

**BEFORE THE HARYANA REAL ESTATE APPELLATE TRIBUNAL**

**Appeal No.670 of 2023**

**Date of Decision: June 05, 2025**

M/s T.S. Realtech Pvt. Ltd. IRIS Tech Parck, 808, Tower A,  
Sector 48, Gurugram-122018

Appellant.

Versus

Yogesh Mohan son of Sh. Bridge Nandan Lal, resident of H. No.  
168, Sector 3, R. K. Puram, New Delhi-110023.

Respondent

Present : Mr. Kamaljeet Dahiya, Advocate for the  
appellant.

Mr. D. S. Dalal, Advocate for the respondent.

**CORAM:**

**Justice Rajan Gupta**  
**Rakesh Manocha**

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

**O R D E R:**

**RAJAN GUPTA, CHAIRMAN:**

Present appeal is directed against order dated  
18.08.2023, passed by the Authority<sup>1</sup>. Operative part thereof  
reads as under:

*“21. Hence the authority hereby passes this order  
and issues the following directions under Section 37*

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

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

*i. The respondent is directed to refund the paid-up amount of Rs.29,96,325/- after deducting the earnest money which shall not exceed the 10% of the basic sale consideration of Rs.64,99,800/-. The refund should have been made on the date of surrender i.e. 22.02.2015. Accordingly, the interest at the prescribed rate i.e. 10.75% is allowed on the balance amount from the date of surrender till the actual date of refund of the amount within the timelines provided in rule 16 of the rules, 2017.*

*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. It appears that allottee-Yogesh Mohan applied for a commercial unit in project “IRIS Broadways”, Sector 85-86, Gurugram. BBA<sup>2</sup> was executed on 23.07.2013 and due date of possession was 23.04.2017. Out of total sale consideration of Rs.64,99,800/-, the allottee remitted Rs.26,96,325/-. Occupation Certificate was received by the promoter on 29.03.2019. The allottee claims that due to delay in construction of the project, he sought withdrawal from the same vide letter dated 22.02.2015. On the other hand, the promoter claims to have cancelled the unit vide letter dated 22.02.2016. Thereafter, the allottee invoked jurisdiction of the Authority claiming refund of the amount with interest. The Adjudicating Officer, vide his order dated 03.09.2021, allowed refund of the amount. The said order was challenged before the Tribunal on the ground of lack of jurisdiction of the

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

Adjudicating Officer. As a result, the Tribunal, vide its order dated 15.03.2023, remanded the case to the Authority with a direction that it shall endeavour to decide the matter at the earliest and in any case not later than two months. The pre-deposit amount was remitted to the Authority for disbursement to the appellant. The parties were directed to appear before the Adjudicating Officer on 27.03.2023. It appears that thereafter, the matter came up before the Authority and decision, as reproduced in opening part of the order, was passed.

3. One of the grounds of challenge to the order passed is that the same was passed *ex-parte* without affording an opportunity of hearing to the appellant. Besides, the Authority has erred in granting interest on the refundable amount from the date of surrender till actual date of refund.

4. Mr. Dalal, counsel for the respondent, however, submits that counsel for the appellant had appeared before the Authority on various dates and was aware that the case was fixed for hearing on 18.08.2023. As per him, non-appearance on behalf of the appellant was intentional. He states that the allottee would be entitled to interest on the refundable amount as per law. The Authority has already directed deduction of 10% of the Basic Sale Price from the refundable amount which leaves the allottee with pittance.

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

6. The plea taken by the appellant that the order was passed *ex-parte*, is without any merit. A perusal of the proceedings dated 07.07.2023 would show that the appellant

failed to file reply despite last opportunity granted to it. The matter was thereafter adjourned to 18.08.2023. The appellant remained unrepresented on the said date as well. The matter having been remanded by this Tribunal with a specific date i.e. 27.03.2023 to enable the counsel to appear before the Adjudicating Officer, the appellant-promoter was supposed to remain vigilant about the proceedings thereof. This plea is thus, rejected.

7. As regards refund of the amount, the Authority has already directed that 10% of the Basic Sale Price (Rs.64,99,800/-) would be deducted from the amount to be refunded i.e. Rs.29,96,325/-. This would reduce the refundable amount by Rs.6,50,000/-. However, payment of interest i.e. 10.75% p.a. on this amount from the date of surrender till actual date of refund is justified.

8. Grievance of the appellant that interest has been wrongly granted is not tenable. He has placed reliance on ***Godrej Projects Development Limited v. Karlekar and others***<sup>3</sup>. However, the same cannot help the case of the appellant as in the said case, the promoter had offered possession to the allottee after having been granted Occupation Certificate. The allottee decided to withdraw from the project thereafter.

8.1 However, in the present case, the allottee surrendered the unit in view of consistent default on part of the promoter. It is on record that due date of possession was 23.04.2017 and the project had not made much headway by

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<sup>3</sup> Civil Appeal No. 3334 of 2023, decided on 03.02.2025

that time. This would be clear from the fact that Occupation Certificate was granted to the promoter as late as on 29.03.2019. The complainant chose to withdraw from the project vide letter 22.02.2015, i.e., much prior to the date of grant of Occupation Certificate.

9. The facts of the instant case are thus, clearly distinguishable from the facts of **Goldrej Projects Development Limited's** case (supra).

10. In view of the above, the appeal is dismissed.

11. It is evident that the instant order is being passed in fresh decision taken by the Authority after the matter was remanded to it in Appeal No. 693 of 2022—***M/s T. S. Realtech Pvt. Ltd.v.Yogesh Mohan*** (decided on 15.03.2023). At the time this appeal was entertained, it was directed that pre-deposit amount sent to the Authority in Appeal No. 693 of 2022 be retained by it till decision of the present appeal. As final verdict in the present appeal is now being rendered, it is directed that pre-deposit amount (Rs.35,44,266/-) in Appeal No. 693 of 2022 (decided on 15.03.2023 be disbursed to the respondent-allottee, subject to tax liability, if any.

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

13. File be consigned to records.

Justice Rajan Gupta  
Chairman  
Haryana Real Estate Appellate Tribunal

(Rakesh Manocha)  
Member (Technical)  
(joined through VC)

June 05, 2025/mk