

**BEFORE THE HARYANA REAL ESTATE APPELLATE  
TRIBUNAL**

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Appeal No.717 OF 2022  
Date of Decision: 21.09.2023

Charan Singh resident of Rathiwas 140, Sidharwali,  
Gurugram.

Appellant

Versus

AVL Infrastructure Pvt. Ltd., Plot No.1, Green Park, Main New  
Delhi 110 016

Respondent

**CORAM:**

**Justice Rajan Gupta  
Shri Anil Kumar Gupta**

**Chairman  
Member (Technical)**

Argued by: Mr. Arun Sharma, Advocate  
for the appellant.

Mr. Gaurav Gupta, Advocate,  
for the respondent.

**ORDER:**

**Rajan Gupta, Chairman (Oral):**

Allottee filed complaint on 11.12.2019 under the relevant provision of the Real Estate (Regulation and Development) Act, 2016 (for short, the Act) praying inter alia that possession of the unit be handed over to him and he be paid interest at the prescribed rate for every month of delay from due date of possession till the actual handing over the possession, to adjust an amount of

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Rs.3,10,816/- as the demand was unreasonable and also penalty for breach of terms and conditions of allotment.

2. Complainant also sought setting aside of the order of cancellation of the flat which was done vide letter dated 31.12.2020 during the pendency of the complaint (this plea was sought by way amendment made in the complaint).

3. Respondent rebutted all the pleas. According to it, it adhered to the terms of allotment. As per them, the Flat Buyer's Agreement was executed between the parties on 24.01.2018. The said unit was mortgaged to ICICI Bank for availing a loan. According to promoter, demand notices dated 01.02.2018, 01.06.2018 and 01.12.2018 were issued to the allottee. The complainant failed to adhere to the payment schedule. As on 07.10.2019, he was in default on payment of Rs.7,56,028/-. Stand of the promoter is that it completed the project before time and applied for Occupation Certificate on 18.10.2019 and the same was received on 17.12.2019. Thereafter, they offered possession of the unit to the complainant. Several reminders in this respect were sent to the complainant. Complainant also submitted an indemnity bond dated 20.02.2020 agreeing to abide by the terms and conditions of the Affordable Housing Policy, 2013. Even thereafter, complainant failed to clear his dues. The respondent was, thus, constrained to cancel the allotment of the unit vide letter dated 30.12.2020. According to promoter, it did so after following proper procedure i.e. publication in two local newspaper.

4. After considering rival pleas, the Haryana Real Estate Regulatory Authority, Gurugram (hereinafter referred to as, the

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Authority) observed that though the complainant had deposited 95% of the total sale consideration, but respondent-promoter had to wait for an year for receipt of sale consideration from the allottee, even after issuance of offer letter after receipt of Occupation Certificate. The allottee argued that he had deposited more than 95% of total sale consideration. Thus, he was entitled to get allotment of the unit. However, by that time unit in question had been cancelled. It was during pendency of the complaint. The Authority, thus, came to the conclusion that the promoter was constrained to cancel the unit as allottee failed to make payments despite repeated reminders issued to him.

5. . The Authority disposed of the complaint with the following direction:

*“1. Directions of the authority*

*Hence, the authority hereby passes this order and issues the following directions under section 7 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 to refund the entire amount paid by the complainant along with interest at the rate of 9.50% (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of cancellation of unit i.e. 30.12.2020 till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017.*
- ii. A period of 90 days is given to the respondent to comply with the direction given in this order and failing which legal consequences would follow.*

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*38. Complaint stands disposed of.*

*39. File be consigned to registry.”*

6. Aggrieved by the said order, appellant-allottee preferred the instant appeal before this Tribunal. Arguments were heard in the appeal on various dates. During pendency thereof, we sought an affidavit of the Senior Executive of the respondent-company by raising a query whether third party rights have been created regarding unit in question. In pursuance of thereof, affidavit of Shri Virender Singh Dhanda, Managing Director of AVL Infrastructure Pvt. Ltd.-respondent was filed. Para No.4, 5, 6 and 7 are reproduced herein for reference:

*“4. That the Appellant had not cleared his even basic instalments of schedule of payment, leave alone the applicable interest, taxes etc., the Respondent was constrained to cancel the allotment of the Appellant. The flat allotment of the Appellant was cancelled on 21.10.2020 upon the Appellant's failure to clear the dues. The Respondent informed the Appellant of the cancellation of allotment vide letter dated 30.12.2020 and thereafter, the said Flat was allotted to one Mrs. Anita vide allotment letter dated 30.12.2020. The Respondent vide letter dated 13.01.2021 requested the Appellant to take refund by submitting all the original documents of the flat which were issued to the Appellant and/or to the Financial Institution.*

*5. That the cancellation of the Appellant's Flat has happened strictly as per the Policy only. In fact, the Policy itself strictly provides that if a person, who has defaulted, does not make the payment of due amounts, after sending notice of default and thereafter also does not make payment within 15 days of publishing such defaulter's name in the newspaper, then as per the Policy*

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*AHP-2013, the flat allotment of such defaulter stands automatically cancelled, without any further communication. Thus, the Respondent has acted strictly in accordance with the Policy as it is bound by the terms of the said Policy AHP-2013.*

*6. That the Respondent in due compliance of HRERA Gurugram Order dated 17.05.2022 (impugned order) (Judgment uploaded on 06.07.2022) offered the entire deposited amount (Rs. 24,04,651/-) plus interest (Rs. 3,51,112/-) calculated from the date of cancellation (i.e. 30.12.2020) of Flat allotment till the actual date of refund, total amounting to Rs. 27,55,763/- (Twenty-Seven Lakhs Fifty-Five Thousand Seven Hundred and Sixty-Three only) to the Appellant, vide letter dated 14.07.2022 bearing No. AVL/AGHC/2022/191. (Copy of the letter dated 14.07.2022 written by the Respondent to the Appellant and to the Financial Institution is annexed herewith as 'ANNEXURE - A'). But neither the Appellant nor the Financial Institution came forward to collect the refund.*

*7. That as on date of filing the preset Affidavit, out of a total of 14480 flats in the project, all flats are allotted. Consequently, there are no vacant/unallotted flat in the Project.”*

7. We have heard learned counsel for the parties and given due consideration to the arguments advanced before us.

8. It is evident that allottee was not able to remit the instalments to the promoter even after Occupation Certificate was obtained by promoter and possession of the unit was offered. The respondent had, thus, no option but to cancel the allotment, there is nothing to show that did not follow the procedure prescribed before resorting for cancellation.

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9. We find no substance in the plea of the appellant that the equalisation/interest demanded by the respondent was not payable by him. It has been noted in the order of the Authority that the requirement of equalisation amount/interest as per policy was duly explained to the appellant at all stages i.e. at the time of issuing advertisement/inviting applications on 21.09.2017/26.10.2017 providing payment terms inclusive of “Equalisation Amount (interest as per policy) calculated at 15% per annum from the commencement date of project, i.e. 2<sup>nd</sup> January, 2016, upto the date of subsequent (present) allotment” for redraw of lots of the left over units. In fact, it is on record that he did not remit the instalment in time despite the fact that he had taken a loan from the ICICI Bank.

10. In view of the affidavit of Shri Virender Singh Dhanda, Managing Director of AVL Infrastructure Pvt. Ltd-Respondent filed, which remains un-rebutted, it is evident that no unit is now available with the promoter for allotment of the complainant (appellant herein).

11. In the facts and circumstances of the case, we feel that the authority has rightly decided to direct refund of the amount from the date of cancellation till realization. As per promoter, a cheque has already been issued by the promoter in the name of allottee. However, the allottee has chosen not to encash the same till now.

12. Thus, we find no merits in the appeal, same is hereby dismissed.

13. Copy of this order be communicated to both the parties/learned counsel for the parties and the Haryana Real Estate Regulatory Authority, Gurugram.

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14. File be consigned to the record.

Announced  
21.09.2023

Justice Rajan Gupta  
Chairman  
Haryana Real Estate Appellate Tribunal

Anil Kumar Gupta  
Member (Technical)

Manoj Rana