

BEFORE THE HARYANA REAL ESTATE APPELLATE TRIBUNAL

Appeal No. 724 of 2023

Date of Decision: April 16,2026

1. Mrs. RinkuKhanchi wife of Mr. SatyavanKhanchi
 2. Mr. SatyavanKhanchi son of Late Sh. Bharat Singh
- Both residents of House No. 602, Asia House Kasturba Gandhi Marg, New Delhi.

Appellants.

Versus

S.S. Group Pvt. Ltd. through its Director having registered office at 4th floor, The Plaza, M.G. Road, Gurgaon-122002. Also at:- 77, SS House, Sector 44, Gurgaon-122002.

Respondent

Coram:

Justice Rajan Gupta

Chairman

Dinesh Singh Chauhan

Member (Technical)

Present: Mr. SatyavanKhanchi, one of the Appellants
in person with Mr. VivekSingla, Advocate.

Mr. Ajiteshwar Singh, Advocate,
for the respondent.

ORDER

RAJAN GUPTA, CHAIRMAN:

Present appeal is directed against order dated 14.09.2023 passed by the Authority¹ at Gurugram. Operative part thereof reads as under:

“H. Directions of the authority

32. 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):

I. The respondent is directed pay interest at the prescribed rate i.e., 10.75 % per annum for every month of delay on the amount paid by the complainants from due date of possession i.e., 23.09.2016 till the date of offer of possession (12.05.2022) plus two months i.e., 12.07.2022; as per proviso to section 18(1) of the Act read with rule 15 of the rules.

II. The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e.,10.75% by the respondent/promoter which is the

¹Real Estate Regulatory Authority, Gurugram

same rate of interest which the promoter shall be liable to pay the allottees, in case of default i.e., the delayed possession charges as per section 2(zc) of the Act.

III. The complainants are directed to pay outstanding dues, if any remains after adjusting delay possession interest within 30 days and the respondent shall handover the possession of the allotted unit complete in all aspects as per specifications of buyer's agreement within next 30 days and if no dues remain outstanding, the possession shall be handed over within four weeks from date of this order.

IV. The respondent shall not charge anything from the complainant which is not the part of buyer's agreement. The respondent is not entitled to charge holding charges from the complainant/ allottee at any point of time even after being part of the builder buyer's agreement as per law settled by Hon'ble Supreme Court in civil appeal nos. 3864-3889 /2020 on 14.12.2020"

2. Factual matrix of the case is that a unit No. 10B, Building 8, 10th Floor, in the respondent's project "The Leaf", Sector 85, Gurugram, measuring 2280 sq. ft. was originally allotted to first allottee on 10.09.2012. A Floor buyer agreement was executed between the original allottee and the respondent-promoter on 23.09.2013. Subsequently, the unit was transferred in favour of the appellant-allottees on 13.05.2016. Appellant-allottees paid an amount of Rs. 1,12,32,047/- out of the total sale consideration of Rs. 1,22,83,200/-. As per clause 8.1 of the agreement, due date of possession was 23.09.2016. However, Occupation Certificate to the project was granted on 09.05.2022, after a delay of approximately six years. An offer of possession was made to the appellant-allottees on 12.05.2022 along with a demand for outstanding dues. Thereafter, appellant-allottees approached the Authority on 21.07.2022 seeking possession along with delay possession charges.

3. The respondent-promoter contended before the Authority that complainants were subsequent allottees and were fully aware of the stage of construction at the time of stepping into the shoes of the original allottee. It was further submitted that the project suffered delays due to force majeure circumstances including orders of the National Green Tribunal (NGT) and therefore, delay possession charges should not be awarded to the subsequent allottees.

4. After considering rival contentions of the parties, the Authority disposed of the complaint vide impugned order, operative part whereof has been reproduced in para 1 of this order.

5. Aggrieved by the impugned order, the appellant-allottees have preferred the present appeal before this Tribunal. They primarily challenged the impugned order on the ground that the Authority erred in granting delay possession charges only till the date of offer of possession, whereas the same ought to have been granted till the actual date of possession, i.e. 23.10.2023. It was further contended that interest ought to have been awarded at the rate of 18% per annum instead of 10.75%.

6. Per contra, learned counsel for the respondent-promoter argued that the project was delayed due to force majeure circumstances and that after completion of construction, a valid offer of possession was made following receipt of the Occupation Certificate along with a request to clear outstanding dues and take possession. It was, therefore, prayed that the appeal be dismissed as the Authority has rightly granted delay possession charges up to the date of the valid offer of possession plus two months.

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

8. Admittedly, Occupation Certificate to the project was granted on 09.05.2022 and offer of possession was made on 12.05.2022. However, the material on record also shows that the appellants consistently disputed the condition of the unit asserting that the unit offered was not in a habitable state. This objection was not a mere afterthought, as the respondent itself, through an email dated 18.07.2022 acknowledged that certain works were still pending on its part and assured the appellants that the deficiencies would be rectified at the earliest. In such circumstances, the offer of possession dated 12.05.2022 cannot be considered a valid and effective offer of physical possession in the true sense.

9. Since the unit was offered not in a complete and habitable condition on 12.05.2022, the appellant-allottees remained deprived of the use

and enjoyment of the apartment until actual possession was handed over on 23.10.2023.

10. In view of the above, the direction of the Authority limiting delay possession charges up to the date of valid offer of possession is unsustainable. The appellant-allottees, therefore, are entitled to delay possession charges for the entire period, from the due date of possession, i.e. 23.09.2016, till the date of actual handing over of possession on 23.10.2023.

11. However, the claim of the appellant-allottees seeking interest at the rate of 18% per annum is untenable in light of the provisions of the Act and the Rules framed thereunder, and is accordingly rejected.

12. In view of the foregoing discussion, the appeal is partly allowed in above terms.

13. Copy of this order be sent to parties/their counsel and the Authority below.

14. File be consigned to records.

Justice Rajan Gupta
Chairman
Haryana Real Estate Appellate Tribunal

Dinesh Singh Chauhan
Member (Technical)

April 16,2026/mk