

**BEFORE THE HARYANA REAL ESTATE REGULATORY  
AUTHORITY, GURUGRAM**

**Complaint no. : 2442 of 2018**  
**First date of hearing : 24.04.2019**  
**Date of decision : 24.04.2019**

Mr. Jiten Bhalla  
R/o D-128, East of Kailash,  
New Delhi- 110065

**Complainant**

Versus

1. M/s Oasis Landmarks LLP,  
Regd. office: Godrej One, 5th floor,  
Pirojshangar, Eastern express highway,  
Vikhroli (East), Mumbai-400079.  
Regional office: 3rd floor, UM house,  
tower -A, plot No. 35,  
Sector-44, Gurugram, Haryana
2. M/s Oasis Buildhome Pvt. Ltd.  
Regd. office: 19, Maulana Azad Society,  
Parwana Road, Pitampura, New Delhi

**Respondents**

**CORAM:**

Shri Samir Kumar  
Shri Subhash Chander Kush

**Member**  
**Member**

**APPEARANCE:**

Shri Jiten Bhalla  
Shri Shri Sandeep Kumar  
Yadav  
Ms. Surbhi Kapur  
Shri Kapil Madan

Complainant in person  
Advocate for the complainants  
Senior manager legal on behalf  
of respondent company  
Advocate for the respondents

**ORDER**

1. A complaint dated 31.12.2018 was filed under section 31 of the Real Estate (Regulation and Development) Act, 2016 read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 by the complainants Mr. Jiten Bhalla, against the promoters M/s Oasis Landmarks LLP and M/s Oasis Buildhome Pvt. Ltd., on account of violation of the Section 11(4)(a) of the Act *ibid*.
2. Since, the apartment buyer's agreement has been executed on 05.01.2016 i.e. prior to the commencement of the Act *ibid*, so the penal proceedings cannot be initiated retrospectively. Hence, the authority has decided to treat the present complaint as an application for non-compliance of statutory obligation on part of the respondents in terms of section 34(f) of the Real Estate (Regulation and Development) Act, 2016.
3. The particulars of the complaint case are as under: -
  - **DTCP license no.:** - 85 of 2013 dated 11.10.2013
  - **License valid up to:** - 09.10.2017
  - **RERA Registration:** - Registered

1.	Name and location of the project	"Godrej Icon", Sector 88A and 89A, Gurugram
2.	Nature of the project	Group housing colony
3.	Project area	9.359 acres

4.	HRERA registration number	<b>54 of 2017</b>
5.	HRERA registration certificate valid up to	<b>30.04.2020</b>
6.	Flat/unit no.	003, ground floor, tower 'ICONIC'
7.	Flat admeasuring	1509 sq. ft.
8.	Allotment letter	28.10.2015
9.	Date of execution of apartment buyer's agreement-	05.01.2016
10.	Payment plan	Flexi possession linked plan
11.	Total consideration as per payment plan annexed as schedule VI of the apartment buyer's agreement	Rs.1,14,39,756/-
12.	Total amount paid by the complainant as alleged by him	Rs.49,49,350/-
13.	Due date of delivery of possession as per clause 4.2 of the apartment buyer's agreement dated 05.01.2016 within 48 months from issuance of allotment letter (28.10.2015) plus grace period of 6 months.	<b>28.04.2020</b>
14.	Delay till date	<b>No delay</b>

4. The details provided above have been checked on the basis of record available in the case file which has been provided by the complainant and the respondents. An apartment buyer's agreement dated 05.01.2016 is available on record for the aforesaid unit. Since the actual date of delivery of possession is 28.04.2020, as such, the cognizance of complaint cannot be taken at this juncture.

5. Taking cognizance of the complaint, the authority issued notice to the respondents for filing reply and appearance. The respondents through its counsel appeared on 24.04.2019. The case came up for hearing on 24.04.2019. The reply filed on behalf of the respondents has been perused by the authority.

