

**BEFORE THE HARYANA REAL ESTATE APPELLATE
TRIBUNAL**

Appeal No. 314 of 2022
Date of Decision: November 12, 2024

Hemant Rehani, C712, 7th Floor, Milloni CHS Ltd., Plot No. 109,
Sector-27, Seawood Nerul E, Navi Mumbai

Appellant

Versus

M/s Athena Infrastructure Ltd. M-62 63, First Floor, Connaught
Place, New Delhi

Respondents

CORAM:

**Justice Rajan Gupta
Rakesh Manocha**

**Chairman
Member (Technical)**

Present: Mr. Anuj Dewan, Advocate,
for the appellant.

Mr. Ajiteshwar Singh, Advocate,
for the respondent.

ORDER:

Rajan Gupta, Chairman

This appeal has been preferred by the appellant-allottee against the order dated 20.07.2021 passed by the Authority¹, whereby complaint No.2302 of 2021 filed by the appellant-allottee was disposed of by issuing the following directions: -

- i. The respondent shall pay interest of 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.,*

¹ Haryana Real Estate Regulatory Authority, Gurugram

24.04.2015 till the expiry of 2 months from the date of offer of possession i.e. 17.06.2018 as per section 19(10) of the Act.

- ii. The respondent is directed to pay arrears of interest accrued within 90 days from the date of order.*
- iii. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.*
- iv. The rate of interest chargeable from the allottee 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 allottee, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.*

2. As per averments made by the appellant in the present appeal, appellant Mr Hemant Rehani along with his wife were allotted Unit No.F-001, Ground Floor, Tower/block-F, India bulls Enigma, Sector 110, Gurugram measuring 3880 sq. ft., super area at a total sale consideration of Rs.2,37,78,600/-. The agreement was executed between the parties on 24.10.2011. The payment plan was Construction Linked Payment Plan. The appellant has paid a total sum of Rs.2,53,31,350/- as per the custom ledger dated 06.01.2021. As per Clause 21 of the agreement, the respondent-promoter was to handover the possession of the unit within a span of 36 months plus grace period of 06 months from the date of execution of the agreement. Therefore, the due date of handing over possession of the subject unit comes out to be 24.04.2015.

3. It was pleaded that appellant has paid all the instalments in due time as and when raised by the respondent-promoter and the same is acknowledged by the respondent-promoter by issuing the receipts against the payments made by appellant.

The appellant till date has made a payment of more than 100% of total sale consideration. Despite this, the promoter delayed the handing over of possession. It is contended by learned counsel for appellant that the premature offer letter dated 17.04.2018 was issued by promoter just to absolve them of their liability to pay DPC². There was no electricity, water connections, proper sewage, drainage system and access to road in the project, making the unit completely inhabitable. However, on approaching the respondent office, the officials of the respondent-promoter assured appellant to issue a separate letter to offer possession as per the terms and conditions of the agreement.

4. It was further pleaded that his wife had submitted an application dated 21.12.2018 to respondent for deletion of her name as co-allottee, and the deletion of her name as co-allottee was confirmed by respondent-promoter vide its letter dated 16.10.2020. Thereafter, appellant was offered possession of the unit in question on 06.01.2021.

5. As per the appellant, there was delay of five years in offering the possession of the unit. By that time, he had remitted an amount of Rs.2,53,31,350/- to the promoter. Due to the delay in handing over the possession, he was constrained to file a complaint before the Authority at Gurugram in the year 2021 whereby he prayed for Delay Possession Charges (DPC) till the handing over of possession of unit complete in all respects. The complaint was allowed vide order dated 20.07.2021.

² Delayed Possession Charges

6. Aggrieved by the impugned order, the appellant-allottee preferred the instant appeal before this Tribunal. Case has been taken up today for hearing. Learned counsel for the appellant mainly contended that Authority has failed to appreciate the fact that the actual letter of offer of possession was issued to appellant on 06.01.2021 instead of 17.04.2018. Appellant contended that he had also filed an application dated 03.12.2021 for rectification of order passed by Authority to reconsider the 'valid' date of offer of possession, however the same was rejected vide order dated 29.01.2022 without due consideration.

7. On this basis, he contended that the impugned order dated 20.07.2021 be modified with respect to the date of offer of possession i.e., 06.01.2021 instead of 17.04.2018.

8. We have heard learned counsel for the parties and given careful thoughts to the facts of the case.

9. The question for consideration in this appeal is with reference to date of offer of possession whether it is to be 17.04.2018 or 06.01.2021.

10. On consideration of the facts of the case and submissions made by the parties, the tribunal is satisfied that the appellant-promoter has failed to handover the possession of the unit within the time stipulated in the builder buyer's agreement dated 24.10.2011. As per clause 21 of the said agreement, due date for handing over of possession was 36 months from the date of execution of agreement plus 6 months grace period, which comes out to be 24.04.2015. Occupation

certificate was granted by the concerned Authority on 06.04.2018 and thereafter a letter was issued to appellant on 17.04.2018 with a title '**Intimation of installment of unit no. F-001, India bulls Enigma-Gurgaon**' and relevant content stating that "**we are pleased to inform you that occupation certificate for the tower in which your unit is located, has been received from the Director General, Town & Country Planning Department and according we are hereby offering you the possession of your apartment. Also find enclosed the final demand in this regard.**"

11. After going through contents of aforesaid letter, the Authority observed that promoter has offered the possession to appellant along with demand of outstanding dues on part of appellant-allottee. Also, the said letter was issued after the receipt of occupation certificate from the concerned authority.

14. This, tribunal is of the view that the offer of possession letter dated 17.04.2018 is valid for the purpose of grant of DPC (Delay Possession Charges). Thus, offer of possession letter dated 17.04.2018 made by appellant-promoter is valid in eyes of law and delay possession charges shall be payable from the due date of possession i.e., 24.04.2015 till 17.06.2018 (i.e. date of offer of possession plus two months).

15. We find no legal infirmity with the order dated 20.07.2021 passed by the Authority. Therefore, the appeal is hereby dismissed. The impugned order is upheld.

17. No order as to costs.

18. Copy of this detailed order be sent to the parties/their counsel and the Authority for information.

19. File be consigned to the record.

Justice Rajan Gupta
Chairman
Haryana Real Estate Appellate Tribunal

Rakesh Manocha
Member (Technical)
(Joined through VC)

November 12, 2024
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