



**HARERA**  
**GURUGRAM**

HARYANA REAL ESTATE REGULATORY AUTHORITY  
GURUGRAM

New PWD Rest House, Civil Lines, Gurugram, Haryana

नया पी.डब्ल्यू.डी. विभाग

गृह सिविल लाईंस गुरुग्राम हरियाणा

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

**Complaint No. : 1707/2019**

**Date of Decision : 13.09.2021**

**Smt Vishakha Bist  
R/o House No.935, Sector-3  
Rohtak, Haryana-124001**

**Complainant**

**V/s**

**M/s Oasis Landmarks LLP  
C/o and/or M/s Godrej Properties Ltd.  
Godrej Bhawan, 4<sup>th</sup> Floor, 4A, Home Street  
Fort, Mumbai-400001  
Also at  
3<sup>rd</sup> Floor, UM House, Plot No.35-P  
Sector 44, Gurugram, Haryana-122002**

**Respondent**

**Complaint under Section 31  
of the Real Estate(Regulation  
and Development) Act, 2016**

**Present:**

**For Complainant:**

**Mr. Rohit Oberoi, Advocate**

**For Respondent:**

**Mr.Kapil Madan, Advocate**

**ORDER**

This is a complaint filed by Smt Vishakha Bist ( also called as buyer) under Section 31 of The Real Estate(Regulation and Development) Act, 2016 (hereinafter referred as Act of 2016) read with rule 29 of The

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Haryana Real Estate(Regulation and Development) Rules, 2017 ( in brief the Rules of 2017)against M/s Oasis Landmarks LLP.(also called as developer) seeking directions to the respondent to refund a sum of Rs.57,71,105/- alongwith interest @ 15% p.a. from the dates of payments till its realisation.

2. According to complainant, on 01.05.2015, after going through brochure of respondent about its project "Godrej Icon" and also payment plan, she booked a residential unit bearing No.DO503 in said project, located in Sectors 88A and 89A, Gurugram, Haryana. She initially paid an amount of Rs.5,00,000/- as booking amount and further made payment of Rs.9,34,872.60p. on 28.07.2015. She received an allotment letter dated 28.10.2015, wherein the respondent mentioned total sale consideration of booked unit as Rs.1,37,27,436/-. Builder Buyer's Agreement was to be signed within 45 days. She(complainant) signed and executed BBA on 11.12.2015, where the project land was mentioned as 9.359 acres and it was also clearly mentioned that Haryana Apartment Owners Act shall be applicable to this agreement. It was agreed by the respondent that construction shall be completed within 46 months, with grace period of six months.

3. On 11.04.2016, she received a demand notice of 20% of amount to be paid at the time of completion of super structure without getting query as to when the project was launched. Finding no option, she made another payment of Rs.28,89,229.20p. as demanded. On 01.08.2016, within 4 months of having made earlier payments, she received another demand for the next 40%, which was actually to be paid at the time when finishing work was completed. Thereafter from August, 2016 to August 2017. She was continuously harassed and threatened by respondent saying that, in case, she fails to make payments, as per their demand, earnest money apart



from other charges shall be forfeited and the unit shall be cancelled. In order to arrange funds, she requested the respondent to add name of her husband as co-allottee, so as to arrange loan from financial institution(s).

4. Failing to get any positive response from the respondent, she was forced to send an email on 04.08.2017, with request to cancel her allotment and sought refund of deposited amount. From August, 2017 to Jan.2019, she wrote many emails with request to refund her money and even permitted the respondent to forfeit 10% of the BSP, but the respondent apart from threatening and blackmailing the complainant, informed her that an amount of Rs.45,00,000/- shall be deducted and balance money shall only be refunded only when the unit in question is resold. She sent legal notice on 08.03.2019, which ultimately lead to filing of present complaint.

5. It is further the case of complainant that she came to know from RERA documents that project land as per BBA is 9.359 acres whereas the actual land was 6.459375 acres i.e. 31% less land. Even the number of units were increased from 358 units to 662 units and number of towers are also increased from 9 to 13. All this is material alteration, adversely affecting the rights of complainant on the project. Without informing her, the respondent, has changed sanctioned plan and thus violated the terms of RERA licence.

6. Citing all this, the complainant has sought refund of entire amount paid by her to the respondent with interest, compensation and litigation charges as described above.

