

-BEFORE THE HARYANA REAL ESTATE APPELLATE TRIBUNAL

Appeal No. 509 of 2023

Date of Decision: March 18, 2025

Rakesh Sharma son of Lt. Sh. Prayag Dutt Dhasmana, resident of House No. 467/5, Sector 5, Gurugram

Appellant

Versus

1. M/s BPTP Limited having its Registered Office at M-11, Middle Circle, Connaught Circus, New Delhi-110001 through the Managing Director

2. M/s Countrywide Promoters Pvt. Ltd. having its Registered Office at M-11, Middle Circle, Connaught Circus, New Delhi-110001 through its Managing Director

Respondents

Present : Mr. Dinesh Arora, Advocate for the appellant(s)
Mr. Hemant Saini, Advocate for the respondents.

CORAM:

Justice Rajan Gupta
Rakesh Manocha

Chairman
Member (Technical)

ORDER:

RAJAN GUPTA, CHAIRMAN (ORAL):

Present appeal is directed against the order dated 24.01.2023 passed by the Authority¹, operative part whereof reads as under:

“28. 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):

¹ Haryana Real Estate Regulatory Authority, Gurugram

i. The respondents are directed to refund the balance amount, if any, after deducting earnest money i.e. 15% earnest money of the total sale consideration alongwith interest at the rate of 10.60% p.a. from the date of cancellation i.e. 03.07.2013 till the actual date of refund of that amount.

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.

30. Complaint stands disposed of.

31. File be consigned to registry.”

2. A project, namely, “Terra” was floated by the promoter in Sector 102, Gurugram. Town and Country Planning Department granted licence for this project on 05.04.2008. Allottee-Rakesh Sharma applied for a residential flat. He was allotted flat measuring 1691 square feet, total consideration for which was Rs.1,03,78,092/-. The allottee, however, remitted an amount of Rs.18,12,982/-. Stand of the promoter is that reminders were sent thereafter to the allottee for payment of the balance amount which was not paid. The promoter was thus constrained to cancel the allotment vide letter dated 03.07.2013. Aggrieved by action of the promoter, the allottee filed a complaint in 2018 before the Authority after five years of the cancellation, *inter alia* seeking refund of the amount deposited by him and cost of litigation.

3. Learned counsel for the appellant has contended that payment was not made by the allottee as it was found that the project in question had not made any headway, much less in sync with payment plan. The allottee waited for a considerable period. Thereafter, no option was left with him but to seek refund of the amount remitted by him. He has limited his prayer to the

effect that deduction of 15% of the sale consideration directed by the Authority is against law as only 10% can be deducted in view of prevalent rules/regulations.

4. Mr. Saini, learned counsel for the respondents, contends that the Authority erred in entertaining the complaint after five years of cancellation of the unit. The allottee was a consistent defaulter as would be clear from the reminders sent to him for making payment. As per him, the order passed by the Authority is sustainable and the promoter is ready to abide by the terms thereof despite the fact that Builder Buyer's Agreement was never executed between the parties.

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

6. Law is well-settled on the point that the amount beyond 10% of the sale consideration cannot be deducted from the refundable amount. Besides, the appellant has limited his prayer to this relief only.

7. Appeal is, thus, partly allowed. The direction given by the Authority is modified to the extent that the promoter would refund the balance amount after deducting 10% of the sale consideration and not 15%.

8. File be consigned to the record.

Justice Rajan Gupta
Chairman
Haryana Real Estate Appellate Tribunal

Rakesh Manocha
Member (Technical)

March 18,2025
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