter known as the Rules) was preferred by the complainant with a grievance that he had applied for a residential unit, whose possession was to be delivered by 22.10.2019. The buyers' agreement was executed in this regard between the parties on 02.05.2018. Clause 7.1 of this agreement envisaged possession by 22.10.2019 and Clause 7.6 contemplated compensation in case of non-delivery of possession within the stipulated time. Thus, the complainant prayed for possession and interest for each month of delay.

2. The present appellant who was the respondent before the Authority did not dispute the delay in handing over possession but attributed it to the COVID-19 situation and pleaded that "Force Majeure" would be attracted, so as to absolve him of the liability. Apart from this, it was pleaded that the complainant had not paid the instalments as per the schedule. The delay of 455 days was attributed to the complaint in this regard.

3. The Authority went through the pleadings and the material on record to pass the order in the following terms:-

"i. The respondent is directed to pay interest as per the provisions of Section 18(1) of the Act, read with Rule 16 of the Punjab State (Regulation and Development) Rules 2017 as



APPEAL NO.10 OF 2022

3

per State Bank of India's highest marginal cost of lending rate (as of today) plus 2%, w.e.f. 22.10.2019 (the stipulated date for delivery of possession) till the date of offer of possession i.e. 16.07.2021.

ii. The complainants would be bound to pay the outstanding amount, as per the agreement, before taking possession of the unit. It is made clear that, the interest to be paid by the complainants for any delay in payment as per payment schedule, would also be the State Bank of India's highest marginal cost of lending rate (as of today) plus 2%.

iii. The other reliefs were not pressed, and hence not allowed.

5. The complaint is accordingly accepted. File be consigned to record room and copy of the order be provided to both the parties free of costs."

4. Aggrieved of the aforesaid, learned counsel for the appellant contends that the benefit of "Force Majeure" could not be restricted to the Authorities own circular, whereas the situation was a continuous one on account of which the labour was unavailable contributing to immense delays in completion of projects including the one at hand.



4. Aggrieved of the aforesaid, learned counsel for the appellant contends that the benefit of "Force Majeure" could not be restricted to the Authorities own circular

5. He further asserted that the possession has since been handed over to the satisfaction of the respondent which fact was not denied by the respondent.

6. It was argued by the learned counsel for the appellant that undisputedly there is a delay but some benefit on account of COVID-19 and the prevailing situation should have been considered by the Authority.

7. After hearing the learned counsel for the parties, we are of the opinion that in an almost similar situation we have taken a view as below:-

“8. After hearing learned counsel for the parties and going through the impugned order and other relevant material, we are of the opinion that the order of the Authority with regard to the reliefs granted at Para 8(ii) and 8(iii) cannot be faulted with. Likewise although the relief granted under Clause 8(i) cannot be termed to be totally erroneous but we are of the opinion that the plea of force majeure should have been tested by a benevolent interpretation, rather than leaving it captive to a circular of the Authority dated 30.05.2020, limiting the benefit available to the promoters, only with regard to the statutory compliances in relation to real estate projects with reference to the date of completion or revised date of completion or extended completion date.



9. The situation emerging from Covid epidemic was unique and unknown to humanity. It was fluid as is evident from the response of the authorities resulting in repeated revisions and overhauling of decisions frequently. It is undeniable that the migrant labour was affected in a huge way, when reverse migration took place on a drastic scale. It is also common knowledge that this unorganised labour sector on which the realty sector depends wholly or substantially did not recover fully even when relaxation were granted by the authorities in human and vehicular movement.

10. It is for this reason, we are of the opinion that the benefit of a plea of force majeure on account of the epidemic has to be interpreted more beneficially, to take into consideration the uncertainties and vagaries of a fluctuating labour force at that point of time depriving the real estate sector driven completely by this unorganized labour segment into throes of accumulated losses, resulting from incomplete projects and unsold inventory.

