

BEFORE THE HARYANA REAL ESTATE APPELLATE TRIBUNAL

Appeal No.722 of 2022

Date of Decision: 21.07.2025

1. Rajiv Shukla,

2. Shivani Kapoor,

Both residents of C-35, SF, East Nizamuddin, New Delhi – 110 013.

Appellants

Versus

1. Godrej Properties Limited, Registered Office at Godrej One, 5th Floor, Pirojsha Nagar, Eastern Express Highway, Vikhroli (East), Mumbai– 400 079, Maharashtra

2. Oasis Landmarks LLP, Godrej One, Registered Office at Godrej One, 5th Floor, Pirojsha Nagar, Eastern Express Highway, Vikhroli (East), Mumbai– 400 079, Maharashtra, also at 3rd Floor, UM House, Tower A, Plot No. 35, Sector 44, Gurugram – 122 002.

3. Oasis Buildhome Pvt. Ltd., 19, Lotus Enclave, Parwana Road, Pitampura, NewDelhi – 110 034 also at 19, Maulana Azad Society, Parwana Road, Pitampura, New Delhi – 110 034.

Respondents

CORAM:

**Justice Rajan Gupta
Shri Rakesh Manocha**

**Chairman
Member (Technical)**

Argued by: Mr.Rajiv Shukla, one of the appellants along with
Ms. Mehak Sawhney, Advocate,

Mr. Saurabh Gaba, Advocate
for the respondents

O R D E R:

RAJAN GUPTA, CHAIRMAN:

Present appeal is directed against order dated 01.08.2022
passed by the Authority¹, operative part whereof reads as under :

- i. *The respondents-promoters are directed to refund the amount after deducting 10% of the sale consideration of the unit being earnest money as per regulation*

¹Haryana Real Estate Regulatory Authority, Gurugram

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(Forfeiture of earnest money by the builder)
Regulations, 2018 within 90 days from the date of
this order along with an interest @ 9.80% p.a. on the
refundable amount, from the date of cancellation i.e.
29.06.2018 till the date of realization of payment ;*

- ii. A period of 90 days is given to the respondents to comply with the directions given in this order and failing which legal consequences would follow.*

2. As per averments made in the complaint, complainants booked a apartment measuring 1779 sq. ft. in the project, namely, “Godrej Icon” in Sector 89A/88A, Gurugram with amenities like Helipad, Skywalk etc. floated by M/s Godrej Properties Ltd.-respondent No.1 against total sale consideration of Rs.1,37,27,436/-. At the time of booking of the said apartment, allottees paid a sum of Rs.5,00,000/- by way of cheque. Provisional allotment letter dated 30.10.2015 for the aforesaid apartment was issued by respondent No.2 in terms of which, BBA² was to be signed. No BBA was ever sent by the respondents and got executed from the allottees. Vide e-mail dated 18.01.2017, the respondents wrongly stated that BBA was sent on 27.12.2016, which fact was denied by the allottees in a revert e-mail. Stand of the allottees is that they were shown draft BBA for the first time on 01.10.2013 in which none of the amenities like Helipad and Skywalk were mentioned. It was conveyed by the allottees that if these amenities are not to be provided, then, total paid amount along with interest be refunded to them.

3. Thereafter, allottees received letters dated 16.05.2018 and 06.06.2018 from respondent no. 2 mentioning

² Builder Buyer's Agreement

therein that they intend to revise the building plan and also change the developer. Allottees filed written objections to DTCP, Gurugram in this respect. Out of ire, the respondents issued letter dated 29.06.2018 illegally cancelling the allotment and forfeiting the amount of Rs. 28,81,876.20 deposited by the allottees.

