

BEFORE THE HARYANA REAL ESTATE APPELLATE TRIBUNAL

Appeal No.675 of 2023

Date of Decision: 02.09.2025

New Look Builders and Developers Private Limited (Formerly known as “Ansal Phalak Infrastructure Pvt. Lwtd.”), First Floor, The Great Eastern Centre, 70, Nehru Place Behind IFCI Tower, New Delhi-110019

Appellant.

Versus

1. Arjun Gupta,

2. Kiran Gupta

Residents of 12/12, V Block, DLF City, Phase 3, Nathupur, Sector 67, Gurugram.

Respondents

Present : Mr. Rohan Mittal, Advocate, for the appellant.
Mr.Yashvir Singh Balhara, Advocate, for the respondents.

CORAM:

Justice Rajan Gupta
Shri Rakesh Manocha

Chairman
Member (Technical)

O R D E R:

RAJAN GUPTA, CHAIRMAN

Present appeal is directed against order dated 13.07.2023, passed by the Authority¹ at Gurugram, whereby it was directed that the appellant-promoter shall pay DPC to the respondent-allottees from due date of possession i.e., 15.08.2016 till the expiry of 2 months from the date of issuance of occupation certificate i.e. 04.03.2017. Operative part thereof reads as under:-

¹ Haryana Real Estate Regulatory Authority, Gurugram

“25. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations casted upon the promoters as per the functions entrusted to the authority under section 34(f) :

- a. The respondent is directed to pay the interest at the prescribed rate i.e. 10.750% per annum for every month of delay on the amount paid by the complainant from due date of possession i.e. 15.08.2016 till the expiry of 2 months from the date of issuance of occupation certificate i.e. 04.03.2017.*
- b. The arrears of such interest accrued from 15.08.2016 till 04.03.2014 shall be paid by the promoters to the allottee within a period of 90 days from the date of this order.*
- c. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.*
- d. The rate of interest chargeable from the complainant/ allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.70% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottees, in case of default, i.e., the delay possession charges as per section 2(za) of the Act.*
- e. The respondent is directed not to place any condition or ask the complainant to sign an indemnity of any nature whatsoever, which is prejudicial to the rights of the complainant as has been decided by the authority in complaint bearing No. 4031 of 2019 titled as Varun Gupta V. Emaar MGF Land Ltd.*

f. The respondent shall not charge anything from the complainant which is not the part of the buyer's agreement. However, holding charges shall not be charged by the promoters at any point of time even after being part of agreement as per law settled by Hon'ble Supreme Court in Civil Appeal No. 3864-3889/2020.

26. Complaint stands disposed of.

27. File be consigned to registry."

2. Factual matrix of the case is that the respondent-allottees were allotted an apartment no. 1556, 2nd Floor, measuring 2198 sq. ft., in the appellant's project, namely, "Esencia" at Sector-67, Gurugram. Total sale consideration of the unit was Rs.171,54,550/- and the respondent had paid a sum of Rs. 1,52,00,000/-. The floor buyer agreement was executed between the parties on 15.02.2013, and the due date for possession as per the agreement was 15.08.2016. The actual physical possession of the unit was handed over to the allottees on 27.06.2016 i.e., prior to the stipulated date. However, the Occupation Certificate for the project was granted only on 04.01.2017. Thus, respondent-allottees filed a complaint before the Authority in the year 2022 seeking delay possession charges.

3. The Authority, after hearing both parties, allowed the complaint and granted relief to the respondent-allottees as reproduced in Para 1 of this order.

4. Aggrieved by the said order, the appellant-promoter has approached this Tribunal by way of instant appeal.

5. The appellant-promoter contended that construction was completed and possession was offered on 04.03.2016 which was subsequently accepted by the allottees vide their own request letter dated 27.06.2016 in full and final settlement of all claims, thereby extinguishing their right to claim any DPC thereafter.

6. Learned counsel for the respondent-allottees supported the impugned order and submitted that DPC has rightly been granted by the Authority from due date of possession (15.08.2016) until two months after the issuance of the Occupation Certificate, i.e., till 04.03.2017.

7. Admittedly, Occupation Certificate was granted to the appellant-promoter on 04.01.2017. While the possession was purportedly handed over to the respondent-allottees on 27.06.2016, it was without grant of Occupation Certificate to the project, which is a mandatory requirement for lawful possession. Any offer of possession or delivery of possession by the promoter prior to grant of Occupation Certificate to the project lacks legal sanctity and cannot be treated as valid possession in the eyes of law. Even if the allottees accept such possession from the promoter, it would still not take away their right to claim DPC for delayed possession under the provisions of RERA Act. Further, appellant-promoter's claim that the allottees accepted possession in full and final settlement, is not sufficient to override their statutory rights, particularly when the possession itself was unlawful under the RERA framework due to absence of Occupation Certificate to the project. Thus, direction of the Authority to grant DPC from due date of

possession till grant of Occupation Certificate plus two months is sustainable and is hereby upheld.

8. In light of above, we find no merit in the appeal. Thus, the appeal is hereby dismissed.

9. The amount deposited by the appellant/promoter i.e. Rs. 8,99,819/- with this Tribunal to comply with the provisions of Section 43(5) of the Act, along with interest accrued thereon, be remitted to the Learned Authority at Gurugram for disbursement to the respondent-allottees in accordance with law and Rules.

10. Copy of this order be sent to the parties/their counsel and the Ld. Authority for compliance.

11. File be consigned to the records.

Justice Rajan Gupta
Chairman
Haryana Real Estate Appellate Tribunal

Rakesh Manocha
Member (Technical)

September 02, 2025/mk