



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	508 of 2024
Date of filing:	03.06.2024
First date of hearing:	05.08.2024
Date of decision:	01.12.2025

1. Manuj Sardana

S/o Madal Lal Sardana
R/o 22/302, 3rd floor,
Emmar Palm Hills,
Sector-77, Gurugram-122001

2. Bharat Sardana

S/o Bhim Sain Sardana
R/o 22/302, 3rd floor,
Emmar Palm Hills,
Sector-77, Gurugram-122001

.....COMPLAINANTS

Versus

Oasis Landmark LLP

Godrej One, 5th Floor,
Pirojshanagar, Eastern Express Highway,
Vikhroli (East), Mumbai-400079

...RESPONDENT

Present: - Adv. Tanya, counsel for complainants through VC.

Adv. Saurabh Guaba, counsel of respondent through VC.

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ORDER (NADIM AKHTAR –MEMBER)

1. Present complaint has been filed by the complainants on 03.06.2024 under Section 31 of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred as RERA, Act of 2016) read with Rule 28 of the Haryana Real Estate (Regulation & Development) Rules, 2017 for violation or contravention of the provisions of the RERA, Act of 2016 or the Rules and Regulations made thereunder, wherein it is inter-alia prescribed that the promoter shall be responsible to fulfil all the obligations, responsibilities and functions towards the allottee as per the terms agreed between them.

A. FACTS OF THE COMPLAINT

2. That the Respondent launched a project under the name and style of “Godrej Green Estate”, situated at *Sector-34, Sonipat, Haryana* (hereinafter referred to as the “*Project*”), registered under License No. 110 of 2022 dated 10.08.2022 for the development of an *Affordable Plotted Colony* under the Deen Dayal Jan Awas Yojna (DDJAY) Policy on the land falling in Sector-34, Sonipat.

3. That in the year 2022, the Respondent commenced promotion and advertisement of the said project “Godrej Green Estate” through aggressive marketing campaigns, both in print and digital media, as well as through brokers and sales representatives. The Respondent made several alluring



claims regarding the location, amenities, and timely possession of plots in the project.

4. That the representatives and authorized marketing agents of the Respondent approached the Complainants and made various representations regarding the assured timelines, world-class facilities, and the overall credibility of the Respondent company. The Complainants, being impressed by such representations and believing them to be true, decided to book a residential plot in the aforesaid project for their personal use.
5. That the Complainants, relying on the assurances and representations of the Respondent, booked the Plot No. B-093 admeasuring 145.59 sq. yds. in the said project and submitted the Application Form dated 27.10.2022, which is annexed herewith as Annexure C1.
6. That the Complainants made timely payments towards the said booking and have already paid a total sum of ₹20,01,990/- (Rupees Twenty Lakhs One Thousand Nine Hundred Ninety Only) to the Respondent up to 17.03.2023. The Statement of Account/Ledger dated 08.05.2023 is annexed herewith as Annexure C2.

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The details of the payments made are as follows:

S.No	Particulars	Date of Payment	Amount (₹)
1.	Application Money	30.09.2022	5,94,000.00
2.	Within 18 Days	30.09.2022	3,97,167.04
3.	Within 45 Days	07.10.2022	9,91,167.04
4.	On completion of underground cabling works	17.03.2023	19,655.92
Total			₹20,01,990.00

7. That the Respondent, in violation of Section 13(1) of the Real Estate (Regulation and Development) Act, 2016, accepted more than 10% of the total sale consideration from the Complainants *without first executing a written and registered Agreement for Sale (Builder Buyer Agreement)*. The said section expressly prohibits a promoter from accepting more than 10% of the cost of the plot/apartment/building as advance without executing and registering such an agreement.
8. That only after receiving the aforesaid amount, the Respondent shared a draft Builder Buyer Agreement (“BBA”) with the Complainants. The said draft was *completely one-sided, arbitrary, and non-negotiable*, as the Complainants were not permitted to make any alterations, additions, or deletions in the same.



