

BEFORE THE HARYANA REAL ESTATE APPELLATE TRIBUNAL

Appeal No. 662 of 2023

Date of Decision: September 25, 2026

Abhijeet Singh Ahluwalia R/o 350 Block M, New Generation Apartments, Kalgidhar Enclave, Dhakoli, Zirakpur, SAS Nagar, Punjab- 140603

...Appellant-allottee

Versus

M/s Oasis Landmarks LLP having Office at Godrej One, 5th Floor, Pirojshanagar, Eastern Express Highway, Vikhroli (East), Mumbai-400079; Also at 3rd Floor, UM House, Tower-A, Plot No. 35, Gate No. 1, Sector 44, Gurgaon-122002

...Respondent-promoter

Coram:

**Justice Rajan Gupta
Dr. Virender Parshad**

**Chairman
Member (Judicial)**

Present: Mr. Rajan Kumar Hans, Advocate
for the appellant.

Mr. Saurabh Gauba, Advocate,
for the respondent.

ORDER:

RAJAN GUPTA, CHAIRMAN

Present appeal is directed against order dated 26.07.2023 passed by the Authority¹ at Gurugram. Operative part thereof reads as under:

“G. Directions of the authority

20. 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 is directed to refund the paid-up amount of Rs. 53,82,000/- after deducting 10% of the sale consideration of Rs. 1,59,06,348/- with interest at the prescribed rate i.e., 10.75% p.a. on such balance amount, from the date of cancellation i.e., 31.03.2019 till the actual date of refund.

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.

21. Complaint stands disposed of.

22. File be consigned to registry.”

¹ Haryana Real Estate Regulatory Authority, Gurugram.

2. Factual matrix of the case is that the appellant had booked a unit bearing no. 1403 on 14th floor in Tower B, measuring 2142 sq. ft., in the respondent's project "Godrej Icon (Iconic Tower)", Sector 88A and 89A, Gurugram, on 20.10.2016. A provisional allotment letter was issued on 20.04.2017 fixing the sale consideration at Rs. 1,59,06,348/-. However, no apartment buyer's agreement was ever executed between the parties despite repeated requests by the appellant. The appellant paid a total sum of Rs. 53,82,000/-, i.e., approximately 33% of the total consideration, in various instalments up to 19.07.2019. The respondent issued reminder letters dated 13.06.2016, 09.02.2017, 07.03.2017, 20.11.2017 and 29.06.2018 alleging default in payment, and thereafter, issued a termination letter dated 31.03.2019 cancelling the allotment. Occupation certificate to the project was granted on 18.09.2020, and possession was never offered to the appellant. Aggrieved, the appellant filed a complaint before the Authority seeking cancellation of the unit and refund of the entire amount paid, without any deduction, along with interest from the date of actual payment till the date of actual refund.

3. The respondent-promoter contended before the Authority that the complaint was not maintainable since the appellant had ceased to be an "allottee" upon cancellation of allotment vide termination letter dated 31.03.2019 for non-payment of outstanding dues. It was further contended that the appellant had defaulted under the payment plan despite reminders, and thus, earnest money was liable to forfeiture under the allotment letter and application form.

4. 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 1 of this order.

5. Aggrieved by the impugned order, the appellant-allottee has preferred the instant appeal before this Tribunal. The main grievance is that the Authority, while rightly directing refund, erred in permitting the respondent to deduct 10% of the sale consideration and in granting interest only from the

date of cancellation (31.03.2019) instead of from the date of the complaint till the date of realisation. It has been urged that admittedly, no apartment buyer's agreement stipulating "earnest money" and its forfeiture was ever executed between the parties, and that in the absence of such duly executed agreement, the respondent could not invoke the forfeiture clause contained merely in a unilateral application form/provisional allotment letter to withhold any part of the amount paid by the appellant.

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

7. It is an admitted position that a builder buyer's agreement was not executed between the parties and that possession was never offered to the appellant. Since the respondent-promoter failed to execute the definitive builder-buyer agreement despite repeated requests by the appellant over several years, the respondent cannot be permitted to take advantage of its own default by relying upon terms of an incomplete, unexecuted contractual arrangement to justify deduction from the amount paid by the appellant. In the absence of a valid and binding agreement between the parties, the appellant is entitled to refund of the entire amount deposited by him, without any deduction.

8. As regards the period for which interest is payable, the appellant approached the Authority by way of complaint after the respondent failed to refund the amount despite cancellation and continued default in execution of the agreement. In the given facts, equity requires that interest on the refundable amount run from the date of filing of the complaint till the date of actual realisation of the amount by the appellant.

9. The impugned order is accordingly modified to the extent that the direction permitting deduction of 10% of the sale consideration as forfeited earnest money is set aside, and the respondent is held liable to refund the entire amount of Rs. 53,82,000/- paid by the appellant, without any deduction, along with interest at the prescribed rate from the date of filing of complaint i.e. 28.01.2021 till the date of actual realisation of the amount by the appellant.

The respondent shall comply with this direction within 90 days from the date of this order.

10. The appeal is allowed in the above terms.
11. Copy of this order be sent to the parties/their counsel and the Authority.
12. File be consigned to records.

Justice Rajan Gupta
Chairman
Haryana Real Estate Appellate Tribunal

Dr. Virender Parshad
Member (Judicial)

September 25, 2026/mk