

**BEFORE THE HARYANA REAL ESTATE APPELLATE  
TRIBUNAL**

---

**Appeal No.57 of 2023**

**Date of Decision: 19.10.2023**

1. Pratik Data son of Shri G.D. Data
2. Jyoti Data d/o Shri Sita Ram Gupta, w/o Shri Pratik Data

Both Resident of P-5-A, Circular Road, New Colony,  
Gurugram-122001.

Appellants

Versus

New Look Builders and Developers Private Limited (Formerly known as Ansal, Phalak Infrastructure Private Limited), 1<sup>st</sup> Floor, The Great Eastern Centre, 70, Nehru Place, Behind IFCI Tower, New Delhi-110019.

Respondent

**CORAM:**

Justice Rajan Gupta	Chairman
Shri Anil Kumar Gupta,	Member (Technical)

**Argued by:** Mr. Dhananjay Singh, Advocate,  
for the appellants.

Mr. T.S. Khaira, Advocate,  
for the respondent.

**ORDER:**

**ANIL KUMAR GUPTA, MEMBER (TECHNICAL)**

The present appeal has been preferred under Section 44(2) of the Real Estate (Regulation and Development) Act 2016 (further called as, 'the Act') by the appellant/promoter against impugned order dated 02.11.2022

**Appeal No.57 of 2023**

passed by the Haryana Real Estate Regulatory Authority, Gurugram (for short, 'the Authority'), whereby the Complaint No. 773 of 2021 filed by the appellant/allottees was disposed of with the following directions:

*“34. 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 promoters as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016.*

- i. The respondent-promoter is directed to refund the paid-up amount to the complainant after deducting 10% of the basic sale consideration of the subject unit being earnest money as per regulation 11(5) of Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 2018 along with interest @ 10.35% p.a. on the refundable amount, from the date of surrender i.e., 26.08.2017 till the date of actualisation of amount.*
- ii. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.”*

2. As per averments in the complaint, the appellant/allottees booked a unit bearing No. 3135, on the

**Appeal No.57 of 2023**

first floor, measuring super area of 1685 sq. ft. for agreed total sale consideration of Rs.1,34,86,928/- inclusive of Preferential Location Charges (PLC), External Development Charges (EDC) and Infrastructure Development Charges (IDC) in the project of the respondent/promoter namely "Versalia" Sector 67-A, Gurugram. The allottees paid an amount of Rs.12,12,670/- at the time of booking. The allotment letter was issued by the promoter on 26.08.2014. A 'Flat Buyer Agreement' (hereinafter referred to as 'the agreement') was executed between the parties on 10.09.2014. As per Clause 5.1 of the agreement, the possession of the flat was to be handed over to the allottees within 36 months from the date of execution of the agreement plus 6 months of grace period. It was a construction linked plan. The allottees have so far made total payment of Rs.40,34,065/-.

3. It was further pleaded that appellant/allottees visited the project site and found that there was no progress in the construction activity at the site. They sent an email dated 19.06.2016 to the promoter raising concern over the delay in construction and the same was admitted by the promoter in its reply by email dated 20.06.2016. Resultantly, the allottees vide their letter dated 26.08.2017 sought refund of money paid by them along with interest but the promoter did not adhere to

### **Appeal No.57 of 2023**

the request of the allottees. Forced by these circumstances, the appellants/allottees filed complaint before the Authority seeking following reliefs:-

- a) *To direct the Respondent to provide full refund of the amount paid till date together with interest at the rate rates prescribed in (sic) the Act, from date of booking to till the date of actual payment for not delivering the possession of the allotted property within due time to the complainants.*
- b) *To direct the Respondent to pay a compensation amount of Rs.30,00,000/- (Rupees Thirty Lacs only) for causing huge financial loss, mental agony, and harassment to the Complainant by providing false promises with fraudulent and malicious intention.*
- c) *Cost of litigation of Rs.2,00,000/-.*
- d) *Any other relief(s) which this Hon'ble Authority may deem fit and proper be also granted in favour of the Complainants and against the respondent."*

4. The complaint was resisted by the respondent/promoter by filing reply stating therein that the appellant/allottees have prayed for refund of Rs.40,34,065/- along with interest, under Section 18(1) of the Act. It was pleaded that the allottees have made a total payment of Rs.40,19,793/- till date towards the allotment of the unit out

**Appeal No.57 of 2023**

of the basic sale consideration of Rs.1,24,46,000/- excluding EDC, IDC charges plus club members fee, interest free maintenance charges and service charges. Therefore, the allottees are liable to pay Rs.84,26,207/- to the respondent/promoter towards the unit along with delayed interest as they have defaulted in payments.

