

BEFORE THE HARYANA REAL ESTATE APPELLATE TRIBUNAL

Appeal No. 153 of 2024

Date of Decision: September 25, 2025

(Pronounced at 10.00 AM)

(i) Puri Construction Pvt. Ltd.
(ii) Florentine Estates Private Limited
4-7B, Ground Floor, 15 & 17, Tolstoy Marg, New Delhi-110001

Appellants

Versus

(i) Atul Kumar Ninawat
(ii) Urmila Devi
Both R/o B-336, U.G.F., Mohan Garden, Uttam Nagar, New Delhi

Respondents.

CORAM:

**Justice Rajan Gupta
Shri Rakesh Manocha**

**Chairman
Member (Technical)**

Present: Ms. Tanika Goyal, Advocate for the appellants.
Mr. Pranjal P. Chaudhary, Advocate for the respondents.

O R D E R:

RAJAN GUPTA, CHAIRMAN:

Present appeal is directed against order dated 23.02.2024,
passed by the Authority¹. Operative part thereof reads as under:-

“G. Directions of the authority

22. 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 cancellation is held to be bad in the eyes of law and the subject unit is being restored.

¹ Haryana Real Estate Regulatory Authority, Gurugram

ii. The respondent-builder is liable to handover the possession of the subject unit to the complainants as per specifications of the allotment letter dated 24.07.2023 at the same rate at which the unit was earlier purchased within two months of this order.

iii. The complainants are directed to pay outstanding dues. The rate of interest chargeable from the complainant-allottee by the promoter, in case of default shall be charged at the prescribed rate i.e. 10.85% by the respondent-promoter which is the same rate of interest which the promoter shall be liable to pay the allottee, in case of default i.e. the delay possession charges as per section 2(za) of the Act.

iv. The complainants w.r.t. obligation conferred upon him under section 19(10) of Act of 2016, shall take the physical possession of the subject plot/unit, within a period of two months of the completion certificate or occupation certificate from the competent authority.

v. The respondent-builder shall not charge anything from the complainants which is not the part of the builder buyer agreement.

23. Complaint stands disposed of.

24. File be consigned to registry.

Dated:23.02.2024

*Sd/-
(Sanjeev Kumar Arora)
Member
Haryana Real Estate Regulatory
Authority, Gurugram"*

2. It appears that a project in the name and style of "Emerald Bay" was floated by the appellants-promoters in Sector-104, Gurugram. They were granted RERA Registration vide certificate No. 136 of 2017 dated 28.08.2017. As per record, the project was granted Occupation Certificate on 21.11.2018. The respondent-allottees were allotted a unit vide allotment letter dated 24.07.2023. Total sale consideration for the unit was

Rs.2,83,04,270/-. The respondent-allottees paid an amount of Rs.27,89,325/- to the appellant-promoters. Vide allotment letter, the respondent-allottees were also informed that it was a 'ready to move-in unit', thus they were asked to execute BBA² and complete rest of the formalities. As a result, copy of the BBA was sent to the allottees vide e-mail dated 10.08.2023. However, the respondent-allottees vide their reply dated 12.08.2023 suggested certain changes in the terms of BBA, as they wished to raise bank loan for purchasing the unit.

3. Stand of the appellant-promoters before this Bench is that a 'ready to move-in unit' had been allotted to the respondent-allottees and they were told that Conveyance Deed would be executed on the very next day, however, the respondent-allottees dilly-dallied. As a result, the appellant-promoters vide e-mail dated 06.09.2023 cancelled the unit and refunded principal amount of Rs.27,89,325/- along with interest @ 10.15% p.a. and TDS amount of Rs.28,175/-, total being Rs.28,53,959/-. After the refund was made, the respondent-allottees approached the Authority for setting aside the cancellation and allotment of the unit. It needs to be mentioned that by this time, BBA had not been executed between the parties. It appears that thereafter third party rights were created by the appellant-promoters in favour of someone else.

4. Counsel for the appellant-promoters submitted that the promoters had acted very promptly in the instant case. They issued the allotment letter on 24.07.2023 and sent BBA for signatures of the respondent-allottees on 10.08.2023. Since it was a 'ready to move-in unit', the appellant-promoters were ready to execute the Conveyance Deed on receipt of balance payment. However, the respondent-allottees dilly-dallied in execution of BBA itself and tried

² Builder Buyer's Agreement

to gain time by suggesting changes in the same. As per her, the respondent-allottees admitted that for remitting rest of the payment, they had to raise bank loan.

5. Counsel for the respondent-allottees, however, submitted that the respondent-allottees were not given any time to make the balance payment. The appellant-promoters unilaterally cancelled the unit. Changes suggested by the respondent-allottees in the BBA ought to have been incorporated therein. Thus, grave injustice had been caused to the respondent-allottees.

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

7. It is evident that the project was launched way back in the year 2013. It appears that appellant-promoters completed the entire project in 2018 itself and was granted Occupation Certificate on 21.11.2018. In view of this, 'ready to move-in units' were available with the appellant-promoters. The respondent-allottees applied against one of them and were successful. They paid 10% of the sale consideration as earnest money. However, on being asked to sign the BBA, they faltered. Instead of signing the BBA and making balance payment, they suggested changes in the same. Admittedly, they wanted to raise bank loan as the balance payment was not available with them at that time.

8. There appears to be substance in the plea of the appellant-promoters that had the respondent-allottees executed the BBA, entire transaction would have been completed as the appellant-promoters already had Occupation Certificate and unit was ready for being occupied. The respondent-allottees did not controvert the

assertion of the appellant-promoters that the unit was fully ready for handing over to enable the respondent-allottees to move in.

9. There is also weightage in the argument of the appellant-promoters that in the absence of BBA, there was no privity of contract between the parties.

10. Besides, there is no denial to the fact that by now third party rights have been created by the appellant-promoters and the entire amount paid by the respondent-allottees has been refunded along with interest @ 10.15% p.a. thereon. Despite the fact that the respondent-allottees appear to be the defaulters in the instant case, the appellant-promoters have neither forfeited the earnest money nor made any deduction from the amount refunded.

11. Under these circumstances, we feel that the order under appeal is unsustainable. All the factors have not been taken into consideration by the Authority while passing the impugned order. The same thus, needs to be set aside. Ordered accordingly.

12. Appeal is allowed in aforesaid terms.

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

Rakesh Manocha
Member (Technical)
(joined through VC)

September 25,2025

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