BEFORE THE HARYANA REAL ESTATE APPELLATE TRIBUNAL

Date of Decision: August31, 2026

(1) Appeal No. 815 of 2025

HCBS Developments Limited having Registered office at Unit No. 69, 70, MGF Metropolis, MG Road, Gurugram.

Appellant-promoter.

Versus

Shubham Kumar R/o H. No. 444/3, Near Prem Sarovar Mandir, Sector 12A, Prem Nagar, Gurugram, Haryana.

Respondent-allottee.

(2) Appeal No. 816 of 2025

HCBS Developments Limited having Registered office at Unit No. 69, 70, MGF Metropolis, MG Road, Gurugram.

Appellant-promoter.

Versus

Hritik Kumar R/o H. No. 193/3, Village Daultabad (53), Gurugram.

Respondent-allottee.

CORAM:

Justice Rajan Gupta **Chairman**
Dinesh Singh Chauhan **Member (Technical)**

Present: Mr. Sahil Dalal, Advocate for
Mr. Harshit Batra, Advocate,
for the appellant-promoter.

Mr. Yaseen Sethi, Advocate,
for the respondent-allottees.

O R D E R:

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. 815 of 2025.

2. Present appeal is directed against order dated 28.03.2025, passed by the Authority at Gurugram[1] whereby Complaint No. 3179 of 2024 filed by the allottee was disposed of with the following directions:-

> *"**G. Directions of the Authority:***
> *27. 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 promoters as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016:*
> *i. The cancellation letter dated 24.01.2025 is hereby set aside. The respondent is directed restore the allotted unit of the complainant within a period of 30 days from the date of this order.*
> *ii. The complainant shall make the outstanding payment within six (6) weeks, along with any applicable delay penalty as per Sections 19(6) and 19(7) of the Act. Subsequent instalments shall be paid as per the agreed terms in the BBA.*
> *iii. The respondent is directed to provide a revised statement of account to the complainant within 15 days from the date of this order.*
> *iv. The respondent/promoter shall not charge anything from the complainant which is not the part of the buyer's agreement.*
> *28. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.*
> *29. The complaint and application, if any, stands disposed of.*
> *30. File be consigned to registry."*

3. Factual matrix of the case is that the appellant–promoter launched an affordable Group Housing Project namely, "Auroville" in Sector–103, Gurugram, Haryana, wherein unit bearing No. 124F on 12th Floor in Tower–F, having 640.67 sq. ft. as carpet area and 110.44 sq. ft. as balcony area, was allotted to the respondent–allottee vide allotment letter dated 21.01.2022. Apartment Buyer Agreement was executed between the parties on 14.03.2023. As per agreement, due date of possession comes out to be 30.07.2026. The total sale consideration of the unit was ₹28,18,722/- , out of which, the respondent–allottee had paid ₹11,27,489/- and had been making payments in accordance with the payment plan mentioned in the brochure of the project as payment

[1] Haryana Real Estate Regulatory Authority, Gurugram.

plan was not annexed with the agreement. Respondent–allottee approached the Authority by filing complaint, alleging that the appellant–promoter had concealed the payment plan which is mandatorily required to be annexed with the agreement. It was further alleged that the respondent–allottee had opted for a construction-linked payment plan and despite this, the appellant-promoter kept on raising demands which did not correspond to the actual stage of construction, thereby such demands were unauthorised and not in conformity with the agreed construction-linked payment schedule.

4. Stand of the appellant-promoter before the Authority was that the respondent-allottee had opted for a construction–linked payment plan and the promoter had been raising demands strictly in accordance with the payment plan annexed with the allotment letter. It was further contended that the respondent-allottee was a habitual defaulter having failed to pay installments from December 2023 onwards and in view of such defaults, the promoter was entitled to cancel the allotment.

5. During the pendency of the complaint, appellant-promoter cancelled the unit on 24.01.2025 due to failure of respondent-allottee to comply with the multiple demand letters followed by reminders issued by the appellant-promoter.

6. After considering rival contentions of the parties, the Authority disposed of the complaint vide the impugned order, operative part whereof has been reproduced in para 2 of this order.

7. Aggrieved by the impugned order, the appellant–promoter has preferred the instant appeal before this Tribunal. It is primarily contended that the Authority erred in granting the relief of restoration of allotment after setting aside the cancellation as such relief was never sought by the respondent–allottee in his complaint. It is further contended that the cancellation dated 24.01.2025 was effected in

accordance with the procedure prescribed under the Affordable Housing Policy, 2013 and appellant–promoter has also refunded the amount to the respondent–allottee on 03.02.2025, including the payments made after the cancellation.

8. On the other hand, learned counsel for the respondent–allottee has contended that the Authority has rightly passed the order of restoration of allotment after setting aside the cancellation dated 24.01.2025, which was effected during the pendency of the complaint despite the clear directions contained in the Authority's order dated 24.01.2025 passed in the presence of counsel for the appellant–promoter, whereby the appellant–promoter was restrained from terminating the allotment and creating third party rights in the subject unit.

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

10. The primary question, that arises for consideration before this Bench is, whether the appellant–promoter could validly cancel the allotment of the respondent–allottee during the pendency of complaint, particularly when the dispute pending before the Authority directly concerned the validity of the demands raised by the appellant-promoter and the proposed action of cancellation.

11. The plea of the appellant-promoter that Authority granted relief which was not specifically prayed for, is misconceived. In the present case, the respondent–allottee had challenged the payment demands on the ground that they were not relatable to the actual stage of construction and that the payment plan had not been annexed to the Apartment Buyer Agreement. The apprehension of cancellation was also expressly raised before the Authority. Therefore,

the respondent-allottee's continued entitlement to the allotted unit was fundamentally connected with the subject matter of the complaint.

12. It is undisputed that on 24.01.2025, the Authority had expressly directed the appellant–promoter not to terminate the allotment and not to create third-party rights in respect of the subject unit. The said order was passed in the presence of learned counsel representing the appellant–promoter. Despite being fully aware of the said direction, the appellant proceeded to issue the cancellation letter on the very same date. Such action, irrespective of the appellant's assertion that the cancellation was otherwise permissible under the Affordable Housing Policy, 2013, cannot be sustained. A party cannot be permitted to defeat or overreach an order passed by the Authority by taking unilateral steps during the pendency of the very proceedings in which the rights of the parties are under consideration.

13. The appellant-promoter has further contended that the payment plan was annexed to the allotment letter and that demands were raised strictly in accordance with the said plan. However, it is also evident from the records that the payment plan was not annexed with the Apartment Buyer Agreement (ABA). In these circumstances, the demands raised without annexing the payment plan with the ABA are themselves invalid, and consequently, the cancellation effected due to the respondent–allottee's alleged failure to comply with such illegal demands is ultimately unsustainable in law.

14. The subsequent refund allegedly made on 03.02.2025 does not cure the illegality attached to the cancellation. A unilateral refund after cancellation, particularly, when the cancellation itself was

made in breach of a subsisting restraint order, cannot extinguish the respondent–allottee's rights in the subject unit.

15. We find no legal infirmity or procedural irregularity in the order passed by the Authority warranting interference by this Tribunal.

16. In view of the above discussion, the appeals are without any merit and are hereby dismissed.

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

18. Files be consigned to records.

Justice Rajan Gupta,
Chairman,
Haryana Real Estate Appellate Tribunal

Dinesh Singh Chauhan
Member (Technical)

August 31, 2026/mk