

**BEFORE THE HARYANA REAL ESTATE APPELLATE  
TRIBUNAL**

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Appeal No. 342 of 2021  
Date of Decision: 24.03.2023

Smt. Sandhya Gupta, House No. 82, Sector 17, Faridabad,  
Haryana 121002.

...Appellant-Allottee

Versus

Adore Realtech Private Limited, IF-22-26, Ozone Center Sector  
12, Faridabad, Haryana 121007.

...Respondent-Promoter

**CORAM:**

**Shri Inderjeet Mehta,  
Shri Anil Kumar Gupta,**

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

**Argued by:** Shri Rajat Jain, Ld. Authorized  
Representative, for appellant-allottee.

Shri Rohan Gupta, Advocate,  
Ld. counsel for respondent-promoter.

**ORDER:**

**Anil Kumar Gupta, Member (Technical):**

The present appeal has been preferred under Section 44(2) of the Real Estate (Regulation and Development) Act, 2016 (hereinafter called the Act) against order dated 09.02.2021 passed by the Ld. Haryana Real Estate Regulatory Authority, Panchkula (hereinafter called 'the Authority'), whereby complaint No. 849 of 2020 filed by the Appellant was

disposed of. The relevant part of the order 09.02.2021 is reproduced as below:-

*“5. Authority after hearing oral as well as written arguments of both the parties is of the view that according to clause 5.1.1 read with clause 1.12 of BBA, respondent was bound to deliver possession of flat to complainant within 4 years from date of approval of building plans or grant of Environmental Clearance, whichever is later. Respondent in his reply has stated that he obtained the Environmental Clearance on 20.5.2016. Thus, Authority observes that respondent had to deliver possession to complainant by 20.05.2020. However, he failed to do so despite obtaining occupation certificate on 07.09.2018 because as proved from various e-mails of the complainant attached as Annexure -9, respondent demanded additional amount at the time of offer of possession of booked property.*

*6. Authority further observes that valid offer of possession along with additional demand of Rs. 1,93,915/- has been made by the respondent on 28.08.2020 and not on 25.09.2018 when he merely called the complainant in his office for meeting. Thus, Authority directs the respondent to deliver possession of booked plot to complainant along with payment of delay interest from deemed date of possession i.e. 20.05.2020 till date of offer of possession i.e. 28.08.2020 which comes to Rs. 51,803/-.*

7. As far as issue of additional demand of Rs. 1,93,915/- made by respondent along with offer of possession dated 28.08.2020 is concerned Authority observes that License No. 108 of 2014 issued to the respondent promoter by DGTCP, Chandigarh dated 19.08.2014 clearly stipulates under clause (o) that the licensee shall abide by the terms and conditions of the policy dated 19.08.2013. As per terms and conditions of the policy prescribed/ approved by the Town and Country Planning Department relating to Affordable Housing Projects dated 19.08.2013, promoter can charge Rs. 3,500/- per sq. ft. within the MC limits of Faridabad and Rs. 4,000/- per sq. ft. outside the MC limits. Only the cost of balconies shall be in addition to the above charge which should not exceed Rs. 500 per sq. ft. up to a maximum of 100 sq. ft. Above rates shall be an all inclusive cost of apartment. Thus, builder buyer agreement in the present case has been executed in violation of terms and conditions of the said policy and licence granted by Department of Town and Country Planning. Therefore, the respondent cannot claim charges other than labour cess and electricity meter charges. Complainant is, thus, liable to pay an amount of Rs. 13,093/- out of total amount of Rs. 1,93,915/- claimed by the respondent.

