

**BEFORE THE HARYANA REAL ESTATE APPELLATE  
TRIBUNAL**

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**Appeal No.424 of 2020  
Date of Decision: 01.08.2022**

1. Smt. Garima Gupta
2. Sh. Tarun Kumar Gupta

Both Residents of 216/B, First Floor, DDA Flats,  
Pitampura, Delhi-110034.

Appellants

Versus

ILD MILENNIUM Private Limited,  
Phone No. 0124-4935100 – 143 & 98701 - 72076  
9<sup>th</sup> Floor, ILD Trade Centre, Sector-47, Sohna Road, Gurgaon-  
122018, Haryana.

Respondent

**CORAM:**

Shri Inderjeet Mehta (Retd)	Member (Judicial)
Shri Anil Kumar Gupta	Member (Technical)

**Argued by:** Shri Tarun Kumar Gupta-appellant no.2 in person.

Shri Atul Goyal, Advocate, ld. counsel for respondent.

**ORDER:**

**ANIL KUMAR GUPTA, MEMBER (TECHNICAL):**

The present appeal has been preferred by the appellants-allottees under Section 44(2) of the Real Estate (Regulation and Development) Act, 2016 (hereinafter called,

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'the Act') against the Order dated 12.11.2020 passed by the Haryana Real Estate Regulatory Authority, Gurugram (hereinafter called, 'the Authority') whereby Complaint No.1941 of 2018 filed by the appellants-allottees was disposed of by issuing directions as under:

- "i. The respondent is directed to pay the interest at the prescribed rate .e. 9.30% per annum for every month of delay on the amount paid by the complainants from due date of possession i.e. 11.07.2016 till the handing over of actual possession after obtaining OC.*
- ii. The arrears of interest accrued so far shall be paid to the complainants within 90 days from the date of this order and subsequent interest to be paid on or before the 10<sup>th</sup> of each succeeding month.*
- iii. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.*
- iv. The respondent shall not charge anything from the complainants which is not part of the apartment buyer's agreement.*
- v. Interest on the delay payments from the complainants shall be charged at the prescribed rate i.e. 9.30% by the promoters which is the same as is being granted to the complainants in case of delayed possession charges."*

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2. The appellants-allottees have filed complaint under Section 31 of the Act read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter called 'the Rules') alleging therein that they had booked flat with the respondent-promoter, bearing No.0104, Tower 07, 1<sup>st</sup> Floor in the project namely 'ILD Spire Green' in Sector 37-C, Gurugram, the provisional allotment of which was made on 19.12.2012. An 'Apartment Buyer's Agreement' (for short 'Buyer's Agreement') was executed on 11.01.2013. As per Clause 10.1 of the said buyer's agreement, the possession of the unit was to be delivered within three years from the date of execution of the agreement plus six months grace period. Therefore, the due date of delivery of possession of the said unit comes out to be 11.07.2016. However, the respondent-promoter failed to complete the project and to offer possession of the apartment to the appellants as per the time schedule stipulated in the agreement. The total sale consideration of the unit was Rs.62,38,830/- excluding taxes. As per SOA dated 05.12.2018, the total amount paid by the appellants to the respondent-promoter, was Rs.53,22,613/-.

3. It was pleaded by the appellants-allottees before the learned Authority in the complaint that they visited the site on various occasions and it was noted that the flat under

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construction was too small in size as compared to what they had expected or had booked for. Further, on actual measurements, it turned out to be of a carpet area of less than 700 sq. ft.

4. It was further pleaded that with this carpet area, the super area of the flat comes out to merely 875 sq. ft. ( $700 + 25\%$  of  $700 = 875$ ) in comparison to the super area of 1355 sq. ft. mentioned in the buyer's agreement and for which the respondent has charged the appellants. The respondent-promoter has cheated the appellants and over-charged them for a super area to the extent of 480 sq. ft. ( $1355 - 875 = 480$ ). This is certainly an unfair trade practice of the worst kind and has been resorted to by the respondent-promoter knowingly, intentionally and under a well thought out plan.

