

BEFORE THE HARYANA REAL ESTATE APPELLATE TRIBUNAL

Appeal No. 604 of 2023

Date of Decision: April 08,2026

Sekhar Ramadurai, aged about 68 years S/o Sh. K. Ramadurai, R/o B-1/408, Satyam Apartments, B-20, Vasundra Enclave, New Delhi-110096

Appellant.

Versus

M/s Neo Developers Pvt. Ltd., Registered office at 32-B, Pusa Road, New Delhi, Also at 1507, Tower D, Global Business Park, Gurugram, Haryana.

Respondent

Coram:

Justice Rajan Gupta

Chairman

Dr. Virender Parshad

Member (Judicial)

Present: Mr. Archit Rana, Advocate for Mr. Neeraj Goyal, Advocate for the appellant.

Mr. Yashvir Singh Balhara, Advocate and Ms. Ankita, Advocate for the respondent.

ORDER

RAJAN GUPTA, CHAIRMAN:

Present appeal is directed against order dated 08.08.2023 passed by the Authority¹ at Gurugram. Operative part thereof reads as under:

“G. Directions of the authority

18. 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. 41,96,903/- after deducting 10% of the basic sale consideration of

¹Haryana Real Estate Regulatory Authority, Gurugram

Rs. 50,03,456/- with interest at the prescribed rate i.e., 10.75% on such balance amount, from the date of cancellation i.e., 09.01.2019 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.”

2. Factual matrix of the case is that a Shop No. 34, Ground Floor, Tower B, measuring 565 sq. ft. super area in the project of the respondent/promoter, namely "Neo Square" located in Sector 109, Gurugram, was provisionally allotted in favour of original allottee vide Allotment Letter dated 01.10.2012 by paying initial booking amount of Rs.7,69,942/-. The said allotment was endorsed in favour of subsequent-allottee-complainant on 23.01.2013. A Flat Buyer Agreement (FBA) was executed between the parties on 06.03.2013. Construction commenced on 15.12.2015 and as per clause 5.2 read with 5.4 of the agreement, due date of possession comes out to be 15.06.2019. Occupation Certificate (OC) to the project has not been granted. Out of the total sale consideration of Rs. 50,03,456/-, the complainant/allottee had paid Rs.41,96,903/-. Despite several reminders issued by the respondent/promoter on 04.10.2017, 23.10.2017, 04.12.2017, 26.12.2017 and 18.12.2018 requesting the complainant/allottee to make payment of the balance amount due since 29.09.2017, he failed to comply. Consequently, the respondent/promoter issued the cancellation letter on 09.01.2019. The complainant/allottee preferred the complaint before Authority at Gurugram on 09.03.2022 seeking possession of the said unit shop along with delay possession interest.

3. Stand of the respondent/promoter before the Authority is that the complainant/allottee was in constant default in making timely payment as per the terms and conditions of the agreement and did not adhere to the agreed payment plan. Respondent issued various reminders to the complainant/allottee demanding balance amount as per clauses 4.4, 4.5 and

4.6 of the agreement. Respondent claimed outstanding dues of Rs.18,43,056/- and contended that the complaint is barred by limitation.

4. After considering rival contentions of the parties, the Authority disposed of the complaint vide impugned order, operative part whereof has been reproduced in para 1 of this order.

5. Aggrieved by the impugned order, the appellant/allottee preferred the instant appeal before this Tribunal. He primarily challenged the impugned order on the ground that the Authority erred in granting refund after deduction while the relief of possession was sought before the Authority.

6. Learned counsel for the respondent/promoter has contended that Occupation Certificate of the project had already been obtained during the pendency of present appeal in the year 2024. Appellant/allottee did not come forward to make further payments despite various reminders issued by the respondent/promoter in this regard. It was submitted that the allotment was cancelled on 09.01.2019 due to default by the allottee in making the payment. Therefore, the direction of the Authority to refund after deduction of 10% of the sale consideration was just and reasonable.

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

8. Admittedly, payment plan was construction linked and allottee was regularly making payment till September, 2017. Thereafter, he stopped making payment as he claimed that the project had not made much headway. Having remitted Rs.41,96,903/-to the promoter already, he withheld rest of the payment in view of the fact that the project was proceeding at slow pace. It is not clear as to when application for Occupation Certificate was submitted by the promoter. It is, however, on record that on the date of cancellation, there was hardly any progress regarding grant of Occupation Certificate as same was granted in the year 2024, during pendency of the present appeal. The manner in which the unit was cancelled post-haste is unacceptable. The cancellation

letter thus cannot be held to be valid under any circumstance. The order of the Authority upholding the cancellation is unsustainable and needs to be set aside. Ordered accordingly.

9. In view of the foregoing discussion, the impugned order is hereby modified to the extent that the respondent/promoter shall offer and hand over possession of the allotted unit to the appellant/allottee, subject to payment of the outstanding dues, if any, in accordance with the terms of the agreement. Both parties are directed to comply with this order within a period of 90 days from the date of this order. The respondent/promoter shall further be liable to pay delay possession charges to the appellant/allottee at the prescribed rate i.e., @10.75%, from the date of filing of the complaint (09.03.2022) before the Authority till the date of actual handing over of possession. The Court is conscious of the fact that there has been default on the part of the appellant-allottee as well, thus interest has been granted w.e.f. 09.03.2022 and not from due date of possession.

10. In view of the above discussion, the appeal is allowed in above terms.

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

12. File be consigned to records.

Justice Rajan Gupta
Chairman
Haryana Real Estate Appellate Tribunal

Dr. Virender Parshad
Member (Judicial)

April 08,2026/
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