9. That upon perusal of the draft BBA, the Complainants immediately raised objections to several arbitrary and unfair clauses therein. However, the Respondent's officials threatened that failure to execute the Agreement would lead to *forfeiture of the entire booking amount already paid*. Left with no alternative and fearing loss of their hard-earned money, the Complainants were coerced into signing the Builder Buyer Agreement dated 23.02.2023 under protest. The copy of the executed BBA is annexed herewith as Annexure C3.
10. That after execution, upon a detailed reading of the BBA, the Complainants realized that it contained numerous arbitrary, oppressive, and one-sided terms which are heavily tilted in favour of the Respondent. Such terms clearly constitute *unfair trade practice* and are contrary to the spirit and intent of the RERA Act, 2016.
11. That the incorporation of such one-sided and unreasonable clauses has been condemned by the Hon'ble Courts in several judgments, including:

1. Neelkamal Realtors Suburban Pvt. Ltd. vs. UOI & Ors., SCC OnLine Bom 9302, wherein it was held that such standard-form agreements drafted solely by builders are overwhelmingly one-sided and unjust; and



2. Pioneer Urban Land & Infrastructure Ltd. vs. Govindan Raghavan, (2019) 5 SCC 725, where the Hon'ble Supreme Court held that one-sided and unfair terms in a Builder Buyer Agreement amount to *unfair trade practice* under Section 2(r) of the Consumer Protection Act, 1986.
12. That the Hon'ble Supreme Court in IREO Grace Realtech Pvt. Ltd. vs. Abhishek Khanna & Ors., Civil Appeal No. 5785 of 2019, categorically held that a developer cannot compel an allottee to be bound by one-sided contractual terms, and such incorporation of arbitrary clauses amounts to an *unfair trade practice*.
13. That the arbitrary and unreasonable clauses in the Respondent's BBA include, inter alia:
 - Clause 2.11: Imposing an excessively high interest rate (2% above SBI MCLR) on any payment delay by the allottee, without any corresponding penalty on the promoter for delay in project delivery.
 - Clause 5.1: Giving the promoter unfettered discretion to adjust payments under any head of dues as it deems fit, denying the allottee the right to object or specify allocation.



- Clause 5.2.2: Allowing forfeiture of booking amount and interest dues on cancellation, contrary to the settled law which permits deduction of not more than 10% as earnest money.
- Clause 8.4: Unlawfully imposing both *maintenance charges* and *holding charges* (₹110 per sq. mtr. per month) even if possession is not taken, which is contrary to law and established precedents.
- Schedule V: Arbitrary double charging of ₹5,06,142.68/- under different heads (“Other Charges” and “Basic Infrastructure Charges”) for the same purpose, though such charges are barred under DDJAY Policy.

13. That such conduct clearly indicates the Respondent’s mala fide intention to exploit and mislead innocent buyers by coercing them into signing a pre-drafted and one-sided agreement and unlawfully charging amounts beyond permissible limits.

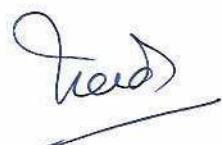
14. That aggrieved by these unfair practices, the Complainants, vide email dated 23.05.2023, requested the Respondent for *cancellation of the allotment* and *refund of the entire amount paid*, citing misrepresentation and coercion. The said email and subsequent communications between 23.05.2023 and 12.10.2023 are annexed as Annexure C4.

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15. That despite repeated reminders, Respondent failed to process the refund and continued to give false assurances to delay the matter. Left with no option, the Complainants served a Legal Notice dated 26.10.2023 upon the Respondent seeking refund of the amount along with interest. The copy of the said notice is annexed as Annexure C5.
16. That despite the lapse of considerable time, the Respondent has failed to refund the money, thereby causing immense *mental, emotional, and financial distress* to the Complainants. The conduct of the Respondent clearly amounts to breach of contract, unfair trade practice, and deficiency in service.

B. RELIEFS SOUGHT

17. Complainants have sought following reliefs:
 - i. To direct the Respondent to refund the total amount paid to the Complainants at the prescribed rate @ MCLR + 2% from date of each payment till actual realization of the amount.
 - ii. Penalty u/s 59/60/61 for violation of Section 13 of the Act.
 - iii. Pass any other relief/direction which the Hon'ble Authority deem fit and proper in the facts and circumstances of the present Complaint.

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C. REPLY ON BEHALF OF RESPONDENT

Respondent filed a detailed reply on 13.12.2024 pleading therein as under:

18. At the outset, the respondent submits that the present complaint is misconceived, false, frivolous, and has been filed with a malafide intent only to mislead this Hon'ble Authority and to conceal the Complainant's own contractual defaults. The Complainants have failed to make payments as per the Payment Schedule agreed under the Application Form, Allotment Letter, and Builder Buyer Agreement (hereinafter referred to as "BBA") and have also failed to come forward for timely registration of the said Agreement despite repeated reminders from the Respondent. The Complainants, after being fully aware of the terms and conditions of allotment, voluntarily executed all the contractual documents and were bound by their provisions. However, the Complainants defaulted in making timely payments, committed a material breach, and are now attempting to take undue advantage of their own wrong by seeking refund contrary to the contract.