8. The complaint is disposed of in the above terms, with direction to both the parties to comply with order of Authority within 45 days of uploading of the order on the website of the Authority. The respondent is directed to deliver

*possession of booked plot to the complainant on payment of Rs. 13,093/- by the complainant to the respondent towards additional charges. The respondent is further directed to pay delay interest of Rs. 51,803/- to the complainant.”*

2. It was pleaded in the complaint by the appellant-allottee that she had booked a unit bearing no. H-303, Type H with a carpet area 473.594 sq. feet under affordable group housing scheme in respondent's project namely "Adore Happy Homes", Sector-86, Faridabad, Haryana on 11.10.2015. Builder Buyer agreement (hereinafter called the 'Agreement') was executed between the parties on 02.11.2015. Sale price of the flat was Rs. 19,44,376/- against which an amount of Rs. 20,18,504/- had already been paid by the appellant-allottee. As per agreement, respondent had committed to deliver possession of the unit within 48 months from the commencement date i.e. 18.04.2015 as per clause 1.12 of agreement. Thus, due date of delivery of possession comes to 18.04.2019. Respondent has obtained occupation certificate on 07.09.2018 and thereafter, a letter dated 25.09.2018 was sent to appellant-allottee whereby she was called for a meeting by the respondent in order to take possession. Appellant-allottee pleaded that in the meeting dated 29.09.2018, the respondent demanded an additional amount of Rs. 1,67,073/- in cash for issuance of 'No Dues Certificate' to enable the complainant to execute the conveyance deed of the flat to which appellant-allottee protested. It was pleaded that

appellant-allottee on many occasions enquired about the date of physical possession of the flat and protested the demand of such amount without through email. The respondent sent an email dated 28.08.2020 with letter dated 03.07.2020 attached with the email offering possession of the unit along with additional demand of Rs. 1,93,915/-. It was further pleaded that email was sent to appellant-allottee on 28.08.2020 but offer letter is ante-dated. It was further pleaded that she is willing to take possession of the said unit but she did not take possession as respondent was asking for illegal demands i.e Rs. 56,770/- as holding charges, Rs. 8,937 as VAT charges, Rs. 7578/- as labour cess, Rs. 5515/- as electricity meter charges, Rs. 11,800/- as common area power backup charges, Rs. 11,800/- as electrical connection 2KW, Rs. 24662/- as operation and maintenance cost and Rs. 68,652/- as reimbursement of electrical infrastructure. The total of such additional demands amount to Rs. 1,93,915/-.

3. Aggrieved with the above, the appellant-allottee has filed the complaint seeking with following reliefs:

- “(1) Interest for the delay in the possession of the flat by the promoter from the date of issuance of occupation certificate.*
- (2) Interest and charges (If any) not conveyed to the complainant with offer of possession be waived off.*
- (3) The charges over and above those stipulated by affordable housing policy not be collected.*

- (4) *Submission of Bank Guarantee by the promoter and a suitable penalty for non-compliance of the policy provisions.*

*As the provisions of the Haryana Affordable Housing Policy 2013 should not be applied only to one party they should be equally reinforced on the other party, then the promoter be directed to submit the Bank Guarantee for all the projects in the plot being developed under the building plan vide Memo No. ZP-1037/AD(NK)/2019/13123 dated 31.05.2019 viz a vis License No. 108 of 2014 dated 14.08.2014, licence no. 29 of 2016 dated 27.12.2016 and licence no. 46 of 2018 dated 09.07.2018 to safeguard the interests of the complainant and other flat buyers. This bank guarantee shall be returned to the promoter only after 2/3<sup>rd</sup> of residents of the group housing colony provides the promoter with a 'No Dues Certificate'.*

*A suitable penalty for non-compliance of the policy provisions and endangering the fate of the flat buyers be imposed on promoter.*

5. *The input credits for service tax and GST be refunded with interest @ 18% to the complainant.*

*As per the recent judgment by the National Anti-Profiteering authority in case of Ms. Santosh Kumar Vs. M/s Aster Infrahome Pvt. Ltd. (National Anti-Profiteering Authority) case no. 57/2019, the promoter has wrongly charged the Service Tax from the period of 11.10.2015 to 30.06.2017 and not provided due ITC*

*benefits to the complainant. The complainant is eligible for the benefit of input tax credit for pre-GST and GST period.*

6. *The promoter should also provide an undertaking for free maintenance of the property as per the provisions of Haryana Affordable Housing Policy 2013. Also, an undertaking from the promoter that he shall not indulge in any harassment to the complainant and other buyers of the society.*
7. *The hon'ble Authority may take suo moto cognizance of such misdeed by the promoter and launch of investigation. The charges extorted by the promoter from the flat buyers be refunded with interest.*
8. *Compensation for the mental agony and harassment caused by the promoter.*