5. It was further pleaded that by resorting to this kind of cheating, the respondent-promoter over-charged the appellants by Rs.18,40,896/- till November 2, 2014 [(88% BSP of 480 sq. ft. =  $480 \times 3840 \times 0.88 = 16,22,016$ ) + (100% PLC on 480 sq. ft. =  $480 \times 125 = 60,000$ ) + (100% EDC + IDC on 480 sq. ft. =  $480 \times 331 = 1,58,880$ )]. Not only this, by constructing a much smaller flat than the one booked by the appellants, the respondent-promoter has completely shattered the appellants' dream of living comfortably in their own house.

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6. It was further pleaded that when the appellants-allottees sought clarification from the respondent-promoter regarding difference between carpet area and the super area of the flat under construction, the Senior Manager-CRM, Mr. Arunjeet Arora, wrote back on 26<sup>th</sup> September, 2017 that “We have already forwarded your concern to the concerned department after getting revert from them will reply you” and no further reply has since been received from the respondent’s side till now.

7. It was further pleaded that the cause of action for filing the complaint firstly arose when a pre-printed builder buyer’s agreement , which was completely one-sided, and contained unfair and unreasonable terms and conditions, was thrust upon the appellants-allottees for signing and after receiving more than rupees Ten Lakhs from them. The cause of action further arose when the respondent-promoter failed to hand over the possession of the completed flat to the appellants on the promised date and that continues to be so even now. Further the promoter is constructing a much smaller flat than the one promised in the builder buyer’s agreement.

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8. The appellants-allottees filed complaint before the learned Authority seeking directions to the respondent-promoter as under:-

- i. To direct the respondent to compensate the appellants-allottees by paying interest (on monthly basis) at an appropriate rate on the money paid by the appellants to the respondent-promoter i.e.Rs.53,59,116/- from the promised date of handing over of flat i.e. 11<sup>th</sup> January, 2016 to the actual date of handing over of the flat to them.*
- ii. To direct the respondent to return the over-charged amount of Rs.18,40,896/- to the appellants-allottees along with interest at an appropriate rate from 2<sup>nd</sup> November, 2014 (when the last payment was made) till the date of such payment.*
- iii. To direct the respondent for compensating the appellants for mental agony they have undergone because of the acts of the respondent lime (a) delay in construction (b) constructing a smaller flat than the promised one, and (c) creating a situation where in the appellants have been forced to resort to litigation and also to pay the costs of litigation.*

9. In response to the above pleadings of the appellants-allottees, the respondent-promoter contested the complaint by filing reply on the following grounds:-

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- i. *That the offer of possession to the appellants was made on 28.10.2016, however, the appellants failed to accept the same nor have they adhered the schedule of payment by not paying a single penny since December, 2014. Huge amount is pending towards total sale consideration.*
- ii. *That the major reason for delay in possession is lack of infrastructure which was beyond the control of the respondent.*

10. On 18.04.2019, the learned Authority directed the respondent-promoter to submit the copy of the approved building plans with reference to loading factor/super area allotted to the appellants. The respondent-promoter submitted the copy of buyer's agreement showing the layout of the unit allotted to the appellants along with a copy of the detailed calculation sheet showing super area details loaded by the promoter. The copy of the approved layout plans of the project showing the area calculation approved by the competent authority was also submitted by the respondent-promoter during the proceedings on 16.01.2020 with the learned Authority. Copies of the above documents were also handed over to the appellants.

11. To the above submissions made by the respondent-promoter with the learned Authority, the appellants-allottees

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submitted their acceptance and objections dated 18.02.2020.

12. All other pleas raised in the complaint were controverted and it was pleaded by the respondent-promoter that the appellants-allottees are not entitled for any relief and prayed for dismissal of the complaint.

13. After hearing the appellant-allottee no.2, learned counsel for the respondent and appreciating the material on record, the learned Authority disposed of the complaint filed by the appellants-allottees vide impugned order dated 12.11.2020 issuing directions already reproduced in the upper part of this order.

14. We have heard Shri Tarun Kumar Gupta- appellant no.2 in person, Shri Atul Goyal, Advocate, learned counsel for respondent and have meticulously examined the record of the case. We have also perused the written submissions of the appellants.

