



HARERA
GURUGRAM

HARYANA REAL ESTATE REGULATORY AUTHORITY
GURUGRAM

New PWD Rest House, Civil Lines, Gurugram, Haryana

नया पी.डब्ल्यू.डी. विश्राम

गृह, सिविल लाईंस, गुरुग्राम, हरियाणा

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

**Complaint No. : 553/2021
Date of Decision : 22.09.2021**

**Rajat Arora
R/o 293, Pocket-D, Mayur Vihar,
Phase-II, Delhi-110091**

**Mrs Megha Arora
R/o 293, Pocket-D, Mayur Vihar,
Phase-II, Delhi-110091**

Complainants

V/s

**M/s Oasis Landmarks LLP
Unit No.5C, 5th Floor, Godrej One
Pirojshahnagar,
Vikroli East, Mumbai-400001**

**M/s Godrej Properties
3rd Floor, UM House, Plot No.35-P
Sector 44, Gurugram, Haryana-122002**

**M/s Oasis Buildhome Private Ltd.
6, Jwalaheri Market, MDI Market,
Paschim Vihar, New Delhi-110063**

Respondents

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

Present:

krb
A.O.
22-9-21

For Complainant:
For Respondent:

Mr. Rohit Oberoi, Advocate
Mr. Kapil Madan, Advocate

ORDER

This is a complaint filed by Shri Rajat Arora and Mrs. Megha Arora (also called as buyers) under Section 31 of The Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as Act of 2016) read with rule 29 of The Haryana Real Estate (Regulation and Development) Rules, 2017 (in brief the Rules of 2017) against M/s Oasis Landmarks LLP. (also called as developer) and others seeking directions to the respondent to refund a sum of Rs.92,10,514/- alongwith interest @ 15% p.a. from the dates of payments till its realisation.

2. According to complainants, on 01.05.2015, after going through brochure of respondents about their project "Godrej Icon" and also payment plans, they booked a residential unit bearing No.A0701, admeasuring 1630 sq ft. in said project, located in Sectors 88A and 89A, Gurugram, Haryana. They (complainants) paid Rs.5,00,000/- as booking amount and further made payment of Rs.6,47,930/- on 10.08.2015. They received an allotment letter dated 18.11.2015, wherein the respondent mentioned total sale consideration of booked unit as Rs.1,10,60,160/-. It was categorically mentioned that Builder Buyer's Agreement will be signed within 45 days, failing which they entail cancellation of booked unit.

3. They (complainants) had opted for 20:20:40:20 payment plan and till January, 2016, they had paid 20% of cost of booked unit, BBA was executed after 09 months i.e. on 19.02.2016 instead of 45 days as earlier committed. It was mentioned that project land was to be 9.359 acres, and that The Haryana Apartment Owners Act will be applicable to this agreement. It


A.O.
22-9-21

was agreed by the respondents that construction shall be completed within 46 months of agreement, with grace period of six months.

4. On 02.03.2016, they received a further demand notice of 20% of amount, whereas this amount was to be paid at the time of completion of super structure. The respondents had agreed that demand will not be raised before May, 2016 and entire payments were to be made in phased manner over period of four years/46 months. On 03.09.2016, within 6 months of having made earlier payment, they (respondents) raised another demand for the next 40%, which was actually to be paid at the time when finishing work was completed. They objected to said demand, as project was nowhere near completion and as such, demand was uncalled for. They were continuously harassed and threatened by the respondents, that, in case, they fail to make payment as per their demands, earnest money apart from other charges shall be forfeited and the unit shall be cancelled.

5. In order to arrange funds, they requested respondents to arrange loan for them from any financial institution(s) but the respondents failed to provide any such assistance. They (complainants) demanded to know status of construction of project but the respondents provided vague and absurd construction updates. Further, the respondents unilaterally changed building plans and admitted such change in building plans, vide their communication.

6. It is further the case of complainants that they came to know from RERA documents that project land as per BBA was 9.359 acres whereas the actual land was 6.459375 acres i.e. 31% less. Even the number of residential units were increased from 358 to 662 and number of towers are also increased from 9 to 13. All this is material alteration, adversely affecting the rights of complainants on the project. Without informing

them, the respondents, have changed sanctioned plan and thus violated the terms of RERA licence.

