

**BEFORE THE HARYANA REAL ESTATE APPELLATE
TRIBUNAL**

Appeal No.627 of 2024
Date of Decision: 15.01.2025

M/s Jubilant Malls Pvt. Ltd. Regd office 9th Floor, ILD Trade Centre,
Sohna Road, Sector-47, Gurugram, Haryana-122018.

Appellant

Versus

1. Sunirmal Baksi;
2. Sushmita Samanta both R/o H.No.646, 2nd Floor, Sector-10,
Gurugram, Haryana-122001.

Respondents

CORAM:

**Justice Rajan Gupta
Shri Rakesh Manohca**

**Chairman
Member (Technical)**

Present: Mr. Munish Kumar Garg, Advocate,
for the appellant

ORDER:

Rajan Gupta, Chairman (Oral):

Present appeal is directed against order dated 17.05.2024 passed by the Authority¹ directing the promoter (appellant herein) to grant possession and delay possession charges @ 10.85% for every month of delay from the due date of possession i.e. 20.03.2021 till offer of possession plus two months, which would come to 01.10.2022.

2. At the outset, Mr. Garg submits that possession has been handed over to the respondents and conveyance deed has also been executed in their favour. His limited plea, however is that there

¹Haryana Real Estate Regulatory Authority, Gurugram

was a MoU² with the allottees that they would not agitate any issue before a legal forum as per 'settlement' between them. Despite this, allottees filed the instant complaint before the Authority.

3. A question, thus, arises before this Bench whether a settlement between the parties can override the provisions of law. The Act³ was enacted for regulation and promotion of the real estate sector and to ensure sale of plots, apartments and sale of real estate projects in an efficient and transparent manner and to protect the interest of consumers in the real estate sector and to establish an adjudicatory mechanism.

4. Complainants have only taken recourse to legal remedy available to them. The Authority after affording opportunity of hearing to both the parties arrived at a conclusion that delay possession charges needed to be granted. It held as follows:

“48. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations casted upon the promoters as per the functions entrusted to the authority under section 34(f):

i. The respondent is directed to pay delayed possession charges at the prescribed rate of interest i.e. 10.85% p.a. for every month of delay on the amount paid by the complainant to the respondent from the due date of possession 20.03.2021 till offer of possession i.e. 01.08.2022 plus two months i.e. upto 01.10.2022 as per proviso to section 18(1) of the Act read with rule 15 of the rules.

ii. The respondent shall not charge anything from the complainant which is not the part of the flat buyer's agreement.

iii. The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the

²Memorandum of Understanding

³The Real Estate (Regulation and Development) Act, 2016

prescribed rate i.e., 10.85% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottees, incase of default i.e., the delayed possession charges as per section 2(za) of the Act.

iv. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.

v. The respondent is directed to pay arrears of interest accrued within 90 days from the date of order of this order as per rule 16(2) of the rules.”

5. This Bench feels that there is no legal infirmity with the aforesaid order passed by the Authority. The contention that the MoU entered between the parties would have overriding effect and provisions of the statute cannot be invoked, is misconceived and deserves outright rejection.

6. In view of above, the appeal is hereby dismissed.

7. The pre-deposit amount of Rs.17,72,128/- made by the appellant alongwith interest accrued thereon be remitted to the Authority below for disbursement of the same to the respondent-allottees, subject to tax liability, if any, as per law.

8. Copy of this order be forwarded to the parties, their counsel and the learned Authority.

9. File be consigned to the records.

Justice Rajan Gupta
Chairman
Haryana Real Estate Appellate Tribunal

Rakesh Manocha
Member (Technical)
(joined through VC)

15.01.2025
Mk