

**BEFORE THE HARYANA REAL ESTATE APPELLATE TRIBUNAL**

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**Date of Decision: June 09, 2025**

**(1) Appeal No. 367 of 2021**

IREO Private Ltd., registered office at: Ireo Compaus, Archview Drive, Ireo City, Gold Course Extension Road, Gurugram-122101

Appellant.

Versus

(1) Gian Prakash Kumar

(2) Komilla Kumar

Both residents of House No. A-14/12, Vasant Vihar New Delhi 110057

Respondents

**(2) Appeal No. 362 of 2021**

(1) IREO Private Ltd., registered office at: Ireo Compaus, Archview Drive, Ireo City, Golf Course Extension Road, Gurugram-122101

(2) M/S NUCLEUS CONBUILD PVT. LTD., Office at 304, Kanchan House, Karampura Commercial Complex, New Delhi-11015

Appellant.

Versus

M/s Denon India Ltd., 18, Community Centre, Mayapuri, Phase-I, New Delhi-110064

Respondent

**(3) Appeal No. 366 of 2021**

IREO Private Ltd., registered office at: Ireo Compaus, Archview Drive, Ireo City, Gold Course Extension Road, Gurugram-122101

Appellant.

Versus

Kamal Nain Swanni, House No. R-5, 2<sup>nd</sup> Floor, Greater Kailash,  
New Delhi-110018 Respondent

Present: Mr. Sameer Chaudhary, Advocate along with  
Ms. Ruchi Kumar, AGM Legal  
Ms. Deepali Verma, Advocate for the appellant.

Mr. Rajeev Anand, Advocate along with  
Mr. Vansh Vohra, Advocate for the respondent  
(in appeal No. 362 of 2021)

Mr. Kuldeep Kumar Kohli, Advocate for the respondent  
(in Appeal No. 366 of 2021).

Mr. Gaurav Chopra, Senior Advocate assisted by  
Mr. Alankar Narula, Mr. Vardaan Seth and  
Ms. Darika Sikka, Advocates for the respondents  
(in Appeal No. 367 of 2021).

**CORAM:**

**Justice Rajan Gupta**  
**Rakesh Manocha**

**Chairman**  
**Member (Technical)**

**O R D E R:**

**RAJAN GUPTA, CHAIRMAN:**

This order shall dispose of above mentioned three appeals, as common questions of law and facts are involved therein. However, the facts have been extracted from Appeal No. 367 of 2021.

2. Present appeal is directed against order dated 21.10.2020, passed by the Authority<sup>1</sup>. Operative part thereof reads as under:

*“(a) The respondent is directed to pay interest at the prescribed rate of 9.30% p.a. for every month of delay from the due date of possession i.e. 17.05.2016 till the handing over of physical possession of the allotted unit.*

*(b) The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.*

*(c) The respondent is directed to pay interest accrued from 17.05.2016 till the handing over of physical possession of the allotted unit to the complainant within 90 days from the date of decision and subsequent interest to be paid by the 10<sup>th</sup> of each succeeding month.*

*(c) The respondent shall not charge anything from the complainants which is not the part of the agreement.*

*16. Complaint stands disposed of.*

*17. File be consigned to the registry.”*

3. It appears that a project “Ireo Gurgaon Hills, Sector 59, Gurugram was floated by the appellant-promoter. It was granted licence by DTCP on 26.04.2011 and it has been validated from time to time. The allottees-Gian Prakash Kumar and Smt. Komilla Kumar applied for an apartment in the said project. After allotment, ABA<sup>2</sup> was executed between the parties on 24.07.2013. Total consideration of the unit measuring

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<sup>1</sup> Real Estate Regulatory Authority, Gurugram

<sup>2</sup> Apartment Buyer’s Agreement

4786.83 square feet was Rs.4,67,87,083/-. The allottees claimed that they remitted the entire consideration. It appears that approval of the building plan was received vide letter dated 17.05.2012. As per clause 14.4 of the ABA, due date of delivery for possession would come to 17.05.2016, i.e. 42 months from the date of approval aforesaid and also grace period of six months in terms of the agreement. Admittedly, approval of Fire Fighting Scheme was granted on 26.12.2013. A perusal of the record shows that Occupation Certificate in respect of the project was granted on 29.06.2022 and offer of possession was made immediately thereafter. However, the complainants filed instant complaint before the Authority in March, 2020 *inter-alia* seeking grant of possession and delay compensation.