4. The respondent-promoter contested the complaint by raising objections that the project was being developed by Oasis Landmarks LLP-respondent no. 2 wherein, Godrej Properties Ltd.-respondent no. 1 was a partner. Respondents having entered into a development agreement with the land owner i.e. Oasis Buildhome Pvt. Ltd. on 22.12.2014 pursuant to which, Oasis Landmarks LLP is entitled to undertake development of Group Housing Project, "Godrej Icon". Allotment letter dated 30.10.2015 was issued to the allottees and the committed delivery date for the apartment was 01.03.2020. However, the allottees failed to make timely payments despite various letters/reminders. As on 30.06.2018, a sum of Rs.86,82,552/- towards principal amount and Rs.16,53,106/- towards interest was outstanding against the allottees. Due to failure of the allottees to make the payment despite repeated letters/reminders, respondents were constrained to terminate the booking vide letter dated 29.06.2018 and forfeit the amount.

5. The learned Authority, after considering the pleadings of the parties, passed the impugned order directing the respondent-promoter to refund the amount after deducting 10% of the sale consideration. Aggrieved with the said order, present appeal has been preferred.

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

7. A perusal of application form shows that the same depicts the name of Oasis Landmarks LLP as the developer. Further, a perusal of letter of allotment dated 30.10.2015 shows that Oasis Landmarks LLP is the developer and made allotment of the apartment in favour of the allottees. Furthermore, the invoices regarding the payments made by the allottees have also been issued by Oasis Landmarks LLP. Vide e-mail dated 21.08.2015, respondents reiterated relationship between Oasis Landmarks LLP and Godrej Properties Ltd. and thus, clarified that Godrej Properties Ltd. is managing partner responsible for the development. After the issuance of this e-mail dated 21.08.2015, the allottees made payment of Rs.23,81,897/- on 07.09.2015 and 15.10.2015 and thereafter, letter of allotment was issued on 30.10.2015. All these facts go to show that the allottees were very much aware that Oasis Landmarks LLP is developing the project, namely, Godrej Icon and respondent no. 1-Godrej Properties Ltd. is a partner therein and the project is being developed as per development agreement dated 22.12.2014 entered with Oasis Buildhome Pvt.Ltd. (land owning entity). The plea regarding misrepresentation about developer/promoter is, thus, without any merit.

8. So far as the aspect of non-execution of BBA is concerned, claim of the respondents is that a copy of BBA was sent to the allottees and an e-mail dated 25.11.2016 was also sent in this respect, which has been denied by the allottees. However, the allottees admitted that they had a meeting in the

office of respondent no. 1 on 01.11.2017 where they were shown draft agreement, wherein, amenities like Helipad and Skywalk were not mentioned and they asked the representatives of the respondents about the same to which, no clear answer was given. It is worth mentioning that on one hand, the allottees are claiming that they did not receive the BBA and on the other hand, alleging that BBA did not specify the amenities. It is worth considering that the respondents, vide e-mail dated 04.05.2018 again reiterated that they will specifically mention about these amenities in the BBA. So, there was no reason for the allottees not to execute BBA themselves and then take excuse that due to non-execution thereof, they intend not to comply with the agreed payment plan and seek refund of the amount already paid by them. Therefore, this contention of the allottees is also without any merit.

9. No other issue was pressed before us.

10. As a result of foregoing discussions, it is found that the respondents were within their right to cancel the allotment of the apartment in favour of the allottees. However, they were not justified in forfeiting the entire earnest money especially, in view of Regulation 11(5) of the Haryana Real Estate Regulatory Authority, Gurugram (Forfeiture of Earnest Money by the Builder) Regulations, 2018, which permits forfeiture of maximum 10% of the amount of earnest money.

11. Thus, the impugned order of the Learned Authority is found to be legal as well as valid and is hereby affirmed. Present appeal being without merits, is dismissed.

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12. Pending application(s), if any, also stand disposed of.
13. No order as to costs.
14. Copy of this order be supplied to the parties/their counsel and HRERA, Gurugram.
15. File be consigned to the records.

Justice Rajan Gupta
Chairman
Haryana Real Estate Appellate Tribunal

Rakesh Manocha
Member (Technical)

21.072025
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