

**BEFORE THE HARYANA REAL ESTATE APPELLATE
TRIBUNAL**

**Appeal No.715 of 2022
Date of Decision: 11.09.2023**

Jagjit Kaur Kohli, T-44, Ground Floor, Rajouri Garden, New
Delhi-110027.

Appellant

Versus

M/s Anant Raj Industries Limited, C-1, Sector-8, IMT
Manesar, District Gurugram, Haryana-122051.

Respondent

CORAM:

Justice Rajan Gupta Chairman
Shri Anil Kumar Gupta, Member (Technical)

Argued by: Mr. Harshit Goyal, Advocate,
for the appellant.

Mr. Akshat Grover, Advocate,
for the respondent.

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 as 'the Act') by the appellant-
allottee against impugned order dated 11.03.2022 passed by
the Haryana Real Estate Regulatory Authority, Gurugram (for
short 'the Authority') whereby Complaint No. 2596 of 2021 filed

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by the appellant/allottee was disposed of with the following directions:-

- a) *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 complainants from due date of possession i.e. 16.08.2016 till the expiry of 2 months from the date of OC i.e. 27.01.2020.*
- b) *The arrears of such interest accrued from 16.08.2016 till the date of order by the authority shall be paid by the promoter to the allottee within a period of 90 days from date of this order.*
- c) *The conveyance deed has also been executed between the parties therefore, the complainant is directed to take the possession of the said unit within 2 months from the date of this order.*
- d) *The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period. The rate of interest chargeable from the complainants/allottees by the promoter, in case of default shall be charged at the prescribed rate i.e. 9.30% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottees in case of default i.e. the*

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delay possession charges as per section 2(za) of the Act.

- e) Also the amount so paid by the respondent to the complainant towards compensation for delay in handing over possession shall be adjusted towards the delay possession charges to be paid by the respondent in terms of proviso to section 18(1) of the Act.*
- f) If there is no amount outstanding against the allottees or less amount outstanding against the allottees then the balance delay possession charges shall be paid after adjustment of the outstanding against the allottees.*
- g) The respondent shall not charge anything from the complainants which is not the part of the buyer's agreement. However, holding charges shall not be charged by the promoters at the point of time even after being part of agreement as per law settled by Hon'ble Supreme Court in civil appeal no.3864-3889/2020."*

2. As per averments in the complaint filed by the appellant/allottee, an 'Apartment Buyer Agreement' (hereinafter referred to as 'the agreement') was executed between the parties on 16.02.2013 in respect of the booked unit bearing no.D-704 on 7th floor, Tower-D, having super area 1862 sq. ft. situated in the project of the respondent/promoter named 'Maceo', Sector-91, Gurugram. The conveyance-deed

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was executed on 05.11.2020 without delivery of physical possession. As per clause 7.1 of the agreement, the respondent/promoter was to complete the construction and hand over the physical possession of the unit within a period of 36 months from the date of execution of the agreement plus six months grace period. Therefore, the due date of delivery of possession was 16.08.2016. However, the respondent/promoter failed to deliver the physical possession of the unit with completed construction till date.

3. It was further pleaded that the possession letter dated 30.11.2019 issued by the respondent/promoter is illegal and unlawful as the construction of the unit was not complete and the same was not ready for possession on the date of offer of possession i.e. 30.11.2019. The construction was not complete is evident from the email dated 09.10.2020 issued by Mr. Parag Sharma, working as CRM Manager with the respondent/promoter. The email dated 09.10.2020 states "This is regards to the readiness of your unit D-704 at Maceo, we would like to confirm you that the unit will be ready for possession tentatively by 22 October 2020. We will keep you posted on same." No communication in respect of completion of the unit has been received till date.

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4. It was pleaded that the delayed possession charges paid by the respondent/promoter were not in accordance with the Haryana Real Estate Regulation and Development Rules, 2017 (hereinafter referred to as 'the rules, 2017').

5. With these pleadings, following relief was sought by the appellant/allottee:-

- a. To direct the respondent to pay delay possession charges at the prescribed rate of interest (SBI MCLR + 2% per annum) to the complainant for the period of delay in delivery of possession of the booked unit i.e. from due date of delivery of possession 16.08.2016 to the date of delivery of actual possession with completed construction works after deduction of amount already paid to the complainant.
- b. To direct the respondent to deliver lawful and valid possession and handover keys of the booked unit to the complainant with completed construction works and in a habitable condition.
- c. To direct the respondent to pay penalty to the complainant for illegal shifting of Main Entry to the project in question "Maceo".

6. The complaint was resisted by the respondent/promoter on the ground that the project "Maceo" was delayed and could not be completed within the stipulated period on account of the reasons beyond the control of the

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respondent/promoter and the same are covered under the 'force majeure' condition stipulated in clause 19 of the agreement. The delay was caused on account of orders passed by the Hon'ble National Green Tribunal and the State Pollution Control Board.

