

BEFORE THE HARYANA REAL ESTATE APPELLATE TRIBUNAL

Appeal No. 1229 of 2025

Date of Decision: July 07,2026

Maheesh Malik son of Sh. Suresh Chandra Malik resident of House No. 1-2-8/3, Gagan Mahal Road, Near Sadharam Hospital, Hyderabad, Andhra Pradesh-500029.

Appellant

Versus

DLF Homes & Developers Ltd. having office at First Floor, DLF Gateway Tower, R-Block, DLF City Phase-III

Respondent

CORAM:

**Justice Rajan Gupta
Dr. Virender Parshad**

**Chairman
Member (Judicial)**

Present: Mr. Amit Bhagat Advocate,
for the appellant.

Mr. Rajiv Anand, Senior Advocate assisted by
Mr. Vandit Jain, Advocate
for the respondent.

ORDER:

RAJAN GUPTA, CHAIRMAN

Present appeal is directed against order dated 06.05.2025, passed by the Authority at Gurugram¹ whereby Complaint No.1998 of 2022 filed by the appellant-allottee was disposed of with the following directions:-

“G. Directions of the Authority

20. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

I. The respondent is directed to issue a fresh statement of account after revising the rate of interest to be levied on the outstanding dues as per the provisions of sections 19(6) and (7) of the Act and handover the physical possession of the

¹Haryana Real Estate Regulatory Authority, Gurugram.

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subject unit within two months from the date of this order as the part completion certificate in respect of the said project has already been obtained by the respondent from the competent authority.

II. The complainant is directed to pay the outstanding amount if any, as per section 19(6) and 19(7) of the Act every allottee shall be responsible to make necessary payments as per buyer's agreement along with prescribed interest on outstanding payments from the allottee and to take physical possession of the apartment as per section 19(10) of the Act, 2016.

III. The respondent is directed to execute the conveyance deed of the allotted plot executed in his favour in terms of section 17(1) of the Act of 2016 on payment of stamp duty and registration charges as applicable.

IV. The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 11.10% 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 delayed possession charges as per section 2(za) of the Act.”

2. It appears that a project in the name and style of “Alameda” was floated by the respondent-promoter in Sector 73, Gurugram. The appellant-allottee booked a plot bearing no. WA-36, Block W measuring 538.20 sq. yards in the said project in the name of Rakesh Malik (name later changed to Maheesh Malik). Plot Buyer Agreement was executed between the parties on 19.07.2011. As per agreement, the due date of possession comes out to 19.01.2013. The appellant-allottee paid a sum of Rs. 3,60,41,889/- against the total sale consideration of Rs. 3,55,75,020/-. Part Completion Certificate for the project was issued on 01.05.2013. Offer of possession was issued by the respondent-promoter on 18.06.2013 along with demand of outstanding dues. However, the appellant-allottee refused to comply, alleging incomplete development and inadequate infrastructure as promised in the brochure and plot

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buyer agreement. Consequently, the respondent-promoter proceeded to issue reminders and notices, but did not cancel the allotment. Thereafter, instead of clearing the outstanding dues, the appellant-allottee filed Complaint No. 2242 of 2016 before NCDRC² seeking refund, which was later withdrawn on 15.03.2022. Subsequently, the appellant-allottee filed a complaint before the HRERA, Gurugram on 04.05.2022 i.e. after a lapse of approximately nine years from the date of offer of possession, seeking possession and delay interest.

3. The stand of the respondent-promoter before the Authority is that the complaint of the appellant-allottee was not maintainable as part completion certificate was issued prior to the enactment of the RERA Act and notification of RERA Rules, 2017. It was also contended that the appellant-allottee had initially filed a complaint before NCDRC for refund of paid-up amount, which was subsequently withdrawn unconditionally without seeking liberty to file a complaint before RERA as mandated under Section 71(1) of the RERA Act. It was argued that the appellant-allottee was under a contractual obligation to make timely payments in accordance with the terms and conditions of the agreement. It was further submitted that several reminders were issued by the respondent-promoter to the appellant-allottee during 2013-2016 to clear the outstanding dues and to take possession of the plot.

