

**BEFORE THE HARYANA REAL ESTATE APPELLATE
TRIBUNAL**

Appeal No. 751 of 2022

Date of Decision: 30.11.2023

Reena Mago wife of Sh. Tirilochan Mago, Resident of House No.1702, Housing Board Colony, Sector 15, Sonapat, Haryana.

Appellant

Versus

M/s MAPSKO Builders Private Limited through its Director, Registered Office: 52, North Avenue Road, Punjabi Bhag West, New Delhi-110026.

Respondent

CORAM:

Justice Rajan Gupta
Shri Anil Kumar Gupta,

Chairman
Member (Technical)

Argued by: Mr. Ketan Antil, Advocate,
for the appellant.

Mr. Akshat Mittal, Advocate,
for the respondent.

ORDER:

RAJAN GUPTA, CHAIRMAN:

The present appeal has been preferred against the order dated 26.07.2022 passed by the Haryana Real Estate Regulatory Authority, Panchkula (hereinafter referred to as 'the Authority'), whereby Complaint No.1519 of 2020, filed by appellant/allottee was disposed of. The operative part of the impugned order is reproduced as under:-

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“5. Perusal of case file reveals that respondent had sent an offer of possession on 04.02.2016 (Annexure R-1). Said offer was made before receiving occupation certificate, therefore it can not be called a valid offer. Later, respondent received Occupation Certificate on 10.07.2017. Thereafter respondent sent a reminder dated 18.12.2019 to complainant for taking possession of the booked unit by referring to their previous offer of possession. Therefore, Authority observes that offer of possession dated 04.02.2016 gains validity as soon as Occupations Certificate was received by the respondent. Complainant should have taken the possession on or after 10.07.2017 i.e. the date of receiving Occupation Certificate.

6. Authority had dealt with the issue of date of offer of possession in its previous order dated 30.06.2021, relevant part of which is reproduced below:-

“2. First issue is delay interest which is payable to the complainant (sic) from the deemed date of possession to date on which actual possession was taken on 17.02.2020. Respondent’s plea on the other hand is that he has offered possession to the complainant on 04.02.2016 vide letter at Annexure R-1 and the delayed interest is therefore payable only from deemed date of possession i.e. July 2014 to date of offer of possession i.e. 04.02.2016.

3. The Authority is of the considered opinion that the allottee is obliged to accept possession

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only if the same is handed over after obtaining occupation certificate. Although, the offer of possession was made in February 2016 but the fact remains that the respondent had obtained occupation certificate on 10/07/2017 is valid offer of possession will be deemed to have been (sic) made on 10/07/2017 considered, the complainant is entitled to delayed interest from 20/07/2014 to 10/07/2017.”

7. *Accordingly, complainant would be entitled to delayed interest from 20.07.2014 to 10.07.2017 @ SBI MCLR + 2% i.e. 9.80%. Complainant claims to have paid Rs.37,00,000/- however, she has submitted receipt of Rs.31,28,256/- including Rs.2,04,000/- towards payment of EDC/IDC. Amount of EDC/IDC is excluded while calculating interest. Complainant paid Rs.3,02,664/- at the time of taking possession i.e., in the year 2020 which is also excluded while calculating interest. Accordingly interest payable by respondent to complainant comes out to Rs.8,50,833/-. This matter is disposed of with direction t respondent to pay the calculated delay interest to complainant within 90 days of uploading of this order.*

8. *Disposed of. File be consigned to record room after uploading of this order on website of this Authority.”*

2. As per the averments in the complaint, the appellant/allottee had booked a unit in the project the

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respondent/promoter known as “Mapsko City Homes” situated in Sector 26, 26A and 27, Sonapat. Vide allotment letter dated 02.01.2014, she was allotted Floor No.370, Ground Floor, MA Block measuring 1374 sq. ft. Floor Buyer Agreement (for short ‘the agreement’) between the parties was executed on 20.07.2012. As per clause 14(a) of the agreement, the possession of the unit was to be delivered within 24 months from the date of execution of the agreement. Thus, the deemed date of possession was 20.07.2014. The total sale consideration of the unit was Rs.34,82,266/-. However, the appellant/allottee paid Rs.37,00,000/- as demanded by the promoter, but still the promoter offered possession to the allottee on 18.12.2019 i.e. with a delay of about four years and five months. The appellant/allottee took possession on 17.02.2020 after making payment of Rs.1,80,000/- on 24.01.2020 and Rs.1,22,664/- on 19.02.2020. It was further pleaded that the respondent/promoter while giving offer of possession had not furnished copy of the ‘Occupation Certificate’ in respect of the unit in question. Thus, she filed complaint before the Authority seeking direction to pay interest for the delayed period in handing over possession i.e. from 20.07.2014 till 18.12.2019.