4. The complainants took the stand that the apartment was booked by them with Construction Linked Plan and they made all payments at the appropriate time. After the ABA was executed on 24.07.2013, possession of the unit was to be handed over within a period of four years from the date of approval of building plan. However, handing over of possession was unduly delayed by the promoter due to which, they were entitled to delay compensation.

5. The aforesaid contentions were refuted by the respondent-promoter. It stated that the apartment was to be handed over in a bare-shell condition to the allottees. The promoter fulfilled all its obligations and completed the entire work within the scope of the ABA and applied for Occupation Certificate on 24.09.2018. As per the promoter, Occupation Certificate was ultimately granted on 29.06.2022. Thereafter,

offer of possession was made to the allottees. As per the promoter, delay in grant of Occupation Certificate was occasioned due to default on the part of the allottees in taking possession and completing the interior work as the apartment was to be handed over in a bare-shell condition.

6. The Authority considered the rival submissions and came to the conclusion that by virtue of ABA executed between the parties on 24.07.2013, possession of the booked unit was to be delivered as per clause 14.4 thereof within a period of 42 months from the date of approval of building plan plus six months' grace period. As building plans were sanctioned on 17.05.2012, due date of possession would come to 17.05.2016. Thus, the complainants were entitled to delay compensation at the prescribed rate i.e. 9.30% per annum from due date of possession i.e. 17.05.2016 till handing over of physical possession of the allotted unit as per provisions of Section 18(1)(a) of the Act<sup>3</sup> read with Rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017. It, thus, issued directions in terms of the order reproduced in paragraph No. 2 of this judgment.

7. Counsel for the appellant has assailed the order passed by the Authority. Relying upon the judgment delivered by predecessor Bench of this Tribunal in **Ireo Private Limited v. Mr. Ashok Jaipuria**<sup>4</sup>, he submits that facts of the instant case are similar to the case of **Ashok Jaipuria** (supra). As per him, though complaint in that case was filed seeking refund of

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<sup>3</sup> The Real Estate (Regulation and Development) Act, 2016

<sup>4</sup> Appeal No. 363 of 2021 decided on 18.01.2023

the amount remitted to the promoter, this Tribunal directed grant of possession to the allottee however without any delay compensation. He has also relied upon the judgment of the Supreme Court in **Ireo Grace Realtech Private Limited v. Abhishek Khanna and others**<sup>5</sup> to contend that date of possession has to be determined with reference to the date on which fire NOC is granted by the concerned department. If said date is taken into consideration, the proposed date for handing over of possession would come to 26.12.2018 i.e. expiry of 48 months from the date of grant of Fire NOC (26.12.2013).

8. Mr. Gaurav Chopra, on the other hand, contends that judgment in **Ashok Jaipuria's** case (supra) is entirely on different footing as the allottee therein approached the Authority with the plea that he be granted refund of the amount remitted by him as the project had not been completed in time. From the order passed by the Authority in **Ashok Jaipuria's** case (supra), Appeal No. 363 of 2021 emanated. A perusal of the record would show that the complaint in the said case was filed before due date of possession while in the instant case, it has been filed after lapse of almost four years after due date of possession (17.05.2016). Besides, in parallel proceedings preferred by Ashok Jaipuria before NCLT, an order was passed wherein it was observed that the allottee was a speculative investor. This apart, the issue regarding grant of Occupation Certificate to IREO on 29.06.2022 was not considered. As per him, order passed in the said case cannot act as a precedent as RERA Appeal No. 93 of 2023, preferred by

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<sup>5</sup> (2021) 3 SCC 241

the allottee before the Hon'ble High Court, is still pending. As regards the judgment delivered in **Abhishek Khanna's** case (supra), he has referred to paragraph 18.10 to contend that in the said case the developer applied for NOC for Fire Fighting Scheme within 90 days before the Director, Fire Services, Panchkula and it was ultimately granted on 27.11.2014. As per him, the present case is clearly distinguishable as the appellant filed its application for grant of fire NOC after a delay of almost 18 months after the date of approval of building plan. Referring to Enclosure-B (*page 53*), he submits that while granting approval for Fire Fighting Scheme vide letter dated 26.12.2013, reference has been made to application No. 201311072769 dated 07.11.2013. As per him, this shows that there was inordinate delay in submitting the application.

9. We have heard learned counsel for the parties; perused the record with their assistance and proceed to deal with the issues raised before this Bench.