7. Details of the complainants' case in tabular form are reproduced as under:

  
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
Project related details		
I.	Name of the project	"GODREJ ICON "
II.	Location of the project	Sectors 88-A, & 89A, Gurugram
III.	Nature of the project	Residential

#### Unit related details

IV.	Unit No. / Plot No.	0503
V.	Tower No. / Block No.	Tower-D
VI	Size of the unit (super area)	Measuring 1779 sq ft
VII	Size of the unit (carpet area)	
VIII	Ratio of carpet area and super area	
IX	Category of the unit/ plot	Residential
X	Date of booking(original)	01.05.2015
XI	Date of Allotment(original)	28.10.2015
XII	Date of execution of BBA (copy of BBA be enclosed)	11.12.2015
XIII	Due date of possession as per ABA	Within 46 months from the date of issuance of allotment letter with six months grace period i.e. 27.08.2019
XIV	Delay in handing over possession till date	About two years
XV	Penalty to be paid by the respondent in case of delay of handing over possession as per the said BBA	

#### Payment details

XVI	Total sale consideration	Rs.1,37,27,436/-
XVII	Total amount paid by the complainants	Rs.57,88,368/-

  
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8. Contesting the claim of complainant, the respondent raised preliminary objection. It is averred that the complainant has not approached this forum with clean hands. She(complainant) alongwith some other persons, subsequent to filing of present complaint has also filed a civil writ petition before the Hon'ble Punjab & Haryana High Court bearing No.17120 of 2020-titled Mrs Anita Sardana & Ors Vs State of Haryana & Ors, where identical issues have been raised. It is a settled law that a litigant cannot be allowed to pursue two remedies seeking similar relief, on the same cause of action. It is prayed that present proceedings may be stayed till the disposal of writ petition.

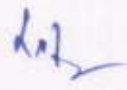
8. It is not disputed by learned counsel for complainant that his client alongwith some other allottees has filed a writ petition before the Hon'ble Punjab and Haryana High Court<sup>as</sup> mentioned above. But according to him, cause of action as well as relief claimed are different. The petitioners in aforesaid writ petition have prayed for issuance of mandamus or any other writ as the Hon'ble High Court<sup>as</sup> may deem it fit, seeking directions against respondent no. 1(State of Haryana) and 2 (HARERA Gurugram) from issuing of occupation certificate and new registration to respondent no. 3 (M/s Godrej Properties). Further, all licensees and registrations granted to respondent no. 3 to 5 (M/s. Godrej Properties Ltd, M/s Oasis Landmarks LLP and M/s. Oasis Buildhome Pvt. Ltd.) with respect to project 'Godrej Icon' etc. be revoked or cancelled and further that during pendency of this petition, the issuance of any new certificate etc be stayed. But in case in hands, his client has simply prayed for directions to refund the amount. As per learned counsel for complainant, there is no need to keep the matter in abeyance.

9. From the complaint, it is apparent that the complainant has blamed respondent for change of sanctioned plan. As per BBA, the project was

comprising 9.359 acres of land but actually the land is 6.459375 acres i.e. 31% less. Even the number of units and also the towers have increased without informing her i.e. complainant. All these facts are mentioned in writ petition before the High Court. It is urged by counsel for complainant that his client does not insist on any of said plea except that she wants directions to respondent to refund her amount. She has requested several times to respondent to refund her amount commencing from 04.08.2017. She has no objection, if 10% of basic sale price is deducted, but respondent despite refunding the amount, threatened her to deduct Rs. 45,00,000/- and to pay back balance amount only when unit in question is resold.

10. Sending of emails dated 04.08.2017 as well as other emails from August 2010 to Jan. 2019 by complainant is not denied on behalf of respondent. Through these mails, complainant had asked for withdrawal from the project and also to refund her money.

11. Exercising powers conferred under section 85 of the Act of 2016 and other powers in that behalf, Haryana Real Estate Regulatory Authority, Gurugram issued Notification dated 05.12.2018 bearing No.11/RERA GGM Regulations 2018. Noticing that several frauds were carried, without any fear as there was no law regarding earnest money and again considering the judgement of National Consumer Disputes Redressal Commission, this authority was of the view that forfeiture of amount of earnest money shall not exceed more than 10% of total sale consideration amount of real estate i.e. apartment/plot/building as the case may be. It is directed that in all cases where the cancellation of flat/unit/building is made by the builder in unilateral manner or the buyer intends to withdraw from the project and the agreement containing any clause contrary to the aforesaid regulations shall be void and not binding on the buyer.

  
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12. In view of aforesaid notification, the respondent was bound to refund the amount of complainant at most after deducting not more than 10% of sale consideration amount of unit in question. As mentioned above, the complainant requested several times for withdrawal from the project and for refund of amount starting from 04.07.2017 till January, 2019 but despite refunding the amount, respondent threatened the complainant to deduct Rs.45,00,000/- and to refund the balance amount only after the unit in question is resold. All this was contrary to notification referred above.

12. As stated earlier, learned counsel for complainant submitted categorically that his client simply wants withdrawal from the project and refund of her amount, in view of said notification. The complaint, in hands, is thus allowed. Respondent is directed to refund amount paid by complainant till now. The same may deduct upto 10% of total sale consideration, according to notification mentioned above. As respondent failed to adhere to the directions of Harera, Gurugram, the same is directed to pay interest on said amount, @ 9.5% p.a. from the date of said notification i.e. 05.12.2018, till its realisation of amount. The respondent is also burdened with cost of litigation of Rs.50,000/- to be paid to the complainant.

13. File be consigned to Registry.

  
**(RAJENDER KUMAR)**  
**Adjudicating Officer,**  
**Haryana Real Estate Regulatory Authority**  
**Gurugram**  
**13.09.2021**