BEFORE THE HARYANA REAL ESTATE APPELLATE TRIBUNAL

Appeal No. 685 of 2023

Date of Decision: November 21, 2026

M/s Ashiana Housing Ltd. having Office at Block 1, 8th Floor, Vatika Business Park, Sohna Road, Sector-49, Gurugram-122018.

...Appellant-promoter

Versus

Avinash Chandra Varshaney R/o B-503, Chitrakoot Apartments, Plot No. 9, Sector-22, Dwarka, New Delhi-110077.

...Respondent-allottee

CORAM:

Justice Rajan Gupta **Chairman**
Dr. Virender Parshad **Member (Judicial)**

Present: Mr. Venket Rao, Advocate, and
Mr. Pankaj Chandola, Advocate,
for the appellant.

Mr. Pranjal P. Chaudhary, Advocate,
for the respondent.

O R D E R:

RAJAN GUPTA, CHAIRMAN

Present appeal is directed against order dated 18.07.2023 passed by the Authority at Gurugram[1]. Operative part thereof reads as under:

> *"**H. Directions of the Authority:***
>
> *37. 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/promoter is directed to refund the paid-up amount of Rs. 19,56,090/- to complainant-allottee after deducting 10% as earnest money of the basic sale consideration of Rs. 63,93,917/- with interest at the prescribed rate i.e., 10.75% on such balance amount, from the date of cancellation i.e., 28.06.2019 till the date of realization.*

[1] Haryana Real Estate Regulatory Authority, Gurugram.

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.

38. Complaint stands disposed of.

39. File be consigned to the registry."

2. Factual matrix of the case is that the respondent-allottee was allotted unit No. M-1109 on the 11th floor of Tower B-3, measuring 1,275 sq. ft., in the project namely "Ashiana Anmol" situated at Sector-33, Gurugram, vide allotment letter dated 21.09.2017 against the total sale consideration of Rs. 63,93,917/-. The respondent-allottee had previously paid an amount of Rs. 19,56,090/- towards an initial booking in the project "Ashiana Nirmay", Bhiwadi, Rajasthan, which sum was duly transferred to the project "Ashiana Anmol" pursuant to the respondent-allottee's request dated 17.08.2017 and adjusted against the consideration of the newly allotted unit. Subsequently, the agreement for sale dated 14.10.2017 was executed between the parties. As per Clause 7.1of the agreement, possession was to be delivered on or before October 2019. Occupation Certificate was granted to the project on 19.06.2019. The appellant-promoter issued multiple demand letters and reminders between 2017 and 2019 seeking payment of the outstanding dues; however, upon the respondent-allottee's failure to discharge the financial liability, the allotment was cancelled vide letter dated 28.06.2019. The respondent-allottee thereafter instituted a complaint before the Authority on 27.06.2022, seeking refund of the deposited amount along with interest and litigation costs.

3. The stand of the appellant-promoter before the Authority was that the respondent-allottee committed continuous default in making payment of the outstanding installments despite issuance of

repeated reminders and demand notices. It was further submitted that the Occupation Certificate to the project was duly granted on 19.06.2019, well prior to the agreed possession deadline of October 2019, and therefore no delay or default could be attributed to the promoter. The appellant-promoter also pleaded that the cancellation of the allotment was entirely lawful under the provisions of the agreement for sale, and conveyed its willingness to refund an amount of Rs. 4,95,728/- following permissible contractual deductions.

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-promoter preferred the instant appeal before this Tribunal. The principal grievance of the appellant is that the Authority erred in directing refund of the entire paid-up amount after deducting only 10% of the basic sale consideration as earnest money, despite the respondent's alleged default in making payment of the balance sale consideration. It further contended that under Clause 7.3 of the agreement, the promoter is authorized to forfeit double the earnest money, along with delayed payment charges and taxes remitted to the concerned authorities, in the event of cancellation and refund the balance amount without any interest.

6. On the other hand, ld. counsel for the respondent-allottee has contended that the Authority has rightly passed the impugned order. The amount paid by the respondent-allottee remained with the appellant-promoter and he was entitled to refund and interest thereon.

7. We have heard the learned counsel for the parties and carefully examined the record of the case.

8. The record establishes that the appellant-promoter issued several demand letters and reminders to the respondent-allottee for payment of the outstanding installments. Despite such demands, the respondent-allottee failed to discharge its payment obligations under the Agreement for Sale. Consequently, the appellant-promoter cancelled the allotment of the unit vide letter dated 28.06.2019. Once the allotment was cancelled, the appellant-promoter became obliged to refund the amount deposited by the respondent-allottee, subject to permissible deductions in accordance with law.

9. The principal question for the consideration is whether the promoter was entitled to deduct more than 10% of the basic sale consideration towards earnest money, delayed payment charges, taxes and other charges, as claimed under Clause 7.3 of the Agreement for Sale. In our considered view, the Authority has rightly restricted the deduction to 10% of the basic sale consideration. It is well settled that, notwithstanding any contractual stipulation to the contrary, the appellant-promoter cannot deduct an amount exceeding 10% of the basic sale consideration from the amount refundable to the allottee upon cancellation of the allotment. Any clause permitting forfeiture beyond 10% is unenforceable to that extent. This position is consistently followed by the Authority and this Tribunal, which have held that deduction from the refundable amount cannot exceed 10% of the sale consideration. The appellant-promoter could have avoided the liability of interest had it refunded the amount to the allottee immediately after cancellation of the unit, which was not done. The amount remained with the promoter and utilised by it.

10. In light of the foregoing discussion, we find no legal infirmity or procedural irregularity in the order passed by the Authority warranting interference by this Tribunal.

11. Accordingly, the appeal, being devoid of merit, is dismissed.

12. The amount deposited by the appellant-promoter with this Tribunal along with accrued interest thereon, in order to comply with the provisions of Section 43(5) of the Act be remitted to the Haryana Real Estate Regulatory Authority, Gurugram for disbursement to the respondent-allottee in accordance with law and Rules, subject to tax liability, if any.

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

14. File be consigned to records.

Justice Rajan Gupta,
Chairman,
Haryana Real Estate Appellate Tribunal

Dr. Virender Parshad
Member (Judicial)

November 21, 2026/mk