

BEFORE THE HARYANA REAL ESTATE APPELLATE TRIBUNAL

Appeal No.220 of 2023
Date of Decision: 25.09.2025

1. Anjani Kumar Awasthi R/o A-4 C/53, Janak Puri, New Delhi – 110 058.
2. Chhaya Sharma R/o 212, Ganga Vihar, Koyal Ghatti, Rishikesh, Uttrakhand – 249 201
3. Sanjay Kedar Sharma R/o 281, Model Town, Rewari -123 401 (Haryana)

....Appellants

Versus

1. M/s. Wonder City Buildcon Private Limited, Regd. Office at Godrej One, 5th Floor, Pirojshanagar, Eastern Express Highway, Vikhroli (East), Mumbai – 400 079.
2. Haryana Real Estate Regulatory Authority, Gurugram, through Registrar, New P.W.D. Rest House, Civil Lines, Railway Road, Gurugram – 122 001. Haryana

...Respondents

CORAM:

Justice Rajan Gupta
Rakesh Manocha

Chairman
Member (Technical)

Argued by : Mr. Deepak Kumar Khushalani, Advocate
for the appellants.

Mr. Saurabh Gauba, Advocate,
for respondent No.1.

None for respondent No.2.

O R D E R:

RAJAN GUPTA, CHAIRMAN

In the present appeal, challenge has been made to order dated 23.02.2023 passed by the Authority.¹. Operative part thereof reads as under :

“51.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

¹Haryana Real Estate Regulatory Authority, Gurugram

promoter as per the functions entrusted to the Authority under Section 34(f) :

- i. The respondent is directed to refund to the complainants the paid-up amount of Rs.49,99,512/- after deducting 10% as earnest money of the basic sale consideration of Rs.1,61,03,732/- with interest at the prescribed rate i.e. 10.70% is allowed, from the date of surrender i.e. 10.08.2019 till date of actual refund.*
 - 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.*
- 52. Complaint stands disposed of.*
- 53. File be consigned to registry.”*

2. It appears that the allottees applied for a unit measuring 1401 sq. feet in the project, in the name and style of “Godrej-Aria” in Sector 79, Gurugram. Licence was granted by the DTCP on 06.06.2013 and renewed from time to time. For the said unit, the appellant remitted an amount of Rs. 49,99,512/- out of the total sale consideration of Rs.1,61,03,732/-. Due date of possession of the unit was 09.07.2020. However, respondent-promoter received the Occupation Certificate on 01.10.2019.

3. The grievance of the appellants is that the Authority passed an order on 31.05.2022 wherein, it was held that allottees were entitled for refund and promoter was directed to act accordingly. Refund was granted with interest @ 9.50% p.a. Relevant para of the order reads as under :-

“Therefore, taking note of all the circumstances, the authority holds its view that the complainants-allottees are entitled for refund and hereby, directs the respondent to return the amount received by it from the complainants-allottees along with interest at the rate of 9.50% p.a. as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 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.

Matter stands disposed off. Detailed order will follow. File be consigned to the registry.

*Sd/
Vijay Kumar Goyal
Member*

*Sd/-
Dr.K.K.Khandelwal
Chairman
31.05.2022”*

4. Thereafter, some vague application seeking mediation was moved by the promoter, which was treated as an application under Section 39 of the RERA Act. The authority, vide its order dated 23.02.2022, completely changed the complexion of the order and directed that refund of the outstanding amount be made after deduction of 10% as earnest money and interest payable from the date of surrender of the unit (10.08.2019).

5 As per the appellants, even this order was not treated as final as it was mentioned therein that detailed order would follow. Relevant para is reproduced hereunder :

“ The counsel for the respondent further states that as per clause 2.5 read with 2.10 of BBA, deduction of 20% of the basic sale price is provided as earnest money and hence, deduction of this amount should be allowed. However, the cancellation is post RERA and authority has already framed regulation allowing only 10% deduction as earnest money and hence, the promoter is directed to refund the outstanding amount after deduction of 10% as earnest money only and the interest shall be paid from the date of surrender of the unit i.e. 10.08.2019 at the prescribed rate of interest i.e. 10.70% per annum.

Arguments heard.

Detailed order will follow. Matter stands disposed off. File be consigned to the registry.

*Sd/-
Vijay Kumar Goyal
Member
23.02.2023”*

6. It appears, thereafter, detailed order was passed on the same day i.e. 23.02.2023, wherein, the Authority also calculated the amount to

be refunded and passed the order which has been reproduced in para 1 of this order.

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

8. In our considered view, order dated 23.02.2023 which is under challenge is totally unsustainable, same having been passed purportedly in exercise of power under Section 39 of the Act. It is settled law that scope of Section 39 is limited wherein only mistake apparent from the record can be rectified. As a result, the consequent detailed order purported to have been passed on the same day i.e. 23.02.2023 would also not survive. It is pertinent to mention here that order dated 31.05.2022 was passed by two Members of the Authority sitting together while subsequent orders dated 23.02.2023 have been passed by the single Member.

9. Stand of the allottees before this Bench has been, that the entire approach adopted by the Authority is haphazard and cannot stand legal scrutiny. The procedure adopted by the Authority of passing one order after another is not contemplated by the statute. As per counsel, the Authority has to act within the ambit of law and procedural irregularity and statutory violation of this kind would vitiate the proceedings.

10. It is inexplicable as to how an application was maintainable after the disposal of the case vide order dated 31.05.2022.

11. Under these circumstances, the orders under challenge are set aside. The matter is remitted to the Authority for decision afresh after affording opportunity of hearing to the parties. They shall remain present before the Authority on 27.10.2025 at 11.00 a.m. sharp.

12. The appeal stands disposed of in the above terms.

13. Copy of this order be sent to the parties/their counsel and the learned authority.

14. File be consigned to the records.

Justice Rajan Gupta
Chairman
Haryana Real Estate Appellate Tribunal

Rakesh Manocha
Member (Technical)
(joined through VC)

September 25, 2025
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