

BEFORE THE HARYANA REAL ESTATE APPELLATE TRIBUNAL

Appeal No. 203 of 2024

Date of Decision: January 31, 2026

SS Group Pvt. Ltd., SS House, Plot No. 77, Sector 44, Gurugram, Haryana
122003.

... Appellant

Versus

Tarun Sharma R/o H. No. C-063, Belveder Park, DLF Phase-3, Gurugram,
Haryana-122002.

... Respondent

CORAM:

Justice Rajan Gupta
Dr. Virender Parshad
Dinesh Singh Chauhan

Chairman
Member (Judicial)
Member (Technical)

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

Mr. D.P. Shishodia, Advocate
for the respondent.

ORDER

RAJAN GUPTA, CHAIRMAM

Present appeal is directed against order dated 08.02.2024, passed
by Authority¹. Operative part thereof reads as under: -

“31. 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 amount i.e. Rs. 25,54,500/- received by it from the complainant along with interest at the rate of 10.85% p.a. as prescribed under rule 15 of the Haryana Real Estate (Regulations and Development) Rules 2017 from the date of each payment 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 respondent to comply with the directions given in this order and failing which legal consequences would follow.

32. The complaint stands disposed of.”

2. Factual matrix of the case is that a project in the name and style of “The Leaf” was floated by the appellant-promoter in Sector 84, Gurugram. Complainant (respondent herein) applied for a flat therein. He was allotted unit no. 7A on the 7th Floor of Building T-3, measuring 1620 sq. ft. BBA² was executed on 17.10.2013. Due date of possession, stipulated as 36 months from the date of execution of BBA, was 17.10.2016. Occupation Certificate for the building was granted on 09.05.2022. Much prior to this, the respondent-allottee had sought refund of the amount deposited with the appellant-promoter, vide e-mails dated 24.03.2019 and 20.05.2019. Thereafter, on 24.11.2021, the promoter issued a notice for cancellation demanding Rs. 51,71,238/- towards outstanding amount and Rs. 45,54,865/- towards interest. The respondent-allottee replied to the same vide e-mail dated 22.12.2021 and subsequently filed complaint before the Authority at Gurugram on 11.02.2022. However, the unit was cancelled thereafter on 19.04.2022. Said complaint was allowed in terms of the order reproduced in the opening paragraph of this order.

3. Counsel for the appellant-promoter has vehemently argued that the order passed by the Authority is erroneous insofar as it does not permit 10% deduction of the basic sale consideration from the refundable amount. As per him, since the respondent-allottee is the defaulter, he is not entitled to a refund of the entire amount remitted by him along with interest @10.85% per annum from the date of each payment till realisation.

4. Prayer has been opposed by counsel for the respondent-allottee. According to him, the respondent-allottee waited for several years for the completion of the project, due date of possession being 17.10.2016. As the construction was not completed within the agreed time-frame, the respondent-

² Builder buyer agreement

allottee stopped making further payment. On 24.11.2021, notice for cancellation was issued by appellant-promoter, whereafter the respondent-allottee was constrained to approach the Authority seeking refund of the paid-up amount along with interest.

5. After hearing counsel for the parties and giving careful thought to the facts of the case, this Tribunal observes that the due date of possession was 17.10.2016 and respondent-allottee had already paid substantial amount of Rs.25,54,500/- towards sale consideration by 01.06.2015. However, Occupation certificate was granted only on 09.05.2022, after delay of over 05 years beyond the committed date. The delay is substantial and without any reasonable explanation from the appellant-promoter.

6. The allottee voluntarily made payments till the year 2015 and thereafter waited till 2019 for the project to make some headway. Having found that the project had not proceeded as per the agreed plan, he demanded refund by way of emails dated 24.03.2019 and 20.05.2019. Even after serving said e-mails in the year 2019, he waited for almost three years before invoking the jurisdiction of the Authority by filing the complaint on 11.02.2022. No doubt, the allottee had an unqualified right to seek refund of the entire paid-up amount, but the date from which he is entitled to DPC³ must be determined in light of the facts of the case. In the instant case, since the respondent-allottee having slept over his rights till 2022, his entitlement to DPC shall run from the date of filing the complaint till realization, with interest at 10.85%.

7. The plea of the appellant-promoter for 10% deduction from the refundable amount is untenable, as such deduction is permissible only when the respondent-allottee is in clear default under RERA provisions. In this case, it appears that the project did not make any head-way despite it being a construction linked payment plan. The appellant-promoter has failed to assign any cogent reason for considerable delay in completion of the project. Under

³ Delay Possession Charges

these circumstances, 10% deduction from the refundable amount cannot be allowed.

8. No other issue was pressed before us.

9. In the light of foregoing discussion, the appeal is partly allowed in the following terms:

(i) The appellant-promoter shall refund the entire amount of Rs. 25,54,500/- deposited by the respondent-allottee within a period of 60 days from the date of this order.

(ii) The respondent-allottee shall be entitled to interest @ 10.85% per annum on the refundable amount of Rs. 25,54,500/-, such interest shall be computed from the date of filing of complaint i.e. 11.02.2022 till the date of actual realisation.

10. The amount of Rs. 55,63,186/- deposited by the appellant-promoter with this Tribunal as pre-deposit in view of proviso to Section 43(5) of the RERA Act, along with interest accrued thereon, be remitted to the Authority to be disbursed to the parties as per their entitlement, subject to tax liability, if any, as per law.

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

12. File be consigned to the record.

Justice Rajan Gupta
Chairman
Haryana Real Estate Appellate Tribunal

Dr. Virender Parshad
Member (Judicial)

Dinesh Singh Chauhan
Member (Technical)

January 31,2026/mk