

BEFORE THE HARYANA REAL ESTATE APPELLATE TRIBUNAL

Appeal No.856 of 2022

Date of Decision: January 07,2025

Rajbala Singh and Rajbir Singh, F3-601, Kingburry Flats, TDI
City, Kundli, Sonipat, Haryana

Appellants.

Versus

M/s Almond Infrabuild Pvt. Ltd., 711/92, Deepali, Nehru Place,
New Delhi

Respondent

Present : Mr. Neeraj Gupta, Advocate for the appellants.
Mr. Vivek Sethi, Advocate for the respondent.

CORAM:

Justice Rajan Gupta
Rakesh Manocha

Chairman
Member (Technical)

ORDER:

RAJAN GUPTA, CHAIRMAN

The present appeal is directed against the order dated 01.09.2022, passed by the Authority¹. The operative part thereof reads as under:

“i). The respondent is directed to handover the possession of the allotted unit complete in all aspects as per specifications of buyer’s agreement within 2 weeks from date this order i.e. 01.09.2022.

ii) The respondent shall pay interest at the prescribed rate i.e. 10% per annum for every month of delay on the amount paid by the complainants from due date of

¹ Haryana Real Estate Regulatory Authority, Gurugram

possession i.e. 18.04.2017 till offer of possession (09.08.2019) plus two months i.e. 09.10.2019 as per Section 18(1) of the Act of 2016 read with rule 15 of the rules.

iii) The respondent is directed to pay arrears of interest accrued within 90 days from the date of order.

iv) The rate of interest chargeable from the allottees by the promoter. In case of default shall be at the prescribed rate i.e. 10% 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 delayed possession charges as per section 2(za) of the Act.

iv) The respondent shall not charge anything from the complainants which is not the part of buyer's agreement."

2. The facts, emanating from the record, are that in the year 2013, the appellants applied for allotment of a flat bearing no. 3081 (Type 'D') measuring 1750 square feet on 8th floor of Tower 3 in group housing project "ATS Tourmaline", situated in Sector 109, Gurugram for a total sale consideration of Rs.1,44,00,000/- and paid booking amount of Rs.37,58,751/-. The appellants paid a sum of Rs.1,44,25,366/- as per demands raised by the respondent. On 09.08.2019, offer of possession-cum- demand letter was issued by the respondent. In terms of the aforesaid letter, the possession of the apartment was to be delivered within 90 days upon receipt of entire payment by the respondent. As there was delay in handing over the possession of the unit, the appellants preferred the complaint before the Authority seeking following reliefs:

(i) Direct the respondent to handover the possession of the allotted unit.

ii) Direct the respondent to pay interest for every month of delay at the prevailing rate of interest.”

3. In reply, the respondent controverted the allegations of the appellants. It was pleaded that after completing the construction of the unit in question, it obtained occupation certificate from the concerned authorities on 09.08.2019 and offered the possession of the unit to them vide letter dated 09.08.2019. According to it, the appellants were bound to take physical possession of the unit after making payment towards the due amount.

4. Vide impugned order, the Authority issued the directions contained in first paragraph of the judgment.

5. It is pertinent to mention that with the intervention of the Bench, the possession of the unit was handed over to the appellants on 23.09.2023.

6. From a perusal of the record, it is apparent that the respondent obtained Occupation Certificate on 09.08.2019 and it also offered the appellants to take possession of the unit on the same day. The appellants failed to take possession despite reminders issued by the respondent. According to the agreement, it was the responsibility of the appellants to take physical possession of the unit.

7. As far as DPC² is concerned, the Authority has rightly observed that the same would be payable from the due

² Delayed Possession Charges

date of possession i.e. 18.04.2017 till offer of possession i.e. 09.08.2019 plus two months. The plea of the appellants that the same should be awarded till actual handing over of possession i.e.23.09.2023 is mis-conceived.

8. In view of the above, it is held that the offer of possession made by the respondent to the appellants was a valid offer. Merely because they themselves delayed taking over the possession as they felt that interest would be payable for such intentional delay, they are not entitled to claim delay compensation beyond 09.08.2019 (plus two months), same having been held to be a valid date of possession.

9. In the cases where possession is offered by the promoter, the allottee is supposed to act with same alacrity as expected from the promoter in offering possession. Once a valid offer of possession is made, there is no reason why allottee should not take possession forthwith unless there are valid reasons for not doing so. The facts and circumstances of this case show that the allottees took possession on 23.09.2023 only after this Tribunal intervened and then tried to make out a case for grant of delay compensation till the said date. This approach on the part of the allottees in trying to get more compensation by delaying possession is unacceptable. The conduct of both the parties i.e. promoter and allottee in respect of delay in possession has to be assessed in each case depending upon its factual matrix.

10. The appeal is accordingly dismissed.

11. Copy of the order be communicated to the parties/Authority for information.

12. File be consigned to the record.

Justice Rajan Gupta
Chairman
Haryana Real Estate Appellate Tribunal

Rakesh Manocha
Member (Technical)

January 07, 2025.
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