7. Citing all this, the complainants have sought refund of entire amount paid by them to the respondents with interest, compensation and litigation charges, as described above.

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

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.	A0701
V.	Tower No. / Block No.	Tower-D
VI	Size of the unit (super area)	Measuring 1630 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)	23.05.2015
XI	Date of Allotment(original)	18.11.2015
XII	Date of execution of BBA (copy of BBA be enclosed)	19.02.2016
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. March 2019

drb
A.O.
22-9-21

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.1,10,60,160/-
XVII	Total amount paid by the complainants	Rs.92,10,514/-

9. Contesting the claim of complainants, the respondents raised preliminary objection. It is averred that the complainants have not approached this forum with clean hands. They (complainants) along with some other persons, subsequent to filing of present complaint have filed a civil writ petition before 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 disposal of aforesaid writ petition.

10. Learned counsel for complainants admitted that his clients along with some other allottees have filed writ petition before the Hon'ble Punjab and Haryana High Court, as mentioned above. But according to him, cause of action as well as relief claimed in these cases are different. The petitioners in aforesaid writ petition have prayed for issuance of writ of mandamus or any other writ, as Hon'ble High Court may deem it fit, seeking directions against respondent no. 1 (State of Haryana) and 2 (HARERA Gurugram) from issuing 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 said petition, the issuance of any new certificate etc be stayed. While in case in hands, his clients have simply prayed for directions to respondents for refund of amount. As per learned counsel, there is no need to keep the matter in abeyance.

11. From the complaint, it is apparent that the complainants in case in hands have blamed the respondents 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. The number of residential units and towers have been increased without informing them i.e. complainants. Further, the officials of respondents kept on avoiding meeting them (complainants) and just requested the complainants to wait and they shall get back to them. Despite assurance given by respondents, the project in question was nowhere near completion. It is clear that neither issues nor relief in cases are similar and hence there is no legal restriction in disposals of this complaint.

12. It is contended by learned counsel for complainants that project is nowhere near completion and there is no likelihood that unit in question will be completed in near future. Moreover, the respondents could not adduce any evidence with regard to status of project and likely date of completion of project or handing over of possession of unit allotted to complainants.

13. It is not denied during deliberation that project land actually was 6.459375 acres, while it was represented to complainants as 9.359 acres at the time of agreement. Learned counsel for respondent did not refute the complainants claiming that building plans were changed later on. Similarly, I have no reason to disbelieve complainants, alleging that progress in construction

dm
A.P.
22.5.21

was not disclosed to them, despite their repeated requests. The Act of 2016 casts duty upon developer, to clarify these facts.

14. Moreover, it is well settled that a buyer cannot be made to wait for his/her dream house indefinitely. Even counsel for respondent is not in a position to tell, as when project/unit in question will be completed or possession of same will be offered to the complainants. The respondents could not adduce any evidence to show the progress of work, completed till now.

14. In these circumstances, the complainants are well within their rights to seek refund of their amount alongwith interest etc. The complaint in hands is thus allowed.

15. It is clarified through Buyer's Agreement that land on which project in question is developed was owned by M/s Oasis Buildhome Pvt Ltd.(Respondent No.3). The latter is(respondent No.1) referred as land owner, while M/s Oasis Landmarks LLP is stated to be 'developer', responsible to develop the project. It is same i.e. respondent No.1 who received payments from complainants and issued receipts, hence liable to refund. There is nothing to show that respondent No.2 was responsible for development of project. ✓

16. The respondent No.1 is directed to refund amount received from complainants i.e. Rs.92,10,514/- to them within 90 days from the date of this order alongwith interest @ 9.3% p.a. from the date of each payment till realisation. Said respondent is also burdened with cost of litigation Rs.50,000/- to be paid to the complainants.

17. File be consigned to Registry.


(RAJENDER KUMAR)
Adjudicating Officer,
Haryana Real Estate Regulatory Authority
Gurugram
22.09.2021