

BEFORE THE HARYANA REAL ESTATE APPELLATE TRIBUNAL

Appeal No.696 of 2023

Date of Decision: April 11, 2025

SS Group Private Limited, Plot No. 77, SS House Sector 44,
Gurugram

Appellant.

Versus

1. Jyoti Dhingra

2. Vijay Kumar Malik

both residents of 17/148, 4th Floor, Subhash Nagar Tagore
Garden, Delhi

Respondents

Argued by: Mr. Ajiteshwar Singh, Advocate for the appellant.
Mr. Kanish Bangia, Advocate for the respondents

CORAM:

Justice Rajan Gupta
Rakesh Manocha

Chairman
Member (Technical)
(Joined through VC)

ORDER:

RAJAN GUPTA, CHAIRMAN:

Challenge in the present appeal is to order dated 18.10.2023, passed by the Authority¹, operative part whereof reads as under:

“31. Hence, the authority passes this order and issues the following directions under Section 37 of the Act to ensure compliance with obligations cast upon the promoter as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016.

i The respondent/promoter are directed to refund the amount i.e. Rs.37,61,372/- received by it from the complainants/allottees along with interest at the rate of 10.75% p.a. as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development)

¹ Haryana Real Estate Regulatory Authority, Gurugram

Rules, 2017 from the date of each payment till the actual date of refund of the amount.

ii. A period of 90 days is given to the respondents to comply with the directions given in this order failing which legal consequences would follow.”

2. Counsel for the appellant states that the Authority has erred in directing refund of the entire amount paid by the allottees without allowing it to deduct 10% of the sale consideration from the same. To this extent, the order is erroneous in nature. He has referred to ledger (Annexure A-10). As per him, a perusal thereof would show that last payment of Rs.9,38,967/- was made by the allottees on 15.07.2013. Thereafter, no payment was received from them despite reminders. They filed the instant complaint eight years thereafter i.e. in 2021 seeking refund of the amount after notice was issued to them for cancellation of the unit.

3. Counsel for the respondents-allottees has refuted the aforesaid contentions. He vehemently contends that the allottees were unable to make payment as construction did not make much headway. It being a 'Construction Linked Plan', the allottees were only waiting for construction to come up as per time frame. He submits that delay in construction would be clear from the fact that Occupation Certificate was granted only on 24.08.2021, almost five years after due date of possession.

4. It appears that project "The Leaf" was floated in Sector 85, Gurugram by the appellant. The respondents were allotted a unit therein measuring 2600 square feet. They paid the earnest money and some other payments were made from time to time till 15.07.2013. Total amount remitted by them

comes to 37,61,372/-. Due date of possession was 03.12.2016. The appellant applied for Occupation Certificate on 18.06.2021 when the project is stated to be near completion. Occupation Certificate was granted thereafter.

5. The only question to be examined by this Bench is whether the appellant ought to have been allowed to deduct 10% of the sale consideration from the amount to be refunded to the allottees.

6. It is apparent that the promoter applied for occupation certificate after lapse of almost 5 years of the due date of possession. This leaves no room for doubt that the construction of the project was considerably delayed. The promoter issued cancellation notice on 29.04.2021 to the allottee giving him final opportunity to pay the dues. By that time, occupation certificate had not been granted to the promoter, same was granted only on 24.08.2021. After grant of occupation certificate there is nothing on record to show that the offer of possession was made to the allottee. Meanwhile i.e. on 18.11.2021 the complainant filed the instant complaint before the Authority below seeking refund of the amount paid by them. It is claimed that cancellation letter dated 20.04.2022 was issued during the pendency of the complaint. The Authority after considering the facts and circumstances allowed the complete refund of the amount to the respondents-allottees along with admissible interest. There is no infirmity with the order passed by the Authority. Law is well settled on the point that the allottees have unqualified right to claim refund of the amount paid by them before offer of possession is made to them. Before any offer of

possession, the allottees preferred complaint before the Authority. Till that time, cancellation letter had not been issued, only the notice of cancellation dated 29.04.2021 was sent. Thereafter, the promoter got occupation certificate on 24.08.2021 but no offer of possession was made to the allottees. Thus, the allottees are entitled to complete refund of the amount paid by them to the promoter. However, keeping in view the peculiar facts and circumstances of the case, particularly the fact that last payment was made by the allottees only on 15.07.2013, they shall be entitled to interest from the date of order passed by the Authority.

7. Appeal is hereby partly allowed in these terms.

8. The amount of pre-deposit has been made with this Tribunal at the time of filing of this appeal be remitted to the Authority along with interest accrued thereon, which shall disburse the same as per entitlement of the parties.

9. Copy of this order be forwarded to the parties, their counsel and the concerned Authority.

10. File be consigned to the records.

Justice Rajan Gupta
Chairman
Haryana Real Estate Appellate Tribunal

Rakesh Manocha
Member (Technical)
(Joined through VC)

April 11, 2025
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