

BEFORE THE HARYANA REAL ESTATE APPELLATE TRIBUNAL

Date of Decision: August 17, 2026

(1) Appeal No. 477 of 2023 (O&M)

1. Anil Sharma, S/o Ramji Lal Sharma, aged about 44 years
2. Smita Joshi W/o Anil Sharma, aged about 39years

Both residents of #6A, Tower-9, Central Park-2, Sohna Road, Sector 48,
Gurugram, Haryana-122003

.....Appellants

Versus

1. Tata Housing Development Company Limited, having registered office at No. 3, Ground Floor, Naurang House, 21,KG Marg, New Delhi-110001 through its Chairman/Managing Director
2. HRERA Gurugram, PWD Guest House, Old Railway Road, Civil Lines, Gurugram Haryana, 122001

.....Respondents

(2) Appeal No. 674 of 2023

Tata Housing Development Company Limited, through Authorised Representative, Office at : E-Block, Voltas Compound, T. B. Kadam Marg, Chinchpokli, Mumbai-400033 and Corporate Office at Intellion Edge, Sector 72, Gurugram, Haryana

.....Appellant

Versus

1. Anil Sharma, S/o Ramji Lal Sharma
2. Smita Joshi W/o Anil SharmaBoth residents of #6A, Tower-9, Central Park-2, Sohna Road, Sector 48, Gurugram, Haryana-122002

.....Respondents

Coram: **JusticeRajanGupta** **Chairman**
 DineshSinghChauhan **Member(Technical)**

Argued by: Mr. Siddhant Arora, Advocate,
 fortheAppellant-Allottees.

Ms.Sandhya Gaur,Advocate
for respondent No. 1.
Mr. Dhruv Lamba, Advocate for HRERA-
Gurugram-respondent No. 2.

ORDER:

RAJANGUPTA,CHAIRMAN:

This order shall dispose of above-mentioned two appeals, as common questions of law and facts are involved therein. However, the facts have been extracted from Appeal No. 477 of 2023.

2. Present appeal is directed against order dated 30.05.2023, passed by the Authority¹. Operative part thereof reads as under:

“H. Directions of the authority

24. 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.98,56,858/- after deducting 10% as earnest money of the basic sale consideration of Rs.3,84,03,300/- with interest at the prescribed rate i.e., 10.70% on the balance amount, from the date of surrender/filing of the compliant i.e., 09.01.2020 till date of actual refund.*
- 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.”*

3. Factual matrix of the case is that the complainants (allottees herein) were allotted a unit No.3201 measuring 4250 sq. feet in Tower-6 of the housing project floated by the

¹HaryanaRealEstateRegulatoryAuthority, Gurugram

respondent-promoter,namely,“Tata Primanti”, Sector 72,Gurugram. Total sale consideration of the unit was Rs.3,65,50,000/-, out of which, complainants had paid Rs.98,56,858/-. This unitNo.3201 was substituted with unit No.3001 of the same size. On physical inspection of unit No.3001, it was found to be of a smaller size, where upon, the complainants took up the matter with the promoter, through various e-mails. Vide e-mail dated 07.03.2019, the promoter was informed that smaller size of the unit now being offered is not suitable and amount of Rs. 98,56,858/- paid by the complainants be refunded to themalongwith interest. However, vide email dated 02.04.2019,respondent-promoter refused to refund the same.The allottees thereafter preferred a complaint before the Authority praying that the respondent-promoter be directed to refund the amount of Rs. 98,56,858/- along with prescribed rate of interest from the dates of respective payments till realization.

4. The promoter contested the complaint by alleging that vide application form dated 26.03.2017, complainants booked unit No.3201 measuring 4250 sq. feet on 31stfloor in Tower 6 for a total sale consideration of Rs.3,65,50,000/-.Occupation Certificate to the project was granted on 09.03.2018, well within the agreed period. Respondent-promoter issued offer of possession vide letter dated 19.03.2019 for possession of the original unit and also asked for payment of balance sale price and other charges. Complainants requested for transfer of booking from unit No.3201 to another unit No.3001 in the project. The request was for transfer of the unit and not

for substitution. So, complainants submitted fresh application form on 20.03.2018 towards booking of new unit no. 3001 in the said project having carpet area of 2271.15 sq. feet for total sale amount of Rs. 3,84,03,300/- excluding club and other charges. The respondent-promoter shared draft of Apartment Buyer Agreement vide letter dated 26.04.2018 but the complainants did not sign the same. As per agreed terms of allotment of the new apartment, the complainants were required to pay 75% being balance sale consideration at the time of offer of possession i.e. by June, 2018. However, on request of complainants, respondent-promoter granted extension for payment by March, 2019. The complainants, with ulterior motive, addressed e-mails on 30.11.2018 and 01.12.2018 and insisted for allowing to make payment by end of 2019. The said e-mails were duly replied and complainants were informed that no further extension beyond March, 2019 can be granted. The complainants did not pay the amount of balance sale consideration. They are not entitled to the refund of the amount.

5. Upon hearing both parties and perusal of the record, the Authority issued the directions vide the impugned order dated 30.05.2023, already reproduced in para 2 of this order.

