

BEFORE THE HARYANA REAL ESTATE APPELLATE TRIBUNAL

Appeal No. 443 of 2020

Date of Decision: May 15, 2025

SS Group Private Limited through its authorized signatory Mr.
Chandra Shekhar Sharma, Plot NO. 77, Sector 44, Gurugram-
122003

Appellant.

Versus

(1) Sandhya Sharma
(2) P. K. Sharma
Both residents of House No. 1482-P, Sector 15, Part 2,
Gurugram

Respondents

Argued by: Mr. Aashish Chopra, Senior Advocate with
Mr. Yashpal Sharma, Advocate for the appellant.

Respondents in person.

CORAM:

Justice Rajan Gupta
Rakesh Manocha

Chairman
Member (Technical)
(joined through VC)

O R D E R:

RAJAN GUPTA, CHAIRMAN

Present appeal is directed against order dated
29.08.2019, passed by the Authority¹. Operative part thereof
reads as under:

¹ Haryana Real Estate Regulatory Authority, Gurugram

“i. The respondent is directed to pay the interest at the prescribed rate i.e. 10.45% per annum w.e.f. due date of possession i.e. 09.02.2015 as per the provisions of Section 18(1) of the Real Estate (Regulation and Development) Act, 2016 till the offer of physical possession.

ii. The arrears of interest accrued so far shall be paid to the complainants within 90 days from the date of this order and thereafter the monthly payment of interest till offer of possession so accrued shall be paid on or before 10th of subsequent month.

iii. Complainant is directed to pay outstanding dues, if any, after adjustment of interest awarded for the delayed period.

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

v. Interest on the due payments from the complainant shall be charged at the prescribed rate of interest i.e. 10.45% by the promoter which is the same as is being granted to the complainant in case of delayed possession.

23. The complaint is disposed of accordingly.

24. The order is pronounced.

25. Case file be consigned to the registry.”

2. It appears that the allottees applied for a unit measuring 1320 square feet in project ‘The Coralwood’ Sector 84, Gurugram floated by the promoter for total consideration of Rs.44,59,575/- out of which the allottees paid Rs.43,15,711/-. FBA² was executed between the parties on 09.11.2011. Due date of possession was 09.02.2015.

² Flat Buyer's Agreement

Occupation Certificate was granted on 17.10.2018. As basic facilities were not available, the allottees did not take possession of the unit. They preferred the instant complaint seeking DPC³.

4. After hearing rival contentions of the parties, the Authority awarded DPC from 09.02.2015 till the offer of physical possession.

5. We have heard learned counsel for the appellant and the respondents, who appeared in person and given careful thought to the facts of the case.

6. It is pertinent to mention that with the intervention of the Bench, the possession of the unit was handed over to the appellants on 08.06.2023.

7. From a perusal of the record, it is apparent that the appellant obtained Occupation Certificate on 17.10.2018; thereafter there is nothing on record to show that any offer of possession was made to the respondents. Only a letter dated 11.08.2018 is on record, whereby offer of possession for fit outs was made, that too before grant of Occupation Certificate.

8. The plea raised by Mr. Chopra is that DPC should have been restricted till the date of valid offer of possession made by the promoter.

9. However, we find no substance in the plea. A perusal of the Occupation Certificate shows that the same was conditional in nature (Annexure 'B' p. 56). Paragraphs 3 to 5 thereof read as under:

³ Delayed Possession Charges

“3. That you shall apply the connection for disposal of sewerage, drainage and water supply from HSVP as and when the services are made available, within 15 days from its availability. You shall also maintain the internal services to the satisfaction of the Director till the colony is handed over after granting final completion.

4. That you shall be fully responsible for supply of water, disposal of sewerage and storm water of your colony till these services are made available by HSVP/State Government as per their scheme.

5. That in case some additional structures are required to be constructed as decided by HSVP at later stage, the same will be binding upon you.”

10. The plea of the allottees is that the promoter failed to provide facilities such as sewerage, drainage, water supply, storm water disposal and setting up of STP in time. There is nothing on record to show that all such facilities were promptly made available by the promoter. The Occupation Certificate was conditional in nature, on which the promoter heavily relies. Same was granted on 17.10.2018. A letter dated 11.08.2018 was sent to the allottees offering possession for fit outs. It cannot be said to be a valid offer of possession as it was made before the grant of Occupation Certificate and was only for fit outs.

11. It is not the case of the promoter that it was able to arrange all facilities as out-lined above in Occupation Certificate. It is for this reason that the Authority decided to grant DPC from due date of possession i.e. 09.02.2015 till the offer of physical possession. It is only during pendency of this appeal that possession was handed over to the allottees when

possibility of amicable settlement was being explored. On 02.05.2023, following order was passed:

“Notice of CM No. 525 of 2023 to counsel for non-applicant/appellant.

Mr. Aashish Chopra, learned counsel for the appellant accepts notice.

He further submits that a flat in good condition shall be given to the respondents-allottees and all possible efforts shall be made to hand over the same in habitable condition. The respondents-allottees shall be at liberty to take possession.

Needless to say, the entire exercise shall be subject to adjudication of all the issues involved in the appeal. This Tribunal shall be apprised of the progress, if any, on the next date of hearing.

Adjourned to 10.07.2023.”

12. Pursuant to above, possession was handed over to the allottees on 08.06.2023.

13. Under these circumstances, the appellant is required to pay interest @10.45% per annum to the allottees from due date of possession i.e. 09.02.2015 till 08.06.2023 i.e. the date of actual handing over of possession.

14. In view of the above, the impugned order is modified to the extent indicated above.

15. The appeal stands disposed of.

16. The amount of pre-deposit made by the promoter with this Tribunal to comply with the provisions of proviso to Section 43(5) of the Act⁴, along with interest accrued thereon, be remitted to the Authority for disbursement to the allottees,

⁴ The Real Estate (Regulation & Development) Act, 2016

subject to tax liability, if any, according to law. Balance DPC, if any, shall be paid at the same rate of interest (10.45% p.a.) by the promoter within 90 days of this order, failing which penal provisions of Section 64 of the Act would come into play and the promoter shall be required to pay Rs.10,000/- per day as penalty.

15. Copy of the order be sent to the parties/counsel and the Authority.

16. File be consigned to the record.

Justice Rajan Gupta
Chairman
Haryana Real Estate Appellate Tribunal

Rakesh Manocha
Member (Technical)

May 15, 2025
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