11. Therefore, since a complete lockdown was imposed in March, 2020 and with no assigned verifiable point of total reversal in movement of labour, we of the opinion that a benefit of at least 4 to 5 months on account of force majeure should be afforded to the developer to absolve him of the liability of completing the projects within the timeline prescribed.



12. *We are not oblivious to the fact that the benefit of 4 to 5 months as deduced by us is based on discretion and some amount of guess work, which is inevitable for the reasons, we have mentioned in the forgoing paragraphs about the resultant situation from the spread of epidemic. Therefore, the liability fastened upon the developer under Clause 8(i) shall now stand reduced by four months in calculating the period.*”

8. We would thus, unhesitatingly adopt the same approach and grant a similar benefit to the appellant. Given the facts of the present case, the possession was to be given by 22.10.2019. The lockdown was imposed in March, 2020. By that time the possession had been delayed by almost 5 months. The offer of possession was made on 16.07.2021. Thus, the total delay is of 21 months approximately has occurred. Applying the same principle as in Hero Reality (supra) we would deem it appropriate to grant a benefit of five months.
9. Thus, we deem it appropriate to grant the benefit of “force majeure” and condone a period of 5 months. As a consequence the benefit under Section 18(1) of the Act read with Rule 16 would be admissible to the respondent for a total period of 16 months, commencing October, 2019. The remaining components of the impugned order as contained in Clause 2(i) of the relief clause, binding



APPEAL NO.10 OF 2022

7

the complainant to payment of interest on account of delayed instalments shall remain unaltered.

10. With the aforesaid modification, the appeal stands disposed of.

Sd/-
JUSTICE MAHESH GROVER (RETD.)
CHAIRMAN

Sd/-
S.K. GARG, D & S. JUDGE (RETD.)
MEMBER (JUDICIAL)

My view is appended on subsequent pages No 9 to 14
ER. ASHOK KUMAR GARG, C.E. (RETD.), *Sd/-*
MEMBER (ADMINISTRATIVE/TECHNICAL)

September 01, 2022
DS



Certified To Be True Copy

Shamset Khan
Registrar
Real Estate Appellate Tribunal Punjab
Chandigarh

15/09/2022

September 01, 2022
DS

**BEFORE THE REAL ESTATE APPELLATE TRIBUNAL,
PUNJAB AT CHANDIGARH**

APPEAL NO. 10 OF 2022

M/s TDI Infratech Ltd., SCO 144-145, 200 ft International Airport,
Sector 117, TDI City, Sahibzada Ajit Singh Nagar, Mohali, Punjab.

.....Appellant

Versus

1. Monika Sharma wife of Sh. Sunil Kumar

2. Sunil Kumar son of Sh. Baldev Singh

Both residents of House No. 46, Panchsheel Enclave, Ambala Road,
SAS Nagar, Mohali- Punjab

....Respondents

Present: Mr. Munish Gupta, Advocate for Mr. Puneet Tuli, Advocate for
the appellant.

Mr. Chetan, Advocate for the respondents.

**QUORUM: JUSTICE MAHESH GROVER (RETD.), CHAIRMAN,
SH. S.K. GARG DISTT. & SESSIONS JUDGE (RETD.),
MEMBER (JUDICIAL)**

**ER. ASHOK KUMAR GARG, CHIEF ENGINEER (RETD.),
MEMBER (ADMN./ TECH.)**

**JUDGMENT: (ER. ASHOK KUMAR GARG, CHIEF ENGINEER
(RETD.), MEMBER (ADMN./TECH.) – HIS VIEW)**

1. By this order, I shall dispose off above mentioned appeal bearing
Appeal No. 10 of 2022 (**TDI Infratech Ltd. versus Monika
Sharma and another**) filed against order dated 20.08.2021 passed
by the Real Estate Regulatory Authority, Punjab (*hereinafter
referred to as the Authority*) in complaint bearing GC No.
16432020 instituted on 02.06.2020.