15. Sh. Tarun Kumar Gupta, appellant no.2 (for himself and on behalf of appellant no.1 ) has contended that on January 16<sup>th</sup>, 2020, Shri Venkat Rao (counsel of the respondent/promoter) had submitted some figures and maps with the learned Authority. He had also handed over to the appellants some figures but no drawings were supplied to

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them. The above said figures were submitted by the respondent/promoter after continuous raising issue of small flat size before the learned Authority. It is further contended that on December 18<sup>th</sup>, 2019 the appellants had requested the learned Authority for appointment of Local Commissioner for calculating the Super Area of the flat. Considering the request of the appellants, the learned Authority verbally instructed Mr. Venkat Rao to submit approved layout calculations and figures of super area. Resultantly, Mr. Venkat Rao submitted the figures and maps on January 16<sup>th</sup>, 2020 as under:-

CARPET AREA DETAILS/NO. OF UNITS						
	CARPET AREA (Sq. mts)	BALCONY AREA (Sq. ft.	BUILT-UP AREA (Sq.mts.)	CORE-AREA (sq. mts.)	SERVICES & COMMON AREA (sq.mts.)	SUPER AREA (sq.mts.)
TOWER-7	68.85	21.55	99.23	17.76	20.92	137.91

Built up Area = Carpet Area + Wall area + Balcony area

Core Area = Typical floor core + ground floor core

Services & Common Area = Tower Loading + Project Loading + Basement Services

16. It is further contended by the appellants that as per the respondent/promoter, carpet area is 68.85 square meter i.e.740.83 sq. feet approximately 741 square feet. Super Area of the unit as per agreement is 1355 square feet. Difference between super Area & Carpet Area is 614 square feet (1355 – 741). This means loading factor of 83% (614/741), as per the calculation provided by the respondent/promoter. He

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contended that as per Standard Norms or Thumb Rule prevalent in the market, Super Area of flat should be 25% to 30% over the Carpet Area. He contended that the respondent/promoter has charged for extra 390 square feet (1355 - 965) which amounts to extra payment of Rs.14,97,600/- (390 x 3840). As per builder, Balcony Area is 21.55 square meters i.e. approximately 232 square feet. As per the builder, the Balcony/Terrace Area is 31.30% of the Carpet Area which is never 31.30% of the Carpet Area. Therefore, this figure is wrongly calculated by the respondent.

17. The appellants have contended that the respondent in the name of Basement Service Area has charged extra amount of Rs.8,64,381/-. The Basement Service Area is being used for parking of vehicles only. The respondent is charging Rs.2,50,000/- from the buyers of the flat for a single parking in the complex in the name of "Parking Spaces Charges". Then including "Basement Loading" in the Super Area of the Flat under consideration amounts to double charging for the same thing.

18. The appellants have contended that the respondent-promoter is wrongly charging extra on account of increased super area on various accounts and with the above

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submissions, the appellants have prayed to determine the actual size of the flat either through;

- (i) Actual measurements, of
- (ii) By analyzing the data supplied by the respondent to the learned Authority
- (iii) To return the extra money already received by the respondent along with interest and penalty be also imposed upon the promoter.

19. Per contra, learned counsel for the respondent has contended that as per the buyer's agreement, the allottees are to pay for the super area and the super area has been calculated as per the terms and conditions of the buyer's agreement. He further contended that the definition of the super area is given at Annexure-B of the agreement. He contended that as per Clause 'I' of the buyer's agreement, the allotment of the unit measuring approximate super area of 1355 sq. ft. has been made to the appellants. He further contended that as per Clause 1.1 of the agreement, the allottees have agreed to purchase the unit having an approximate super area of 1355 sq. ft. The sale price is also based on the super area. He further contended that as per Clause 1.6 of the buyer's agreement, it has been made clear that the developer and the allottees agreed that the sale price

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of the said unit shall be calculated on the basis of its super area (as per definition of super area given in Annexure B). He contended that the allottees have been rightly charged for the super area of 1355 sq. ft. and therefore there is no merit in the appeal and the same requires to be dismissed.

