

BEFORE THE HARYANA REAL ESTATE APPELLATE TRIBUNAL

Date of Decision: October 07, 2026

Appeal No. 406 of 2023

1. Pushpa Lata Sharma, w/o Anil Sharma
2. Anil Sharma, s/o Ram Dular

Both R/o-88, Gangotri Apartment, DDA PKT-1, Sector-12, Dwarka, Delhi-110078.

... Appellant-allottees

Versus

M/s Sepset Properties Private Limited, Regd. Office at: 11th Floor, Paras Twin Towers, Tower-B, Sector-54, Golf Course Road, Gurugram, Haryana – 122002.

... Respondent-promoter

Appeal No. 407 of 2023

Vinod Dalal, S/o Sh. Ved Prakash Dalal, through GPA Holder – Devinder Dalal, S/o Sh. Ved Prakash Dalal, R/o H-002, BPTP Park Prime, Sector-66, Gurugram, Haryana – 122001.

... Appellant-allottee

Versus

M/s Sepset Properties Private Limited, Regd. Office at: 11th Floor, Paras Twin Towers, Tower-B, Sector-54, Golf Course Road, Gurugram, Haryana – 122002.

... Respondent-promoter

CORAM:

Justice Rajan Gupta
Dinesh Singh Chauhan

Chairman
Member (Technical)

Present:

Mr. Kamaljeet Dahiya, Advocate
for the appellants.

Mr. Kunar Dawar, Sr. Advocate assisted by
Ms. Ankita Chaudhary, Advocate,
Mr. Rohit Sangam, Advocate
Mr. Sachin Bhanot, Authorized Representative,
for the respondent.

ORDER:**RAJAN GUPTA, CHAIRMAN**

This order shall dispose of above-mentioned appeals, as common questions of law and facts are involved therein. However, the facts have been extracted from Appeal No. 406 of 2023.

2. Present appeal is directed against the order dated 12.04.2023, passed by the Authority¹ in Complaint No. 1018 of 2019/602 of 2021. The operative part thereof reads as follows:

H. Directions of the authority

“28. 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/builder is directed to refund the paid-up amount of Rs.1,01,28,165/- after deducting 10% of the basic sale consideration of Rs.92,40,000/- being earnest money along with an interest @ 10.70% p.a. on the refundable amount, from the date of filing of this complaint i.e., 18.03.2019 till its realization.

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.

29. Complaint stands disposed of.

30. File be consigned to the registry.”

3. Factual matrix of the case is that the appellant-allottees had booked a unit No. T-B/2102 in the respondent's project, “Paras Dews”, at Sector-106, Gurugram. The allotment letter was issued on 10.01.2013, and the flat buyer's agreement was executed on 02.04.2013. The total sale consideration was Rs.1,04,26,400/-, against which the appellants paid Rs.1,01,28,165/-. Due date for possession was 06.09.2017. However, the Occupation Certificate was granted on 15.01.2019, and possession was offered on 24.01.2019.

¹ Haryana Real Estate Regulatory Authority, Gurugram

The appellant-allottees filed their complaint on 18.03.2019 seeking a refund along with interest. In the complaint, they referred to delay and to an alteration in the layout plan.

4. The respondent opposed the complaint. It submitted that the project had been completed, the Occupation Certificate had been granted, and possession had been offered before the complaint was filed. It further submitted that, if the allottees chose not to take possession, earnest money could be deducted under the buyer's agreement and the applicable regulations.

5. 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 whereby the Authority ordered a refund but allowed deduction of 10% of the basic sale consideration as earnest money.

6. Aggrieved by the impugned order, the appellant-allottees preferred the instant appeal before this Tribunal and have challenged that deduction of 10% of the basic sale consideration in these appeals.

7. Before this Tribunal, the counsel for the appellant-allottees have specifically argued that the flat offered to them did not have the L-shaped balcony shown in the annexures to the buyer's agreement and the original plans. They submit that this changed the unit and reduced its super area. Thus, according to them, they are entitled to full refund along with interest without any deduction.

8. Learned counsel for the respondent-promoter disputes this claim. Its case is that, under the revised approved plans, L-shaped balconies were provided only in corner flats, whereas the appellants' flat was not a corner flat. It submits that the Authority correctly permitted deduction of earnest money.

9. We have heard learned counsel for the parties and examined the record. The question before us is whether the Authority's direction to allow deduction of 10% as earnest money calls for interference.

10. Perusal of record shows that there was a delay between the due date for possession and the offer of possession. The Authority nevertheless ordered a refund, and that part of its order is not in issue here. The question is whether the appellants have shown a sufficient ground for setting aside the deduction.

11. The specific objection about the L-shaped balcony has been raised in these appeals. The complaint contained only a general allegation of alteration in the plan. It did not identify the absence of an L-shaped balcony as a reason for seeking a refund. The Authority, therefore, had no occasion to decide that specific objection.

12. In any event, the material placed before us does not establish that the unit offered to the appellants was contrary to the revised plans approved by the competent authority. The Authority noted that the revised building plans had been approved by the Directorate of Town and Country Planning. In these circumstances, the balcony objection does not provide a basis for setting aside the deduction allowed by the Authority.

13. The occupation certificate had been granted and possession offered before the complaint seeking refund was filed. On the facts before us, the appellants have not shown that the Authority erred in allowing deduction of 10% of the basic sale consideration as earnest money. We find no ground to interfere with the orders under appeal.

14. Both appeals are accordingly dismissed. Ordered accordingly.

15. We find no illegality or infirmity in the impugned order. Consequently, both the appeals, being devoid of merit, are hereby dismissed.

16. Copy of the order be sent to the parties/their counsel and the Authority for compliance.

17. Files be consigned to the records.

Justice Rajan Gupta
Chairman
Haryana Real Estate Appellate Tribunal

Dinesh Singh Chauhan
Member (Technical)

October 07, 2026/mk