

**BEFORE THE HARYANA REAL ESTATE APPELLATE
TRIBUNAL**

Appeal No.514 of 2023
Date of Decision: 21.04.2025

M/s SS Group Pvt. Ltd. through its Authorized Signatory Mr. Chandra Shekhar Sharma, registered office at Plot No.77, SS House, Sector 44, Gurugram-122003, Haryana.

--Appellant

Versus

1. Haryana Real Estate Regulatory Authority, Gurugram through its Chairman, New PWD Guest House, Civil Lines, Gurugram, Haryana
2. Ms. Deepika Jain D/o Sh. Ravinder Jain, resident of House NO.999, Sector 14, Gurugram, Haryana-122001.

--Respondents

CORAM:

**Justice Rajan Gupta
Rakesh Manocha**

**Chairman
Member (Technical)**

Present: Mr. Rajeev Anand, Advocate
Mr. Vansh Vohra, Advocate
for the appellant.

None for respondent No.1- Authority

Mr. Sanjeev Gupta, Advocate
for the respondent No.2.

ORDER:

Rajan Gupta, Chairman (Oral):

The present appeal is directed against order dated 31.03.2023 passed by the Adjudicating Officer¹. Operative part thereof reads as under:-

“Learned counsel for DH claims that this was not actual offer of the possession rather “an offer for fit out”. According to him, his client is entitled for DPC, till the date of actual handing over of the possession i.e. 09.09.2022.

By sending letter for ‘fit out’, the builder/developer invites the allottee to come and see if unit was complete or worth occupying. It cannot be termed as valid offer of possession. Considering all this, in my opinion JD is liable to pay interest

¹ Adjudicating Officer, Haryana Real Estate Regulatory Authority, Gurugram

Appeal No.514 of 2023

till actual handing over possession i.e. 09.09.2022. Objection raised by JD in this regard is thus dismissed.

This is a petition seeking execution of order for recovery of amount of interest. As per judgment of Hon'ble High Court of Punjab and Haryana, Chandigarh, in case titled as M/s International Land Developers Pvt. Ltd. Vs. Aditi Chauhan and others CWP No.7738 of 2022, and M/s International Land Developers Pvt. Ltd. Vs. Nitin Mathur and others CWP 7750 of 2022 for recovery of amount, recovery certificate is required to be issued to the collector concerned. Let R/C be issued to Collector, Gurugram to recovery decretal amount, as arrears of land revenue.

File be sent to CA for preparing recovery certificate. Parties to appear before CA on 03.05.2023.”

2. Learned counsel for the appellant has assailed the order. He has vehemently contended that Executing Court has travelled beyond the decree passed by the Authority. As per him, there is no power vested in the Executing Court to arrive at finding that actual date of handing of possession to the allottee was 09.09.2022 and to proceed to award delay compensation accordingly.

3. Learned counsel for the respondent has refuted the aforesaid plea. As per him, the possession was not handed over by the promoter within one month of the order passed by the Authority. Consequently, the complainant filed an execution petition, pursuant to which possession was delivered to him on 09.09.2022.

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

5. Operative part of the order passed by the Authority reads as under:

“49. After taking into consideration all the material facts as adduced and produced by both the parties, the authority exercising powers vested in it under Section 37 of the Real Estate (Regulation and Development) Act, 2016

Appeal No.514 of 2023

hereby issues the following directions to both parties in the interest of justice and fair play:

- i. The possession of the unit shall be delivered by the respondent within a period of one month after adjusting due payments on account of delay payments by the complainant along with prescribed interest at the rate of 10.70 % per annum.*
- ii. Respondent is directed to send them a copy of OC through courier/registered post within a period of 15 days.*
- iii. The respondent shall not charge any parking charges beyond the terms of agreement.*

50. The order is pronounced.

51. Case file be consigned to the registry.”

6. It is evident that as per the decree the possession of the unit was to be delivered by the promoter within one month after making the adjustment of the amount due along with interest thereon.

7. Admittedly, possession was not handed over within the period prescribed by the aforesaid decree. The complainant resultantly filed execution petition on 20.12.2019.

8. During the course of hearing of the execution petition, Executing Court noticed that due date of possession was 04.01.2016 and there had been considerable delay thereafter. Thus, it came to the conclusion that possession had actually been handed over to the allottee on 09.09.2022. Therefore, he was entitled to delay compensation till the said date.

9. In our view, there is no infirmity with the order passed by the Executing Court. Decree would have remained just a paper decree if effective steps had not been taken for its execution. For this purpose, the Executing Court had to embark upon cumbersome exercise. There being no mechanism to execute a decree passed by the Authority, the Executing Court was left with no option but to take appropriate measures including issuance of recovery certificate. For the purpose of

Appeal No.514 of 2023

determining the time period for which DPC² were payable, it was necessary to give a finding upon the date when actual possession was handed over, which came out to be 09.09.2022. The fact that the builder earlier sent a letter inviting the allottee to visit the site and examine the unit could not be termed as offer of possession. No fault can be found in this finding. Such an offer was only for the purpose to see whether the unit was complete and worth occupation. This is the actual term which would normally precede the process initiated to hand over actual physical possession.

10. Keeping in view above facts and circumstances, it cannot be said that the Executing Court travelled beyond the decree passed by the Authority. The appeal is thus, hereby dismissed.

11. The amount deposited by the appellant/ promoter with this Tribunal to comply with proviso to Section 43(5) of the Real Estate (Regulation and Development) Act, 2016, along with interest accrued thereon, be sent to the learned Authority for disbursement to respondent No. 2 subject to tax liability, if any. The balance, if any, shall be remitted to the promoter.

12. A copy of this order be communicated to the parties/counsel for the parties, the Adjudicating Officer and the Authority for compliance.

13. File be consigned to record.

Justice Rajan Gupta
Chairman
Haryana Real Estate Appellate Tribunal

Rakesh Manocha
Member (Technical)

21.04.2025
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² Delayed Possession Charges

