

**BEFORE THE HARYANA REAL ESTATE APPELLATE TRIBUNAL**

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**Appeal No.591 of 2023**

**Date of Decision: June 05, 2025**

1. Selene Construction Ltd., Office No. 202, 2<sup>nd</sup> Floor, A-18 Rama House, Middle Circle, Connaught Place, New Delhi-110001
2. Indiabulls Real Estate Ltd. Office No. 01-1001, WeWork, Blue One Square, Udyog Vihar, Phase IV, Gurugram, Haryana

Appellants

Versus

1. Ankur Jain
2. Raj Kumar Jain

Both residents of A-603, Unique Apartments, Plot No. 38, Sector 6, Dwarka, New Delhi-110075

Respondents

**CORAM:**

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

**Chairman**  
**Member (Technical)**  
(Joined through VC)

Present : Mr. Ajiteshwar Singh, Advocate for the appellants.  
Mr. Raj Kumar Jain, respondent No. 2 in person.

**ORDER:****RAJAN GUPTA, CHAIRMAN**

Present appeal is directed against order dated 07.08.0223, passed by Adjudicating Officer of the Authority<sup>1</sup>.

The same reads as under:

*“Written arguments filed on behalf of JD. Heard. By order of this forum dated 08.05.2023, recovery certificate was issued to the Collector, Gurugram to recover amount of Rs.82,40,408/- as calculated by the CA.*

*JD has objection on this calculation. It is submitted by learned counsel for objector/JD that as per decree under execution, his client was liable to pay delay possession charges at the prescribed rate of interest i.e. 10.75% per annum w.e.f. 15.09.2015, till offer of possession. His client offered possession to the DH by writing a letter dated 11.02.2019, but DH did not take possession. In this way, his client (JD) is not liable to pay interest after 11.02.2019, when possession was offered to the allottee/DH. Contending that CA did not take into consideration the fact that possession was offered on 11.02.2019, he calculated the amount taking the date as actual handing over of the possession, and hence the calculation is not correct.*

*On the other hand, it is contended by learned counsel for DH that even if, any such letter dated 11.02.2019 was issued by the JD, this was not valid offer of the possession. The DH insisted on*

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

*making certain payments, which were not outstanding against his client.*

*Moreover, the amount claimed from his client as outstanding dues, was less than amount of DPC. JD could make payment of amount after deducting the amount of outstanding dues.*

*Though, JD offered possession but admittedly insisted on payment of the outstanding dues. It is not denied during deliberations that JD had to pay more amount, then amount of the outstanding dues.*

*Considering all this, I do not find any weight in the objection raised by the JD, offer of possession through letter dated 11.02.2019 was not valid offer of possession. Objections are thus dismissed.*

*Recovery certificate is stated to have already been sent to the Collector concerned, Gurugram.*

*File be sent back to the record room.”*

2. It appears that order dated 30.01.2019 was passed by the Authority. Operative part thereof reads as under:

*“(i) Counsel for the respondent has stated that occupation certificate has been received vide memo no. 28 dated 1.1.2019 and the copy of the same has been placed on record.*

*(ii) As per clause 21 of the builder buyer agreement dated 15.3.2012, for unit No. G-2, 1601, in project “Centrum Park”, Sector 103, Gurugram, possession was to be handed over to the complainant within a period of 3 years from the date of execution of buyer’s agreement + 6 months grace period which comes out to be 15.9.2015. However, the respondent has not delivered the unit in time. Complainant has already paid Rs.1,11,80,868/- to the respondent*

*against a total sale consideration of Rs.1,16,68,125/-. There is delay of 3 years, 4 months and 15 days to deliver the possession of the unit to the complainant. Counsel for the respondent has stated that since occupation certificate has been received and they shall offer the possession within one month.*

*(iii) An application on behalf of respondent No. 3 has been moved for deleting the name of respondent No. 3 and the same has been allowed.*

*(iv) However, the complainant is entitled for delayed possession charges at prescribed rate of interest i.e. 10.75% per annum w.e.f. 15.09.2015 as per the provisions of Section 18(1) of the Real Estate (Regulation and Development) Act, 2016 till offer of possession failing which the complainant is entitled to seek refund of the amount.*

*(v) The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order and thereafter monthly payment of interest till handing over the possession shall be paid before 10<sup>th</sup> of subsequent month. The respondent is directed to adjust the payment of delayed possession charges towards dues from the complainant, if any.”*

3. Pursuant to the aforesaid order, execution proceedings were initiated before the Adjudicating Officer. The Adjudicating Officer asked the CA to calculate the amount due towards the JDs<sup>2</sup>. Report was submitted by the CA that due amount is Rs.82,40,408/-. Adjudicating Officer thus, issued recovery certificate to recover the said amount. At this stage,

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<sup>2</sup> Judgment Debtors

JDs raised objection on the calculation. It was stated that JDs were only required to pay interest w.e.f. 15.09.2015 till offer of possession. JDs had offered possession promptly vide letter dated 11.02.2019 but DHs<sup>3</sup> did not come forward to take possession. Thus, the allottees-DHs were not entitled to interest after 11.02.2019 when possession was offered to them.

4. The allottees-DHs, however, contended that letter dated 11.02.2019 was not a valid offer of possession as same was conditional on making certain payments. The Adjudicating Officer came to the conclusion that offer of possession dated 11.02.2019 would not be considered to be a valid offer and thus rejected the objection. The order has been assailed before this Bench.

5. Heard learned counsel for the appellants and respondent No. 2 in person. It appears that recovery certificate has been issued on the basis of calculation made by the CA. The expertise in computing the amount would be with the person dealing in Accountancy. Thus, Adjudicating Officer committed no error in relying upon the same.

6. As regards possession letter dated 11.02.2019, the Bench feels that same should have been unconditional in nature. The allottees have already been harassed to a great extent, the promoters being in dominant position. Keeping in view the facts and circumstances of the case, the action of the Adjudicating Officer in issuing recovery certificate cannot be faulted with.

7. The appeal is, thus, dismissed.

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<sup>3</sup> Decree Holders

8. The amount of pre-deposit made by the promoters in terms of proviso to Section 43(5) of the Real Estate (Regulation and Development) Act, 2016 along with interest accrued thereon, be remitted to the Authority for disbursement to the allottees-DHs, subject to tax liability, if any.

9. Copy of the order be sent to the parties/their counsel and the Adjudicating Officer.

10. File be consigned to records.

Justice Rajan Gupta  
Chairman  
Haryana Real Estate Appellate Tribunal

Rakesh Manocha  
Member (Technical)  
(Joined through VC)

June 05, 2025  
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