

**BEFORE THE HARYANA REAL ESTATE APPELLATE TRIBUNAL**

---

**Appeal No.07 of 2023**  
**Date of Decision: 14.11.2023**

Gitika Duggal wife Vivek Anand, resident of 407, Sem B, Shipra Shristi, Indrapuram, Ghaziabad, Uttar Pradesh 201010.

Appellant-Allottee

Versus

Pivotal Infrastructure Private Limited, registered office at 309, 3<sup>rd</sup> Floor, JMD Pacific Square, Sector 15, Part-II, Gurugram (Haryana) 121 001

Respondent-Promoter

**CORAM:**

**Justice Rajan Gupta**  
**Shri Anil Kumar Gupta**

**Chairman**  
**Member (Technical)**

Present : Mr. Sanat Garg, Advocate,  
for the appellant.

Mr. Abhimanyu Jangra, Advocate,  
for the respondent.

**ORDER:**

**RAJAN GUPTA, CHAIRMAN (ORAL):**

Present appeal is directed against order dated 11.10.2022 passed in Complaint No.5202 of 2021 by the Haryana Real Estate Regulatory Authority, Gurugram (for short, 'the Authority below'). Operative part thereof reads as under:

*"19. Hence, the authority hereby passes this order and issues 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 refund the amount of Rs.18,22,847/- paid by the complainant after deduction of Rs.25,000/- as per clause 5(iii)(i) of the Affordable Housing Policy 2013 along with interest @ 10% per annum on the balance amount from the date of cancellation of the unit i.e. 02.08.2020 till the actual realization of the 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.*
- 20. Complaint stands disposed of.*
- 21. File be consigned to registry.”*

2. The brief factual matrix of the case is that the complainant (appellant herein) applied for flat in a residential project namely 'Paradise' situated in Sector 62, Village Ullahawas, Gurgaon. The said housing project was proposed to be developed under the Affordable Housing Policy promulgated by the Government of Haryana in the year 2013. The total consideration of the flat in question was Rs.23,09,500/- plus taxes. The amount to be paid at the time of application was Rs.1,15,475/- i.e. 5% of the sale consideration. Draw of lots was conducted on 28.11.2016 in which, the appellant was successful. In view of draw of lots, the appellant paid another amount of Rs.4,61,900/- i.e. 20% of the total sale consideration to the promoter. Consequently, the allotment letter dated 01.12.2016 was issued to the appellant. As per terms thereof, possession was to be handed over before 30.12.2020. As per the appellant, she visited the site to find out about the stage of construction. However, she found that hardly

any progress had been made at the site. She, thus, decided not to make any further payment. Instead of redressing the legitimate grievance of the appellant, the respondent-promoter issued cancellation letter dated 16.09.2017. As per the appellant, after receipt of said letter, she agreed to make balance payments from 30.10.2017 to 12.06.2020. Thus, she paid a total amount of Rs.18,22,847.88 approximately 79% of the total consideration. She again made effort to check the status of the project. As per her, the promoter declined to accept any further payment and she was informed that her allotment was cancelled. Copy of defaulters was published in the newspaper (Tribune). She was informed that the unit (T3-301) allotted to her had been cancelled due to default in payment. In view of above, the appellant invoked the jurisdiction of the Authority at Gurugram seeking directions to the respondent to refund the amount paid by her to the promoter along with prescribed rate of interest from the dates of respective payments and to award suitable compensation.

3. The respondent refuted the claim of the appellant and submitted that delay in the project occurred due to Covid-19 pandemic and also due to the orders passed by the NGT prohibiting the construction at the site in question. Other similar pleas were taken by the respondent. It was also stated that the appellant had invoked the jurisdiction of the Judicial Magistrate under Section 156(3) of the Code of Criminal Procedure (Cr.P.C.).

4. The Authority after considering the rival contentions of the parties came to the conclusion that the respondent had failed to complete the project within prescribed period. The factum of payment of Rs.18,22,847/- remained undisputed. It did not find any substance in the plea taken by the respondent and, thus, directed the respondent to refund the amount of Rs.18,22,847/-, after deduction of Rs.25,000/- as per Clause 5(iii)(i) of the Affordable Housing Policy, 2013, along with interest @ 10% per annum on the balance amount from the date of cancellation of the unit i.e. 02.08.2020 till actual realization of the amount. A period of 90 days was given to the respondent to comply with the directions, failing which, legal consequences would follow.

5. On due consideration, we find that there is no legal infirmity in the order passed by the Authority below. Apart from the fact, the respondent has placed reliance on the conditions of Covid-19 pandemic and certain orders passed by the NGT, no other plea having any legal basis has been raised. Admittedly, the appellant has already withdrawn the complaint filed by her under Section 156(3) of the Cr.P.C. from the Court of Judicial Magistrate First Class. Admittedly, as per order dated 24.07.2023, a Demand Draft of Rs.21,89,523/- was sent to the appellant-allottee, which was encashed by her.

6. In view of above observations, we do not find any ground to interfere with the impugned order in our appellate

jurisdiction. Appeal is, thus, without any merit and is hereby dismissed.

7. No order as to costs.
8. Copy of this order be communicated to the parties, their counsel and the Authority below.
9. File be consigned to the record.

Justice Rajan Gupta  
Chairman  
Haryana Real Estate Appellate Tribunal

Anil Kumar Gupta  
Member (Technical)

14.11.2023  
Manoj Rana