

BEFORE THE HARYANA REAL ESTATE APPELLATE TRIBUNAL

Appeal No.16 of 2023

Date of Decision: June 06, 2025

SS Group Private Limited through its authorized signatory Mr.
Chander Shekhar Sharma, Plot No. 77, Sector 44, Gurugram

Appellant.

Versus

1. Mrs. Shashi Rastogi
2. Col. Rajendera Kumar Rastogi

Both residents of House No. 195, Sector 45, Faridabad.

Respondents

Present : Mr. Aashish Chopra, Senior Advocate with
Mr. Yashpal Sharma, Advocate for the appellant.
Mr. Harshit Joon, Advocate for the respondents.

CORAM:

Justice Rajan Gupta
Rakesh Manocha

Chairman
Member (Technical)
(Joined through VC)

O R D E R:

RAJAN GUPTA, CHAIRMAN:

Challenge in the present appeal is to order dated
04.10.2022, passed by the Authority¹, operative part whereof
reads as under:

*“24. Hence, the authority 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 function entrusted to the
Authority under Section 34(f) :*

¹ Haryana Real Estate Regulatory Authority, Gurugram

i The respondent/promoter is directed to refund the entire amount of Rs. 38,46,881/- paid by the complainant along with prescribed rate of interest @ 10% p.a. from the date of each payment till the actual date of refund of the deposited amount within 90 days from the date of this order as per provisions of Section 18(1) of the Act read with rule 15 of the rules, 2017.

ii 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 registry.”

2. Counsel for the appellant states that the Authority has erred in directing refund of the entire amount paid by the allottees without allowing it to deduct 10% of the sale consideration from the same. To this extent, the order is erroneous in nature. He has referred to ledger (Annexure A-10). As per him, a perusal thereof would show that last payment of Rs.4,27,432/- was made by the allottees on 27.05.2015. Thereafter, no payment was received from them despite reminders. They filed the instant complaint four years thereafter i.e. in 2019 seeking refund of the amount after notice was issued by them for cancellation of the unit.

3. Counsel for the respondents-allottees has refuted the aforesaid contentions. He vehemently contends that the allottees were unable to make payment as construction did not make much headway. It being a 'Construction Linked Plan', the allottees were only waiting for construction to come up as per time frame. He submits that delay in construction would be clear from the fact that competent authority granted

Occupation Certificate only on 09.05.2022, almost six years after due date of possession.

4. It appears that project “The Leaf” was floated in Sector 84-85, Gurugram by the appellant. The respondents were allotted a unit therein measuring 1575 square feet. They paid the earnest money; thereafter, some other payments were made from time to time till 27.05.2015. Total amount remitted by them comes to Rs. 38.46,881/-. Due date of possession was 24.09.2016. The appellant was granted Occupation Certificate on 09.05.2022 when the project was stated to be nearing completion.

5. The only question to be examined by this Bench is, whether the appellant ought to have been allowed to deduct 10% of the sale consideration from the amount to be refunded to the allottees.

6. It is apparent that the promoter applied for occupation certificate after lapse of almost six years from the due date of possession. This leaves no room for doubt that the construction of the project was considerably delayed. The allottees opted to surrender the unit on 03.12.2015. By that time, occupation certificate had not been granted to the promoter. Same was granted only on 09.05.2022. After grant of occupation certificate, offer of possession was made to the allottees on 12.05.2022. The Authority, after considering the facts and circumstances, allowed the complete refund of the amount to the respondent-allottees along with admissible interest. There is no infirmity with the order passed by the Authority. Law is well settled on the point that the allottees

have unqualified right to claim refund of the amount paid by them before offer of possession is made to them. The allottees had preferred the instant complaint when offer of possession had not been received by them. The promoter got occupation certificate on 09.05.2022. Thus, the allottees are entitled to complete refund of the amount paid by them to the promoter. However, keeping in view the peculiar facts and circumstances of the case, particularly the fact that last payment was made by the allottees way back in the year 2015 (27.05.2015), they shall be entitled to interest from the date of order passed by the Authority. This would reasonably balance the equities.

7. Appeal is hereby partly allowed in these terms.

8. The amount of pre-deposit made with this Tribunal at the time of filing of this appeal be remitted to the Authority along with interest accrued thereon, which shall disburse the same as per entitlement of the parties, subject to tax liability, if any.

9. Copy of this order be forwarded to the parties/their counsel and the concerned Authority.

10. File be consigned to the records.

Justice Rajan Gupta
Chairman
Haryana Real Estate Appellate Tribunal

Rakesh Manocha
Member (Technical)
(Joined through VC)

June 06, 2025
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