BEFORE THE HARYANA REAL ESTATE APPELLATE TRIBUNAL

Appeal No. 676 of 2024

Date of Decision: May 18,2026

1. Alok Gupta,
2. Anita Gupta

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

Appellants

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 appellants.

ORDER:

RAJAN GUPTA, CHAIRMAN

Present appeal is directed against order dated 15.03.2024 passed by the Authority[1] at Gurugram. Operative part thereof reads as under:

> *"**G. Directions of the authority***
> *62. 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(i):*
> *i. The respondent is directed to pay interest at the prescribed rate of 10.85% p.a. for every month of delay from the due date of possession i.e.,26.12.2021 till offer of possession plus two months i.e., 21.03.2022 to the complainant(s) as per section 19(10) of the Act.*
> *ii. The arrears of such interest accrued from due date of possession shall be paid by the promoter to the allottees within a period of 90 days from date of this order as per rule 16(2) of the rules.*

[1] Haryana Real Estate Regulatory Authority, Gurugram.

iii. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period against their unit to be paid by the respondent.
iv. The rate of interest chargeable from the allottees by the promoters, in case of default shall be charged at the prescribed rate i.e., 10.85% by the respondent/promoters which is the same rate of interest which the promoters would be liable to pay the allottee, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.
v. The respondent is also directed not to charge anything which is not part of buyer's agreement.
V. Complaint stands disposed of.
VI. File be consigned to registry."

2. Factual matrix of the case is that appellant-allottees booked a unit bearing No. GF-26 (area 521 sq. ft.), which was subsequently re-numbered to GF-41 (area 520.60 sq. ft) in the project of the respondent-promoter namely, "AIPL Joy Central", Sector-65, Gurugram. The booking was made on 03.02.2017 by paying a booking amount of Rs.4,95,000/- and an Allotment Letter was issued on 06.04.2017. Total sale consideration of the unit was Rs.1,28,94,100/- out of which, the appellant-allottees paid Rs.1,25,94,100/-. The respondent-promoter paid assured return amounting to Rs.13,61,316/- till April, 2021. However, no Builder Buyer Agreement was executed between the parties despite letter dated 19.07.2017 and a reminder dated 18.08.2017 issued by the respondent. As per Clause 40 of the application form dated 03.02.2017, the due date of possession was 26.12.2021. Occupation Certificate to the project was granted on 24.12.2021 and offer of constructive possession was made on 21.01.2022. Thereafter, the appellant-allottees filed a complaint before the Authority, Gurugram on 24.03.2022, seeking physical possession of the unit along with delay possession interest and payment of the remaining assured returns.

3. Stand of the respondent/promoter before the Authority was that complainants had failed to execute the Builder Buyer Agreement (BBA) and also defaulted in making the remaining payments despite repeated reminders. It was further stated that the relationship between the parties was governed by the application form dated 03.02.2017. The respondent also submitted that assured returns had been paid to the complainants up to April 2021 even

though there was no contractual obligation to do so, and such payments were thereafter prohibited under the Banning of Unregulated Deposit Schemes Act, 2019.

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 filed the present appeal before this Tribunal. The appellants primarily challenged the impugned order on the ground that the Authority wrongly treated the offer of constructive possession as a valid offer of possession, whereas the respondent-promoter was under an obligation to hand over actual physical possession of the unit and not merely constructive possession. It was further contended that the Authority also erred in not granting the remaining assured returns as agreed between the parties.

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

7. With regard to the issue of possession, it is undisputed that no Builder Buyer Agreement was executed between the parties, therefore, the relationship between the parties is governed by the application form dated 03.02.2017. A perusal of the relevant clauses of the application form shows that the promoter had reserved the right to offer possession after grant of necessary approvals to the project including the Occupation Certificate. In the present case, the Occupation Certificate was granted on 24.12.2021 and thereafter, the offer of possession was issued on 21.01.2022.

8. In the absence of a formal Builder Buyer Agreement, the terms of the application form are binding upon the parties. The appellant-allottees cannot now depart from the agreed terms and seek a mode of possession different from what was originally contemplated. Accordingly, the offer of constructive possession made by the respondent-promoter after the grant of

Occupation Certificate is in accordance with clauses 40 and 42 of the application form and thus, cannot be termed illegal or invalid.

9. The Authority has rightly calculated the delay, if any, up to the date of the valid offer of possession and granted interest accordingly. We find no illegality or infirmity in the said finding warranting interference by this Tribunal.

10. Further, the claim of the appellant-allottees for continuation of assured returns beyond April 2021 is wholly untenable in the absence of any specific clause in the application form providing for payment of such assured returns. Mere payment of assured returns by the respondent-promoter up to April 2021 cannot, by itself, create a perpetual or legally enforceable obligation in favour of the appellant-allottees. Therefore, the claim for continuation of assured returns beyond April 2021 is liable to be rejected.

11. In view of the above discussion, we find no legal infirmity in the order passed by the Authority. No ground for interference is made out.

12. Consequently, the findings recorded by the Authority are upheld with a further direction that in case BBA has not been executed till now, parties may take necessary steps in that direction. Accordingly, the appeal is dismissed.

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

14. File be consigned to records.

Justice Rajan Gupta
Chairman
Haryana Real Estate Appellate Tribunal

Dr. Virender Parshad
Member (Judicial)

May 18,2026/mk