

BEFORE THE HARYANA REAL ESTATE APPELLATE TRIBUNAL

Appeal No.776 of 2022

Date of Decision: July 11, 2025

1. Priyadarshani @ Priyadarshini,
2. Dr. Ranjit Kumar

Both residents of C-801, Dwarkadham Apartments, Plot No. 13,
Sector 23, Dwarka, New Delhi – 110 077.

Appellants-Allottees

Versus

M/s BPTP Ltd., M-11, Middle Circle, Connaught Circus, New Delhi –
110001.

Respondent-promoter.

CORAM:

**Justice Rajan Gupta
Shri Rakesh Manocha**

**Chairman
Member (Technical)**
(joined through VC)

Present: Mr. Ashok Jindal, Advocate,
for the appellants-allottees

Mr. Hemant Saini, Advocate
for the respondent.

O R D E R:

RAJAN GUPTA, CHAIRMAN:

Present appeal is directed against order dated 23.08.2022,
passed by the Authority¹. Operative part thereof reads as under:

*“24. Hence, the Authority hereby passé this order and
issue the following directions under section 37 of the Act to
ensure compliance of obligations cast upon the promoter as
per the functions entrusted to the Authority under Section
34(f) of the Act of 2016:*

- 1) The respondent is directed to return the amount paid by
the complainant/allottee i.e. Rs.32,66,472/- after
deducting 10% of the sale consideration of the unit being*

¹ Haryana Real Estate Regulatory Authority, Gurugram

earnest money as per regulation Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 2018 along with an interest @ 10% p.a. on the refundable amount, from the date of cancellation till the date of realization of payment as the cancellation of the allotted unit was made on 21.08.2020 i.e. after the Act of 2016.

2) 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.

25. Complaint stands disposed of.

26. File be consigned to the Registry.”

2. It appears that the appellants-allottees applied for a residential unit in the Project ‘Amstoria’ in Sector 102/102A Gurugram, Haryana floated by the appellant promoter. FBA² was executed on 27.02.2012. Unit No. A-161-GF measuring 1999 sq. feet was allotted to the appellants, basic sale price whereof was Rs.87,24,996/-. As per record, complainants remitted a total amount of Rs.32,66,472/- till the year 2019. Due date of delivery of possession fell in the year 2014. As the unit of the allottees was terminated due to alleged default in payment, they filed the instant complaint before the Authority at Gurugram on 06.10.2021.

3. The Authority considered the rival contentions and upheld the termination. It directed refund of amount of Rs.32,66,472/- after deduction of 10% of the basic sale consideration of the unit along with interest.

4. Aggrieved, the allottees have preferred the instant appeal. Their limited plea is that there was no occasion for the Authority to direct deduction of 10% of the basic sale consideration out of the

² Floor Buyer’s Agreement

amount to be refunded to the allottees. As per them, the allottees were making payments promptly. It was construction of the project which was unduly delayed.

5. Respondent has opposed the plea. As per it, number of reminders were sent to the appellants, however, they deliberately delayed in paying the instalments. The promoter was, thus, left with no option but to cancel the unit in question.

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

7. It appears that in FBA (page 66), there was a clause incorporated as regards possession. Para 5.1 thereof reads as under:-

*“ Subject to Force Majeure, as defined in Clause 14 and further subject to the Purchaser(s) having complied with all its obligations under the terms and conditions of this Agreement and the Purchaser(s) not being in default under any part of this Agreement including but not limited to the timely payment of each and every instalment of the total sale consideration including DC, Stamp duty and other charges and also subject to the Purchaser(s) having complied with all formalities or documentation as prescribed by the Seller/Confirming Party, the Seller/Confirming party proposes to hand over the physical possession of the said unit to the Purchaser(s) within a period of 24 months from the date of sanctioning of the building plan or execution of Floor Buyers Agreement, whichever is later (“**Commitment Period**”). The Purchaser(s) further agrees and understands that the Seller/Confirming Party shall additionally be entitled to a period of 180 days (“**Grace Period**”) after the expiry of the said Commitment Period to allow for filing and pursuing the*

Occupancy Certificate etc. from DTCP under the Act in respect of the entire colony.”

8. A perusal of the aforesaid clause shows that possession of the unit was to be delivered to the allottees within a period of 24 months from the date of sanction of the Building Plan or execution of the FBA, whichever was later.

9. During the course of arguments, learned counsel for the appellants referred to letter dated 23.05.2016, relevant part whereof reads as under :-

“ Dear Customer

At the outset, we are thankful for your continued support. The Real Estate Sector is undergoing multiple reforms and our company is also putting its best efforts to deal with the situation and match up to the expectations and commitments made to our customers.

Over the past few years the real estate markets all across India and in particular the NCR have been going through a major lull. The sale volumes across all developers and projects have plummeted to unprecedented levels

We want to inform you that we have successfully settled our prolonged dispute with our institutional investor shareholders. Adverse market conditions coupled with prolonged litigation with our institutional investor shareholders restricted our ability to raise debt which severely impacted the delivery of our projects.”