4. After considering rival contentions of the parties, the Authority rejected the claim of the appellant-allottee qua delay possession interest vide the impugned order dated 06.05.2025, operative part whereof has been reproduced in para 1 of this order.

5. Aggrieved by the impugned order, the appellant-allottee has preferred the instant appeal before this Tribunal. He primarily challenged the impugned order on the ground that the Authority erred in

²National Consumer Disputes Redressal Commission

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dismissing the claim of delay possession interest as the offer of possession made by the respondent-promoter was invalid since the same was issued without obtaining final completion certificate.

6. Learned counsel for the respondent-promoter has contended that Section 71(1) mandates that no complaint can be filed before RERA Adjudicating Officer if a consumer complaint has been filed before NCDRC unless such complaint is withdrawn with prior permission from NCDRC and in the present case, NCDRC Complaint No. 2242 of 2016 was unconditionally withdrawn by the appellant-allottee on 15.03.2022 without seeking liberty, thereby barring the present complaint. It is further submitted that the Authority lacked jurisdiction to entertain the complaint as the part completion certificate was issued on 01.05.2013, much prior to the enactment of RERA Act, 2016 and notification of Haryana RERA Rules, 2017.

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

8. For ready reference, relevant portion of Section 71(1) is extracted hereunder:

“71. (1) For the purpose of adjudging compensation under sections 12, 14, 18 and section 19, the Authority shall appoint in consultation with the appropriate Government one or more judicial officer as deemed necessary, who is or has been a District Judge to be an adjudicating officer for holding an inquiry in the prescribed manner, after giving any person concerned a reasonable opportunity of being heard:

Provided that any person whose complaint in respect of matters covered under sections 12, 14, 18 and section 19 is pending before the Consumer Disputes Redressal Forum or the Consumer Disputes Redressal Commission or the National Consumer Redressal Commission, established under section 9 of the Consumer Protection Act, 1986, on or before the commencement of this Act, he may, with the permission of

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such Forum or Commission, as the case may be, withdraw the complaint pending before it and file an application before the adjudicating officer under this Act.”

9. A plain reading of Section 71(1) along with its proviso makes it abundantly clear that where a complaint is pending before a Consumer Forum or Commission as on the date of commencement of the Act, such complaint may be withdrawn only with the permission of the concerned Forum or Commission, prior to instituting proceedings before the Adjudicating Officer under the Act.

10. In the present case, however, the appellant-allottee filed the complaint directly before the Authority on 04.05.2022 seeking possession of the subject unit, whereasthe claims falling under Sections 12, 14, 18 and 19, insofar as they relate to compensation, are required to be adjudicated by the Adjudicating Officer. Furthermore, the record reveals that Consumer Complaint No. 2242 of 2016 pending before the NCDRC was withdrawn unconditionally on 15.03.2022, without seeking liberty to pursue remedies under the RERA framework. In the absence of such liberty, the subsequent complaint filed before the Authority is procedurally unsustainable. Additionally, the appellant-allottee altered the nature of relief sought by shifting from the claim of refund before the NCDRC to the claim of possession before the Authority. Such a material change in the nature of relief, in the manner adopted, is impermissible in law.

11. It is further evident that Part Completion Certificate for the project was granted on 01.05.2013and offer of possession was made on 18.06.2013. Significantly, the RERA Act came into force on 28.07.2017. The dispute in question, therefore, arises fromthe events preceding the enforcement of the Act and is thus pre-RERA in nature.

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12. Besides, the Authority below has granted the main relief regarding handing over the possession of the unit. The main submission of the appellant is regarding DPC. It is an admitted fact that he had knocked the doors of NCDRC and thereafter opted to withdraw the complaint. He could very well press his right before NCDRC for being compensated for the delay in handing over possession. In these circumstances, it appears that he had taken a conscious decision at that time while withdrawing the complaint before NCDRC. Therefore, his submission regarding claim of DPC cannot be considered, particularly in the circumstances when he filed the complaint before the Authority at Gurugram after nine years.

13. In view of the foregoing discussion, the present appeal, being devoid of merit, is hereby dismissed.

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

15. File be consigned to records.

Justice Rajan Gupta,
Chairman,
Haryana Real Estate Appellate Tribunal

Dr. Virender Parshad
Member (Judicial)

July 07, 2026/mk