

BEFORE THE HARYANA REAL ESTATE APPELLATE TRIBUNAL

Appeal No. 168 of 2023

Date of Decision: May 29, 2026

1. Mr. Gaurav Gupta resident of House No. 969/31, Laxman Vihar, Phase-I, Gurugram, Haryana.
2. Mr. Prashant Chibber resident of Apartment No. A-1203, Rainbow Apartments GH-26, Sector-43, Gurugram, Haryana.

Appellants

Versus

M/s. Pareena Infrastructures Private Limited having office at Flat No. 2, Palm Apartment, Plot No. 13-B, Sector-6, Dwarka New Delhi-110075.
Also at:- C-7A, 2nd Floor, Omaxe City Centre, Sohna Road, Sector-49, Gurugram, Haryana.

Respondent

CORAM:

**Justice Rajan Gupta
Dr. Virender Parshad
Dinesh Singh Chauhan**

**Chairman
Member (Judicial)
Member (Technical)**

Present: Ms. Aarti Bhalla, Advocate with
Mr. Sharvan Kumar, Advocate,
for the appellants.

Mr. Kamaljeet Dahiya, Advocate
for the respondent.

ORDER:

RAJAN GUPTA, CHAIRMAN

Present appeal is directed against order dated 14.09.2022, passed by the Authority at Gurugram¹ whereby Complaint No.4094 of 2021 filed by the allottees was disposed of with the following directions:-

“F. Directions of the authority

20. 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):

¹ Haryana Real Estate Regulatory Authority, Gurugram.

- i. The respondent is directed to refund the deposited amount of Rs 45,86,750/- after forfeiting 10% of the basic sale price of the unit being earnest money along with an interest @10% p.a. on the refundable amount, from the date of surrender (i.e. 27.05.2018) till the date of realization of payment.*
- 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 the appellant-allottees booked a unit bearing No. T1-1101 in Tower T1 measuring 1997 sq. ft. in the project of the respondent-promoter, namely “Coban Residences” situated in Sector-99A, Gurgaon, by paying a booking amount of Rs. 21,53,560/-. The original builder buyer agreement was executed on 17.04.2014, and thereafter, on the request of appellant-allottees, a revised builder buyer agreement incorporating a new payment plan was executed on 14.01.2015. As per the agreement, the due date of possession comes out to be 14.01.2019. Out of the total sale consideration of Rs. 1,28,29,940/-, the appellant-allottees had paid Rs. 45,86,750/-. Despite delayed construction under the agreed construction-linked payment plan, the respondent-promoter continued demanding payments from the appellant-allottees, compelling them to seek refunds via emails dated 27.05.2018 and 12.08.2018, and subsequently file a complaint before HRERA Gurugram on 27.08.2019 for the refund of deposited amounts with interest.

3. Stand of the respondent-promoter before the Authority was that the appellant-allottees were in persistent default in making payments under the original agreed plan. It was submitted that despite repeated demands and communications during 2014-2015, the appellant-allottees failed to clear the outstanding dues within the stipulated time. Even after execution of a fresh agreement dated 14.01.2015 with a revised payment plan, they did not honour the

payment obligations. It was further stated that additional demands were raised in 2018 at the relevant stage of construction, but instead of making the requisite payments, the appellant-allottees opted to surrender the unit through emails dated 27.05.2018 and 12.08.2018.

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-allottees have preferred the instant appeal before this Tribunal. They primarily challenged the impugned order on the ground that the Authority erred in allowing deduction of 10% of the sale consideration while directing refund.

6. Learned counsel for the respondent-promoter has contended that the project was progressing, though with some delay, and that the Occupation Certificate for the project was eventually granted by the competent authority on 13.12.2022. It was further submitted that despite several reminders, the appellant-allottees failed to make the requisite payments and remained in default. In these circumstances, it was argued that the direction to refund the amount after deduction of 10% of the sale consideration was fair, just, and reasonable.

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

8. It is evident from the record that the appellant-allottees were in continuous default of their contractual payment obligations under the original Builder Buyer Agreement dated 17.04.2014 as well as the revised agreement dated 14.01.2015, despite being granted a fresh payment schedule. They paid only Rs. 45,86,750/- against the total sale consideration of Rs. 1,28,29,940/- and failed to adhere to the construction-linked payment plan despite demands raised as per

construction stages. The appellants, instead of clearing their dues, voluntarily surrendered the unit vide emails dated 27.05.2018 and 12.08.2018, well before the stipulated possession date of 14.01.2019. It is, therefore, not a case where the appellants waited till the committed date of possession and thereafter sought refund on account of delay attributable to the promoter. Rather, the surrender was effected during subsistence of the contractual period and at a stage when the appellants themselves were in default of the agreed payment obligations. Moreover, the project stands completed, as evidenced by the offer letter dated 14.12.2022, which confirms that the Occupation Certificate was granted to the project on 13.12.2022. Thus, the Authority's direction for refund after 10% forfeiture as earnest money is thus legally valid under the agreement terms and equitable principles.

9. We find no legal infirmity in the order passed by the Authority warranting interference by this Tribunal.

10. In view of the above discussion, the appeal is devoid of merit and accordingly stands dismissed.

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)

Dinesh Singh Chauhan
Member (Technical)

May 29, 2026/mk