5. It was further pleaded that the respondent/promoter was obligated to deliver the possession of the unit to the appellant/allottees within a period of 42 months from the date of receiving the sanctioned plan for the project, subject to timely payment of dues by them and force majeure circumstances. As per the agreement, the allottees were liable to pay interest @ 24% per annum for the period of delayed payment and in the event the allottees failed to pay the instalments for three years, in that eventuality, they do not have the right to claim compensation/interest on the consideration paid to the promoter.

6. Further, it was pleaded that the promoter is/was ready and willing to allot an alternate unit to the allottees in the same location and pay the delayed possession charges after the adjustment of delayed interest to be paid by the allottees for non-payment. The construction of the project is dependent upon the amount of money being received from the

### **Appeal No.57 of 2023**

allottees in the form of instalments, however, during the prolonged effect of the global recession, the number of bookings made by the prospective purchasers reduced drastically in comparison to the expected bookings anticipated by the promoter at the time of launch of the project. That reduced number of bookings along with the fact that several allottees of the project either defaulted in making payment of the instalment or cancelled booking in the project, resulted in less cash flow to the promoter henceforth, causing a delay in the construction work of the project. The project of the promoter is reasonably delayed because of the force majeure situation and is expecting to hand over the possession very soon, once the present situation of pandemic 'Covid-19' gets over and situation normalizes. The real estate is severely affected due to the implementation of nationwide lockdown w.e.f. 22.03.2020 and amid this prevailing situation of the pandemic the slowing economy is also posing difficult challenges for the promoter.

7. After controverting all the pleas raised by the appellant/allottees, the respondent/promoter pleaded for dismissal of the complaint being without any merit.

8. The learned Authority after hearing the pleadings of both the parties passed the impugned order, the operative part

**Appeal No.57 of 2023**

of which has already been reproduced in the opening para of this order.

9. We have heard, learned counsel for the parties and have carefully examined the record.

10. At the outset, learned counsel for the appellants contended that the due date of possession of the unit was 10.03.2018; the respondent/promoter has yet not completed the construction and has also not obtained the Occupation Certificate (OC) so far. There is no construction work going on at the site. The appellant/allottees have paid an amount of Rs.40,34,065/- against the total sale consideration of Rs.1,29,51,500/-. He asserted that the learned Authority has wrongly taken the letter dated 26.08.2017 of the appellant/allottees as surrender letter. This letter was written by the appellant/allottees to seek refund of the amount along with interest as there was no progress of construction activities at the site. He contended that the appellant/allottees are entitled for refund of the amount paid by them along with prescribed rate of interest from the date of each payment till realisation as envisaged in Section 18(1) of the Act and also in terms of the judgment passed by the Hon'ble Apex Court in ***Newtech Promoters and Developers Private Limited Vs. State of U.P. and Ors.2020-2021 (1) RCR (c) 357.***

**Appeal No.57 of 2023**

11. With these contentions, he contended that the appeal may be allowed and the impugned order passed by the Authority may be modified accordingly.

12. On the other hand, learned counsel for the respondent/promoter contended that as per Section 18(1) of the Act, the allottees become entitled for the refund on demand. The demand of the refund was raised by the appellant/allottees vide their letter dated 26.08.2017, which is prior to the due date of possession i.e. 10.03.2018. Therefore, the order of the Authority is correct which is in terms of Haryana Real Estate Regulatory Authority, Gurugram (Forfeiture of earnest money by the builder) Regulations 11(5) of 2018, which in case of surrender of the unit are applicable.

13. He contended that there is no merit in the appeal. The impugned order is as per the provisions of the Act, rules and regulations made thereunder and therefore the appeal deserves to be dismissed.

14. We have duly considered the aforesaid contentions of the parties.

15. Undisputedly, the appellant/allottees booked a unit bearing No. 3135, measuring super area of 1685 sq. ft., on the first floor, for agreed total sale consideration of

**Appeal No.57 of 2023**

Rs.1,34,86,928/- (Inclusive of preferential location charges, EDC and IDC) in the project of the respondent/promoter namely "Versalia" Sector 67-A, Gurugram. At the time of booking, the appellant/allottees paid an amount of Rs.12,12,670/-. The allotment letter was issued by the promoter on 26.08.2014. An agreement was executed between the parties on 10.09.2014. As per Clause 5.1 of the agreement, the possession of the flat was to be handed over to the allottees within 36 months from the date of execution of the agreement plus 6 months of grace period i.e. up to 10.03.2018. It was a construction linked plan. The appellant-allottees have so far made a total payment of Rs.40,34,065/- against the total consideration of the unit.