4. The respondent-promoter has contested the complaint on the ground that there has been no delay on part of the respondent in offering possession to the appellant-allottee. It was pleaded that the period of four years for purposes of delivering possession to appellant-allottee should be counted from 20.05.2016 when respondent had obtained Environmental Clearance and not from 18.04.2015. Thus, due date of delivery should be 20.05.2020 and not 18.04.2019. It was pleaded that the respondent had offered possession to the appellant-allottee on 25.09.2018 much prior to deemed date of delivery. It is appellant-allottee who deliberately avoided taking possession. The respondent also refuted the allegation of

demanding additional amount in cash from appellant-allottee. It was pleaded that the additional demand made by respondent vide email dated 28.08.2020 are within the ambit of agreement only and are as per clause 2.5 and 2.6 of agreement which are on account of VAT, labour cess, electricity meter charges, common area power backup charges, electrical connection 2KW, reimbursement of electrical infrastructure and operation and maintenance cost.

5. All other pleas raised by the respondent-allottee were controverted by the appellant-promoter and pleaded for dismissal of the complaint being without any merits.

6. We have heard Ld. counsel for both the parties and have carefully examined the record of the case.

7. Initiating the arguments, ld. Counsel for the appellant contended that Agreement was executed between the parties on 02.11.2015. Sale price of the flat was Rs. 19,44,376/- against which an amount of Rs. 20,18,504/- had already been paid by the appellant-allottee. He contended that as per para D of the Agreement, the respondent promoter had got building plans approved for the AGH Colony vide memo no. ZP-1037/SD(DK)/2015/5347 dated April 3, 2015 from DGTCP and had got the environment clearance from State Environment Appraisal Committee in the 118<sup>th</sup> meeting held on 03.03.2015 for the AGH colony. He further contended that



as per clause 5.1.1, the respondent-promoter was to hand over the physical possession of the flat to the appellant within a period of forty eight (48) months from the commencement date. The commencement date has been mentioned in clause 1.12 as a later date of approval of building plans or the date of obtaining environment clearance for the AGH Colony which is April 18, 2015. Therefore, he contended that the commencement date is already mentioned in clause 1.12 of the agreement as 18.04.2015. Thus, the respondent was to handover the possession of the unit on or before 17.04.2019. The respondent had obtained the occupation certificate on 07.09.2018 and letter of offer of possession was issued vide respondents email dated 28.08.2020 which was accompanied by an offer of possession letter dated 03.07.2020 and a demand of Rs. 1,93,915/-. The said demand of Rs. 1,93,915/- was an illegal demand and on account of non-payment of this demand the respondent did not hand over the said unit to the appellant-allottee. The unit was ultimately handed over to the appellant on 15.04.2021. He contended that in this appeal the appellant is only contesting about the period of delayed possession charges which should be from the due date of possession i.e. on 18.04.2019 to till the date the possession has been actually handed over to the appellant i.e. upto 15.04.2021. He further contended that the appellant is not pressing for any other relief other than the above said relief of payment of delay possession interest for the above said period.

8. With these contentions, it was prayed that the appeal may be allowed and the impugned order dated 09.02.2021 passed by the learned Authority in the complaint may be modified accordingly.

9. Per contra, ld. Counsel for the respondent has contended that the unit allotted to the appellant is under the category of AGH policy 2013 of the Town and Country Planning Department Haryana. The appellant is not a genuine purchaser to avail the benefits of allotment of the house under the said category of affordable housing policy as the appellant has rented out the apartment on 23.09.2021 whereas, the appellant cannot rent out the said premises within one year of the actual physical possession of the unit in accordance with the said policy and as per the terms and conditions of the agreement.

10. It was further contended that the offer of possession and the demand of Rs. 1,93,215/- made along with the possession letter was as per the terms and conditions of the agreement and nothing extra was demanded.