2. Ms. Monika Sharma and Mr. Sunil Kumar (*the respondents,
hereinafter also referred to as the complainants or as the allottees*)
filed their complaint bearing GC No. 16432020 on 02.06.2020
against TDI Infrastructure Limited (*the appellant, hereinafter also*



referred to as the promoter) in Form 'M' before the Authority under Section 31 of the Real Estate Regulation and Development Act, 2016 (hereinafter referred to as the Act) and Rule 36(1) of the Punjab State Real Estate Regulation and Development Rules, 2017 (hereinafter referred to as the Rules), wherein they have inter alia alleged (i) that they, vide application dated 22.05.2017, applied for a flat measuring 250 square yards in the project 'Canaught Residency' at TDI City, Sector 74-A, 116-119, Mohali and have been allotted residency No. GF-1546, having carpet area of 1180 square feet, type 3 BHK on Ground Floor for total sale price of Rs. 56,70,083/- and have entered into agreement on 02.05.2018; (ii) that the promised date of handing over possession of the residency was by 22.10.2019; (iii) that the appellant neither handed over the possession of the plot nor paid interest for every month of delay (for which they requested the appellant on 07.01.2020) despite payment of an amount of Rs. 40,59,665/- till the date of the complaint by the complainants to the appellant as per the plan; (iv) that they also have entered into tripartite agreement on 29.03.2018 for availing a home loan; and (v) that the appellant, without completing the construction of the flat, which was going on at the time of the complaint, issued demand letters.

3. The respondents, vide their above mentioned complaint, have prayed the Authority to direct the appellant to (i) hand over possession of the residency after obtaining occupation certificate; (ii) pay interest for every month of delay till handing over the possession.

4. After considering the reply dated 06.10.2020 of the appellant-promoter to the complaint, the rejoinder filed by the complainants and the arguments of the parties, the Authority passed order dated



20.08.2021, the concluding and operative parts of which read as under:-

“4. We have gone through the pleadings of the parties and facts of the matter. As the due date for possession as per the agreement to sell expired prior to the beginning of COVID no "force majeure" would apply in this case. As to the issue of limitation, no arguments were made by the respondent either orally or in writing and hence the same is dismissed as not pressed. The only other plea of the respondents, against the delay in giving possession of the impugned flat is that, the complainants have not paid installments within the stipulated time. This Authority, vide its order dated 02.06.2021, had asked the respondent to give necessary details for the delay in payment of installment. The respondents have accordingly, vide their application dated 06.07.2021, filed a chart showing delay of 455 days in the payment of various installments. Other than that, no reason has been given for delay in offer of possession. The respondents have also submitted that they have now received the occupancy certificate from the appropriate authority on 17.08.2020. As regards the delay of 455 days computed by the respondents for making payment of various installments, we find that the same has been computed without allowing for the grace period of fifteen days given in the demand letters and also time for delivery of the demand letters to the complainants. Therefore, while calculating interest payable by the complainants to the respondents, sufficient allowance has to be given for both the above mentioned timelines. In the circumstances, it is ordered as follows:

- i. The respondent is directed to pay interest as per the provisions of Section 18(1) of the Act, read with Rule 16 of the Punjab State (Regulation and Development) Rules 2017 as per State Bank of India's highest marginal cost of lending rate (as of today) plus 2%, w.e.f. 22.10.2019 (the stipulated date for



Appeal No. 10 of 2022

11

delivery of possession) till the date of offer of possession i.e. 16.07.2021.

- ii. The complainants would be bound to pay the outstanding amount, as per the agreement, before taking possession of the unit. It is made clear that, the interest to be paid by the complainants for any delay in payment as per payment schedule, would also be the State Bank of India's highest marginal cost of lending rate (as of today) plus 2%.*
- iii. The other reliefs were not pressed, and hence not allowed."*

5. Aggrieved by the aforementioned order dated 20.08.2021 of the Authority, the appellant-promoter filed its appeal dated 31.12.2021, along with an even dated application for condoning 57 days' delay in filing the appeal.

