

BEFORE THE HARYANA REAL ESTATE APPELLATE TRIBUNAL

Appeal No. 314 of 2024

Date of Decision: October 01,2026

1. Sachin Vats
2. Dhruv Vats,
Both R/o : C-82, Mansarover Colony, Delhi Road Mathura, UP-
244001
Appellants.

Versus

1. M/s Ashiana Dwelling Private Limited
2. Mr. Rohit Raj Modi, Director
Regd. Office: 5F, Everest, 46C, Chowrunghee Road, Kolkata,
West Bengal-700071
Respondents

Coram:

Justice Rajan Gupta

Chairman

Dinesh Singh Chauhan

Member (Technical)

Present: Mr. Abhishek Jindal, Advocate for the appellants.

Mr. Keshav Saini, Advocate and
Ms. Nimisha Pathak, Advocate for the respondents.

RAJAN GUPTA, CHAIRMAN:

Present appeal is directed against order dated 21.12.2023 passed by the Authority¹. Operative part thereof reads as under:

“F. Directions of the Authority

18. Hence, the authority hereby passes this order and issue 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.18,97,394/- after deducting 10% of

¹ Haryana Real Estate Regulatory Authority, Gurugram

the basic sale consideration of Rs.78,86,220/- being earnest money along with an interest @10.85% p.a. (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 on the refundable amount from the date of surrender i.e. 17.08.2017 till actual refund of the amount within the timelines provided in rule 16 of the Haryana Rules, 2017 ibid.

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.

19. Complaint stands disposed.

20. File be consigned to registry.”

2. It appears that a project in the name and style of ‘Ashiana Mulberry’ was floated by respondent No. 1 (hereinafter referred to as ‘the promoter’) in Sector 2, Gurugram. A unit measuring 1730 square feet was allotted to the appellants therein vide provisional allotment letter dated 27.10.2015. Total sale consideration of the unit was Rs.94,86,970/-, out of which, the allottees remitted an amount of Rs.18,97,394/-. Flat Buyer Agreement was executed between the parties on 27.10.2015. Due date of possession was 27.07.2019. As there was delay in handing over the possession, the allottees opted to withdraw from the project on 17.08.2017. The promoter sent various letters/reminders to the allottees to pay outstanding dues. As the allottees failed to adhere to the payment schedule, the unit was cancelled on 16.10.2019. Occupation Certificate to the project was granted on 02.11.2022. The allottees preferred a complaint before the Authority seeking refund of the entire amount along with interest.

3. The stand of the promoter before the Authority was that as the allottees did not adhere to the payment schedule despite letters/reminders sent by it to the allottees, therefore, the unit was cancelled on 16.10.2019.

4. After hearing rival contentions of the parties, the Authority disposed of the complaint vide the impugned order with the directions, as contained in opening paragraph of this order.

5. Feeling aggrieved by the aforesaid order, the allottees have preferred the present appeal.

6. The only grievance of the allottees is that the Authority erred in granting refund after deducting 10% of the basic sale consideration.

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

8. It is undisputed that the allottees have deposited an amount of Rs.18,97,394/- against the total sale consideration of Rs.94,86,970/-. As per the agreement dated 27.10.2015, the due date for handing over the possession was 27.07.2019. The appellant-allottees expressed their desire to exit from the project on 17.08.2017 and sought complete refund of the amount remitted by them along with interest . It is evident that the construction did not make much headway as Occupation Certificate to the project was granted on 02.11.2022. In the instant case, however, the allottees sought to exit even before the due date of possession i.e. 27.07.2019. We find substance in the plea that the allottees had unqualified right to do so. In this context, observations made by the Supreme Court in ***M/s Newtech Promoters and***

Developers Pvt. Ltd. v. State of UP, 2022(1) RCR (Civil) 367

are reproduced hereunder:

*“78. This Court while interpreting Section 18 of the Act, in **Imperia Structures Ltd. v. Anil Patni and Another, 2020(10) SCC 783** held that Section 18 confers an unqualified right upon an allottee to get refund of the amount deposited with the promoter and interest at the prescribed rate, if the promoter fails to complete or is unable to give possession of an apartment as per the date specified in the home buyer’s agreement in para 25 held as under:*

“25. In terms of Section 18 of the RERA Act, if a promoter fails to complete or is unable to give possession of an apartment duly completed by the date specified in the agreement, the promoter would be liable, on demand, to return the amount received by him in respect of that apartment if the allottee wishes to withdraw from the Project. Such right of an allottee is specifically made “without prejudice to any other remedy available to him”. The right so given to the allottee is unqualified and if availed, the money deposited by the allottee has to be refunded with interest at such rate as may be prescribed. The proviso to Section 18(1) contemplates a situation where the allottee does not intend to withdraw from the Project. In that case he is entitled to and must be paid interest for every month of delay till the handing over of the possession. It is up to the allottee to proceed either under section 18(1) or under proviso to Section 18(1). The case of Himanshu Giri came under the latter category. The RERA Act thus definitely provides a remedy to an allottee who wishes to withdraw from the

project or claim return on his investment.”

9. In view of the above, the allottees are entitled to full refund of the deposited amount without any deduction, along with interest @ 10.85% per annum from the date of surrender i.e. 17.08.2017 till its realization.
10. The appeal is allowed in the above terms.
11. Copy of this order be sent to the parties/their counsel and the Authority.
12. File be consigned to records.

Justice Rajan Gupta
Chairman
Haryana Real Estate Appellate Tribunal

Dinesh Singh Chauhan
Member (Technical)

October 01, 2026
mk