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3. Respondent/promoter resisted the claim of the allottee by filing reply stating therein that the appellant/allottee has concealed the fact that possession of the unit was offered on 04.02.2016. The Occupation Certificate qua the unit was applied on 07.02.2016 and same was obtained on 10.07.2017. It was further pleaded that after obtaining the Occupation Certificate, vide letter dated 18.12.2019, the appellant/allottee was asked to take possession and physical possession was taken by the allottee on 17.02.2020. While controverting all the pleas taken in the complaint, the promoter pleaded for dismissal of the complaint, being without any merit.

4. The Authority after considering the pleadings of the parties, passed the impugned order dated 26.07.2022, the relevant part of which has already been reproduced in the opening para of this order.

5. We have heard learned counsel for the parties and have carefully gone through the record of the case.

6. At the outset, learned counsel for the appellant/allottee contended that the Authority while passing the impugned order, has wrongly and illegally considered offer of possession letter dated 04.02.2016 as a valid offer of possession as the same is a created document only to defeat

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the valid claim of the appellant/allottee. It was contended that the said letter was never received by the allottee. More so, the alleged letter, if any, was issued by the promoter even without applying for the Occupation Certificate because the same was applied on 07.12.2016 i.e. after the above said letter dated 04.02.2016 and same was received on 10.07.2017. So, the alleged possession letter dated 04.02.2016 cannot be considered a valid offer of possession. In fact, the offer of possession was given by the respondent/promoter on 18.12.2019.

7. Per contra, learned counsel for the respondent submitted that the order passed by the Authority is correct. There is no merit in the appeal filed by the allottee and the same deserves to be dismissed.

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

9. Undisputedly, letter dated December 18, 2019 (Annexure A-7) was issued by the respondent/promoter to the appellant/allottee. There is specific mention therein that 'Occupation Certificate' has been obtained by the company and the allottee was asked to take possession forthwith. Relevant part of the said letter is reproduced hereunder for ready reference:

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“With reference to your booking of a GROUND Floor No.MA-370 having area 1345 Sq. ft. “PMAPSKO CITY HOMES” at Sector 26, 26-A & 27, Sonapat, Haryana. Please refer to our offer of Possession Letter dated 42404 [sic 04.02.2016]. It is observed that you have still not taken any action towards Possession of said floor. This has been already informed you in our offer of possession Letter that the developments work of the “MAPSKO CITY HOMES” has been completed and the company has obtained the Occupancy Certificate for the same. Hundreds of Conveyance Deed already been executed in favour of the concerned allottees. In view of the above progress you are requested to kindly pay the following amount and take the Possession of said floor.

Particulars	Basic	Tax	Total
Possession amount due	182842.00	8228.00	191070.00
VAT	111594.00	0.00	111594.00
Water & Sewerage Connection charges	0.00	0.00	0.00
Interest charges @ 10 % on delayed payments.	58260.00	6991.00	65251.00
Holding charges @ 5/sq.ft./month	209350.00	55683.00	365033.00
Total			732948.00
Club membership charges	50000.00	9000.00	59000.00
IFMS 25/- per sq.ft on built up area	33625.00	0.00	33625.00
Monthly maintenance charges (after Possession) @ 1/- per sq.ft on built-up area From 01 March 2016 to 31 December, 2019.	61870.00	11377.00	73247.00
Interest charges @ 10 % on Maintenance Charges	58771.00	10579.00	69350.00
Total			236222.00

You are requested to kindly pay the said amount of Rs.732948/- (Rupees Seven Lakh Thirty Two Thousand Nine Hundred Forty Eight only) by Demand Draft/Cheque drawn in favour of “MAPSKO BUILDRES PVT. LTD.” Payable New Delhi and a cheque of Rs.235222/- (Rupees Two Lakh Thirty Five Thousand Two Hundred Twenty Two only) by Demand Draft/Cheque drawn in favour of MAPSKO BUILDCON PVT. LTD.”. Payable, New Delhi. We expect you to remit the payments, to reach us positively at the earliest Conveyance/Sale Deed for the said floor shall be Executed in your favour after clearing of all dues.”

10. In view of the above, we are of the considered opinion that the appellant/allottee is entitled to the delay

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interest from 20.07.2014 to 18.12.2019 plus two months. Besides, the appellant is entitled to interest only till the letter of offer of possession as he has pressed his claim only till the letter dated 18.12.2019 (Annexure A-7) was issued. Ordered accordingly.

11. No other point was argued before us.

12. Consequently, the impugned order passed by the learned Authority is modified in the manner indicated above and the appeal stands disposed of.

13. No order as to costs.

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

15. File be consigned to the record.

Announced:
November 30, 2023

Justice Rajan Gupta
Chairman
Haryana Real Estate Appellate Tribunal

Anil Kumar Gupta
Member (Technical)