- a. Failure of the complainants to make payments as per agreement*
19. The Complainants, after going through and understanding the Payment Schedule incorporated under the Cost Sheet, Allotment Letter and the BBA, voluntarily executed the same. Copy of the Cost Sheet is annexed herewith as



Annexure R2. That as per Clause 6 of the BBA, time was the essence of the contract, and the Complainants were obligated to make timely payments. However, the Complainants defaulted in making payments, thereby committing a material breach as contemplated under Clause 10.3 of the BBA. Despite repeated reminders, the Complainants failed to pay the due instalments towards the total sale consideration, and accordingly, the Respondent was constrained to issue a final reminder letter dated 03.05.2023. Copy of the said letter is annexed herewith as Annexure R6. Thus, the default lies entirely with the Complainants, and the Respondent has not committed any breach or deficiency. The Respondent has acted strictly in terms of the contract, and there is no violation of Section 13 of the RERA Act as alleged.

b. *Delay on the part of the complainants to execute and register the BBA*

20. Clause 19 of the Application Form categorically provides that if the Complainants fails to come forward for registration of the BBA, the Respondent shall be entitled to cancel the Application and forfeit the Booking Amount. That the Respondent, through emails and reminder letters dated 25.02.2023 and 05.03.2023, repeatedly requested the Complainants to execute and register the BBA. However, the Complainants failed to do so and thereby violated the agreed terms. Copies of the reminder letters are annexed as



Annexure R3. The Complainants have intentionally concealed such correspondence and have approached this Hon'ble Authority with unclean hands.

c. *Complainants misleading the Hon'ble Authority*

21. The Complainants, after doing independent research and due diligence, applied for allotment of a plot in the Respondent's project "Godrej Green Estate", situated at Sector 34, Sonipat, Haryana. The Complainants voluntarily executed the Application Form dated 30.09.2022, which clearly recorded that they were fully aware of the nature and scope of the project and that all information furnished by him was true and complete. Copy of the Application Form is annexed as Annexure R4. Pursuant thereto, the Allotment Letter dated 17.11.2022 was issued to the Complainants for Plot No. B093, for a total sale consideration of ₹1,00,09,948/. Copy of the Allotment Letter is annexed as Annexure R5. As per Clause 5 of the Allotment Letter, the Complainants were required to register the BBA within 15 days of issuance of the Allotment Letter, failing which the Respondent was entitled to cancel the allotment and forfeit the booking amount. However, the Complainants failed to comply despite reminders. Eventually, the Complainants executed the



Builder Buyer Agreement (BBA) only on 23.02.2023 after substantial delay.

Copy of the executed BBA is annexed as Annexure R6.

d. Contractual terms and default

22. As per Clause 2.5 and Clause 6 of the BBA, the Complainants were required to make payments as per the Payment Plan (Schedule VI) and it was expressly agreed that “time is the essence” for both parties. Further, Clause 10.3 of the BBA stipulates that in case of default in payments for more than three months, the Respondent is entitled to cancel the allotment and forfeit the Booking Amount (Earnest Money). The Booking Amount/Earnest Money, being 10% of the total sale consideration, was a genuine pre-estimate of loss and not a penalty, as provided under Clause 2.3.1, Clause 5.2, and Clause 8.6 of the BBA. The Complainants made only a part payment of ₹20,01,990/- and failed to pay the remaining balance. Instead, vide email dated 23.05.2023, the Complainants sought voluntary cancellation, admitting inability to pay. This clearly establishes that the default was solely on the part of the Complainants. The Respondent has strictly adhered to the terms of the Agreement and raised demands only as per the Payment Schedule incorporated under the BBA. The Respondent also obtained the Completion Certificate dated 29.03.2023 from the Directorate of Town and Country Planning, Chandigarh, Copy of which is

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annexed as Annexure R8. As on 27.11.2024, there is a principal outstanding amount of ₹39,49,315/- and interest outstanding is of an amount of ₹7,12,402/-, as per the Statement of Account and Interest Calculation annexed as Annexure R9 (Colly). Despite several demand and reminder letters (Annexure R10 Colly), the Complainants failed to clear dues and instead filed the present Complaint to avoid their liabilities.

e. *Losses suffered by the respondent*

23. The Respondent has suffered significant financial loss and opportunity cost due to non-payment by the Complainants. The Complainant's default deprived the Respondent of the right to sell the said plot to another genuine buyer who could have complied with the agreed payment terms. The Application Form, Allotment Letter, and BBA clearly defined that 10% of the sale consideration shall be treated as Earnest Money, meant to ensure performance of the buyer's obligations. In the present case, the Complainants having defaulted, the forfeiture of Earnest Money is strictly in accordance with the contract. The said amount represents a genuine pre-estimate of damages, and its forfeiture is lawful.

