

BEFORE THE HARYANA REAL ESTATE APPELLATE TRIBUNAL

Date of Decision: May 19, 2025

Appeal No.07 of 2024

Puri Construction Pvt. Ltd., 4-7 B, Ground Floor, 15 &17, Tolstoy
Marg, New Delhi-110001 ...Appellant

Versus

Kavita Pathak & Munish Pathak, Flat No. C2-1601, Puri
Diplomatic Greens, Sector 110A, Gurgaon, Haryana-122017
Respondents

CORAM:

**Justice Rajan Gupta
Mr. Rakesh Manocha**

**Chairman
Member (Technical)**

Present: Ms Tanika Goyal, Advocate for the Appellant.
Mr. Shubnit Hans, Advocate for the respondents.

ORDER:

JUSTICE RAJAN GUPTA, CHAIRMAN

Present appeal is directed against order dated 27.10.2023
passed by the Authority at Gurugram¹. Operative part thereof reads as
under:

*“13. Hence, the authority hereby passes this order
and issues the following directions under Section 37
of the Act to ensure compliance of obligations cast
upon the promoter as per the function entrusted to
the authority under Section 34(f) of the Act of 2016:*

- (i) The respondent is directed to pay delayed possession
charges to the complainants against the paid-up
amount for every month of delay from the due date of
possession i.e., 14.09.2015 till the offer of possession
i.e., 12.05.2017 plus two months which comes out to
12.07.2017 at the prescribed rate i.e., 10.75% p.a. as
per proviso to section 18(1) of the Act read with rule 15
of the rules.”*

¹ Haryana Real Estate Regulatory Authority, Gurugram

2. It appears that the allottees applied for a residential unit in project, "Diplomatic Greens, Sector 110A and Sector 111, Village Chouma, Gurugram" floated by the promoter- M/s Puri Constructions Pvt. Ltd. They were provisionally allotted residential unit No. 1601, 16th floor, Block no. C2 on 19.01.2012. Thereafter, the complainants paid various amounts as per the demands raised by the promoter. Admittedly, total consideration in respect of the unit was remitted. ABA² was executed between the parties on 14.03.2012. Possession of the unit was to be offered on or before 14.09.2015 but the same was offered on 12.05.2017. Conveyance deed was also executed between the parties on 03.10.2017. The instant complaint was preferred by the allottees before the Authority on 18.07.2022 seeking DPC³. The same was decided vide impugned order.

3. Admittedly, the respondents are in possession of the unit. The promoter obtained occupation certificate on 29.08.2016. Thereafter possession was offered to the respondents. Conveyance deed was executed in their favour on 03.10.2017. After five years, the respondents preferred the complaint seeking DPC.

4. On the other hand, learned counsel for the allottees defended the impugned order.

5. Heard learned counsel for the parties and given careful thought to the facts of the case.

6. Admittedly, the allottees are in possession of the unit and conveyance deed in their favour was executed way back on 03.10.2017. They invoked jurisdiction of the Authority five years thereafter i.e. 18.07.2022.

7. The first and foremost question to be considered is, whether dispute falls within the purview of the Act⁴. For this purpose, it is

² Apartment Buyer's Agreement

³ Delayed Possession Charges

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

necessary to see whether Occupation Certificate was granted to the promoter prior to the enactment of the Act or thereafter. In the instant case, there is no dispute about the fact that Occupation Certificate was granted to the promoter on 29.08.2016 i.e. prior to the enactment of the Act and the Rules framed thereunder.

8. It appears that the appellant completed the construction and applied for Occupation Certificate on 20.04.2016, which was granted on 29.08.2016. Thereafter, offer of possession was made which the allottees accepted without any demur. Pursuant to same, Conveyance Deed was also executed between the parties. Almost five years thereafter, they instituted the instant complaint.

9. Apart from huge delay in invoking jurisdiction of the Authority, it is highly doubtful whether the dispute would be within the purview of the Act, Occupation Certificate having been granted prior to the enactment of the Act and the Rules framed thereunder (*see judgment in Neelkamal Realtors Suburban Pvt. Ltd. V. Union of India and others, AIR 2018 (NOC) 398 (Bom.) para 84*).

10. The respondent-complainants have not controverted the fact that Occupation Certificate was granted on 29.08.2016 i.e. prior to the special enactment. Thereafter, they readily agreed to take possession and execute conveyance deed. In the peculiar facts and circumstances of the case, the Authority has erred in granting DPC. Thus, appeal deserves to be allowed. Ordered accordingly. Impugned order is set aside.

11. The amount deposited by the appellant/promoter i.e. Rs. 50,15,903/- with this Tribunal, along with interest accrued thereon, in order to comply with the provisions of Section 43(5) of the Act be remitted to the Authority for disbursement to the appellant-promoter, subject to tax liability, if any.

12. Copy of this order be communicated to parties/Ld. counsel for the parties and the Ld. Authority for compliance.

13. Files be consigned to the records.

Justice Rajan Gupta
Chairman
Haryana Real Estate Appellate Tribunal

Rakesh Manocha
Member (Technical)

May 19, 2025
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