10. As per him, the aforesaid letter shows that there was inordinate delay in completion of the project. He also referred to letter dated 02.07.2019. As per him, the unit was terminated vide

said letter even before grant of Occupation Certificate. Relevant part thereof is extracted below:

“ 3. Your failure to deposit the above mentioned overdue/outstanding amount is in complete breach of the terms and conditions of the Agreements, wherein it was a specifically agreed and accepted by you that timely payment is of essence to the Agreement/allotment and any default in payment or non payment shall constitute a fundamental breach thereof. Further, as previously notified to you in the Agreements and reiterated herein, your continued failure to adhere to the payment schedule and failure to make full and timely payment impacts our ability to fulfill our obligations to you and other customers and consequently prejudicially affects as well as results in the waiver of your rights under the Agreements, including but no limited to the right to claim any compensation for delay in handing over possession of the Unit and the cancellation of your allotment amongst other rights. Accordingly, in the event that you fail to strictly adhere to the complete terms of this Final Demand Notice and the Agreements, such action on your part shall amount to a voluntary, conscious and intentional waiver and relinquishment by you of all your rights and privileges under the terms of the Agreements

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and this Letter shall, in exercise of our rights under the terms of the Agreements, be treated as termination/cancellation of allotment of the aforesaid unit and you shall cease to have any right or interest whatsoever in the said unit or under the Agreements and shall also be liable to forfeiture of earnest money deposit, accumulated interest and brokerage paid (if any). Further, we shall deal with the said unit in any manner as we may deem fit.

4. Without prejudice to our rights under the terms of the Agreements, keeping in view the interest of our customers at large, we hereby provide you this last and final opportunity to ensure immediate compliance with the terms of the Agreements and the Reminders and to immediately clear your entire outstanding amount of Rs.58,57,212/- along with accumulated interest @ 10% p.a. till the date of payment, no later than 15 days from the date of this notice.”

11. Per contra, learned counsel for the respondent states that the project was delayed due to certain unforeseen circumstances. However, allottees were given sufficient opportunity to make payments from time to time. Ultimately, Occupation Certificate for the project was received on 22.01.2020. As the allottees were still in default, their unit was terminated vide letter dated 21st of August, 2020 (*page 208*). He submits that the Authority has rightly directed deduction of 10% of the basic sale consideration from the refundable

amount in the facts and circumstances of the case. He further submits that the termination as well as deduction is as per the Regulations³ framed by the Authority, which have already been upheld by Hon'ble Supreme Court in **Godrej Projects Development Limited v. Anil Karlekar and others**⁴

12. From a perusal of the contents of letter dated 23.05.2016, it is evident that the project was considerably delayed due to the reasons mentioned therein. As per Clause 5.1 of the FBA, possession was to be delivered within 24 months. However, till the year 2016, it appears that the project had not made much headway. On 02.07.2019, a letter was addressed to the allottees making the final demand for payment with an overriding clause that in the eventuality of non-payment, same be treated as cancellation letter. By this time, even Occupation Certificate had not been granted for the project in question. Despite all this, the allottees kept on making payment and remitted an amount of Rs.32,66,472/- out of total consideration of Rs.87,24,996/-. In the peculiar facts and circumstances of the case, it is inexplicable as to how the Authority has directed deduction of 10% of the basic sale price out of the amount to be refunded to the allottees.

13. The Regulation in question (framed by the Authority itself) only contains an enabling provision for deduction of 10% amount, however, it has to be examined on case-to-case basis where the allottee or the promoter is in default. The judgment in **Godrej Projects Development Limited's case (supra)** is thus, not applicable to the facts of the instant case. In that case, Hon'ble Supreme Court held that as cancellation was at the buyer's discretion and not due to

³ Haryana Real Estate Regulatory Authority Gurugram (forfeiture of earnest money by the builder) Regulations, 2018

⁴ Civil Appeal No. 3334 of 2023, decided on 03.02.2025

any delay by the builder, the promoter was directed to refund the amount without interest after deducting 10% of the basic sale price, whereas in the instant appeal, there is default of promoter in completing the project and offering unit.

14. In view of the above, the appeal is allowed. The order passed by the Authority is set aside with a direction that the promoter shall pay the paid up amount to the allottees without deducting 10% of the basic sale consideration along with admissible interest within a period of 90 days of the order, failing which penal provisions contained in Section 64 of the Real Estate (Regulation and Development) Act, 2016 would come into play and the respondent shall be liable to pay Rs.5,000/- per day as penalty on expiry of 90 days.

15. Copy of the order be forwarded to the parties/counsel and the Authority.

16. File be consigned to records.

Justice Rajan Gupta
Chairman
Haryana Real Estate Appellate Tribunal

Rakesh Manocha
Member (Technical)
(joined through VC)

July 11,2025
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