

BEFORE THE HARYANA REAL ESTATE APPELLATE TRIBUNAL

Date of Decision: April 01, 2025

Appeal No.662 of 2021

Magnum International Trading Company Pvt. Ltd., 48/1,
Commercial Centre, Malcha Marg, Chanakyapuri, New Delhi-
110021
...Appellant

Versus

Atul Joshi son of Sh. Jagan Nath Joshi, X-217, Regency Park 2,
Galleria DLF-IV, Farrukh Nagar, Gurgaon.

.. Respondent

CORAM:

Justice Rajan Gupta
Mr. Rakesh Manocha

Chairman
Member (Technical)

Present: Mr. Bahul Bungler, Advocate for the Appellant.
Ms. Priyanjali Singh, Advocate for the respondent.

O R D E R:

JUSTICE RAJAN GUPTA, CHAIRMAN

Present appeal is directed against order dated 05.11.2020
passed by the Authority¹. Operative part thereof reads as under:

*“13. Hence, the Authority hereby pass the following order
and issue directions under section 34(f) of the Act:*

- (i) The respondent is directed to pay the interest at 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. 06.05.2016 till the handing over of physical possession of the allotted unit.*
- (ii) The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order and subsequent interest to be paid on or before 10th of every month;*
- (iii) The respondent is directed to not to charge any escalation charges from the complainant. Charges for super area shall be calculated as per provisions of RERA Act.*
- (iv) The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.*

¹ Haryana Real Estate Regulatory Authority, Gurugram

(v) *The respondent shall not charge anything from the complainant which is not part of the buyer's agreement.*

2. A unit bearing no. F1402, Tower F, was allotted to original allottee on 30.04.2011 in a project namely 'Gurgaon One-84', located at Sector-84, Sihi-Sikandarpur Road, Gurgaon floated by the promoter. Total sale consideration for the said unit, measuring 3194 sq. ft., was Rs. 1,32,53,641/-. The payment plan agreed upon was a Construction Linked Payment Plan. Apartment Buyer's Agreement (hereinafter referred to as 'the agreement') was executed on 29.06.2011. Original allotment letter and the agreement were endorsed in the favour of respondent-allottee on 23.08.2012. The allottee paid a total sum of Rs.26,05,067/-. Possession of the unit was to be delivered on or before 06.05.2016, which included 6 months grace period as per clause 12.1 of the agreement. The promoter failed to deliver possession within the stipulated time. It received the Occupation Certificate (OC) on 09.10.2017 and issued an offer of possession on 13.10.2017. However, the respondent found that the second staircase, which was required for fire safety, had not been constructed, making the unit unfit for occupation. Offer of possession was accompanied with additional demands with respect to escalation charges and increase in saleable area by 240 sq. ft. Consequently, he refused to accept the 'offer'. He filed the instant complaint seeking possession of the unit, complete with the necessary fire safety measures, and delayed possession interest till handing over of possession, along with the quashing of additional demands such as the charges for increased saleable area and escalation charges.

4. Learned counsel for the promoter contended that the offer of possession made on 13.10.2017 was valid as same was made after the receipt of the Occupation Certificate. It was argued that there was no issue regarding fire safety of the unit, thus allottee was not

entitled to DPC². He failed to accept possession despite valid offer given to him. As regards enhanced charges for additional area, same were covered under the relevant clause of the agreement.

5. Learned counsel for the respondent contended that staircase was not constructed in the building, due to which promoter was not granted necessary permissions. He could not take possession in absence of same. Thus, promoter is wholly solely responsible for delay in granting possession.

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

7. During pendency of the appeal, parties were given liberty to explore the possibility of amicable settlement. As a result thereof, possession was granted to the allottee on 04.09.2023. It is reflected in the order dated 19.09.2024, which is reproduced hereunder:

“Admittedly, the allottee is already in possession of the unit.

Learned counsel for the appellant submits that he has instructions to state that there is no possibility of amicable settlement between the parties.

In view of the statement made by counsel for the appellant, Ms. Priyanjali Singh, counsel appearing for the respondent submits that the matter may be listed for arguments on merits.

This prayer is accepted.

List on 23.01.2025”

8. The issue which deserves attention of this Bench is whether the promoter is liable to pay compensation for delayed possession, if so till when.

9. We find that offer of possession was made by the promoter on 13.10.2017 on the basis of Occupation Certificate dated 09.10.2017. However, Occupation Certificate was conditional in nature as second

² Delayed Possession Charges

staircase had not been built leading to concerns regarding fire safety. It is, thus, evident that the allottee may have been hesitant to take possession as the Occupation Certificate was conditional in nature.

10. It appears that thereafter completion certificate was granted to the promoter on 13.12.2019 by the concerned department. However, there is nothing on record to show that any fresh offer of possession was made thereafter by the promoter to the allottee despite the fact that full sale consideration (Rs.1,52,00,254/-) which included additional charges for enhanced area, had been remitted to the promoter.

11. In view of our finding that there is no eventual offer of possession on record after first offer dated 13.10.2017 when the building was incomplete, we feel that the allottee is entitled to DPC till the handing over of possession i.e. 04.09.2023 along with interest @ 9.30% per annum from due date of possession i.e. 06.05.2016 till 04.09.2023.

12. The appeal is disposed of in above terms.

13. The amount deposited by the appellant/promoter i.e. Rs.13,70,658/- with this Tribunal in view of provisions of Section 43(5) of the Act, along with interest accrued thereon, be remitted to the Authority for disbursement to the respondent-allottee. The balance, if any, shall also be remitted by the promoter to the allottee within 90 days of uploading of this order along with same rate of interest i.e. 9.30% per annum from due date of possession (06.05.2016) till 04.09.2023, failing which it shall be liable to pay Rs.10,000/- per day as penalty till continuance of default in terms of penal provisions contained in Section 64 of the Real Estate (Regulation and Development) Act, 2016.

14. The regulatory mechanism must ensure that the buildings which are allowed to come up in inhabited areas of various townships must adhere to all safety norms, fire safety being one of the primary concern. In the instant case, the initial Occupation Certificate granted by DTCP did not give complete clearance to the promoter as regards fire

safety. Objectives of enactment of the legislation provide for regulation and promotion of real estate sector in a manner which is efficient and transparent, as also to protect the interests of consumers. In these circumstances, it is necessary to ascertain whether the building in question is fully equipped with fire safety measures. Copy of this order be thus forwarded to Directorate of Town & Country Planning, Haryana with liberty to examine the fire safety aspect afresh.

Copy be also retained by the Authority with liberty to initiate any penal/ *suo-moto* action, if circumstances so warrant.

15. File be consigned to the records.

Justice Rajan Gupta
Chairman
Haryana Real Estate Appellate Tribunal

Rakesh Manocha
Member (Technical)

April 01, 2025
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Appeal No. 662 of 2021

Magnum International Trading Co. Pvt. Ltd. V. Atul Joshi

As the Bench was informed that certain inadvertent typographical errors have crept in, the matter was directed to be listed before the Bench.

The same has been taken up. As the errors are only typographical in nature, necessary corrections need to be carried out. Ordered accordingly.

Learned counsel be informed.

(Justice Rajan Gupta)
Chairman
Haryana Real Estate Appellate Tribunal
Chandigarh.