John
Ward

f. Complainants cannot take advantage of their own wrong

24. The Complainants, having defaulted in making timely payments and voluntarily sought cancellation, cannot now claim refund by invoking the equitable jurisdiction of this Hon'ble Authority. The Complaint is an afterthought, filed only to evade contractual obligations and extract undue financial benefit. Hence, it deserves to be dismissed with exemplary costs.

D. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANTS AND RESPONDENT

25. Learned counsel for the Complainants submitted that the Respondent wrongfully cancelled the allotment despite the Complainants having already paid a substantial amount. It is argued that no proper notice of default or opportunity to cure was ever served. Counsel contends that the Respondent violated Sections 13 and 11(4) of the RERA Act by demanding payments without executing a fair agreement and without showing proportionate progress of development. Counsel submits that the Complainants are entitled to refund of the entire deposited amount with interest.

26. Learned counsel for the Respondent argued that the Complainants repeatedly defaulted in making timely payments, despite several reminders. That the Builder Buyer Agreement clearly authorizes forfeiture of earnest money in the



event of default and empowers the developer to cancel the allotment. Counsel contends that the complaint is also premature, as the deemed date of possession is 31.03.2025, whereas the complaint was filed on 03.06.2024, before any delay in possession could arise. It is further argued that the Respondent acted strictly in accordance with the contractual payment schedule and is not liable to refund the amount except as per contractual terms.

E. ISSUES FOR ADJUDICATION

27. Whether the complainants are entitled for refund of the amount deposited by them along with interest in terms of Section 18 of RERA, Act of 2016?

F. OBSERVATIONS AND DECISION OF THE AUTHORITY

In light of the background of the matter as captured in this order and also the arguments submitted by the learned counsels for both the parties, the Authority observes as under:

28. That the complainants had booked a plot in the real estate project; “Godrej Green Estate” being developed by the promoter namely; “Oasis Landmark LLP” and in consonance to the same, complainants were allotted plot no. B-903, admeasuring 145.59 sq. yds. in the project known as “Godrej Green Estate” situated at Sector-34, Rathdhana Village, Sonipat, Haryana. The

Builder Buyer Agreement was executed between the parties on 23.02.2023.

Complainants have paid a total sum of ₹20,01,990/- against the total sale consideration of the unit amounting to ₹1,00,09,948/- . Respondent received a conditional Completion Certificate from the competent Authority on 29.03.2023. On 23.05.2023, complainants requested the respondent for refund vide letter dated 13.05.2023 sent to the respondent.

29. As per Clause 8.1 of the agreement for sale "*The promoter, based on the approved plans and specifications shall offer possession of the plot on or before 31.03.2025.....*" As clearly stated in the agreement, deemed date of possession as per agreement is **31.03.2025**.
30. The first issue to be adjudicated by the Authority is whether present complaint is maintainable before the Authority or not?
31. The complainant's request for a refund is based on the assumption that the developer has failed to deliver the property, even though clause 8.1 of the Builder-Buyer Agreement clearly specifies that possession of the plot is due on or before 31.03.2025 and complainants have filed this captioned complaint on 03.06.2024, which is prior to the deemed date of possession, and as per the terms of the agreement, developer is not in breach of any obligations related to possession. The Real Estate (Regulation and Development) Act, 2016

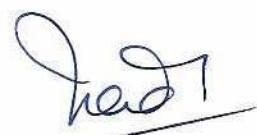


(RERA) specifically governs such disputes and outlines that complaints regarding possession or delivery of property can only be filed once the agreed possession date has passed. In this case the possession is legally due within the agreed timeframe and no default has occurred on part of respondent in delivering possession of booked unit. Moreover, RERA provides a structured framework for resolving such issues. However, it is pertinent to mention here that complainants are praying for refund of paid amount in terms of RERA Act, 2016 but the provisions of Section 18 (Return of amount and compensation) has not been yet invoked in present case due to the fact that respondent's inability to deliver the possession is not the reason to seek refund. Section 18 of RERA Act, 2016 is reproduced below for reference.

“18. Return of amount and compensation-(1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building-

- (a) in accordance with the terms of the agreement for sale, or as the case may be duly completed by the specified therein or*
- (b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason.*

He shall be liable on demand to the allottees, in the cases the allottee wishes to withdraw from the project, without prejudice to any other remedy available to return the amount received by him in respect of that apartment, plot or building as the case may be with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act.”

