

BEFORE THE HARYANA REAL ESTATE APPELLATE TRIBUNAL

Date of Decision: September 19, 2025

(1) Appeal No. 232 of 2024

Sanjeev Kapoor, R/o G-87A, Ground Floor, South City-II,
Gurugram, Haryana

Appellant

Versus

JMD Limited, 6, UGF, Devika Tower, Nehru Place, New Delhi-
110019

Respondent

(2) Appeal No. 233 of 2024

Harinder Kapoor, R/o G-87A, Ground Floor, South City-II,
Gurugram, Haryana

Appellant

Versus

JMD Limited, 6, UGF, Devika Tower, Nehru Place, New Delhi-
110019

Respondent

CORAM:

Justice Rajan Gupta
Rakesh Manocha

Chairman
Member (Technical)

Present: Mr. Kunal Thapa, Advocate
for the appellant(s).
Mr. Pankaj Chandola, Advocate
for the respondent.

ORDER:

Rajan Gupta, Chairman:

This order shall dispose of above-mentioned appeals,
as common questions of law and facts are involved therein.
However, the facts have been extracted from Appeal No. 232 of
2024.

2. Present appeal is directed against order dated 29.02.2024 passed by the Authority¹. Operative part thereof reads as under:

“29. 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 function entrusted to the authority under section 34(f):

(a) The respondent is directed to refund the paid-up amount to each complainant after deducting 10% of the sale consideration being earnest money along with interest at the rate of 10.85% on such balance amount from the date of request for cancellation i.e. 19.10.2022 till 03.12.2022 when a part of refundable amount had been paid back. Thereafter, refund balance amount with interest from 03.12.2022 till its realization.

b) 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.

30. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.

31. The complaints stand disposed of. True certified copies of this order be placed on the case file of each matter.

32. Files be consigned to registry.”

3. It appears that the appellant-allottee applied for a commercial unit in a project floated in the name and style of “JMD Suburbio”, Sector 67, Gurugram. Admittedly, Occupation Certificate was granted to the project on 18.10.2018. However, the

¹ The Real Estate Regulatory Authority, Gurugram

appellant-allottee made a request for surrender of the unit on 19.10.2022. The respondent-promoter considered the request and refunded the amount after making deduction of 15% of the sale consideration. This forced the appellant-allottee to file the instant complaint before the Authority with the grievance that no deduction could have been made by the promoter.

4. The complaint was disposed of by the Authority vide its order dated 29.02.2024, operative part whereof has been reproduced in para No. 2 of this order.

5. Counsel for the appellant-allottee has assailed the order. He has vehemently contended that deduction of 10% is unsustainable. As per him, the appellant-allottee did not receive any communication from the respondent-promoter for payment of the balance amount. It being a construction-linked plan, it was obligatory on the respondent-promoter to inform the allottee to pay the instalments. He submits that communications, if any, were sent on the wrong address.

6. Counsel for the respondent-promoter has, however, refuted the contentions. He submits that receipts are on record, whereby communications were sent to the appellant-allottee.

7. During the course of arguments, a query was put to learned counsel for the respondent-promoter whether any tracking report is available on record, his answer is in negative. As per him, this tracking report could not be produced due to lapse of time.

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

9. In our opinion, the order passed by the Authority is legally sustainable. Occupation Certificate was granted to the project on 18.10.2018. Immediately thereafter, possession was offered to the appellant-allottee on 03.12.2018. The respondent-promoter also gave various reminders to the appellant-allottee for making payment of outstanding dues. The appellant-allottee neither took possession nor remitted the balance amount.

10. In view of the fact that the respondent-promoter was granted Occupation Certificate on 18.10.2018 and made offer of possession on 03.12.2018, it appears to have acted promptly. The appellant-allottee decided to withdraw from the project and surrendered the unit vide notice dated 19.10.2022. Thus, after examining the entire issue, the Authority directed refund of the paid-up amount after deducting 10% of the sale consideration.

11. We find no infirmity with the order. Interest was also awarded @10.85% from the date of request for cancellation (19.10.2022) till 03.12.2022 when part refund has been made. We deem it fit to keep the same intact. The amount due, if not already remitted, be paid to the appellant-allottee within 90 days of this order, failing which it will carry further interest at the same rate i.e. 10.85% from the date of order passed by the Authority till realisation. In case of failure of the respondent-promoter to remit the amount within 90 days from uploading of this order, penal provisions of Section 64 of the Real Estate (Regulation and Development) Act, 2016 will also come into play and the promoter shall be liable to pay Rs.5,000/- per day as penalty till realisation.

12. The appeals stand disposed of.

13. Copy of this order be forwarded to the parties, their counsel and the learned Authority.

14. Files be consigned to the records.

Justice Rajan Gupta
Chairman
Haryana Real Estate Appellate Tribunal

Rakesh Manocha
Member (Technical)
(Joined through VC)

September 19, 2025
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