BEFORE THE HARYANA REAL ESTATE APPELLATE TRIBUNAL

Appeal No.94 of 2024

Date of Decision: November 03,2026

1. Indira Mahlawat
2. Rajvir Mahlawat

Both R/o 84/7, Sector-8, HIG Flat, Pratap Nagar, Sanganer, Jaipur, Rajasthan – 302033

... Appellants / Allottees

Versus

1. Ashiana Housing Ltd. Regd. Office: Tower-1, 8th Floor, Vatika Business Park, Sector-49, Sohna Road, Gurugram – 122001
2. Universe Heights (India) Pvt. Ltd. Regd. Office:5G/1Everest 46/C, Chowringhee Road, Kolkata, WeST Bengal-700071.

... Respondents / Promoters

CORAM:
Justice Rajan Gupta **Chairman**
Dr. Virender Parshad **Member (Judicial)**

Present : Ms.Rupali Shekhar Verma Advocate,and
Ms. Neetu Singh Rana, Advoacate,
for the Appellants.

Mr.Venkat Rao, Advocate,
Mr. Pankaj Chandola, Advocate
for the respondents.

O R D E R:

RAJAN GUPTA, CHAIRMAN:

Present appeal has been filed by the appellant-allottees challenging the order dated 17.10.2023 passed by the Authority[1] in Complaint No. 2792 of 2020, whereby the Authority disposed of the complaint by issuing the following directions:

> *"51. Hence, the authority hereby passes this order and issues the following directions:-*

[1] Haryana Real Estate Regulatory Authority, Gurugram

i. *The respondents/allottees may take the possession of the allotted unit as offered by the complainant/promoter after payment of outstanding amount along with prescribed rate of interest @10.75%. and shall issue an updated revised statement of account.*

ii. *The respondents/allottees shall be charged interest at the prescribed rate of interest that is at the rate 10.75% per annum by the complainants/promoters which is the same as is being granted to the complainants/promoters in case of delayed possession.*

iii. *The respondents/allottees shall make the requisite payments as per the provisions of section 19(6) and (7) of the Act, within a period of 60 days failing which the complainant/promoter may proceed with cancellation/termination in terms of buyer's agreement subject to Regulations, 11(5) of 2018."*

2. Factual matrix of the case is that the appellants booked Unit No. M-209, measuring 1275 sq. ft., in the Group Housing Project “Ashiana Anmol”, situated in Sector-33, Tehsil Sohna, Gurugram. A flat buyer’s agreement (FBA) was executed between the parties on 08.04.2015 for a total sale consideration of Rs. 68,09,325/-. As per Clause 6.1 of the FBA, the promoter was required to complete the construction within 36 months, along with a grace period of six months, from the commencement of construction. The Environmental Clearance for the project was granted on 28.12.2015, and construction commenced on 01.03.2016. Accordingly, the contractual due date for delivery of possession, including the grace period, worked out to 01.09.2019. The promoter completed the construction ahead of schedule and received Occupation Certificate on 19.06.2019, and made offer of possession on 19.08.2019, well before the expiry of the due date of possession. Despite the timely offer of possession, the appellants vide letter dated 09.08.2019 sought cancellation/refund, approached the District Consumer

Commission, South Delhi, and repeatedly defaulted in clearing their balance consideration of Rs. 9,57,039/- and taking physical possession despite multiple reminders. Under these circumstances, rather than the allottees having any grievance, the promoter was compelled to file complaint before the Authority seeking directions to compel the allottees to clear dues and take physical possession.

3. After considering the rival contentions, the Authority disposed of the complaint vide the impugned order, the operative part of which has already been reproduced in paragraph 1 above.

4. Aggrieved by the aforesaid order, the appellants have preferred the present appeal seeking Delayed Possession Charges (DPC).

5. Learned counsel for the appellants contended that the due date of possession was December 2018, as mentioned in the Tripartite Agreement dated 22.03.2016, executed between the promoter, the appellants and the lending bank. According to learned counsel, the said agreement modified and superseded the date of possession stipulated in the FBA. Therefore, the appellants claimed that they were entitled to delay possession charges (DPC) from December 2018 onwards.

6. It was further contended that the appellant-allottees had already paid Rs. 68,60,515/-, as reflected in promoter's own ledger, and there was no default on their part. She further submitted that the offer of possession dated 19.08.2019 was invalid, as Occupation Certificate had not

been enclosed with it. On these grounds, the appellant-allottees claimed entitlement to DPC.

7. Per contra, learned counsel for the respondent-promoters submitted that the FBA dated 08.04.2015 was the principal agreement governing the rights and obligations of the parties, as per which, the due date of possession was 01.09.2019. Tripartite Agreement was merely an ancillary document and could not alter or supersede the terms of the FBA. The promoter had timely completed construction, received OC and offered possession. Therefore, the allottees were not entitled to any DPC.

8. It is a material fact that during the pendency of this appeal, with the indulgence of this Bench, physical possession of the flat was handed over to appellants, and the conveyance deed has been executed in their favour. Now, the only question that survives for consideration in the present appeal is whether the appellant-allottees are entitled to Delayed Possession Charges (DPC).

9. We have heard learned counsel for the parties and have carefully examined the record.

10. The principal contention raised on behalf of the appellants counsel is that the Tripartite Agreement dated 22.03.2016, which mentions December 2018 as the due date for delivery of possession, should prevail over the FBA dated 08.04.2015. We are unable to accept this contention.

11. The Flat Buyer's Agreement is the principal agreement executed between the promoter and the allottees. It governs the substantive rights and obligations of both

parties, including the agreed date for completion of construction and delivery of possession. On the other hand, the Tripartite Agreement was executed primarily to facilitate the housing loan and regulate the financial arrangements between the parties and the lending bank. Merely because a different date is mentioned in such an ancillary financing document, it cannot, by itself, be construed as modifying or superseding the possession schedule contained in the FBA. Also, there is nothing on record to establish that the parties intended to novate or amend the relevant possession clause of the FBA through the Tripartite Agreement. Consequently, the date mentioned in the FBA would govern the determination of the appellant-allottees claim for DPC.

12. As per Clause 6.1 of the FBA, the due date of possession was 01.09.2019. The record further establishes that the promoter received the OC on 19.06.2019 and issued the offer of possession to the appellants on 19.08.2019. Both these events took place before the expiry of the contractual period. Thus, there was no delay on the part of the promoter in fulfilling its contractual obligation to offer possession. Rather, the respondent-promoters had to approach the Authority to compel the appellants to clear the outstanding dues and take possession.

13. In view of the above, the claim of the appellants for delayed possession charges on the basis of the date mentioned in the Tripartite Agreement is devoid of merit and is accordingly rejected.

14. Consequently, the present appeal is dismissed.

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

16. File be consigned to the records.

Justice Rajan Gupta,
Chairman,
Haryana Real Estate Appellate Tribunal

Dr. Virender Parshad
Member (Judicial)

November 03,2026
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