

BEFORE THE HARYANA REAL ESTATE APPELLATE TRIBUNAL

Appeal No. 210 of 2024

Date of Decision: September 19, 2025

Sushma Arora, W/o Harish Chandra Arora, R/o Flat No. 9, SFS Flats,
Sector 2, Pocket-1, Dwarka, New Delhi-110075

Appellant

Versus

M/s Prime Infra Developers Private Limited, Regd. Office at: A-2
Basement, Wazirpur Industrial Area, New Delhi-110052

Respondent

CORAM:

**Justice Rajan Gupta
Shri Rakesh Manocha**

**Chairman
Member (Technical)**

Present: Mr.Tarun Singhal, Advocate for the appellant.
Mr. Munish Kumar Garg, Advocate for the respondent.

O R D E R:

RAJAN GUPTA, CHAIRMAN:

Present appeal is directed against order dated 21.02.2024
passed by the Authority¹. Operative part thereof reads as under:

“22. 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):

- i. The respondent/promoter is directed to refund the deposited amount of Rs.55,94,387/- after deducting 10% of the sale consideration of Rs.49,06,000/- being earnest money along with an interest @ 10.85% p.a. as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 on the refundable amount from the date of cancellation i.e. 11.08.2021 till the actual date of refund of the deposited amount.*

¹ Haryana Real Estate Regulatory Authority, Gurugram

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.

23. Complaint stands disposed of.

24. File be consigned to the registry.”

2. It appears that in a project in the name and style of “Habitat Arcade” floated by the respondent-promoter in Sector 99A, Gurgaon, Haryana, the appellant-allottee booked a retail unit under Affordable Housing Policy for a total sale consideration of Rs.49,06,000/-. The appellant-allottee remitted an amount of Rs.55,94,387/-. Builder Buyer’s Agreement was executed between the parties on 24.10.2016. Due date of possession was 22.01.2020. Occupation Certificate was granted to the project on 13.12.2019. Immediately thereafter, it offered possession to the appellant-allottee on 16.12.2019. As the appellant-allottee failed to clear the outstanding dues, the respondent-promoter cancelled the unit of the appellant-allottee after deducting 10% of the sale consideration vide letter dated 11.08.2021. The appellant-allottee preferred a complaint before the Authority seeking refund of the entire paid-up amount along with interest.

3. The grievance of the appellant-allottee is that the Authority has gravely erred in directing deduction of 10% of the sale consideration out of the refundable amount. It has not appreciated the contentions in right perspective and completely ignored the report submitted by the Local Commissioner.

4. Counsel for the respondent-promoter, however, has opposed the plea. According to him, there is default on the part of the appellant-allottee which has prompted the Authority to order deduction of 10% from the refundable amount.

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

6. It appears that during the course of hearing before the Authority, a Local Commissioner was appointed to give a report on the condition of the property in order to ascertain whether the appellant-allottee was responsible for delay in taking possession. The Local Commissioner, who was an Engineer Executive, submitted his report dated 19.12.2022 (Annexure A3 herein). The report has been perused with the assistance of the counsel. Operative part thereof is reproduced hereunder for ready reference:

“5. CONCLUSION:

The site of project namely “Habitat” being developed by M/s Prime Infra Developers Pvt. Ltd. has been inspected to check the status of the deficiencies pointed out by the complainant. During the site inspection, the complainant submitted the deficiencies, and it was found that all deficiencies pointed out by the complainant relates to the inhabitable condition of unit & unit not fit for possession due to existence of sewer, storm and water pipes in the complainant retail unit. The detailed description of each deficiency is described above and the final conclusion of the deficiencies is submitted under:

“The complainant retail unit is located beneath the residential units in the tower. The sewer, storm and water pipes of the tower runs vertically from top to bottom which are connected to each residential unit above the retail unit and finally these pipes cross from the ceiling of the retail unit of complainant and further connects to the STP. There is no connection of the complainant unit to these pipes, but the pipes are running as per the structure design. Further if any damage/leakage occurs to these pipes, then there will be damage to the material placed in the complainant unit and the damaged pipes will only be repaired/replaced from the complainant unit. Also, there is

drizzling sound/noise observed in the complainant unit at the time of flow of waste through these pipes. Hence it is submitted that the unit is inhabitable/hazardous due to presence of these pipes in the unit.

The complainant has raised this issue from the date of possession offered. The promoter has obtained the occupation certificate of the project vide memo no. ZP-1029/AD(RA)/2019/30684 dated 13.12.2019.

The site photographs captured at the time of site inspection are attached herewith as annexure B for reference place.

Sd/-

*Engineer Executive
(Local Commission)”*

7. A perusal of the report by the Engineer Executive, who has necessary expertise, merely goes to show that the appellant-allottee could not take possession of the property, which was in bad condition as on 19.12.2022. The plea for refund of the entire paid-up amount along with prescribed rate of interest was thus, justified. The Authority, however, erred in directing deduction of 10% of the sale consideration from the refundable amount.

8. In view of above, the appeal is allowed. The order passed by the Authority is modified to the extent indicated above.

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

10. File be consigned to records.

Justice Rajan Gupta
Chairman
Haryana Real Estate Appellate Tribunal

Rakesh Manocha
Member (Technical)
(Joined through VC)

September 19, 2025/mk