

**BEFORE THE HARYANA REAL ESTATE APPELLATE TRIBUNAL**

**Appeal No. 357 of 2024**

**Date of Decision: August 27,2025**

Shri Rajeev Bajaj, S/o Shri H.G. Bajaj, R/o BU-41, Pitampura,  
Delhi-110034

Appellant

Versus

- 1. M/s DSS Buildtech Pvt. Ltd., Regd. Office: 506, 5<sup>th</sup> Floor, Time Square Building, B Block, Sushant Lok Phase I, Gurgaon, Haryana-122002
- 2. Shri Paras Kumar Jain (Managing Director), M/s DSS Buildtech Pvt. Ltd., Regd. Office: 506, 5<sup>th</sup> Floor, Time Square Building, B-Block, Sushant Lok Phase-I, Gurgaon, Haryana-122002
- 3. M/s Silverglades Holdings Pvt. Ltd., Regd. Off: 404, Nirmal Tower, 26 Barakhamba Road, New Delhi-110001
- 4. Shri Pradeep Jain (Managing Director), M/s Silverglades Holdings Pvt. Ltd., Regd Off: 404, Nirmal Tower, 26 Barakhamba Road, New Delhi-110001

Respondents

**CORAM:**

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

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

Present : Appellant in person along with  
Mr. Sanjay Gupta, Advocate.

Mr. Pranjal P. Chaudhary, Advocate for the respondents.

**ORDER:**

**RAJAN GUPTA, CHAIRMAN**

Present appeal is directed against order dated 08.02.2024, passed by the Authority<sup>1</sup>. Operative part thereof reads as under:

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

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

*i. The respondent/promoter is directed to refund the paid-up amount of Rs.13,49,963/- after deducting 10% of the sale consideration of Rs.76,68,900/- being earnest money along with an interest@10.85% p.a. as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 on the refundable amount, from the date of surrender i.e. 10.11.2015 till actual refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 ibid.*

*ii. A period of 90 days is given to the respondents to comply with the directions given in this order and failing which legal consequences would follow.”*

2. The appellant-allottee is aggrieved by the direction, whereby 10% amount of the sale consideration has been ordered to be deducted out of the refundable amount.

3. Counsel for the appellant submits that no BBA<sup>2</sup> was executed between the parties. As per him, the appellant had surrendered the unit vide letter dated 10.11.2015 asking for refund as construction had not made much headway.

4. Counsel for the respondents submits that the order passed by the Authority is sustainable. The appellant was consistent defaulter in payments after the unit was allotted to him. As per him, the allottee failed to respond despite

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<sup>2</sup> Builder Buyer's Agreement

reminders sent to him. Thus, 10% of the sale consideration out of the refundable amount has been deducted as per rules.

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

6. It appears that project “The Melias” was floated in Sector 35, Sohna, District Gurugram. The appellant was allotted the unit in question. No BBA was executed between the parties. In the absence of BBA, due date of possession was determined on the analogy of another case pending before the Authority. It was taken as 20.03.2021 i.e. 48 months from the date of environment clearance in the said case of the same promoter. However, admittedly, no Occupation Certificate was granted to the promoter by that time. An amount of Rs. 13,49,963/- had been remitted by the allottee to the promoter.

7. There is merit in the contention of the appellant-allottee that deduction of 10% of the sale consideration from the refundable amount is unjustified. It is an undisputed fact that no BBA was executed between the parties. In such circumstances, the obligation to execute BBA is on the promoter, it being in dominant position. The Authority erred in adjudicating the matter without consideration of the fact that BBA was not in existence. Although the promoter has alleged default in payment by the allottee, the record clearly shows that promoter failed to hand over possession of the unit by the stipulated date i.e. in the year 2021. Furthermore, as of that date, no occupation certificate had been issued, thereby indicating that construction of the project was not completed as

scheduled. Admittedly, on 10.11.2015 the allottee had sought for refund.

8. Keeping in view the entire facts and circumstances of the case, we are of the considered view that in the absence of BBA and considerable delay by the promoter in raising construction, the Authority has erred in directing 10% deduction from the amount to be refunded to the appellant.

9. In view of above, the appeal is hereby allowed. The impugned order, in so far as it directs deduction of 10% of the sale consideration from the refundable amount, is hereby set aside. The allottee would, thus, be entitled to the entire amount remitted by him to the promoter along with interest @ 10.85% p.a. from the date of surrender i.e. 10.11.2015 till the actual date of refund of the amount.

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

11. File be consigned to records.

Justice Rajan Gupta  
Chairman  
Haryana Real Estate Appellate Tribunal

Rakesh Manocha  
Member (Technical)  
(joined through VC)

August 27 ,2025  
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