6. The appellant in his appeal has inter alia contended as under:-

- (i) that possession was to be delivered on 22.10.2019;
- (ii) that there was nation wide lockdown since March 2020 to May 2020 and thereafter despite shortage of labour & restrictive functioning of the infrastructure sector, the appellant made sure that the construction work picked up pace and the appellant has even handed over the possession of the units to many customers on time;
- (iii) that the appellant got the occupancy certificate dated 17.08.2020 qua the unit;
- (iv) that the possession of the unit was offered on 16.07.2021;
- (v) that even during the period of lock down, the Authority, vide its circular dated 13.05.2020, extended the time upto 30.06.2020; and



(vi) that the Authority, vide its circular dated 28.10.2010, extended the time upto 15.09.2020.

7. The appellant, in its appeal, has sought to modify the impugned order dated 20.08.2021 to the extent that the period of lockdown may not be calculated while calculating the interest for delayed possession as well as for delay in paying the installments.

MY FINDINGS:

8. The appellant has primarily sought relief that the period of lockdown may not be calculated while calculating the interest for delayed possession as well as for delay in paying the installments.

9. The possession of the unit was to be delivered on 22.10.2019. The present complaint was filed on 02.06.2020. The appellant got the occupancy certificate dated 17.08.2020 qua the unit. The possession of the unit was offered on 16.07.2021 (i.e. almost after an year after obtaining the occupancy certificate).

10. The nation wide lockdown admittedly commenced on 24.3.2020 (i.e. after the due date of possession ^{i.e. 22.10.2019} ~~was~~ 22.10.2019).

11. Alike in the present appeal, in my judgment/view in the Appeal No. 110 of 2020 (**Hero Reality Private Limited versus Arun Premdhar Dubey and another**) and another connected matter wherein also I differed from the view of Hon'ble Chairperson and learned Member (Judicial) of this Tribunal and wherein after detailed discussion in respect of provisions regarding 'force majeure' only under Section 6 of the Act under its Chapter II relating to the registration of the projects and agents, the advisory for extension of registration of real estate projects issued by Government of India, Ministry of Housing & Urban Affairs



(Housing Section) vide its office memorandum dated 13.05.2020 pursuant to an urgent meeting of Central Advisory Council (CAC) held on 29.04.2020, the circulars dated 13.05.2020 and 28.10.2020 of the Authority relied upon by the appellant, etc), I had expressed my opinion that no benefit of Covid-19 can be given to the promoter for reduction in the amount of interest payable by the promoter to the allottee for the delay in delivery of possession of the unit, because there is no provision of 'force majeure' in the relevant Sections of the Act and allowing such benefit to the promoter will be at the cost of the allottee who shall be then deprived of the legitimate benefit admissible to him under the provisions of Section 18(1) of the Act.

12. Hon'ble Supreme Court of India, in its judgment dated 11.11.2021 in **M/s Newtech Promoters and Developers Pvt. Ltd. versus State of UP and others etc** in Civil Appeals No. 6745-6749 of 2021 and connected matters, has inter alia held as under:-

*"25. The unqualified right of the allottee to seek refund referred under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement **regardless of unforeseen events** or stay orders of the Court/Tribunal, **which is in either way not attributable to the allottee/home buyer**, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act **with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed.**"*
[Emphasis laid]



Appeal No. 10 of 2022

14

13. The present appeal, being similar to the Appeal No. 110 of 2020 and another connected matter (**Supra**) in regard to relief on the premise of the 'force majeure', is also devoid of any merit. Therefore, I am not inclined to interfere in the impugned order and the appeal is hereby ordered to be dismissed.

14. A copy each of this order be placed in the file of aforementioned appeal and also be sent to the parties as well as the Authority and thereafter, the files be consigned to the record room.

Sd/-
ER. ASHOK KUMAR GARG, C.E. (RETD.),
MEMBER (ADMINISTRATIVE/TECHNICAL)

September 1st, 2022



Certified To Be True Copy

Manendra Kumar
Registrar
Real Estate Appellate Tribunal Punjab
Chandigarh

15/09/2022