

BEFORE THE HARYANA REAL ESTATE APPELLATE TRIBUNAL

Appeal No.93 of 2021

Date of Decision: 18.02.2025

Sushil Kumar Sharma, resident of C-84, Oakwood Estate, DLF, Phase-2, Gurugram, Haryana.

Appellant-allottee.

Versus

Magic Info Solutions Private Limited, D-13, Defence Colony, New Delhi-11002 and registered office at Godrej Summit, Sector 104, Gurugram, Haryana.

Respondent-promoter.

CORAM:

**Justice Rajan Gupta
Shri Rakesh Manocha**

**Chairman
Member (Technical)**

Present: Mr. Sushil Kumar Sharma-appellant in person.

None for the respondent.

O R D E R:

RAJAN GUPTA, CHAIRMAN (ORAL):

Present appeal is directed against order dated 10.02.2021 passed by the Authority at Gurugram¹ exercising the powers of executing court. Operative part thereof reads as under:

“Execution application has been filed by the decree holder for the refund of the amount deposited by the decree holder (DH) to the judgment debtor (JD) in furtherance of order date 07.08.2018. During arguments the counsel for the JD submitted that in order dated 07.08.2018, the respondent was directed to pay the interest at the prescribed rate of interest i.e. 10.45 % on the amount

¹ Haryana Real Estate Regulatory Authority, Gurugram

deposited by the complainants for every month delay from the due date of possession i.e. 27.01.2017 till the actual date of handing over of the possession.

After hearing arguments, the authority clarifies that para 21 (ii) has to be linked para 21 (iv) of the detailed order. Both are reproduced as under:

- i. The deposited amount is to be refunded to the complainant along with prescribed interest.*
- ii. ...*
- iii. ...*
- iv. The authority decided that if the possession is not given on the date committed by the respondent then the complainant is at the liberty to approach the authority for the remedy provided under the provision of the RERA Act. The respondent is directed to pay interest accrued on account of delay till the date of handing over of possession.*

From the perusal it is clear that the complainant was entitled to refund only after the failure of respondent to give possession within a committed period. Counsel for the judgment debtor submitted that possession was offered to the decree holder on 19.02.2018 and again on 09.02.2019. The intimation for the possession has been placed on record by the judgment debtor. Thus, it is clear that as the possession has been handed over within reasonable time, the para 21 (iii) and (v) will prevail over para 21 (ii) and (iv) of the detailed order and decree has also been made in furtherance for the order. Thus, the arguments advanced by the Decree holder that he is entitled to refund are devoid of merits and he is entitled to delayed possession charges and not to refund.

In the present case, it is the complainant who has been failed to take the possession of the flat as per Section 19 (10) of RERA Act as the Occupation Certificate has been granted on 20.06.2017 and thereafter, the possession was offered on

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19.02.2018. He may file execution on account of delayed possession charges.

The mater is disposed off accordingly. File be consigned to the registry.”

2. Mr. Sharma states that due date of possession was 27.01.2017, however, same was offered on 19.02.2018. Prior to said date, he (allottee) had exercised his option for refund. He has referred to letter dated 20.09.2017. He contends that decretal order clearly gives option to the appellant to seek refund as per para 21(ii) of the decree. The question of possession and delay compensation would have arisen only if promoter had offered possession by the due date i.e., 27.01.2017. As per him, he has unqualified right to seek refund in view of judgment of *Hon’ble Supreme Court in M/s Newtech Promoters and Developers Pvt. Ltd. v. State of UP & others 2022 (1) RCR (Civil) 357*. He further contends that this plea has not been clearly dealt with by the executing court. Order under challenge is cryptic in nature and needs to be set aside.

3. Respondent remains unrepresented.

4. We have heard the appellant, who is present in court and given careful thought to the case.

5. Para 21(ii) of the decree needs to be referred to, same reads as under:

“21 (ii) The deposited amount is to be refunded to the complainant along with the prescribed interest.”

6. A perusal of the aforesaid direction given by the Authority on 07.08.2018 shows that there was an option for the appellant to seek refund of the amount remitted by him to the promoter. Stand of the appellant is that due date of possession was 27.01.2017. However, promoter failed to adhere to this deadline and offered possession only on

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19.02.2018. Before the said date, the appellant had already exercised his option for refund of the amount remitted by him as project in question had not made much headway. He has referred to the said letter dated September 18, 2017, relevant part thereof reads as under:

“Dear Sir/Madam,

This is with regard to Apartment Buyer’s Agreement dated June 21st, 2013 entered between Magic Info Solutions Pvt. Ltd. and Sushil Kumar Sharma & Meenakshi Sharma (“Buyers”) towards the purchase of Apartment no.J-606 in Project Godrej Summit, Sector-104, Gurgaon, Haryana.

Since you have failed to issue Possession Notice to the Buyers on or before Tentative Completion Date as stated in the Agreement, the undersigned Buyers, in terms of paragraph 4.2 of the said Agreement hereby instruct you to refund the amount of Rs.12,552,814.00 already received by you together with simple interest, calculated @ 15 % per annum to the undersigned Buyers at the earliest.

Kindly acknowledge receipt.

Thanking you.

Yours sincerely,

Sushil Kumar Sharma & Meenakshi Sharma

C-84, Oakwood Estate

DLF Phase-II,

Gurgaon, Haryana-122002.”

7. It appears that authenticity of aforesaid letter has not been disputed by the promoter. This Bench feels that the matter needs to be reconsidered by the Executing Court as the impugned order is cryptic in nature and leaves many questions unanswered.

8. In view of above, impugned order is set aside and the matter is remitted to the same Authority for decision afresh after affording opportunity of hearing to both the parties.

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9. Appeal is allowed in these terms.
10. Both the parties may appear before the Authority below on 17.03.2025.
11. Copy of this order be sent to the parties, their counsel and the Authority below.
12. File be consigned to the records.

Justice Rajan Gupta
Chairman
Haryana Real Estate Appellate Tribunal

Rakesh Manocha
Member (Technical)
(joined through VC)

18.02.2025
Manoj Rana