

BEFORE THE HARYANA REAL ESTATE APPELLATE TRIBUNAL

Appeal No. 420 of 2023

Date of decision: July 24, 2026

1. Nandini Mathur;
2. Pradeep Mathur
Both R/o 178, Samachar Apartments, Mayur Vihar, Phase-I,
New Delhi-110091.

Appellants

Versus

M/s Landmark Apartments Private Limited registered office at A-11, Chittranjan Park, South Delhi, New Delhi-110019; Corporate office at Landmark House, Plot No.65, Sector-44, Gurugram, Haryana-122003.

Respondent

CORAM:

**Justice Rajan Gupta
Dinesh Singh Chauhan**

**Chairman
Member (Technical)**

Argued by: Mr. Vikas Jain, Advocate,
Mr. Vishesh Jain, Advocate,
for the appellants.

Mr. Venket Rao, Advocate,
Mr. Pankaj Chandola, Advocate,
Mr. Gunjan Kumar, Advocate,
Mr. Yashvir Singh Balhara, Advocate,
for the respondent.

ORDER:

RAJAN GUPTA, CHAIRMAN

Present appeal is directed against order dated 14.02.2023, passed by the Authority¹. Operative part thereof reads as under:

¹ Haryana Real Estate Regulatory Authority, Gurugram

“H. Directions of the authority:-

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 sec. 34(f) of the Act of 2016:-

i. The respondent is directed to refund the amount received by it from the complainants i.e., Rs.50,90,800/-, after deducting 10% of the basic sale price with interest at the rate of 10.60% from the date of surrender/withdrawal of said unit i.e., 05.04.2021 till the actual date of refund of the amount.

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. It appears that a project in the name and style of “Landmark the Outlet”, was floated in Sector-67, Gurugram by the promoter. Licence of the project was granted way back in May 2008. Nature of the project was ‘Cyber Park’. Case of the promoter is that a unit measuring 520 sq. ft was allotted to the allottees. Two MoUs dated 17.01.2008 and 01.02.2014 respectively were executed between the parties, due date of possession being 18.12.2016. Total sale consideration of Rs.64,23,040/-, out of which the allottees paid 50,90,800/-. Assured return of Rs.25,97,340/- was paid to the allottees. Occupation Certificate in respect of the project was granted vide communication dated 26.12.2018. As per promoter, offer of possession to the allottees was made on 23.06.2015. However, they chose to withdraw from the project vide their e-mail dated 05.04.2021. The complainants, thereafter, approached the Authority in June, 2021 seeking refund of the

amount remitted by them along with interest. While the allottees asserted that construction of the project never made any headway, the respondent-promoter controverts this assertion. The Authority took note of the occupation certificate granted in respect of the project in the year 2018.

3. Learned counsel for the appellant-allottees, however, contends that the occupation certificate is not in respect of the instant project but to another project known as 'Cyber Park'. As per him, the allottees were not in default of payments, thus, the deduction of 10% of the basic sale consideration on the refundable amount is unsustainable.

4. Mr. Rao, on the otherhand, contends that the second MoU was in respect of a unit measuring 520 sq. ft. in 'Landmark the Outlet', to which the allottees, of their own volition, shifted from 'Landmark Mall', where they were earlier allotted a unit. Mr. Rao submits that offer of possession dated 23.06.2015 was made in respect of the unit in 'Landmark the Outlet' which was a part and parcel of 'Landmark Cyber Park' in Sector 67, Gurugram. However, the allottees waited for a period of six years and in 2021 opted to exit from the project on 05.04.2021. He further submits that licence no. 97 dated 12.05.2008 was in respect of the IT Park comprising of 'Retail Hub' and 'Cyber Park'. Thus, the allottees were granted a unit in project under the same licence number.

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

6. It is evident from the record that the allottees made complete payment of Rs.50,90,800/- in compliance to the

initial MoU signed on 17.01.2008 against allotment of area measuring 520 square feet in the project 'Landmark the Mall' in Sector 66, Gurugram. However, finding that construction of the project did not make much headway, the allottees requested for refund of the amount deposited. The respondent-promoter gave the offer of shop in the project, namely, 'Landmark the Outlet' in Sector 67, Gurugram having same area for a total consideration of Rs.64,23,040/-. A period of three years was required by the respondent-promoter for completion of the project, which expired on 18.12.2016. The promoter made offer of possession on 23.06.2015 without grant of Occupation Certificate to the project, which was received on 18.12.2016. Thereafter, no formal possession letter was issued by the respondent-promoter to the allottees. Under these circumstances, the allottees made a request for withdrawal from the project on 05.4.2021.

7. From the above, it is evident that the allottees were making efforts to purchase a property from the promoter since 15.10.2007 with initial MoU signed on 17.1.2008 and subsequent MoU on 01.02.2014 but failed to get possession of the unit or refund of the money deposited by them with the promoter. It is, thus, clear that money remained with the respondent-promoter for more than a decade without any valid offer of possession to the allottees. Hence, the order of the Authority in directing deduction of 10% of the basic sale price is not justified. As offer of possession was not made by the respondent-promoter to the allottees after grant of Occupation Certificate, therefore, the allottees are held entitled to interest from the date of grant of Occupation Certificate.

8. In view of above, the appeal is allowed. The order passed by the Authority is set aside.
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)

July ,2026
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