BEFORE THE HARYANA REAL ESTATE APPELLATE TRIBUNAL

Appeal No. 677 of 2024

Date of Decision: May 18,2026

Alok Gupta R/o 66, Tagore Park, Model Town, Part-1, Dr. Mukherjee Nagar, North-West Delhi-110009

Appellant

Versus

M/s Advance India Projects Ltd. having Registered Office at 232-B, Fourth Floor, Okhla Industrial Estate, Phase-III, New Delhi-110020.

Respondent

Coram:

Justice Rajan Gupta **Chairman**

Dr. Virender Parshad **Member (Judicial)**

Present: Mr. Yaseen Sethi, Advocate for

Mr. Dhruv Lamba, Advocate for the appellant.

ORDER:

RAJAN GUPTA, CHAIRMAN

Present appeal is directed against order dated 09.02.2024 passed by the Authority[1] at Gurugram. Operative part thereof reads as under:

> ***"H. Directions of the authority***
>
> *51. 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 is directed to refund the paid-up amount of Rs. 8,21,693/- after deducting 10% as earnest money of the sale consideration of Rs. 22,72,659/- with the interest at the prescribed rate i.e., 10.85% on the balance amount, from the date of termination/cancellation i.e., 24.08.2021 till date of actual refund.*
>
> *ii. The amount of assured return if any, paid to the complainant be adjusted.*

[1] Haryana Real Estate Regulatory Authority, Gurugram.

iii. 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.

52. Complaint stands disposed of.

53. File be consigned to registry."

2. Factual matrix of the case is that the original allottees were provisionally allotted Unit No. FL-24 measuring 146.01 sq. ft. on the second floor in the project "AIPL Joy Central" Sector 65, Gurugram floated by the respondent-promoter, which was subsequently revised to Unit No. FL-20 measuring 185.07 sq. ft., vide Allotment Letter dated 17.08.2017. Builder Buyer Agreement was executed between the original allottees and the respondent on 04.11.2017. Thereafter, the allotment was assigned in favour of the appellant/allottee on 01.04.2018. As per the terms of the BBA, due date of possession was 04.11.2020, being three years from the date of execution of the agreement. Occupation Certificate to the project was granted on 24.12.2021. Against the total sale consideration of Rs. 22,72,659/-, the appellant-allottee paid only Rs. 8,21,693/-. Despite assured returns having been credited up to 20.04.2021, complainant/allottee defaulted in making payment of the outstanding dues from early 2021 onwards. The respondent-promoter issued several reminders dated 11.04.2021, 06.05.2021 and 05.06.2021 followed by a pre-termination notice dated 07.06.2021, but the complainant failed to clear the dues. Consequently, the allotment was terminated vide letter dated 24.08.2021. Thereafter, the complainant-allottee filed a complaint before the Authority at Gurugram on 13.04.2022 seeking revival of the allotment and payment of the remaining assured returns.

3. The respondent-promoter contended before the Authority that the complainant-allottee continuously defaulted in making timely payments under the agreement. Despite several reminders and a pre-termination notice issued in 2021, the complainant failed to clear the dues. Consequently, the allotment was cancelled on 24.08.2021 in accordance with the terms of the Builder Buyer Agreement and the agreed payment plan.

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-allottee preferred the instant appeal before this Tribunal. He primarily challenged the impugned order on the ground that the Authority erred in granting refund after deduction while the relief of possession was sought before the Authority.

6. We have heard the learned counsel for appellant and carefully examined the record of the case.

7. It is evident from the record that the appellant/allottee failed to adhere to the payment schedule under the Builder Buyer Agreement dated 04.11.2017 and did not make payments towards the outstanding dues. The material on record shows that the respondent-promoter issued several reminders, still the appellant-allottee remained in default. Consequently, the respondent/promoter issued a pre-termination notice dated 07.06.2021 and thereafter cancelled the allotment of the subject unit vide letter dated 24.08.2021. The Authority, after considering rival contentions, came to the conclusion that the appellant-allottee was entitled to refund subject to deduction of 10% of the sale consideration. There is no infirmity with this direction. However, the Authority erred in holding that the amount of assured returns already remitted to the appellant-allottee be adjusted against the refundable amount. This direction cannot be sustained as the grant of assured returns arises from the contractual arrangement between the parties and the respondent-promoter is legally bound to honour such contractual commitments. Clauses in the agreement are considered valid contractual obligations and failure to honour the same, constitutes the breach of contract. The appellant-allottee would have vested right over the assured returns remitted to him, thus, deducting the same from the refundable amount would not be justified. Finding of the Authority to this extent is set aside. Similar is the view taken in ***Appeal No. 509/2020*** titled **"*Arvind Kumar Gautam and***

Dr. Renu Gautam vs. UP Real Estate Regulatory Authority and Omaxe India Trade Center Pvt. Ltd.” by The Uttar Pradesh Real Estate Appellate Tribunal.

8. Thus, appellant-allottee is entitled to the refund of paid-up amount after deduction of 10% of the sale consideration along with interest @ 10.85% p.a. from the date of cancellation i.e., 24.08.2021 till realization. The respondent-promoter shall make the payment within 90 days from the date of uploading of this order.

9. The appeal is partly allowed in above terms.

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

11. File be consigned to records.

Justice Rajan Gupta
Chairman
Haryana Real Estate Appellate Tribunal

Dr. Virender Parshad
Member (Judicial)

May 18,2026/mk