

**BEFORE THE HARYANA REAL ESTATE APPELLATE  
TRIBUNAL**

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Appeal No.695 OF 2022  
Date of Decision: 15.05.2023

Rupa Joshi, resident of House No.1567, Sector 7E, Faridabad  
Haryana; Second address: House No.412, Sector 8, Faridabad  
121006 Haryana

Appellant

Versus

M/s GPM Developers Pvt. Ltd., registered office at SCF-2,  
Near Kanishka Towers, Ashoka Enclave-1, Sector 35,  
Faridabad Haryana

Respondent

**CORAM:**

**Justice Rajan Gupta  
Shri Inderjeet Mehta  
Shri Anil Kumar Gupta**

**Chairman  
Member (Judicial)  
Member (Technical)**

Argued by: Mr. Gurinder Singh Goraya, Advocate,  
for the appellant.

Mr. Anil Kumar Goyal, Advocate,  
for the respondent.

**ORDER:**

**Rajan Gupta, Chairman:**

1. The appellant-allottee has posed to challenge the order dated 07.07.2022 in Complaint No.1217 of 2019 passed by the Haryana Real Estate Regulatory, Panchkula (for short, the Authority).

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2. Rupa Joshi-Complainant booked a 3BHK apartment with the respondent (M/s GPM Developers Pvt. Ltd.). Builder Buyer's Agreement was executed between the parties on 18.10.2013.

3. As per the promoter Occupation Certificate (OC) was applied on 18.04.2017, thereafter offer of possession was made to the allottee on 15.11.2017. As per him, OC was ultimately granted on 31.08.2021. It is, thus, clear that offer of possession was made without occupation certificate having been issued by the Competent Authority. In the order passed by the Authority, it has been clearly stated that the matter remained pending before it for considerable time during which it took a number of tentative views. It ultimately decided the complaint vide its order dated 07.07.2022 wherein it affirmed its tentative view. Operative part thereof reads as under:

*“Authority reaffirms it's tentative view that complainant is entitled to possession of the unit along with permissible interest for the delayed period ranging from deemed date of possession i.e. 18.10.2016 till the date of obtaining of occupation certificate i.e. 31.08.2021 calculated @ SBI MCLR +2% as provided in Rule 15 of the Haryana Real Estate (Regulation and Development) Rules 2017 which arrives @ 9.70% at the time of passing of this order. Respondent shall also provide a fresh statement of Accounts after duly adjusting the amount of*

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*delay interest payable in the complainants within 30 days of uploading of this order. Such statement shall reflect the amount of payable or receivables if any by/to complainants.*

*The Authority has got calculated, the interest payable to the complainant from Accounts branch of this Authority. Which is mentioned below in the following table.*

<i>Complaint No.</i>	<i>Principal Amount</i>	<i>Interest Calculated</i>	<i>Total Amount payable by Respondent to Complainant</i>
<i>1217 of 2019</i>	<i>31,60,282/-</i>	<i>14,94,103/-</i>	<i>46,54,385/-</i>

*In the following complaint, delay interest is calculated after deducting EDC/IDC Charges and Service tax from the total paid amount/receipts. The amount of such taxes are not payable to the builder rather required to passed on by the builder to the concerned revenue department/authorities. If a builder does not pass on this amount to the concerned department the interest thereon becomes payable only to the department concerned and the builder for such default of non-passing of amount to the concerned department will himself be liable to bear the burden of interest.*

*Case is **disposed of**. File be consigned to record room after uploading of order on website of Authority. “*

4. It is evident from perusal of the aforesaid order while the complainant sought refund in her complaint, the Authority has granted interest on delay in possession. During the course of hearing, we asked

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learned counsel for the parties to refer to various documents such as application for Occupation Certificate (OC), offer of possession and Occupation Certificate. None of these documents appears to be on record. The Authority completely misdirected itself in not dealing with the issues involved in the cases. The complainant approached the Authority with the prayer to grant her refund as the project had been considerably delayed. It, however, provided to grant interest on delay in possession. It is inexplicable how this approach was adopted.

5. Interestingly, the Occupation Certificate for the tower in which unit of the appellant is situated, not being on record, the Authority relied upon an affidavit of the respondent-promoter and conveyance deed in favour of another allottee in the same tower and arrived at the conclusion that occupation certificate of the said unit had been granted.

6. We feel that the order not only suffers from serious infirmities but is vague and cryptic. It is also inexplicable how tentative views have been taken from time to time and same have been affirmed in the final order.

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7. On a query being put to learned counsel for the parties whether such tentative views taken by the Authority are tenable, no clear answer is forthcoming.

8. We are of the view that the forming tentative views by the Authority during the pendency of proceedings suffer from an inherent procedural defect. This is so because these tentative views become basis of the final order to be passed by the Authority. Such a approach by any quasi judicial forum is unknown to law.

9. In the peculiar facts and circumstances of the case, we deem it fit to set aside the impugned order and remit the same to the Authority for decision afresh as per law, after affording opportunity of hearing to both the parties.

10. As the matter has been considerably delayed, it shall endeavour to conclude its proceedings within 2 months of the date on which the parties put in appearance before it.

11. Parties to appear before the Authority on 30.05.2023.

12. Before parting with the judgment we may add that the Authority may adjudicate upon the matter as per

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relief claimed in the complaint and stand taken by the respondent.

13. Copy of this order be communicated to the parties/learned counsel for the parties and the Authority, Panchkula.

14. File be consigned to the record.

Announced:  
May 15, 2023

Justice Rajan Gupta  
Chairman  
Haryana Real Estate Appellate Tribunal

Inderjeet Mehta  
Member (Judicial)

Anil Kumar Gupta  
Member (Technical)

Manoj Rana