

**BEFORE THE HARYANA REAL ESTATE APPELLATE TRIBUNAL**

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**Appeal No.845 of 2022**

**Date of Decision: November 08, 2024**

M/s Alpha Corp. Development Private Limited, Golf View Corporate Towers, Tower-A, Sector 42, Golf Course Road, Gurgaon.

Appellant.

Versus

Mr. Kapil Dev son of Charanjit Lal, 149, Rajiv Coony, Kaithal Road, Karnal (Haryana).

**Respondent**

Present : Mr. Bahul Bunger, Advocate for the appellant.  
Mr. Nilotpall Shyam, Advocate for the respondent.

**CORAM:**

**Justice Rajan Gupta  
Rakesh Manocha**

**Chairman  
Member (Technical)**

**O R D E R:**

**RAJAN GUPTA, CHAIRMAN (ORAL):**

The present appeal is directed against the order dated 30.9.2021, passed by the Authority<sup>1</sup>. The operative part thereof reads as under:

*“i).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 complainant from due date of possession i.e. 21.05.2016 till 13.12.2017 i.e. expiry of 2 months from the date of offer of possession (13.10.2017).*

*ii) The arrears of such interest accrued from 21.05.2016 till 13.12.2017 shall be paid by the*

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<sup>1</sup> Haryana Real Estate Regulatory Authority, Gurugram

*promoter to the allottee within a period of 90 days from the date of this order as per rule 16(2) of the rules.*

*iii) The complainant is directed to make the outstanding payments including charge till 21.05.2016, if any, to the respondent along with prescribed rate of interest i.e. equitable interest which has to be paid by both the parties in case of failure on their respective parts.*

*iv) The respondent is right in demanding maintenance charges at the rates prescribed in the buyer's agreement at the time of offer of possession. However, the respondent shall not demand the maintenance charges for more than one year from the allottee.*

*v. The respondent shall not charge anything from the complainant which is not the part of the buyer's agreement. The respondent shall not claim holding charges from the complainant/allottee at any point of time even after being part of the builder buyer's agreement as per law settled by Hon'ble Supreme Court in Civil Appeal Nos. 3864-3889/2020 decided on 14.12.2020."*

2. The facts, emanating from the record, are that in the year 2011, the respondent<sup>2</sup> had booked an apartment bearing No. E-1204 of 1181 square feet in block E of the project 'Gurgaon One' Sector 84, Gurgaon (hereinafter referred to as 'the unit'), developed by Magnum International Trading Company Pvt. Ltd. and the appellant<sup>3</sup> for a total consideration of Rs.44,73,256/- and made advance payment of Rs.5,72,195/-. The payments were made by the allottee through the promoter. Pursuant to the booking amount, the

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<sup>2</sup> allottee

<sup>3</sup> promoter

allottee was allotted the unit. The allottee entered into ABA<sup>4</sup> with the promoter on 24.08.2011. The possession of the unit was to be handed over by 21.11.2015. The promoter obtained Occupancy Certificate on 09.10.2017 and offered possession of the unit to the allottee vide letter dated 13.10.2017. As the promoter failed to hand over the possession within the stipulated period and demanded other charges, the allottee filed the complaint.

3. The promoter resisted the claim of the allottee by pleading that the project did not require registration under the Act<sup>5</sup> as Occupancy Certificate had already been granted on or before publication of the Rules<sup>6</sup>, hence the project shall be excluded from the purview of the Act and the Rules.

4. The Authority, *vide* impugned order, disposed of the complaint by issuing directions, as referred to above.

5. Aggrieved, the promoter has filed the present appeal.

6. Counsel for the promoter made two-fold submissions—firstly, the project in question does not fall within the purview of the Act and the Rules and secondly, the promoter is entitled to Holding Charges.

7. From the scheme of the Act, it is apparent that its application is retroactive in character and it can safely be observed that the projects already completed or to which the completion certificate has been granted are not under its fold and therefore, vested or accrued rights, if any, in no manner are affected. At the same time, it will apply to on-going projects

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<sup>4</sup> Apartment Buyer Agreement

<sup>5</sup> The Real Estate (Regulation and Development) Act, 2016

<sup>6</sup> The Haryana Real Estate (Regulation and Development) Rules, 2017

and future projects registered under Section 3 of the Act to prospectively follow the mandate of the Act. Mere applying for grant of occupation certificate to the competent authority does not exempt the project from the category of 'on-going project'. (See *M/s. Newtech Promoters and Developers Pvt. Ltd. Vs. State of U.P.*, 2022(1) RCR (Civil) 367).

8. As regards the Holding Charges, the issue is no longer *res-integra* in view of the judgment of Hon'ble Supreme Court in Civil Appeal Nos.3864-3889 of 2020- "*DLF Home Developers Ltd. (Earlier Known as DLF Universal Ltd) and another vs. Capital Greens Flat Buyers Association Etc. Etc.*", wherein it was held that the builder is not entitled to levy holding charges.

9. Consequently, the view taken by the Authority is plausible. No interference is called for in the present appeal.

10. The appeal is, accordingly, dismissed.

11. The amount of Rs.7,67,768/- deposited by the promoter with this Tribunal as pre-deposit to comply with the provisions of proviso to Section 43(5) of the Act, along with interest accrued thereon, be remitted to the Authority for disbursement to the allottee, subject to tax liability, if any, according to law.

12. File be consigned to the record.

Justice Rajan Gupta  
Chairman  
Haryana Real Estate Appellate Tribunal

Rakesh Manocha  
Member (Technical)

November 08, 2024  
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