11. With these contentions, the respondent-promoter prayed for dismissal of the appeal being without any merits.

12. We have duly considered the aforesaid contentions of the parties.

13. The appellant had booked a unit bearing no. H-303, Type H with a carpet area 473.594 sq. feet under affordable

group housing scheme in respondent's project namely "Adore Happy Homes", Sector-86, Faridabad, Haryana on 11.10.2015. The Agreement between the parties was executed on 02.11.2015. Sale price of the flat was Rs. 19,44,376/- against which an amount of Rs. 20,18,504/- had already been paid by the appellant-allottee. As per clause no. 5.1.1 of the agreement, the respondent-promoter was to offer the handing over the physical possession of the flat to the appellant within a period of 48 months from the commencement date. The commencement date has been mentioned in clause 1.12 of the agreement which is reproduced as under:-

*1.12 "Commencement Date" shall mean the later of the date of approval of the building plans or the date of obtaining the environment clearance for the AGH Colony which is April 18, 2015."*

14. It has been mentioned in clause D of the recitals of the agreement that the respondent had got the building plans approved on 03.04.2015. Thus, the commencement date of the project comes out to be 18.04.2015 and therefore, the possession of the unit was to be offered to the appellant-allottee on or before 17.04.2019. The offer of possession has been made by the respondent vide its email dated 28.08.2020 through which a letter dated 03.07.2020 was sent intimating the offer of handing over of the physical possession of the unit in question to the appellant. The offer of possession was accompanied with a demand of Rs. 1,93,915/-. The details of which are as under:-

	Basic	GST	Total
Flat Due Amount	0	-	0
Holding Charges	48111	8659.98	56770.98
Vat Cost	8937	-	8937
Labour Cess	7578	-	7578
Electrical Meter Charges	4674	841	5515
Common Area Power Backup Charges	10000	1800	11800
Electrical Connection Charges 2KW	10000	1800	11800
(1 KW is free, so total load will be 3 KW)			
Interest	0	0.00	0.00
Operation & Maintenance Cost	20900	3762	24662
(Till 30 <sup>th</sup> Jun-2020)			
Reimbursement of Electrical Infrastructure Augmentation charges	58180	10472.4	68652.40
Net Dues	168380	25535.38	1,93,915.38

15. Ld. Authority vide its impugned order dated 09.02.2021 had observed that the respondent cannot claim charges other than labour cess and electricity meter charges and found that the appellant is liable to pay only an amount of Rs. 13,093/- out of total demand of Rs. 1,93,915/-. The appellant has also been held entitled to Rs. 51,803/- as delayed possession interest from the deem date of possession i.e. 17.04.2019 till date of offer of possession i.e. 28.08.2020 vide impugned order dated 09.02.2021 passed by the ld. Authority. The said order of the ld. Authority has not been

contested by the respondent. Thus, at the time of offer of possession, the appellant was entitled for more amount than as demanded by the respondent vide offer of possession letter emailed on dated 28.08.2020. Thus, the offer of possession dated 28.08.2020 was not valid offer of possession as the respondent would not hand over the possession of the unit until the demand of Rs. 1,93,915/- is paid by the appellant. During the arguments, the Authorized Representative of the appellant has stated that the appellant has taken the possession on 15.04.2021. There is no documents on record to prove that the appellant had taken over the possession on 15.04.2021. However, the same has not been contested by the ld. Counsel for the respondent. Thus, from the above said discussions, the delayed possession interest is allowed with effect from the deem date of possession i.e. from 17.04.2019 till the date physical possession has actually been handed over to the appellant i.e. on 15.04.2021, instead of for the period from 20.05.2020 to 28.08.2020 as awarded in the impugned order, at the prescribed rate of interest as per Rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 i.e. SBI Highest MCLR+2% which comes out to be Rs. 10.6% per annum on the amount paid by the appellant-allottee.

16. Consequently, the appeal is allowed and the impugned order is modified accordingly as per above said order.

17. No other points were raised before us.
18. No order to costs.
19. Copy of this order be sent to the parties/Ld. counsel for the parties and Ld. Haryana Real Estate Regulatory Authority, Panchkula
20. File be consigned to the record.

Announced:  
March 24,2023

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

Anil Kumar Gupta  
Member (Technical)

*Rajni Thakur*