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Perusal of aforesaid provisions clearly provides that respondent-builder is liable to refund the paid amount with interest only if conditions prescribed in clause (a) and (b) exists between the parties. In present case, it is not the case that respondent is unable to deliver the possession. Fact is that complainants have not made payment in furtherance of buyer agreement and have already expressed their wish to withdraw from the agreement, that too before the deemed date of possession. Hence, claim of complainants for refund as per Section 18 of RERA Act, 2016 is not admissible.

32. The Authority has examined the pleadings, documentary record, and submissions made by both parties. It is not disputed that the Complainants were allotted a unit/plot in the Respondent's project and had deposited certain amounts towards the sale consideration. The Respondent contends that the Complainants failed to adhere to the agreed payment schedule and therefore the Respondent exercised its contractual right to cancel the allotment and forfeit the earnest money. The Complainants, on the other hand, alleges that the cancellation was premature, unjustified, and contrary to the provisions of the RERA Act.
33. The Authority observes that the Builder Buyer Agreement (BBA) and related documents executed between the parties classify 10% of the total sale



consideration as "Earnest Money". The Respondent relies on these clauses to justify forfeiture. Such clauses give the promoter a contractual right to retain earnest money in case of a material breach. However, the Authority must also consider the statutory scheme under the RERA Act, which mandates fairness, proportionality, and balance in enforcement of contractual obligations.

34. The Authority observes that the Respondent has placed on record certain reminders and communications issued to the Complainants regarding delayed payments. At the same time, the Respondent has not been able to establish that such communications were followed by strict compliance with the contractual mechanism of (i) issuance of default notices, (ii) grant of a reasonable cure period, and (iii) a final termination notice duly served on the Complainants. In absence of proof of proper service, the Authority cannot conclusively hold that the Complainants were afforded the full opportunity to rectify the alleged default.
35. The Authority also observes that while the Respondent asserts that instalment demands were made as per the payment plan, no corresponding evidence of proportionate progress of development, as contemplated under Section 11(4) and Section 13 of the Act, has been placed on record. This does not automatically negate the Respondent's contractual position, but it does limit



the extent to which the Respondent can rely upon payment delay as the sole ground for cancellation.

36. On the other hand, the Complainants have approached the Authority before the deemed date of possession, which computes to 31.03.2025 based on the contractual timeline. Ordinarily, such a complaint would be premature. However, since the Respondent has already cancelled the allotment and severed the contractual relationship prior to the possession date, a cause of action has arisen independently of possession delay. Therefore, the complaint cannot be dismissed solely on the ground of prematurity.
37. The Authority further notes that forfeiture of earnest money is permissible under law, but only to the extent of reasonable compensation. Judicial precedents interpreting Section 74 of the Contract Act and various RERA decisions emphasize that promoters cannot retain any amount exceeding the earnest money unless they demonstrate actual loss. In the present matter, the Respondent has not shown quantified loss beyond the earnest money. Likewise, the Complainants have also not established mala fides or arbitrary conduct on the part of the Respondent such as to warrant full refund without any deduction.



38. Thus, a balanced approach is required. While the Respondent is entitled to enforce contractual discipline and retain 10% earnest money, the Respondent cannot retain amounts beyond this limit in absence of demonstrated loss. At the same time, the Complainants cannot seek to recover the entire amount without deduction when the record reflects that there were indeed delays in payment at certain stages.

39. Moreover, in this complaint, the respondent allotted the plot to the complainants under the Deen Dayal Jan Awas Yojna, was obligated to refund the amount paid by the complainants in terms of provisions of Clause 5.2 of agreement. Said clause provides that if the complainants withdraw from the project without there being any default on the part of the respondent, then respondent shall be entitled to forfeit the booking amount and refund the balance amount without interest as per applicable laws. Booking amount as such is defined in clause 2.3.1 which provides that booking amount shall mean 10% of the total price. However, the respondent failed to process the refund till date. Therefore, both parties are at fault: the respondent for not processing the refund as required, and the complainants for prematurely seeking relief before the agreed possession date. The respondent should fulfill his obligation by processing the refund in terms of buyer agreement as stated



above in this paragraph and shall refund the amount after deducting 10% of total sale price, i.e. ₹1,00,09,948/- out of paid amount of ₹20,01,990/-.

40. In view of above-mentioned terms, Authority directs the respondent to refund the amount of ₹10,00,996/- to the complainants within 90 days of uploading of this order.

Disposed of. File be consigned to the record room after uploading of the order on the website of the Authority.



.....
NADIM AKHTAR
[MEMBER]