16. Admittedly, the Occupation Certificate has not been issued so far and consequently no offer for possession has been made by the respondent/promoter to the appellant/allottees. The respondent/promoter in its reply to the complaint had pleaded that the project was delayed on account of the reasons of global recession on account of which number bookings made by the prospective purchasers reduced drastically in comparison to the expected bookings. Also, there was delay on account of implementation of nationwide lockdown w.e.f. 22.03.2020 due to Covid-19 pandemic arisen

**Appeal No.57 of 2023**

thereafter. It is noticed that no reason for delay in delivery of possession has been attributed to the appellant/allottees. As per the averments of the appellant/allottees in the complaint, it was noticed by them on their various visits to the project that there was no progress in the construction activities at the site. There is no specific denial by the respondent/promoter in its reply to the complaint to the above averments of the appellant- allottees. It is admitted by the respondent/promoter that there was delay in completion of the project. No specific timelines for offer of possession has been committed by the respondent/promoter in its reply to the complaint as well as during the arguments in the appeal. Rather, in its reply to the complaint, the respondent/promoter has submitted that it is willing to allot an alternative unit to the appellant/allottees at some other location and is ready to pay the delay possession charges. This clearly establishes that either the project has not been started or it is at a very early stage of construction and there is no likelihood that the respondent/promoter will be able to issue offer of possession of the unit to the appellant-allottees in the near future.

17. The case of the appellant- allottees is well covered by section 18(1) of the Act which states that if the allottee wishes to withdraw from the project and demands return of

**Appeal No.57 of 2023**

the amount received by the promoter in respect of the unit with interest, on failure of the promoter to complete or inability to give possession of the unit, the allottee has unqualified right to seek refund of the amount along with interest. The case of the appellant/allottees is also very well covered by the judgment of the Hon'ble Apex Court in **Newtech Promoters and Developers'** case (Supra), the relevant part of which reads as under:-

*“25. The unqualified right of the allottee to seek refund referred under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed.”*

**Appeal No.57 of 2023**

18. As per the aforesaid ratio of law, the allottee has unqualified right to seek refund referred under Section 18(1)(a) and Section 19(4) of the Act, which is not dependent on any contingencies. The right of refund of payment has been held to be as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events. Thus, in the present case appellant/allottees have an unqualified and unconditional absolute right to seek the refund as the promoter has failed to deliver the possession of the unit by 10.03.2018 the stipulated date as per the buyer's agreement dated 10.09.2014.

19. The respondent/promoter's argument that the appellant/allottees surrendered their unit vide letter dated 26.08.2017, which is prior to the possession due date of 10.03.2018, and thus, 10% of the basic sale consideration as earnest money should be forfeited, and interest on the remaining amount is payable from the surrender date, lacks merit. Upon examining the content of the letter dated 26.08.2017, it is evident that the appellant-allottees wrote letter dated 26.08.2017 seeking a refund with interest due to the lack of progress in the construction work at the project

**Appeal No.57 of 2023**

site. The appellant/allottees, recognizing the insufficient progress as per the agreement terms, rightfully wrote letter dated 26.08.2017 and demanded refund and subsequently filed a complaint with the authority on 19.02.2021 under section 18(1) of the Act. Based on the facts available on the record, we have observed in the foregoing paras that either the project of the respondent/promoter has not started or it is at a very early stage, making it highly unlikely for the respondent/promoter to offer possession in the foreseeable future. Therefore, in these circumstances the letter dated 26.08.2017 of the appellant/allottees does not preclude them for seeking refund of amount paid by them along with interest at the prescribed rate under Section 18(1) of the Act.

20. In view of the peculiar facts and circumstances of the instant case the appellant/allottees are entitled to a refund of the amount of Rs.40,34,065/- paid by them to the respondent/promoter, along with interest at the prescribed rate of 10.35% per annum from the date of each payment until realization and it is ordered accordingly.

21. No other point was argued before us.

22. Consequently, the appeal filed by the appellant/allottees is allowed and the impugned order is modified accordingly as per the above said observations.

**Appeal No.57 of 2023**

23. No order as to costs.
24. Copy of this order be communicated to the parties/counsel for the parties and Haryana Real Estate Regulatory Authority, Gurugram.
25. File be consigned to the record.

Announced:  
October 19, 2023

Justice Rajan Gupta  
Chairman  
Haryana Real Estate Appellate Tribunal

Anil Kumar Gupta  
Member (Technical)

CL