20. We have duly considered the aforesaid contentions.

21. In this appeal, the appellants have restricted their claim only with respect to the overcharging of super area by the respondent. The appellants have contended that the super area being charged is more than what is required to be charged. In para no. 5 and 6 of the rejoinder before the learned Authority, the appellants have raised certain issues. Para no.5 is regarding incompleteness of the unit and about the pending works of the project. The relevant to this appeal is para no.6, wherein it is mentioned by the appellants that the carpet area is much smaller as compared to the super area with highly unreasonable "loading ratio" which is roughly 100%. Further, it is mentioned that for a flat of super area of 1355 sq. ft. the carpet area is less than 700 sq. ft. and requested the learned Authority to verify the same through an independent surveyor.

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22. The learned Authority in the proceedings dated 18.04.2019 directed the respondent to submit complete calculations of FAR of unit approved by the competent authority duly shown in the sanctioned building plans and details of common area which are part of FAR but have been counted by the developer towards loading factor of super area. It was further directed that supporting documents regarding common area including super area as a loading factor be furnished by the respondent within a period of 15 days. It is also mentioned that after considering the findings of the super loading area, based on documents duly approved by the competent authority, final decision in the matter shall be taken by the authority on this issue along with other issues.

23. In the proceedings dated 16.01.2020 before the learned Authority, the respondent submitted a copy Annexure-F of Buyer's Agreement showing the layout of the unit allotted to the appellants along with copy of detailed calculation sheet showing the super area details loaded by the promoter with reference to the project. In addition to the above, a copy of the approved lay out plan of the project showing the area calculation approved by the competent authority was also submitted. A copy of the above documents was also handed over to the appellants. It is further mentioned that the

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documents need further scrutiny to find out the actual super area uploaded on the carpet area by the promoter in this project. The details provided by the respondent during the above proceedings are as follows:

ILD Greens	
Tower	7
Floors	G+19
No. of Unit	76
No. of Unit (each floor)	4

CARPET AREA DETAILS/NO. OF UNITS						
	CARPET AREA (Sq. mts)	BALCONY AREA (Sq. ft.)	BUILT-UP AREA (Sq.mts.)	CORE-AREA (sq. mts.)	SERVICES & COMMON AREA (sq.mts.)	SUPER AREA (sq.mts.)
TOWER-7	68.85	21.55	99.23	17.76	20.92	137.91

Built up Area = Carpet Area + Wall area + Balcony area

Core Area = Typical floor core + ground floor core

Services & Common Area = Tower Loading + Project Loading + Basement Services

Calculation of Core Area

Ground floor core (A)	84.97
Typical floor core (B)	70.27
Total floor core (C) = (B x no. of floor)	1264.86
Total Core area (D) = ( C + A )	1349.83

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Proportionate Core area = (D/no.of Units) 17.76092105  
17.

Calculation of Services & Common Area

Services & Common Area		20.92
1. Tower Loading		3.47
2. Project Loading		2.74
3. Basement Loading		14.71

AREA BREACK UP-TOWER LOADING		
Terrace	Sqm	Sft
Mumty	14.82	159.5
Machine Room	40.40	434.9
Machine Room mumty	40.4	
Water Tank	23.9	257.3
Shaft closing at terrace	23.9	257.3
Aintenance/facility office	100	1076.4
TOTAL (A)	250.7	1186.9

AREA BREACK UP		
Miscellaneous	Sqm	Sft
Handicap ramp	4.8	51.7
canopy	8.0	86.5
TOTAL (B)	12.8	86.5

PROPORTIONATE Tower loading= (A) + (B)/No. of units  
3.467105263

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24. In addition to the above calculations, the project loading showing proportionate of each unit was submitted by the respondent-promoter which are not being reproduced herein on account of brevity.