6. Aggrieved thereby, both parties have filed cross-appeals before this Tribunal, raising various contentions.

7. The promoter primarily assailed the order on the ground that the Authority erred in ordering refund of the paid-up amount after deducting 10% of earnest money and further erred in granting interest on the balance

amount as default was entirely on the part of the complainants. The promoter had completed the project, granted Occupation Certificate and offered possession of the unit within the agreed time but complainants did not come forward to take possession as they were not having requisite balance sale consideration and opted delay tactics

8. On the other hand, Ld. Counsel for the allottees contended that the unit originally allotted to the allottees was unilaterally changed by the promoter and a unit, much smaller in size, was allotted by wrongly projecting the same to be of the same size as the original allotted unit. This fact came to the knowledge of the complainants on physical inspection of the unit and was clarified by the architects who took measurements of the new unit. The new smaller unit being not suitable to the complainants, they asked for refund of the paid up amount with interest, which was wrongly declined by the promoter. The fault being entirely of the promoter and it having tried to give a new unit with a smaller carpet area to the complainant-allottees, was liable to refund the entire paid-up amount to the complainants without any deduction.

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

10. Order dated 04.07.2022, was passed by the Authority directing that possession of the unit be handed over to the allottees and rejecting the plea of the complainants seeking refund of the paid up amount. Operative part thereof reads as under:

“In the instant case, the complainant-allottee was first allotted unit no. 3201 in Tower-6 and was offered for possession on 19.03.2018. But the allottee requested for transfer of the said unit to new unit no. 3001 in Tower-6

which was complied by the respondent. The payment made for the old unit was then transferred to the new unit. The complainant had paid 25% of the total consideration as stipulated under the payment plan. The rest 75% was to be paid after the offer of possession was made. The complainant, however, when the offer of possession was made for the old unit opted not to pay the remainder amount and rather requested to transfer the unit. Accordingly, the deadline for payment of balance consideration for the new unit was set on 28.06.2018 but the respondent allowed the complainant to make payments by March 2019. the complainant requested for further extension vide mails dated 30.11.2018 and 01.12.2018 and also sought to clarify on transfer of the booked apartment to the third party. The Respondent communicated to the complainant its inability to further gave extension of payment of remaining consideration. The complainant vide email dated 05.12.2018 inquired about charges that would be deducted on cancellation of the unit. From the above mentioned facts, it becomes clear that the complainant has approached this authority with unclean hands. The complainant was unable to arrange money and thus had requested for further extension for payment of the same. The complainant then also inquired about cancellation charges indicating his intent to cancellation. But when the same was rejected by the respondent, it started raising allegations regarding size of the unit. The LC Report submitted to this authority on 07.11.2021 cannot be relied upon as it has not calculated the area of the study when measuring the size of the master bedroom. Thus, the contention of the complainant regarding size of the master bedroom cannot be taken into consideration. Hence, the plea of the complainant seeking refund of the paid-up amount is rejected. However, the complainant is directed to pay the remaining sale consideration and take possession of the unit failing which the respondent can proceed under law.”

11. It appears that the allottees moved an application for clarification thereafter, whereupon the impugned order as detailed in para no.2 of this order was passed. There is no provision of law under which the order passed earlier can be reviewed. The origin of the application seeking clarification can only be traced under Section 39 of the Act. However, scope of clarification under Section 39 of the Act is very limited wherein only clerical/typographical errors can be corrected. There is absolutely no scope for re-writing the order or change the nature of the relief already granted.

12. It is inexplicable why in the instant case, the Authority has acted in a manner that it has not only changed the complexion of the order passed earlier but the entire purport thereof while maintaining the same number of complaint i.e., Complaint No.113 of 2020. It has, in fact, passed another order in the same complaint. It appears that in these circumstances, Chairman of the Authority needs to be given liberty to hold appropriate enquiry into the matter. Ordered accordingly.

13. The explanation submitted on behalf of RERA, Gurugram, does not impress this Bench. In view of the contradictory orders passed by the Authority in violation of the procedure, we reiterate our observation regarding liberty to the Chairman to hold an enquiry and ensure that judicial propriety is maintained and such practice is not resorted to in future.

14. In view of the above, the orders dated 04.07.2022 and 30.05.2023 passed by the Authority are,thus, held to be unsustainable and are hereby set aside. The matter is remanded to the Authority for decision afresh expeditiously, in any case, not later than 3 months.

15. Both the appeals are accordingly disposed of.
16. Parties to appear before the Authority below on 16.09.2026.
17. The amount of pre-deposit made by the promoter in Appeal No. 674 of 2023 in terms of proviso to Section 43(5) of the Real Estate (Regulation and Development) Act, 2016 along with interest accrued thereon, be remitted to the Authority, to be retained by it till the final decision of the complaint.
18. Copy of this order be sent to the parties, their counsel and the Authority below.
19. Files be consigned to the records.

Justice Rajan Gupta
Chairman,
Haryana Real Estate Appellate Tribunal

Dinesh Singh Chauhan
Member (Technical)

August 17,2026
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