

BEFORE THE HARYANA REAL ESTATE APPELLATE TRIBUNAL

Appeal No.703 of 2023

Date of Decision: August 02 ,2025

Upender Kumar, House No. 1097/1, Dayanand
Colony, Gurugram, Haryana-122001

Appellant.

Versus

Ms Venetian LDF Projects LLP, 83 Avenue Sihi Village, Sector
83, Vatika Next, Manesar, Gurugram, Haryana

Respondent

Present : Mr. Amarjit Beniwal, Advocate for the appellant.
Mr. Yashveer Singh Balhara, Advocate for the respondent

CORAM:

Justice Rajan Gupta
Rakesh Manocha

Chairman
Member (Technical)

ORDER:

RAJAN GUPTA, CHAIRMAN:

Present appeal is directed against order dated
20.09.2023 passed by the Authority¹. The operative part thereof
reads as under:

*“40. 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 functions entrusted to
the Authority under Section 34(f) of the Act of 2016:*

*i. The respondent is directed to refund the deposited
amount of Rs.19,58,169/- after deducting 10% of the
basic sale price of Rs.46,71,700/- being earnest
money along with an interest @ 10.75% p.a. on the*

¹ Haryana Real Estate Regulatory Authority, Gurugram

refundable amount from the date of cancellation of unit (i.e. 26.03.2021) till the date of realization of payment.

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

41. Complaint stands disposed of.

42. File be consigned to the Registry.”

2. At the time, the case was taken up for hearing, the parties made efforts to settle the matter amicably but that remained futile. Today, they have prayed that the matter be heard on merits.

3. The appeal has been taken up for hearing.

4. Brief factual matrix of the case is that a commercial unit was booked by the allottee- appellant in the project of the respondent=promoter, namely, '83 Avenue' in Gurugram. An agreement to sell was executed between the parties on 19.08.2014. Due date of possession was 19.11.2017. Total consideration of the unit was 59,50,047/-. Admittedly, till February 2015, the allottee remitted an amount of Rs.19,58,169/- to the promoter. Stand of the promoter is that the allottee failed to pay balance amount thereafter despite various reminders issued to the allottee. As a result thereof, unit was cancelled on 03.03.2021. Per contra, stand of the allottee is that it was a construction linked plan and the promoter was lagging behind in construction of the project. Thus, he was advised not to make further payments to the promoter. After the allottee received cancellation letter dated

03.03.2021, he challenged the same before the Authority by filing complaint dated 22.12.2021.

5. Heard learned counsel for the parties and given careful thought to the facts of the case.

6. Primarily, the factual issue that arises before this Bench is whether the allottee defaulted in making timely payments or the promoter was able to raise construction as per schedule in the agreement to sell.

7, The Authority dealt with this issue and referred to various reminders sent by the promoter. The same have been reproduced in the shape of a chart in paragraph 28 of the impugned order. It held that responsibility for delay in payment squarely fell on the shoulders of the allottee and thus, directed refund of paid-up amount after deducting 10% of the basic sale price.

8. Though the Authority has extensively referred to the reminders sent by the promoter to the allottee for making balance payment, there is no indication as to the stage of construction by the developer. It being a construction linked plan, the allottee was required to make payment as per the schedule provided in the agreement. It appears that this fact has been completely ignored by the Authority wherein there is no report on record that the construction proceeded as per the plan.

9. Occupation Certificate has not been granted to the promoter. It shows that construction has not been carried out as per the agreement. In such circumstances, the order granting 10% deduction from the refundable amount would be

unsustainable, as reliance has been placed purely on 'record of reminders sent by the promoter from 2013 to 2021. The stand of the allottee is that he was hesitant to remit rest of the amount seeing inordinate delay in raising construction.

10. In view of above, the order directing 10% deduction of the basic sale consideration from the refundable amount to be paid to the allottee is unsustainable. The same is hereby set aside.

11. The appeal is allowed. The refundable amount along with interest @10.75% per annum from the date of cancellation of the unit (i.e.26.03.2021) till realization, if not already paid, be paid to the allottee within one month of uploading of this order, failing which penal provisions of Section 64 of the Real Estate (Regulation and Development) Act, 2016 would come into play and the promoter shall be liable to pay Rs.5,000/- per day as penalty from the date of this order till realization.

12. Copy of this order be sent to the parties/their counsel and the Authority.

13. File be consigned to the record.

Justice Rajan Gupta
Chairman
Haryana Real Estate Appellate Tribunal

Rakesh Manocha
Member (Technical)
(joined through VC)

August 02,2025
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