10. We find substance in the plea that the judgment in **Ashok Jaipuria's** case (supra) would not be relevant in the facts and circumstances of the instant case; firstly, it was a case where the prayer was only for refund of the amount remitted by the allottee and not for grant of possession and delay compensation; secondly, in the said case the complaint was found to be pre-mature as same was filed before due date of possession. It appears that Appeal No. 93 of 2023 was preferred against the said order before the Hon'ble High Court which is stated to be pending. The order passed in the said

case, thus, can be of no help to the appellant in the instant case.

11. The judgment in **Abhishek Khanna's** case (supra) is also distinguishable as in the said case, the developer applied NOC for Fire Fighting Scheme within prescribed period i.e. 90 days from date of sanction of the building plan. Same was granted on 27.11.2014. Thus, date of possession was determined with reference to the said date. In the instant case, however, application was made on 07.11.2013 i.e. after a delay of almost 1-1/2 years after sanction of building plan. This would be clear from a perusal of letter (Enclosure-B page 53) showing that application No.201311072769 was made on 07.11.2013. The approval for Fire Fighting Scheme was finally granted on 26.12.2013. Thus, delay being on part of the promoter itself in applying for NOC, reliance on judgment in **Abhishek Khanna's** case (supra) is mis-placed.

12. An effort has been made to justify the delay in submitting application for Fire Fighting Scheme by seeking to place on record documents by way of additional evidence to show that the application was made within time, however, the same was returned with certain objections. In our considered view, the plea is mis-placed. A perusal of the documents annexed with the application show that the promoter took considerable time in removing the objections. Thus, the same cannot give benefit to the appellant. Besides, it is inexplicable why the documents were not brought on record before the Authority where the case remained pending for considerable time. The application is, thus, mis-conceived and rejected.



13. It appears that the allottees paid the instalments demanded by the promoter as per payment schedule despite the fact that casting and construction works were underway upto October, 2018. The promoter applied for Occupation Certificate on 24.09.2018. Same was granted by the department on 29.06.2022. Thereafter, offer of possession was made. The grant of Occupation Certificate is a matter purely within the domain of DTCP. The fact that the same was granted on 29.06.2022 shows that the building was not ready for occupation till then. The effort to shift the blame for delay in completion on the allottees is misplaced as completion of interior work does not appear to be *sine qua non* for grant of Occupation Certificate. This is fortified from the fact that in the final offer of possession dated 11.07.2022, the allottees have been asked to “take possession and commence the interior works”. The relevant part of the letter is reproduced hereunder for ready reference:

*“Dear Mr. Gian Prakash Kumar,*

*“Greetings for the day!*

*We would like to start by thanking you for your continued patronage. We are delighted to share that we have been granted the Occupation Certificate by the office of Director, Town and Country Planning, Haryana, Chandigarh for Gurgaon Hills Project, Sector 2, Gwal Pahari, Gururgram.*

*This mail is in continuance of our earlier letter/e-mail communications sent out in 2016/2017, 2019 and 2021 with respect to the start of the interior works in your exclusive and premium respective apartments.*

*We are once again inviting you to “Take possession and Commence the Interior works” as per the agreed terms and conditions of your respective Apartment Buyer’s Agreement.*

*Please note that interior works can be carried out at the site post submission and approval of drawings as per approved building plans which shall be vetted by our engineers/consultants for fire/safety/structure-related compliance as per the standard operating procedure as detailed in our subsequent communication.*

*We also request you to note that we shall share the requisite paperwork/documentation formalities to be completed by yourself for the purpose of carrying out the interior works at the time of possession in our subsequent communication. Subject to such completion of formalities, you could proceed with the commencement of work within your apartment.*

*In addition to the above, our subsequent communication should also contain details on “Notice of Possession and completion of interior works” along with your final statement of accounts.*

*We request you to complete all payments and necessary documentation, enabling us to start the handover process at the earliest.*

*We look forward to your continued support.”*

13.1 A perusal of the aforesaid letter shows that offer of possession was promptly made after receipt of Occupation Certificate from the competent authority.

14. Keeping in view the entire facts and circumstances of the case, we feel that the Authority has rightly decided to grant interest from due date of possession i.e. 17.05.2016 till

handing over of physical possession to the allottees. There is no legal infirmity with the order passed by the Authority. Thus, no interference is called for.

15. The appeals are dismissed.

16. The amount of pre-deposit in each appeal, made by the promoter in terms of proviso to Section 43(5) of the Act along with interest accrued thereon, be remitted to the Authority for disbursement to the allottees, subject to tax liability, if any.

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

18. Files be consigned to records.

Justice Rajan Gupta  
Chairman  
Haryana Real Estate Appellate Tribunal

Rakesh Manocha  
Member (Technical)

June 09, 2025  
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