

**BEFORE THE HARYANA REAL ESTATE APPELLATE TRIBUNAL**

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**Appeal No. 245 of 2024**

**Date of Decision: March 25, 2026**

Peter Harvey S/o Late Shri P.D. Harvey,

R/o T-114, Emar Emerald Hills, Sector 65, Golf Course Road,  
Gurugram, Haryana-122001

Appellant-allottee

Versus

M/s. Orris Infrastructure Pvt. Ltd.

Regd. Office: J-10/5, DLF Phase-II, M.G. Road, Gurugram,  
Haryana-122002

Respondent-promoter

**CORAM:**

**Justice Rajan Gupta  
Dinesh Singh Chauhan**

**Chairman  
Member (Technical)**

Present: Dr. Arnold Harvey, Advocate with  
Ms. Neelam Verma, Advocate,  
for the appellant.

Mr. Surjit Bhadu, Sr. Advocate assisted by  
Ms. Sanya Thakur, Advocate,  
Ms. Ankita Rastogi, Advocate,  
Mr. Vikrant Yadav, Advocate,  
for the respondent.

**ORDER:**

**RAJAN GUPTA, CHAIRMAN**

Challenge in the present appeal is to order dated 06.10.2022 passed by the Haryana Real Estate Regulatory Authority, Gurugram in Complaint No. 691 of 2020. Operative part thereof reads as under:

*"36. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoters as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016.*

- i. The respondent-promoter is directed to refund the paid-up amount of Rs.20,09,000/- to the complainant after deduction of 10% of basic sale consideration of the subject unit being earnest money as per Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 2018 along with interest @10.00% p.a. on the refundable amount, from the date of filing of complaint i.e., 06.02.2020 till the date of realization of amount after adjustment of the amount of assured return paid to the complainant.*
- ii. A period of 90 days is given to the respondent-builder to comply with the directions given in this order and failing which legal consequences would follow.*

*37. Complaint stands disposed of.*

*38. File be consigned to the registry."*

2. It appears that a project in the name and style of "Floreal Towers" was floated by the respondent-promoter in Sector 83, Gurugram. License for this project was granted by DTCP vide License No. 260 of 2007 dated 14.11.2007. The appellant was allotted a commercial unit (office space) measuring 500 sq. ft. super area (Unit No. 1508, Block B, 15th Floor). A Memorandum of Understanding dated 12.05.2008 was executed. As per allottee, total sale consideration of the unit was Rs. 34,00,000/- out of which, Rs.20,09,000/- were paid through cheques and the remaining Rs.13,91,000/- were paid in cash. However, as per documents on record and impugned order passed by the Authority, total sale consideration was Rs. 20,09,000/- which stands fully paid. The agreement provided for assured returns @ Rs. 68/- per sq. ft. per month i.e. Rs.

34,000/- per month w.e.f. 01.06.2008 up to the first 36 months after completion of building or till lease, whichever was earlier. Respondent paid assured returns amounting to Rs. 39,44,000/- till December 2016. Completion Certificate/Occupation Certificate to the project was granted on 16.08.2017. Offer of possession was made on 30.04.2018. Complaint was filed before the Authority by the allottee on 06.02.2020 seeking refund along with interest.

3. Respondent-promoter took a stand before the Authority that the project is complete and appellant-allottee sought refund after offer of possession and after receiving assured returns exceeding principal amount. Thus, at this stage refund cannot be allowed.

4. After hearing learned counsel for both the parties and considering the documents on record, the Authority decided the complaint with the directions as reproduced in para 1 of this order. However, an application dated 18.01.2024 was filed by allottee for rectification of the impugned order. Same was also dismissed vide order dated 05.03.2024.

5. Aggrieved by the said order, appellant-allottee filed the present appeal challenging the adjustment of amount of assured returns received by the allottee in the order of refund of paid-up amount payable by the promoter. Learned counsel for respondent-promoter however contended that adjustment of assured returns against refundable amount was justified.

6. We have heard learned counsel for the parties and given careful thought to the facts of the case. It is clear that offer of possession was made to the appellant on 30.04.2018

subsequent to grant of Occupation Certificate to the project on 16.08.2017. The Authority, after considering rival contentions, directed refund of paid-up amount subject to deduction of 10% of the basic sale consideration of the unit. There is no infirmity in this direction. However, the Authority erred in directing adjustment of assured returns of Rs. 39,44,000/- already paid to the appellant against the refundable amount. This direction cannot be sustained as the grant of assured returns arises from the contractual arrangement between the parties and the respondent-promoter is legally bound to honour such contractual commitments. Clauses in the agreement are considered valid contractual obligations and failure to honour the same constitutes breach of contract. The appellant had vested right over the assured returns remitted to him, thus, deducting the same from the refundable amount would not be justified. Finding of the Authority to this extent is set aside. Similar is the view taken in Appeal No. 509/2020 titled “**Arvind Kumar Gautam and Dr. Renu Gautam vs. UP Real Estate Regulatory Authority and Omaxe India Trade Center Pvt. Ltd.**” by The Uttar Pradesh Real Estate Appellate Tribunal.

7. Thus, appellant is entitled to refund of paid-up amount of Rs. 20,09,000/- after deduction of 10% of basic sale consideration along with interest @10.00% p.a. (SBI MCLR +2%) from the date of filing of complaint (06.02.2020) till realization, without adjustment of assured returns. The respondent-promoter shall make the payment within 90 days from the date of uploading of this order.

8. The appeal is allowed in the above terms.

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

Dinesh Singh Chauhan  
Member (Technical)

March 25, 2026  
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