7. It was further pleaded that despite the force majeure condition, the respondent/promoter completed the construction of the said project in 2019 and received the Occupation Certificate on 28.11.2019 and offered possession on 30.11.2019. The respondent/promoter through an email dated 31.01.2020, asked for certain documents from the appellant before handing over of the possession. The said email clearly stated that pursuant to conciliation of all such documents, the finishing work of the unit will start and possession will be handed over within 90 days thereof. In reply to the said email, the appellant/allottee sent email dated 11.02.2020, wherein he has mentioned that the allottee is yet to receive a cheque in lieu of delayed possession charges payable by the respondent/promoter. Subsequently, due to the nationwide lockdown declared by the government of India on account of spread of Covid-19 virus, the finishing work of the said project was delayed.

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8. It was further pleaded that the respondent has already paid an amount of Rs.6,59,301/- to the allottee towards delayed possession charges in accordance with the agreement, hence, nothing more is left to be paid on behalf of either of the parties.

9. With these pleadings, it was prayed that there is no merit in the complaint and the same deserves to be dismissed.

10. We have heard learned counsel for the parties and have carefully examined the record.

11. At the outset, while reiterating the pleadings of the complaint, learned counsel for the appellant contended that the respondent had obtained the Occupation Certificate on 28.11.2019 and offered possession of the unit on 30.11.2019. However, the construction work of the unit was not completed and the unit was not ready for possession on the date of offer of possession. The appellant sent emails on 11.02.2020, 21.02.2020, 17.03.2020 and 02.06.2020, seeking possession and execution of the conveyance-deed. In response to the above said emails of the appellant, the respondent/promoter through Mr. Parag Sharma, CRM Manager of the respondent sent an email dated 09.10.2020, intimating that the unit will be ready for possession tentatively by 22.10.2020. It was further submitted that the conveyance-deed was executed on

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05.11.2020, but the physical possession of the unit was not given. The appellant filed complaint before the Authority seeking delayed possession charges from the due date of delivery of possession till the actual date of delivery of physical possession of the unit. Physical possession of the unit has been taken by the appellant on 16.04.2022.

12. With these contentions, it was prayed that the appeal may be allowed and the allottee may be granted delayed possession interest, as per rule 15 of the rules, from the due date of delivery of possession till the date of actual possession was handed over to him.

13. Per contra, learned counsel for the respondent submitted that the order passed by the Authority is as per the Act and rules made thereunder. There is no merit in the appeal filed by the allottee and the same deserves to be dismissed.

14. We have duly considered the aforesaid contentions of both the parties.

15. The brief facts of the case are that the agreement between the parties was executed on 16.02.2013 for the unit bearing no.D-704 on 7th floor, Tower-D, having super area 1862 sq. ft. situated in the project of the respondent/promoter

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named 'Maceo', Sector-91, Gurugram. The conveyance-deed was executed on 05.11.2020 without delivery of physical possession. As per clause 7.1 of the agreement, the respondent/promoter was to complete the construction and hand over the physical possession of the unit within a period of 36 months from the date of execution of the agreement plus six months grace period, which comes out to be 16.08.2016 and there is no dispute about it. The total sale consideration was Rs.69,90,960/-. The total amount paid by the allotted as per conveyance deed is Rs.62,65,000/-.

16. The appellant alleges that the construction was not complete when the possession was offered on 30.11.2019. The appellant sent emails on 11.02.2020, 21.02.2020, 17.03.2020 and 02.06.2020, seeking possession and execution of the conveyance-deed. In response to the above said emails of the appellant, Mr. Parag Sharma, CRM Manager of the promoter had sent an email dated 09.10.2020 indicating that the unit will be ready for possession tentatively by 22.10.2020. However, the physical possession of the unit was not given and the conveyance deed was executed 05.11.2020 without physical possession. Therefore, the appellant in this appeal seeks delayed possession interest till he took physical possession on 16.04.2022.

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17. Mr. Parag Sharma, CRM Manager of the respondent, through an email dated October 9, 2020, informed the appellant that the unit will be ready for possession by October 22, 2020. There exists no supporting evidence in the record or within the correspondence exchanged between the parties after October 22, 2020, suggesting that the appellant made any notable efforts to secure physical possession of the unit. The appellant ultimately took physical possession of the property on April 16, 2022, without any communication and there was no resistance or objection from the respondent. It is therefore, evident that the appellant did not actively pursue physical possession of the unit. Typically, conveyance deed is executed after securing physical possession of the property. It remains unclear how the appellant executed the conveyance deed on November 5, 2020, without having obtained physical possession of the unit. In light of the aforementioned observations, we grant the appellant delayed possession interest up to October 22, 2020, the date when the respondent communicated via its email dated October 9, 2020, that possession would likely be available by October 22, 2020, as opposed to the earlier date of March 27, 2020, as determined by the Authority.

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18. Consequently, the appeal filed by the appellant/allottee is partly allowed as per the above said observations and the impugned order is modified accordingly.

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

20. File be consigned to the record.

Announced:
September 11, 2023

Justice Rajan Gupta
Chairman
Haryana Real Estate Appellate Tribunal

Anil Kumar Gupta
Member (Technical)

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