

BEFORE THE HARYANA REAL ESTATE APPELLATE TRIBUNAL

Appeal No. 542 of 2024

Date of Decision:17.12.2025

- 1. Dr. Anju Rani;
- 2. D.C. Pandey

Both R/o House No. 112, Basant Vihar, Alwar, Rajasthan-301001.

Appellants.

Versus

M/s Landmark Apartments Private Limited Registered office at Plot NO. 85, Sector 44, Institutional Area, Gruguram-122003, Haryana.

Respondent

Coram:

Justice Rajan Gupta	Chairman
Dr. Virender Parshad	Member (Judicial)
Dinesh Singh Chauhan	Member (Technical)

Present: Mr. Jagdeep Singh, Advocate,
for the appellant.

Mr. Yashvir Singh Balhara, Advocate,
for the respondent.

ORDER:

RAJAN GUPTA, CHAIRMAN (Oral):

Present appeal is directed against order dated 24.05.2024 passed by the Authority¹. Operative part thereof reads as under:-

“i. The respondent-builder is directed to refund the paid-up amount of Rs.69,74,374/- after deducting earnest money i.e. 10% of the

¹ Haryana Real Estate Regulatory Authority, Gurugram

basic sale consideration of unit along with interest at the prescribed rate i.e, 10.85% on such balance amount from the date of surrender i.e., 06.09.2021 till date of actual refund.

ii. a period of 90days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.”

2. It appears that a residential project in the name and style of “Landmark-The Residency”, was floated by the respondent-promoter in Sector-103, Gurugram in an area of 10.868 acres. Licence was granted by the Directorate of Town and Country planning, Haryana on 19.04.2011. The appellants had applied for a unit in the project. Provisional allotment letter dated 03.04.2013 was issued to them. Unit No. B-62, 6th Floor, Tower-B was allotted to the appellant-allottees, total area being 1350 sq. ft. As per order of the Authority, due date of possession would come to 15.11.2019. As against basic sale consideration of Rs. 62,53,500/-, the appellant-allottees paid an amount of Rs.69,74,374/-. Admittedly, occupation certificate in respect of the project was received on 25.09.2020. As per the respondent- promoter, offer of possession was made thereafter i.e. on 12.11.2020. However, its stand is disputed by the appellant-allottees. As per them, on 12.11.2020 only a reminder pursuant to earlier letter dated 11.12.2018 was sent. As per them, on the said dated (11.12.2018), the promoter did not have the Occupation Certificate. Apart from this, appellant-allottees contend that various amenities such as Club House, STP plant, boundary wall

primary school, shopping market etc. were not provided within the time-line specified. Due to this, the appellant-allottees were constrained to move the complaint before the Authority on 06.09.2021 seeking refund of the entire amount paid by them along with interest.

3. The claim of the appellant-allottees was contested by the respondent-promoter stating that the allottees time and again had failed to make the payment despite reminders dated 03.11.2012, 15.01.2013 and 12.03.2013 yet, provisional allotment letter dated 03.04.2013 was issued in their favour. The default on part of the appellant-allottees, however, continued. Demand notice dated 22.05.2014 was sent to the appellant-allottees however, they again failed to make payment. According to the promoter, due to continued default on part of the appellant-alottees, 10% of the basic sale consideration needed to be deducted from the refundable amount. As regards the delay in receiving Occupation Certificate, stand of the respondent-promoter that a lot procedural delay occasioned in the office of DTCP.

4. The Authority after considering rival contentions and documents on record came to the conclusion that the appellants-allottees were entitled to refund of the amount along with interest @10.85% from the date of surrender i.e. 06.09.2021 (the date of filing the complaint) after deduction of 10% of the basic sale consideration from the date of surrender till actual realization.

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

6. The Authority came to the conclusion that due date of possession was 15.11.2019. By that time, the appellant-allottees had remitted an amount of Rs.69,74,374/-. There was considerable delay in grant of Occupation Certificate to the respondent-promoter as the same was granted on 25.09.2020. Basic amenities, such as Club House, STP Plant, boundary wall, primary school, shopping market etc. were not set up within the time-line. As a result, the appellant-allottees had no option but to move the Authority for refund of the amount. They filed complaint dated 06.09.2021 for refund of the entire amount. However, the Authority directed that 10% of the basic sale consideration be deducted from the refundable amount and appellant-allottees be refunded rest of the amount from the date of surrender (which was taken as date of complaint dated 06.09.2021) along with interest @ 10.85% till realisation. In our considered view, deduction of 10% is unsustainable in view of the fact that the project was considerably delayed. Initially, when offer of possession was made (04.12.2018), the respondent-promoter did not have Occupation Certificate. After grant of Occupation Certificate on 25.09.2020, only a reminder was sent to the appellant-allottees on 12.11.2020. Due to delay in setting up the project, grant of Occupation Certificate and non-providing of basic amenities, the appellant-allottees had to move the Authority seeking refund of Rs.69,74,374/-. No cogent reasons were coming for deducting 10% of the basic sale consideration from the

refundable amount. To that extent the order is unsustainable and is set aside.

7. The appeal is allowed. The appellant-allottees would be entitled to entire refund of the amount along with interest @10.85% per annum from the date of cancellation of the unit (i.e.06.09.2021) till realization. The amount be paid to the appellant-allottees within ninety days of uploading of this order, failing which penal provisions of Section 64 of the Real Estate (Regulation and Development) Act, 2016 would come into play and the promoter shall be liable to pay Rs.7,000/- per day as penalty from the date of this order till realization.

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

9. 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 17,2025
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