

BEFORE THE HARYANA REAL ESTATE APPELLATE TRIBUNAL

Appeal No. 741 of 2023

Date of Decision: December 05, 2025

1. Sushil Kumar Rathi S/o Sh. Puran Lal resident of House No. 342/15, Hans Enclave, Gurugram – 122 001.

2. Neeraj Sadhu S/o Sh. Pushkar Nath Sadhu resident of 88, Rochefort Street, Kitchener, ON N2R 1V6, Canada

...Appellants

Versus

M/s Capital Heights Private Limited having CIN U70101DL2011PTC217786 registered office at Ground Floor, The Cityspace, Vill-Maidawas, Golf Course Ext. Road, Sector-66, Gurugram, Haryana through its Managing Director/Director/Secretary/Authorized Representative.

...Respondent

CORAM:

**Justice Rajan Gupta
Dr. Virender Parshad
Shri Dinesh Singh Chauhan**

**Chairman
Member (Judicial)
Member (Technical)**

Present: Mr. Sunil Kumar Dhanda, Advocate,
for the Appellant-allottees.
Mr. Pankaj Chandola, Advocate for
Mr. Yashvir Singh Balhara, Advocate,
for the Respondent-promoter.

ORDER:

RAJAN GUPTA, CHAIRMAN

The present appeal has been preferred by the appellant-allottees against order dated 04.10.2023 passed by the Authority¹ at Gurugram. Operative part thereof reads as under:

¹Haryana Real Estate Regulatory Authority, Gurugram

“ 17. 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 is directed to refund the paid-up amount of Rs.33,37,669/- after deducting 10% of the sale consideration of Rs. 1,18,95,900/- with interest at the prescribed rate i.e. 10.75% on such balance amount, from the date of cancellation i.e., 01.06.2022 till the actual date of 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.*
- iii. The Planning branch of the authority is directed to initiate Suo moto cognizance against the respondent-promoter for non-registration of the project under this Act and separate proceedings shall be initiated against the respondent under Section 59 of the Act.*

19. Complaint stands disposed of.

20. File be consigned to registry.”

2. Factual matrix of the case is that project in the name and style of “Residences 360” was floated by the respondent-promoter in Sector 70A, Gurugram. The appellant-allottees applied for a unit therein and were allotted unit bearing No. CR-02/11-02 (1900 sq. ft.) vide provisional allotment letter dated 06.05.2013 for a total sale consideration of Rs.1,18,95,900/-.The appellants paid Rs.33,37,669/- by 2013. No Builder-Buyer Agreement was executed between the parties. Due date of possession, calculated as 36 months from the start of construction, was 15.03.2016. Occupation Certificate (OC) for the project was obtained on 26.10.2021, after a delay of around six years. Thereafter, due to continued non-payment by the appellants despite

repeated reminders, the respondent cancelled the allotment vide letter dated 01.06.2022.

3. The appellants filed a complaint before the Authority on 02.11.2022, seeking refund of the paid-up amount along with interest. The Authority, vide the impugned order dated 04.10.2023, directed refund after deducting 10% of the sale consideration along with interest, and declined to order full refund.

4. Feeling aggrieved, appellant-allottees filed the present appeal. Learned counsel for the appellants contended that there was an inordinate delay of nearly six years in completion of the project and the appellants cannot be compelled to take possession after such delay. It was further submitted that the Authority erred in allowing deduction of 10% of the sale consideration while directing refund, as the delay was solely attributable to the promoter.

5. Learned counsel for the respondent-promoter contested the appeal, arguing that Occupation Certificate had already been obtained prior to the filing of the complaint, and the appellants did not come forward to make further payments and take possession despite repeated requests. It was submitted that the allotment was cancelled on 01.06.2022 due to default by the allottees in making payments, therefore, the direction to refund after deduction of 10% of the sale consideration was just and reasonable.

6. It is an admitted fact that Occupation Certificate (OC) for the project was obtained on 26.10.2021, whereas the appellants filed the complaint before the Authority on 02.11.2022, i.e., after completion of the project and when the same was ready for possession. Once the Occupation Certificate was issued, the promoter had fulfilled its obligation to complete the project and was ready to offer possession after getting balance dues. At that stage, it was incumbent upon the allottees

to come forward, make the balance payment, and take possession of the allotted unit. However, instead of doing so, the allottees chose to approach the Authority seeking refund of the paid-up amount along with interest when the project had already been completed and possession could have been taken.

7. The material on record shows that the respondent had also issued several reminders to the appellants for making balance payments and take possession, but the appellants did not comply. Consequently, cancellation letter dated 01.06.2022 of the allotment was issued.

8. In these circumstances, the Authority rightly held that since the allottees defaulted in making payments and failed to take possession after grant of Occupation Certificate to the project, the promoter was entitled to deduct 10% of the sale consideration.

10. This Tribunal finds no legal infirmity in the impugned order warranting interference in the appellate jurisdiction. The direction to refund the paid-up amount after 10% deduction of the sale consideration along with interest @ 10.75% per annum from the date of cancellation till actual date of refund is hereby upheld.

11. As regards Direction No. (iii) of the impugned order, it is noted that the Authority has filed its status report, stating that the promoter had applied for registration on 03.07.2023, prior to the passing of the order dated 04.10.2023 and therefore *suo moto* cognizance for non-registration was not pursued. This aspect, therefore, requires no further consideration.

12. In view of the above discussion, this Tribunal finds no merit in the appeal. The impugned order dated 04.10.2023 passed by the Haryana Real Estate Regulatory Authority, Gurugram, is upheld.

13. The appeal is hereby dismissed.

14. Copy of this order be sent to parties/their counsel and the Authority for compliance.

15. File be consigned to records.

Justice Rajan Gupta
Chairman
Haryana Real Estate Appellate Tribunal

Dr. Virender Parshad
Member (Judicial)

Dinesh Singh Chauhan
Member (Technical)

December 05, 2025
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