

**BEFORE THE HARYANA REAL ESTATE APPELLATE
TRIBUNAL**

(1) Appeal No.16 of 2018

Date of Decision: December 03, 2024.

Mohd.Shaquib son of Sh. Abdul Rashid Ansari resident of # F-56/23, Sir Syed Road, Batla House, PO Jamia Nagar, New Delhi-110025.

Appellant.

Versus

MG Housing Pvt. Ltd. through its Managing Director having office at G-127, 12th Floor Himalaya House, 23, Kasturba Gandhi Marg, New Delhi-110001.

Respondent

(2) Appeal No.15 of 2018

Nitin Kumar Chauhan son of Sh. Sushil Kumar Chauhan, resident of # E-601, Supertech Livingstone, Crossing Republic, Ghaziabad, Uttar Pradesh-201016.

Appellant.

Versus

MG Housing Pvt. Ltd. through its Managing Director having office at G-127, 12th Floor Himalaya House, 23, Kasturba Gandhi Marg, New Delhi-110001.

Respondent.

(3)Appeal No.17 of 2018

Rudra Pratap Ojha son of Sh. Shankar Dayal Ojha, resident of House No.B2-210, Himsagar Apartments, P-4, Greater Noida, Uttar Pradesh.

Appellant.

Versus

MG Housing Pvt. Ltd. through its Managing Director having office at G-127, 12th Floor Himalaya House, 23, Kasturba Gandhi Marg, New Delhi-110001.

Respondent

(4) Appeal No.838 of 2022

Sameer Mahawar son of Sh. Shushil Kumar Mahawar, R/o Summer Palms Apartment, C-2, 704, Sector 86, Faridabad-121002.

Appellant.

Versus

MG Housing Pvt. Ltd. through its Managing Director having office at G-127, 12th Floor Himalaya House, 23, Kasturba Gandhi Marg, New Delhi-110001.

Respondent.

(5) Appeal No.839 of 2022

Neeraj Jain son of Sh. Digambar Prasad Jain, resident of House No.110-B, Street No.7, Gulab Vatika, Loni Road, Ghaziabad, Uttar Pradesh.

Appellant.

Versus

MG Housing Pvt. Ltd. through its Managing Director having office at G-127, 12th Floor Himalaya House, 23, Kasturba Gandhi Marg, New Delhi-110001.

Respondent.

CORAM:

Justice Rajan Gupta
RakeshManocha

Chairman
Member (Technical)

Present: Mr.Nitin Kant Setia, Advocate,
for the appellant.

Mr.Rohan Mittal, Advocate,
for the respondent.

ORDER:

JUSTICE RAJAN GUPTA, CHAIRMAN

1. This order shall dispose of above mentioned five appeals, as common question of law and facts are involved. However, the facts have been extracted from Appeal No. 16 of 2018.

2. The present appeal is directed against the order dated 23.08.2018, passed by the Authority¹, operative part whereof reads as follows:

"In view of the foregoing findings, the complaint is liable to be dismissed, with directions to the complainants to take possession of the apartment. If the complainants fail to do so, the respondent shall be entitled to take further action in accordance with the provisions of the Agreement. The Authority further directs the respondent to issue a fresh Statement of Accounts to the complainant, clearly stating the amount to be paid after adjusting the delay compensation for the delay of approximately nine months in offering possession."

3. Aggrieved, the appellant-allottee preferred the present appeal before this Tribunal.

4. Appellant- Mohd Shaquib, was allotted Apartment No. 307, with a super area of 1220 sq. ft., situated on the 3rd floor of Tower-A in the respondent's project "Mulberry County,"

¹ Real Estate Regulatory Authority, Panchkula

Faridabad. Agreement² was executed between the parties on 24.03.2014. According to Clause 6.1 thereof, possession of the apartment was to be delivered by June 2016, with an additional grace period of six months. Hence, the due date for handing over possession was 31.12.2016. However, the respondent offered possession on 09.10.2017, after obtaining the occupation certificate dated 22.09.2017.

5. Mr.Nitin Kant Setia, learned counsel for the appellant, contended that the respondent had unilaterally revised the layout plan of the project without the appellant's consent. He further argued that the respondent had breached the conditions laid down in the brochure, which stated that the project was located on a 45-meter wide sector road, with an additional 12-meter wide service road. The appellant had booked the unit by relying on the said representations, but the actual location of the project was not on the promised 45-meter road.

6. Mr.Rohan Mittal, learned counsel for the respondent, submitted that the layout plan was tentative and subject to change as per Clause 4.2 of the Agreement, which allowed for alterations in accordance with the directions of the competent authority. He further submitted that the changes were made after due notice was given to the appellant and other allottees, and the revised plan had been approved by the Town and Country Planning Department. The appellant did not raise any objection to the changes after the notice was issued and published. He further contended that possession of the

² Apartment Buyer's Agreement

apartment was offered on 09.10.2017, after obtaining the occupation certificate on 22.09.2017, and the appellant had neither accepted possession nor paid the outstanding dues. At this belated stage, the appellant is not entitled for refund.

7. Regarding the claim that the project was not located on a 45-meter wide sector road, the respondent stated that the construction of such roads was the responsibility of the State Government, as per the approved master plan, and that such roads may undergo changes over time. The respondent contended that no misrepresentation was made regarding the road width, and the obligations towards the State Government, including the payment of External Development Charges (EDC), had been duly fulfilled.

8. After considering the facts of the case and the submissions made by both parties, this Tribunal is satisfied that the respondent had issued notices regarding the change in the layout plan, and the appellant did not object to the changes within the prescribed time frame. The Tribunal further notes that possession was offered to the appellant after the occupation certificate was issued, and the appellant failed to accept possession or pay the balance dues.

9. With respect to the appellant's grievance regarding the project's location on a 45-meter wide sector road, the Tribunal finds that this cannot be the sole ground for granting the relief sought for. Admittedly, other similarly placed allottees have taken possession of their respective units.

10. The Tribunal accepts the plea that there was a delay in offering possession, beyond the stipulated date of 31.12.2016, and that the appellant is entitled to compensation for the delay in accordance with the terms of the Agreement. The appellant is, therefore, entitled to delay possession charges from the due date of possession (31.12.2016) until the date possession was offered (09.10.2017) for which the respondent-promoter is liable. The amount due be remitted within 90 days of uploading of this order. It has been noticed that several orders passed by the Authority/Tribunal are not complied with; very casual approach is adopted by the parties. This breach of order cannot be ignored by this Bench. It has no option but to invoke penal powers to ensure that there is no delay in complying with the orders. It is, thus, directed that the respondent-promoter shall remit the amount due to the allottee within 90 days of uploading of this order, if not already disbursed, failing which it shall be liable to pay Rs.10,000/- per day as penalty till continuance of default in terms of Section 64 of the Real Estate (Regulation and Development) Act, 2016.

11. In light of the above, the Tribunal is of the view that the Authority has rightly directed the appellant to take possession of the apartment, subject to the payment of outstanding dues, including the adjustment of delay compensation as stipulated in the Agreement. The appellant would however be at liberty to seek any further compensation raising his grievances, if permissible in law.

12. The appeals are hereby dismissed and the order dated 23.08.2018 passed by the Authority is upheld. No order as to costs.

13. Copy of this order be communicated to both the parties/learned counsel for the parties in all appeals and the Haryana Real Estate Regulatory Authority, Panchkula.

14. Files be consigned to the records.

Justice Rajan Gupta
Chairman
Haryana Real Estate Appellate Tribunal

Rakesh Manocha
Member (Technical)

December 03, 2024.
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