

**BEFORE THE HARYANA REAL ESTATE APPELLATE TRIBUNAL**

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**Appeal No.882 of 2022**

**Date of Decision: June 02, 2025**

1. Arshdeep Tiwana son of Col. HPS Tiwana, N2/103, Paras Irene, Sector 70A Gurgaon, Haryana
2. Pritam Saikia son of Narayan Saikia, Flat No. 1203/17, The Close South Apartments, Nirvana Country, Sector 50, South City II, Gurgaon, Haryana

Appellants

Versus

1. Haamid Real Estate Pvt. Ltd., through its Managing Director, AIPL Business Club, Fifth Floor, Golf Course Extension Road, Sector 62, Gurugram, Gurgaon HR-122101
2. Advance India Projects Ltd., though its Managing Director AIPL, Business Club, Fifth Floor, Golf Course Extension Road, Sector 62, Gurugram HR 122101

Respondents

**CORAM:**

**Justice Rajan Gupta**

**Chairman**

**Rakesh Manocha**

**Member (Technical)**

Present : Ms. Pooja Chopra, Advocate for the appellants.  
Ms. Tanika Goyal, Advocate for the respondents.

**ORDER:**

**RAJAN GUPTA, CHAIRMAN**

Present appeal is directed against order dated 02.08.2022, passed by the Authority<sup>1</sup>. Operative part thereof reads as under:

*“33. Hence, the authority hereby passes this order and issues the following directions under*

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<sup>1</sup> Haryana Real Estate Regulatory Authority, Gurugram.

*Section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under Section 34(f) of the Act of 2016:*

- i. The respondent-promoters are directed to refund the amount of Rs.33,50,697/- after deducting 10% of the sale consideration of Rs.1,54,99,051/- of the unit being earnest money along with interest @ 9.80% p.a. on the refundable amount, from the date of email of surrender i.e. 05.03.2017 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 and failing which legal consequences would follow.”*

2. The appellants are aggrieved by the direction, whereby 10% amount of the total sale consideration has been ordered to be deducted out of the refundable amount.

3. Counsel for the appellants submits that no BBA<sup>2</sup> was executed between the parties. The Authority decided the entire issue on the basis of booking application. As per her, the appellants had sent letter dated 06.10.2015 asking for refund as construction had not made much headway. Stand of the promoters that the unit was cancelled on 11.08.2015 is disputed by the appellants on the plea that subsequent to the said date, there was correspondence between the parties, which is on record.

4. Counsel for the respondents submits that the order passed by the Authority is sustainable. The appellants were

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<sup>2</sup> Builder Buyer's Agreement

consistent defaulters after the unit was allotted to them. The promoters, thus, had no option but to cancel the unit in August, 2015. As per her, the allottees failed to make payment despite repeated reminders sent to them due to which the promoters were constrained to cancel the unit vide letter dated 11.08.2015. Thus, 10% of the total sale consideration out of the refundable amount has been deducted as per rules.

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

6. It appears that project "The Peaceful Homes" was floated in Sector 70A, Gurugram. RERA registration was granted on 22.10.2019. The appellants were allotted the unit in question on 23.05.2013. Construction is stated to have commenced on 21.04.2014. Thus, due date of possession would fall in the year 2017. However, admittedly Occupation Certificate was granted to the builders on 29.10.2019. An amount of Rs.33,50,697/- had been remitted by the allottees to the promoters on 23.05.2013 (i.e. date of issuance of allotment letter). Admittedly, thereafter no BBA was executed.

7. There appears to be substance in the plea of the appellants that deduction of 10% of the sale consideration from the amount to be refunded to the allottees is not sustainable. It has not been controverted that BBA was never executed between the parties. The obligation to ensure execution of BBA is on the promoter, it being in dominant position. In the absence of BBA, the Authority proceeded to decide the matter on the basis of booking application ignoring that conditions of agreement are reduced into writing only in BBA. Though the

promoters pleaded that the allottees were in default of payment, it is on record that promoters were not able to deliver possession on the due date which would fall in the year 2017. Ultimately, Occupation Certificate was granted only on 29.10.2019 which shows that construction of the project did not proceed as planned. The promoters claim that unit was cancelled vide letter dated 11.08.2015 but allottees dispute receipt of such a letter. They, on the other hand, claim that much correspondence followed between the parties after said date i.e. 11.08.2015. Admittedly, on 06.10.2015 the allottees asked for refund.

8. Keeping in view the entire facts and circumstances of the case, we are of the considered view that in the absence of BBA and considerable delay by the promoters in raising construction, as is evident from the Occupation Certificate granted by the concerned department, the Authority has erred in directing 10% deduction from the amount to be refunded to the appellants. This apart, there is nothing on record to show that even after grant of Occupation Certificate, any offer of possession was made by the promoters.

9. In view of the above, the appeal is hereby allowed. The impugned order, in so far as it directs deduction of 10% of the basic sale consideration from the refundable amount, is hereby set aside. The allottees would, thus, be entitled to the entire amount remitted by them to the promoters along with interest from 05.03.2017 till the actual date of refund of the amount.

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

11. File be consigned to records.

Justice Rajan Gupta  
Chairman  
Haryana Real Estate Appellate Tribunal

Rakesh Manocha  
Member (Technical)

June 02, 2025  
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