BEFORE THE HARYANA REAL ESTATE APPELLATE TRIBUNAL

Appeal No. 249 of 2023

Date of Decision: July 28, 2026

Bhupinder Singh S/o Sh. Jaspal Singh Chadha, R/o House No. 901, Pilot Court, Essel Towers, MG Road, Gurugram-122002.

Appellant-allottee.

Versus

M/s Athena Infrastructure Limited having registered office at F-60, Malhotra Building, 2nd Floor Connaught Place, New Delhi-110001

Also at: 448-451, Indiabulls, House, Udyog Vihar, Phase V, Gurugram-122001.

Respondent.

CORAM:

Justice Rajan Gupta — **Chairman**
Dinesh Singh Chauhan — **Member (Technical)**

Present: Ms. Nazuk Gupta, Advocate for Mr. Himanshu Gupta, Advocate, for the appellant.

Mr. Ajiteshwar Singh, Advocate, for the respondent.

O R D E R:

RAJAN GUPTA, CHAIRMAN

Present appeal is directed against order dated 29.11.2022 passed by the Authority at Gurugram[1]. Operative part thereof reads as under:

> *"**H. Directions of the Authority**:*
> *48. 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 functions entrusted to the Authority under Section 34(f) of the Act of 2016:*
> *i. The respondent-builder is directed to pay an amount of Rs. 2,20,35,740/- to the financer of the complainants i.e., Indiabulls Housing Finance Limited.*
> *ii. The respondent-promoter is also directed to refund the amount paid by the complainants to the tune of Rs. 41,36,272/-, to them after deducting 10% of the basic sale*

[1] Haryana Real Estate Regulatory Authority, Gurugram.

consideration of the unit being earnest money along with an interest @ 10.35% p.a. on the refundable amount, from the date of surrender i.e., 30.08.2018 till the date of realization of payment.
iii. A period of 90 days is given to the respondent-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 the appellant-allottee, along with his wife, Smt. Harneet Chadha booked an apartment in the respondent-promoter's project, namely, "Indiabulls Enigma" situated in Sector 110, Gurugram, on 08.12.2012. Vide allotment letter dated 27.02.2013, a unit bearing No. A-184 on the 18th floor in Tower A, measuring 3350 sq. ft. was allotted to them. Total sale consideration of the said unit was Rs. 2,50,55,000/-. Against the said consideration, the allottees paid a sum of Rs. 41,36,272/- from their own funds upto 19.02.2013. In addition, under a subvention arrangement, Indiabulls Housing Finance Limited disbursed a loan amount of Rs. 2,20,35,740/- directly to the respondent-promoter on 04.04.2013. Consequently, the respondent-promoter received an aggregate amount of Rs. 2,61,72,012/-. Apartment buyer's agreement was executed between the parties on 27.08.2013. As per agreement, the due date of possession was 27.02.2017. However, the respondent-promoter failed to honour its contractual obligation and did not deliver possession within the agreed timeline. Occupation Certificate to the project was granted only on 06.04.2018, more than a year after the due date of possession and an offer of possession was issued on 07.06.2018 coupled with a demand for alleged outstanding dues. Thereafter, the allottees, vide email dated 30.08.2018, sought withdrawal from the project and requested refund on account of the respondent-promoter's failure to hand over possession within the stipulated time. Subsequently, the respondent-promoter cancelled the allotment in terms of the Apartment Buyers Agreement and the tripartite agreement executed with Indiabulls Housing Finance Ltd.

and retained the amount paid by the allottees, which constrained the allottees to approach the Authority seeking refund of the paid-up amount along with interest.

3. The respondent-promoter contended before the Authority that the complainants, having booked the unit under a subvention scheme, were bound by the terms of the tripartite arrangement and the apartment buyer agreement. It was further contended that the promoter had fulfilled its obligation by offering the possession after the grant of Occupation Certificate from the competent authority. However, instead of making payment of balance dues, allottees had surrendered the unit and sought refund, thus allotment was terminated in accordance with the contractual terms.

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

5. Aggrieved by the impugned order, the appellant-allottee has preferred the instant appeal before this Tribunal. He primarily challenged the impugned order on the ground that the Authority erred in allowing deduction of 10% of the sale consideration while directing refund and further erred in granting interest from the date of surrender instead of respective dates of payments.

6. On the other hand, learned counsel appearing for the respondent-promoter supported the impugned order and prayed for dismissal of the appeal.

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

8. It is not disputed that the due date of possession was 27.02.2017, whereas the Occupation Certificate to the project was granted on 06.04.2018 and possession was offered thereafter on

07.06.2018. It cannot be lost sight that there is considerable delay on the part of the promoter for completing the project. The default on its part cannot be overlooked. By the time offer of possession was made, the allottee had exhausted himself as the allotment was made way back in the year 2013. In the peculiar facts and circumstances of the case, we feel that deduction of 10% of the basic sale price from the refundable amount is unsustainable. The allottees are entitled to refund of the entire amount paid by them without any deduction. Further, the Authority has already awarded interest on the refundable amount at the rate of 10.35% per annum from the date of surrender, i.e., 30.08.2018 till the date of actual payment. We find no reason to interfere with the said direction. Thus, the allottees are held entitled to refund of entire paid-up amount of Rs.41,36,272/- along with interest from the date of surrender i.e., 30.08.2018 till realization. This order has been passed in the peculiar facts and circumstances of the case and would not be treated as a precedent.

9. The appeal is disposed of in above terms.

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

11. File be consigned to records.

Justice Rajan Gupta,
Chairman,
Haryana Real Estate Appellate Tribunal

Dinesh Singh Chauhan
Member (Technical)

July 28 ,2026/mk