BEFORE THE HARYANA REAL ESTATE APPELLATE TRIBUNAL

Appeal No. 329 of 2022

Date of Decision: July 03,2025

M/s Prime Infradevelopers Private Limited, registered office: at 10th Floor, Tower-D, Global Business Park, MG Road, Gurugram-122002.

Appellant-Promoter

Versus

Smt. Kusum Lata Rohilla R/O: H.No. 240/1, Ward No.13, Mohalla Lal Khania, Diamond Chowk, Jhajjar, Haryana

Respondent-Allottee

CORAM:

Justice Rajan Gupta **Chairman**
Shri Rakesh Manocha **Member (Technical)**
(through VC)

Argued by: Mr. Manish Kumar Garg, Advocate,
for the appellant.

Mr. Gaurav G.S. Chauhan, Advocate,
for the respondent.

O R D E R:

RAJAN GUPTA, CHAIRMAN:

Present appeal is directed against the order dated 01.12.2022 passed by the Authority[1] at Gurugram. Operative part thereof reads as under:-

> *"i. The respondent is hereby directed to refund the excess amount deducted by it over and above of ₹25,000/- as specified under clause 5(iii)(i) of Policy, along with interest @ 10.35% per annum from the date of cancellation of the unit i.e., 31.03.2021 till the actual realization of the amount.*
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> *ii. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal*

1 Haryana Real Estate Regulatory Authority, Gurugram

consequences would follow."

2. Brief factual matrix of the case is that the complainant-allottee (respondent herein), booked a flat bearing No.C-302, 3rd Floor, Tower-C measuring 448 sq. ft. in the project, namely, "Habitat" at Sector 99A, Gurugram floated by appellant-promoter (M/s Prime Infradevelopers Pvt. Ltd.) under 'Affordable Housing Policy, 2013'. On 10.09.2015, unit in question was allotted to the respondent-allottee. A BBA[2] was executed between the parties on 23.05.2016, as per which, the date of delivery of possession was 22.01.2020. The total sale consideration of the unit was ₹18,10,000/- against which the respondent-allottee paid an amount of Rs.11,86,205/-. OC[3] was granted by the concerned Department to the appellant-promoter on 13.12.2019. After grant of OC, the appellant-promoter offered the possession of unit in question to the respondent-allottee on 16.12.2019 along with demand of ₹9,27,395/- but she failed to do so. However, the appellant-promoter cancelled the allotment of the unit on 31.03.2021 on the ground of non-payment of the demands raised by it. Thereafter, on 29.06.2021 and 01.07.2021 the respondent-allottee requested twice to the appellant-promoter to refund the amount as per clause 4.5 of BBA with the head "Mode of Payment". On 07.07.2021, the appellant-promoter sent a communication to the respondent-allottee to collect the balance amount of ₹9,51,306/- after making the following deductions:

	Particular	Amount
Less	Total Amount Received	11,86,205/-
Less	Deduction as per Haryana affordable housing policy	1,15,500/-
Less	Service Tax & user	33,715/-

2 Builder Buyer's Agreement
3 Occupation certificate

	Charges	
	GST due till 31.03.2020	85,684/-
	Balance Refundable	9,51,306/-

3. The appellant-promoter has contended that the respondent-allottee had failed to meet the demand raised in accordance with the Affordable Housing Policy of 2013, later amended in 2019. The unit's allotment was cancelled due to non-payment of the due amount after following the prescribed procedure and providing adequate opportunity. Following the cancellation of the unit, the amount received from the respondent-allottee was refunded, which she accepted without demur. Main grievance of the appellant-promoter is that the respondent-allottee had given acknowledgment dated 03.08.2021 that she would accept the amount and will not claim anything beyond what was paid by the appellant-promoter. He has further contended that the order passed by the Authority is per se illegal and deserves to be set aside.

4. On the other hand, the respondent-allottee contended that the order passed by the Authority is sustainable and the appeal filed by the appellant-promoter is not maintainable as it did not follow the Affordable Housing Policy of 2013, later amended in 2019 while refunding the amount.

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

6. Admittedly, the respondent-allottee was allotted a unit, details whereof have been mentioned in the opening para of this order. Various demands were raised by the appellant-promoter from the respondent-allottee to clear the dues and to take possession of the unit in question, despite that, respondent-

allottee failed to pay the balance installments. However, the appellant-promoter cancelled the allotment of the unit on 31.03.2021 on the ground of non-payment of the demands raised by it.

7. The core issue in this appeal is whether the deductions made by the appellant-promoter from the refundable amount paid by the respondent-allottee are permissible under Clause 5(iii)(i) of the Affordable Housing Policy, 2013 (as amended), and whether the appellant's reliance on an acknowledgment dated 03.08.2021 extinguishes the allottee's right to claim refund beyond what was paid.

8. Admittedly, under Clause 5(iii)(i) of the Policy, a promoter is permitted to deduct a maximum of ₹25,000/- upon cancellation of an allotment. In the present case, deductions exceeding ₹1.15 lakh (in addition to other charges like service tax and GST) were made, in clear contravention of the policy.

9. The contention of the appellant that the respondent-allottee had given up her right to claim any excess amount by signing an acknowledgment is wholly misconceived. A mere acknowledgment, signed in the absence of any informed consent or consideration, cannot override the statutory mandate. A statutory right conferred under a binding policy notification or statute cannot be waived unilaterally, especially in a case governed by a beneficial legislation such as the Act[4]. In the present case, the Authority rightly exercised its jurisdiction in directing the promoter to refund the excess amount deducted, along with interest at the prescribed rate. The action of the

[4] The Real Estate (Regulation and Development) Act, 2016

appellant-promoter in making deductions exceeding ₹25,000/- is not only contrary to the Affordable Housing Policy but also against the spirit and object of RERA as interpreted by the Hon'ble Apex Court.

10. We are of the considered view that the Authority's order dated 01.12.2022 is well-reasoned, lawful, and does not warrant any interference. The appellant-promoter has failed to make out any ground for reversal of the impugned order.

11. Accordingly, the appeal stands dismissed.

12. The amount of pre-deposit made by the appellant with this Tribunal at the time of filing of this appeal in terms of proviso to Section 43(5) of the Act along with interest accrued thereon, be sent to the learned Authority for disbursement to the respondent-allottee subject to tax liability, if any, as per law.

13. Copy of this order be communicated to both the parties/their counsel and the concerned Authority.

14. File be consigned to the records.

Justice Rajan Gupta
Chairman
Haryana Real Estate Appellate Tribunal

Rakesh Manocha
Member (Technical)
(through VC)

July 03,2025
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