25. To the above calculations submitted by the respondent-promoter, the appellants-complainants submitted their objections dated 18.02.2020 to the learned Authority. It was pleaded that they had objection to the inclusion of service and common area of 20.92 sq. mtrs. (Tower Loading 3.47 sq. mtrs, "Project Loading" 2.74 sq. mtrs. and "Basement Loading" of 14.71 sq. mtrs.) in super area of the flat. It was also pleaded that the basement area/service area has wrongly been charged as this area is to be used for parking of vehicles only. The respondent has already charged Rs.2,50,000/- from the buyer's of the flat for single parking. Therefore, the "Basement Loading" in the super area of the flat under consideration would amount to double charging for the same. It was pleaded that inclusion of the area of Guard Room and maintenance/facility office etc. in "Tower Loading" and "Project Loading" is not correct, highly inflammatory and unreasonable which is also not in accordance with the market practices. It was pleaded that charges of super area of 1355 sq. ft. for a flat

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of carpet area of 741 sq. ft. is highly unreasonable and is very much on the higher side.

26. In the proceedings dated 12.11.2020 before the learned Authority, it is mentioned that the respondent has applied for Occupation Certificate in the month of July, 2020 which shall be forthcoming in future. It is also mentioned that with respect to the issue raised by the appellants-complainants regarding super area and loading factor etc., the same shall be decided and taken into account at the time of actual handing over and taking over of possession of the unit and restrained the respondent from raising untoward demands. In the final impugned order with respect to the above issue raised by the appellant-complainants, it was observed by the learned Authority that since the unit has not been handed over, as such it is too early to take the plausible view in this context and it shall be taken into account at the time of actual handing over and taking over of the possession. It is further mentioned that in the meantime, the promoter will not raise any untoward demand.

27. In this appeal the appellants have only raised the above said issue of increased super area and contended that as per the calculations of super area submitted by the respondent promoter on 16.01.2020 before the learned

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authority, the carpet area is much less than the super area as the calculation of super area submitted by the respondent is not as per the standard norms or rule of thumb prevalent in the market. The appellants are also alleging that as per the above said calculations of super area, the balcony terrace area is 30% of the carpet area and are contending that this figure is wrong. It has also been further contended that in the above said calculation of super area, Core Area is 17.76 sq. mtr. and Common Area is 20.92 sq. mtrs which comes out to be 416 sq. ft. and contended that this area should have been covered in internal development works or external development works. It is also contended that Typical Floor Core, Ground Floor Core, Tower Loading & Project Loading has been wrongly calculated by the respondent and is not as per the terms of the buyer's agreement. It is also contended that the basement area/service area has wrongly been charged as this area is being used for parking of vehicles only. The respondent has also charged Rs.2,50,000/- from the buyers of the flat for single parking in the basement. Therefore, the "Basement Loading" in the Super Area of the Flat under consideration would amount to double charging for the same thing.

28. The determination of the super area requires detailed scrutiny of approved drawings, measurement and

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calculations of the structures constructed by the respondent at site. The super area is also required to be calculated as per the provisions in the agreement. These issues were raised by the appellants before the learned Authority but the same have not been adjudicated upon by the learned Authority, rather, in the impugned order it is mentioned that in order to take up a plausible view these shall be considered at the time of handing over and taking over of the possession.

29. As has been referred to above, the appellants are not at all aggrieved by the relief granted by the learned Authority vide impugned order regarding interest on account of delay in handing over of the actual possession. The appellants have restricted their claim only with respect to the overcharging of super area by the respondent. The learned Authority in para no.16 of the impugned order has made the specific observation that since the unit has not been handed over, as such, it is too early to take a plausible view in this context and shall be taken into account at the time of handing over and taking over of the possession. In these circumstances, it will be in fitness of the things that the matter of Super Area is adjudicated upon by the learned Authority in the first instance so that if any of the parties have grievance about the decision of the authority, then the party

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aggrieved has an opportunity of appeal as envisaged in the Act.

30. Thus, as a consequence to the aforesaid discussion, the appeal preferred by the appellants is hereby dismissed. However, as per the aforesaid observations made by the learned Authority in para no.16 of the impugned order, the appellants are at liberty to approach the learned Authority to put their claim with respect to the overcharging of super area by the respondent.

31. The copy of this order be communicated to the parties/learned counsel for the parties and the learned Authority for compliance.

32. File be consigned to the record.

Announced:

August 01, 2022

Inderjeet Mehta  
Member (Judicial)  
Haryana Real Estate Appellate Tribunal,  
Chandigarh

Anil Kumar Gupta  
Member (Technical)