

**BEFORE THE HARYANA REAL ESTATE APPELLATE
TRIBUNAL**

Appeal No.704 of 2022
Date of Decision: July 03,2025

Kamlesh Rani W/o Sh. Sanjeev Bansal, R/o House No. 1545/12, Didar Nagar, Kurukshetra now R/o Flat No. 27-B, INR Royal City, Sector 29, Karnal.

--Appellant

Versus

1. M/s INR Constructions Registered office # 17, Opp. New Bus Stand, Sector 29, INR Royal City, Karnal.

2. M/s Alpha Corp Development Private Limited registered office at Upper Basement, Alpha Mall, MBM Farm, G.T. Road, Sultan Wind Sub Urban, Amritsar, Punjab.

--Respondents

CORAM:

**Justice Rajan Gupta
Rakesh Manocha**

**Chairman
Member (Technical)
(joined through VC)**

Present: Mr. Vivek Aggarwal, Advocate,
for the appellant.

Mr. Hemant Saini, Advocate, along with
Ms. Neha, Advocate,
for the respondents.

O R D E R:

Rajan Gupta, Chairman (Oral):

Present appeal is directed against order dated 10.08.2022 passed by the Authority¹. Operative part thereof reads as under:-

“Today is the third hearing of the case. Even today none appeared on behalf of the respondent. Fact and grievance of the complainant have already been captured by the Authority. Facts and grievance of the complainant have already been captured by the authority vide it’s order dated 07.07.2022. Same is reproduced below:

¹ Haryana Real Estate Regulatory Authority, Panchkula

Today is the second hearing in the matter. Case of the complainant is that he booked unit in the respondent's project INR Construction Royal City situated in sector-29 karnal. Both parties executed Builder Buyer Agreement on 19.12.2020 and possession of the unit was to be delivered by 05.02.2021. Basic Sale Price of the unit was fixed for Rs. 45,00,000/- against which complainant has claimed to have paid 31,64,250/-. Complainant has approached the Authority with grievance that unit booked by him was measuring 180 sq. Yards but respondent later decreased the size of the unit to 165 sq. Yards. Complainant has approached the authority seeking relief of allotting him the original size of unit i.e 180 sq. Yards.

Authority has heard the contentions put forth by the ld. Counsel for complainant and observes that at the time there is always a possibility to change the area of the unit/plot as per demarcation at site while demarcating. In absence of written submissions by respondents, Authority is of tentative view that such reduction in area could be due to short of dimensions at site available during demarcating of the approved layout plan. Therefore, the same be accepted by the allottee/complainant. Complainant will only be liable to pay proportionate of the area of 165 sq. Yards.

Authority grants final opportunity to the respondent to appear before the Authority and prosecute his matter failing which tentative view of Authority will be confirmed on the next date of hearing."

2. *Since none appeared on behalf of the respondent Authority deems fit to hear the matter ex-parte as sufficient opportunities have been given to the*

respondent to defend their case. No additional information or document has been submitted by the complainant and he only presses for his relief of possession of the unit along with permissible delay interest. Neither he has submitted any relevant document to prove his claim of reduction in area from 180 sq. yards to 165 sq. yards. It is also further relevance to observe that both parties are governed by the terms and conditions of builder buyer agreement and as per clause 17. (a) of the BBA. Same is reproduced below;

17. (a) That the Promoter shall, under normal conditions, complete the said Floor as per the said plans and specifications seen and accepted by the Intending Purchaser with such additions, alterations, modifications in the layout and building plans and specifications as the Promoter may consider necessary or as may be required by any competent authority to be made in them or any of them while sanctioning the plans or at any time thereafter. No future consent of the Intending Purchaser shall be required for this purpose. Alterations, if any, inter-alia involve all of the changes in its dimensions, change in its area etc., to implement all or any of the above changes, supplementary sale deed or deeds, if necessary, will be executed and registered by the Promoter in case a Sale Deed has already been executed and registered in favour of the Intending Purchaser. If, as a result of the above mentioned alteration, if there is either reduction or increase in the super built up area of the said Floor, the price agreed as mentioned herein shall be reduced proportionate to the reduction in the area of Floor and likewise in case the change results in increase in area of the Floor, the sale price shall be proportionately increased by the Promoter in the prices prevailing at that time. The Promoter shall be liable to refund only the extra price and other pro-rata changes or shall be entitled to recover

the additional price and other proportionate charges without interest, as the case may be.

Authority confirms its tentative view and directs complainant to take possession of the unit and pay proportionate to the size of unit offered by respondent.

3. Case is disposed of. File be consigned to the record room after uploading of order on the website of the Authority.”

2. Learned counsel for the appellant has assailed the order before this Bench on the ground that despite order passed by the Authority, possession of the flat had not been handed over to her within the prescribed period. Besides, the promoter is demanding escalation charges from the allottee.

3. Mr. Saini submits that there is no infirmity with the order passed by the Authority. A perusal of the clause 17 (a) of the BBA² would show that respondent-promoter is acting in consonance with the said clause.

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

6. A perusal of the record shows that during the pendency of the appeal, builder was called upon to show cause as to why possession of the flat had not been handed over to the appellant. It appears that on 07.08.2024, statement was made on behalf of the promoter that possession of the unit had been handed over to the appellant.

7. Mr. Aggarwal, however, states that area of the unit was lesser than that was promised. As a result, liberty was given to Mr. Saini to file an affidavit. Thereafter, an affidavit dated 28.08.2024 was filed on behalf of the respondent-promoter. On 30.09.2024, when the case was came up for hearing before this Bench, following order was passed:-

² Builder Buyer Agreement

“On the last date of hearing, the following order was passed in this case:-

“Admittedly, possession of the unit has been handed over to the appellant-allottee.

Learned counsel for the appellant submits that area of the unit is lesser than as promised in the Builder Buyer’s Agreement.

Mr. Saini controverts this statement and seeks to file a short affidavit in light of the order dated 13.12.2023. Same be filed within three weeks from today.

List on 30.09.2024.”

Mr. Gautam seeks to place on record an affidavit of Mr. Naveen Gupta S/o Shri Sham Lal Gupta in light of aforesaid order. Prayer is accepted. Affidavit is taken on record. Relevant paragraphs thereof read as under:

“1. That as per the Agreement dated 19.12.2020, the area of the plot agreed to be sold to the complainant-allottee was 179.33 sq.yds(149.94 sq.mtr.)

2. That the aforesaid area of the plot is in consonance with the sanctioned plan. In the sanctioned plan, the area of the plot has been sanctioned as 149.94 sq.mtr. only. As per the sanctioned plan, the covered area is 98.851 sq.mtr. and as per the Occupation Certificate the area has been sanctioned as 99.052 sq. mtr. The Complainant-Allottee has been given the premises, in terms of the sanction plan.”

Copy of the same be furnished to counsel opposite.

List on 22.01.2025.”

8. Admittedly, as on date, no dispute survives regarding the area of the flat. Only grievance of the appellant is that escalation

charges and certain other charges are being demanded by the respondent. Stand of the respondent is, however, that same are in consonance of the terms of BBA.

9. From a perusal of the relevant clauses of the BBA, there is no room for doubt that size of the unit can always vary and so can be its price. Thus, the allottee is required to pay the price proportionate to the size of the unit offered to him. As we find no violation of any of the clauses of the BBA, no interference in appellate jurisdiction is called for.

10. The appeal is without any merit and is hereby dismissed.

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

12. File be consigned to records.

Justice Rajan Gupta
Chairman
Haryana Real Estate Appellate Tribunal

Rakesh Manocha
Member (Technical)
(Joined through VC)

July 03,2025
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