

**BEFORE RAJENDER KUMAR, ADJUDICATING OFFICER,
HARYANA REAL ESTATE REGULATORY AUTHORITY
GURUGRAM**

Complaint no. : 3069 of 2020

Date of decision : 01 .09.2021

SACHIN MITTAL AND JYOTI
R/O : 1A#702, Bharat Apartment
Plot No. 8, Sector 18 A
Dwarka, New Delhi-110078

Complainants

Versus

1. M/s OASIS LANDMARKS LLP
Address : 3rd Floor, Town B, UM House,
Plot No. 35, Sector-44
Gurugram, Haryana-122001

2. M/s GODREJ PROPERTIES
Address : Godrej One, 5th Floor,
Pirojshanag, Eastern Express Highway,
Vikhroli(East), Mumbai-400079

3. M/s OASIS BUILDHOME PVT. LTD.
Address : 6, Jwala Heri Market,
Near MDI Market, Paschim Vihar
New Delhi-110063

Respondents

APPEARANCE:

For Complainants:
For Respondents:

Rohit Oberoi (Adv)
Kapil Madan (Adv)

ORDER

1. This is a complaint filed by Sachin Mittal and Jyoti (also called as buyers) under section 31 of The Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 29 of The Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) against respondents/promoters.
2. As per complainants, on 14.05.2015, they jointly booked a flat in project "**Godrej Icon**", situated at sector-88 A, 89 A, Gurugram. They (complainants) made payment of Rs 5,00,000 as booking amount. The respondent vide an allotment letter dated 05.11.2015 allotted a unit admeasuring carpet area of 1113 sq. ft. and super built up area of 1575 sq. ft. for a total consideration of Rs 1,14,41,675 including BSP, EDC, IDC etc. A buyer's agreement dated 14.12.2015 was executed between them.
3. As per Clause 4.2 of buyer's agreement, the possession of said premises was proposed to be delivered within 48 months from the date of issuance of allotment letter with grace period of 6 months. In this way, the possession ought to have been delivered by 05.05.2020 but respondent failed to complete the construction work and consequently failed to deliver the same till date.

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4. As per the payment plan opted by the complainants, they made timely payment of Rs 96,70,448.06, i.e. 80 % of entire agreed sale consideration, along with miscellaneous and additional charges etc, but to their utter dismay, the possession of the apartment has not been delivered in finished manner as agreed in buyer's agreement.
5. The respondent has unilaterally changed the sanctioned plan. The size of the project has been reduced from 9.358 acres to 6.459375 acres, the number of dwelling units and towers have been increased without prior consent of the allottees.
6. The respondent has committed gross violation of the provisions of section 18(1) of the Act, and hence complainants are forced to file present complaint, seeking refund of entire amount of Rs 96,70,448.06, along with 15 % interest from the 14.05.2015 till 29.02.2020 along with pendente lite and future interest at the same rate, Rs 9,18,692 towards loss of appreciation @ 10 % p.a. from May 2015 till March 2020, Rs 25,00,000 towards mental and physical harassment, Rs 2,00,000 towards cost of litigation.
7. The particulars of the project, in tabular form are reproduced as under:

S.No.	Heads	Information
PROJECT DETAILS		
1.	Project name and location	" Godrej Icon", Sector 88 A, 89 A Gurugram, Haryana
2.	Project area	9.359 acres

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3.	Nature of the project	Group Housing Colony
4.	DTCP license no. and validity status	85 of 2013 dated 10.10.2013 valid up to 09.10.2024
5.	Name of licensee	Oasis Landmarks LLP
6.	RERA Registration	Registration No. 54 of 2017 dated 17.08,2017

UNIT DETAILS

1.	Unit no.	D0301
2.	Unit measuring	Carpet area : 1113 sq. ft. Super built-up area: 1575 sq. ft.
3.	Date of Booking	14.05.2015
4.	Date of Allotment Letter	05.11.2015 (Pg. No. 94)
5.	Date of Buyer's Agreement	14.12.2015 (Pg. No.99)
6.	Due Date of Delivery of Possession As per Clause No. 4.2: The possession of the said premises is proposed to be delivered within 48 months from the date of issuance of Allotment letter with grace period of 6 month. (Pg. No. 97)	05.05.2020
7.	Delay in handing over of possession till date	1 year 3 months

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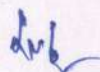
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PAYMENT DETAILS		
8.	Total sale consideration	Rs 1,15,41,675 /-
9.	Amount paid by the complainants	Rs 96,70,448.06 /-
10.	Payment Plan	Flexi Possession Linked Plan

8. On 12.01.2021, on the request of the respondents , the latter were allowed to file written within 15 days before next date fixed which was 24.03.2021. At the same time, the same was directed to file complete documents consisting of sanctioned plan of the project/allotted unit, statement of account of unit of the complainant, environment clearance certificate and latest status report of the project alongwith written reply. Neither any reply was filed nor documents mentioned above.

9. Despite filing any written statement, the respondent filed an application seeking stay of proceedings. It is mentioned that a Writ Petition bearing No.17120 of 2020 titled-**Mrs Anita Sardana & Ors Vs Oasis Landmarks LLP and others**, has been filed by the petitioners including present complainants, before the Hon'ble Punjab & Haryana High Court at Chandigarh. According to learned counsel for respondent till decision of said writ petition, this complaint is liable to be adjourned sine die, as same matter is pending before the Hon'ble High Court.



