

BEFORE THE HARYANA REAL ESTATE APPELLATE TRIBUNAL

Appeal No.736 of 2023

Date of Decision: May 02,2025

Vimal Kumar Sachdeva, B-240,Florence Elite, Sector 57,
Gurugram

Appellant.

Versus

Sana Realtor Pvt. Ltd., D-2 Lower Ground Floor, Southern
Park, District Centre Saket

Respondent

Present : Mr. Kunwar Singh, Advocate for the appellant.
Mr. Shubhnit Hans, Advocate for the respondent.

CORAM:

Justice Rajan Gupta
Rakesh Manocha

Chairman
Member (Technical)
(Joined through VC)

ORDER:

RAJAN GUPTA, CHAIRMAN (ORAL):

Present appeal is directed against order dated 15.09.2023, passed by the Authority¹. Operative part thereof reads as under:

“a. The complainant is entitled monthly assured return of Rs.42,162/- as agreed by both the parties vide clause 2 of the MoU dated 11.05.2010 from the date on which the said amount was made due by the respondent i.e. January, 2015 till offer of possession i.e. 24.07.2017 along with interest @8.75% p.a. till the date of actual realization.

b. The respondent is directed to pay the outstanding accrued assured return amount till date at the

¹ Haryana Real Estate Regulatory Authority, Gurugram

agreed rate within 90 days from the date of this order after adjustment of outstanding dues, if any.

c. The promoter shall not charge anything which is not part of the buyer's agreement.

23. The complaint stands disposed of.

24. File be consigned to registry.”

2. Counsel for the appellant has assailed the order primarily on the plea that no offer of possession dated 24.07.2017 was made by the promoter. The Authority has thus erred in restricting the amount payable till said date (24.07.2017).

3. Counsel for the respondent, however, states that Occupation Certificate in respect of the project was granted on 18.07.2017. Immediately thereafter, offer of possession was made on 24.07.2017.

4. It appears that the complainant applied for a unit measuring 727 square feet floated by Sana Realtors Pvt. Ltd. In Sector 57, Gurugram. Due date of delivery, according to MoU signed between the parties, was 11.05.2013. It was also agreed between the parties that after receipt of consideration of Rs.26,00,000/-, assured return would be paid to the allottee till offer of possession. Said clause is reproduced below for ready reference:

“After receipt of consideration of Rs. 26,00,000/- (Rupees Twenty Six Lakhs only), the developer shall give an investment return @ Rs.60/- per sq. ft. per month i.e. Rs.42,160/- (Rupees Forty Two Thousand One Hundred Sixty only) with effect from May, 2010 on or before 10th day of every month for which it is due till the possession of the said property is offered

to the buyer which shall be tentatively within three years from the date of agreement”.

5. Admittedly, Occupation Certificate was granted to the project vide order dated 18.07.2017. The promoter claims that it made offer of possession immediately thereafter i.e. 24.07.2017. Proceeding on this premise, the Authority directed that assured return of Rs.42,160/-, as agreed in MoU dated 11.05.2010, be remitted to the allottee from due date i.e. 11.05.2013 till offer of possession i.e. 24.07.2017 along with interest @ 8.75% per annum till the date of actual realization. However, the appellant seriously disputes the fact that any offer of possession was made to him vide letter dated 24.07.2017. As per him, no such letter was received by the complainant. Counsel for the respondent, however, has referred to a document showing proof of service of letter i.e. courier receipt (p. 139) to contend that said letter was duly delivered.

6. The only question to be determined by the Bench is whether any offer of possession was made on 24.07.2017 by the promoter and whether any letter in that respect was served on the allottee.

7. Aforesaid issue is purely factual in nature, yet courier receipt in respect of letter dated 24.07.2017 has been perused and shows that the letter was duly delivered. This fact has not been controverted by the allottee by way of any evidence before the Authority. Contents of letter (Annexure-R5) have also been perused. Same show that that valid offer of possession was made to the appellant. Thus, the appellant would be entitled to assured return only from due date of possession till valid offer of possession was made. The

Authority has arrived at the same conclusion. We thus find no infirmity with the order passed.

8. The appeal is thus without any merit and is hereby dismissed.

9. Copy of the order be sent to the parties/counsel and the Authority for information.

10. File be consigned to records.

Justice Rajan Gupta
Chairman
Haryana Real Estate Appellate Tribunal

Rakesh Manocha
Member (Technical)
(Joined through VC)

May 02,2025.
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