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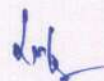
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10. As per learned counsel for complainants subject matter of said writ petition and complaint in hands are different, his clients i.e. the complainants have sought refund of the amount before this forum but no such relief has been claimed before Hon'ble High Court. A copy of Writ Petition has been annexed by the respondent along with their objections. The petitioners including present complainants have prayed Hon'ble High Court, to issue writ in the nature of Mandamus or any other appropriate writ, order or directions of similar nature etc ordering the respondent No.1 and respondent No.2 (State of Haryana and Haryana Real Estate Regulatory Authority)

(i) not to issue the completion certificate and occupation certificate/registration certificate to respondent No.3 to 5 i.e. M/s Godrej Properties, M/s Oasis Landmarks LLP and M/s Oasis Build Home Pvt Ltd., and/or

(ii) issue a writ in the name of Mandamus or any other appropriate order etc.....ordering respondent No.2(Harera) to take cognizance of illegalities committed by the respondents No.3 to 5 and revoke all licenses and registration certificate granted in favour of said respondents, and/or

(iii) to direct respondents No.3 to 5 not to enter into any more agreement for sale of units with third parties and/or



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(iv) direct respondent No.1 and respondent No.2 not to issue completion certificate and occupation certificate, further registration.

11. True, no such claim for refund has been prayed by the present complainants in said writ petition. In this way, I see no reason to adjourn this complaint sine die i.e. till decision by Hon'ble High Court, in aforementioned writ petition. As mentioned above, respondents did not file any reply. In such a circumstance, contentions raised by the complainants are presumed to be true. According to complainants, same booked 2 BHK + Study Type H unit i.e. Unit No.D-0301 in respondent's project by paying Rs.5,00,000/- as booking amount. The booking was under 20:20:60 plan though 60% was to be paid at the time of possession. It was informed to the complainants that booking can be under 20:20:40:20 which was not acceptable to them. After making a lot of requests, the scheme was changed to 10:10::40:20. Last two instalments were to be paid within six months of possession being offered. Till January, 2016, the complainants paid 20% of cost of property/unit without any BBA, having been executed. The possession of unit was to be handed over within two years after of furnishing work(As per payment demand being raised by the respondent) within 19 months of date of booking. Complainants have paid 80 % of total consideration.

12. BBA was executed on 14.12.2015, but name of respondent No.2 (M/s Godrej properties) was missing. It was mentioned in the BBA that construction will be completed within a period of 46 months with grace period of six months thereafter. On being contacted, complainants were assured that possession will be handed over in Nov.2018. They were asked to arrange for funds.
13. From August, 2016, respondents started pressurizing them for immediate payment of remaining amount. The complainants were constrained to avail financial assistance in terms of home loan and paid enormous interest. Despite lapse of about two years, no construction was started and respondent failed to disclose as when possession of their unit will be handed over to them (complainants). Till mid 2018, the project was nowhere near completion.
14. It is contended by learned counsel for complainant that his client was mis-represented that said project was to be constructed by Godrej Properties, a famous Godrej company but later came to know that name of Godrej was misused by other respondents and it was not a project of M/s Godrej company.
15. Photo copy of brochure has been put on file, where the project is advertised as Godrej Icon, Sector 88-A and Sector 89-A, Gurgaon. Some other documents showing Godrej Icon



unit configuration and some other literature mentioning as Godrej Properties with logo of famous Godrej company are filed by the complainant. During deliberations, it is admitted by learned counsel representing the respondent that it was not project of that famous Godrej company. According to him, it was project named i.e. M/s Oasis Landmarks LLP being developed by respondents other than M/s Godrej, a famous company. Printed material advertised by respondent developers (other than respondent no. 2) was misleading to customers, like complainants. I have no reason to disbelieve learned counsel for complainant alleging that his client was misled on mis-representation by those respondents that it was a project of famous Godrej company.

16. The developers were duty bound to give every detail of their project to the buyers but in spite of giving correct information, in my opinion, respondents mis-represented and tried to mislead the complainant by using the name and logo of famous Godrej company. The complainant is thus, entitled to get the amount refunded alongwith interest and compensation.

17. There were stark differences in the sanctioned plan and the plan as affixed with the brochure, application form, BBA as originally signed. The total lands included the lands for not only the project Godrej Icon but also for the project titled as

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Godrej Oasis and two other parcels of land which have not been shown to be a part of either Icon or Oasis.

18. The developers were duty bound to give every detail of their project to the buyers but in spite of giving correct information, in my opinion, respondents mis-represented and tried to mislead the complainants. The complainants are thus, entitled to get the amount refunded alongwith interest and compensation.

19. The complaint in hands is, thus, allowed. Respondents (other than respondent no. 2) are directed to refund the amount alongwith received from complainant till now i.e. Rs 96,70,448.06 /- within 90 days from today , interest @ 9.3% p.a. from the date of receipts till realization of amount. Said respondents are further burdened with cost of Rs.1,00,000/- to be paid to the complainants.

File be consigned to the Registry.

01.09.2021


(RAJENDER KUMAR)

Adjudicating Officer

Haryana Real Estate Regulatory Authority

Gurugram

Judgement uploaded on 11.09.2021.