### **Facts of the complaint**

6. Briefly stated, the facts of the complaint are that the complainant had applied for allotment of a residential apartment in respondents project vide his application dated 22-04-2015. Thereafter, a cheque was given to respondent of Rs.5,00,000/-, as booking amount. The respondent had agreed that the cost of unit would be Rs.6499/- per square feet. The total cost of residential unit which includes ESC, car parking, club membership, IFMS, electrification, power back up, legal and administration cost was Rs. 1,14,39,756/-.
7. The complainant submitted that after 60 days of booking the respondent raised demand vide invoice dated 03-07-2015 for a sum a Rs.6,57,158.60 and Rs.30,906/- as sales

tax which was paid by the complainant vide cheque no.126647 dated 20-07-2015 and cheque no.126648 dated 20-07-2015 respectively. Within five months of booking again an invoice was raised which was duly paid by the complainant vide receipt no.-32000002049 dated 14-10-2015. The respondents provisionally allotted to complainant the residential apartment no. ICONIC0003 on ground floor in “Iconic” apartment having super built up of 1509 square feet vide allotment letter dated 28-10-2015. The total sale consideration of the apartment was to be paid in frame of 4 years as the project was stipulated to be completed in a time frame of 4 years and with 6 months grace period which was given to complainant at the time of filling of application form.

8. The complainant submitted that the allotment of the residential unit an apartment buyer’s agreement was signed on 05.01.2016. On the completion of superstructure another invoice was raised which was paid on 19-09-2017 by the complainant. As soon as the complainant received the mail demanding of 20% of the payment the complainant

wrote a mail to respondent asking for the RERA compliance and exact carpet area and covered area under RERA and the structure stability certificate as Gurugram falls under the seismic zone 4. The demand of complainant for the RERA compliance was ignored by the respondent. Thereafter, a reminder mail was sent for not responding to the mail and in view of the figures as the figures, sent by the respondent were differed from the invoices raised by the respondent. However, complainant made the payment on 19-09-2017 raised by the invoice under protest and under pressure of forfeiture of money

9. The respondent without answering and addressing the concerns and queries of complainant raised another invoice demanding 40% of the payment which was demanded within 3 months of the raising of previous invoice demanding 20% which was received by respondent. This 40% payment was due payable at the time of finishing of the apartment. The invoice was raised just after the plaster and no finishing work like flooring, tiles, paint, door and windows, kitchen work, sanitary etc. not

done by the respondent and demanded 80% payment of the total sale consideration.

10. The complainant asked for the cancellation of the agreement and refund of the entire amount paid to the respondent. The respondent replied back saying that the deductions shall be made on the cancellations by misstating the facts.

11. The respondents assured that the necessary sanctions etc. had already been obtained and the assurances that the project would be completed within time, were *inter alia* factors, which induced the complainant into booking the flat with the respondents and were essence of the apartment buyer's agreement.

#### **Issues to be decided**

12. The complainants have raised the following issues:

- i. Whether the payment of 80% could have been demanded by the builder without completing finish work?

- ii. Whether the respondent have to justify the reason for not showing the 'structural stability certificate', as Gurugram falls under the seismic zone-4 to the complainant, as per the Haryana Real Estate Regulatory Authority, Gurugram?

**Relief sought by the complainant**

13. Direct the respondents to refund the amount of Rs. 49,01,281/- along with prescribed interest. to the complainant.

**Reply on behalf of respondent no. 1**

14. The respondent submitted that the complainant booked an apartment with the respondents in their project namely "Godrej Icon" situated at sector 88A, 89A, Gurugram, Haryana vide an application form dated 22.04.2015. The complainant opted for a construction linked plan and promised to make timely payment.
15. The respondent submitted that pursuant to the said application, the complainant was allotted an apartment unit no. 0003 on the ground floor in Tower Iconic vide an



Allotment letter dated 28.10.2015. an apartment buyer's agreement was duly executed on 05.01.2016.

16. As per clause 4.2 of the apartment buyer's agreement, it was made clear to the complainant that the tentative completion time shall be i.e. 48+ 6 months from the date of issuance of allotment letter (28.10.2015) and hence the tentative date of possession is 27.04.2020.

17. The respondent duly achieved all the construction related milestones in the timely manner and was able to complete the super structure on 01.09.2017 and accordingly thereafter respondent raised the demand for same on 02.09.2017

18. The respondent submitted that the respondent is carrying out the construction as per the approved layout and there has been no change whatsoever in the flat allotted to the complainant. The complainant is ranking frivolous issues in order to somehow arbitrarily seek exit from the said project in view to avoid forfeiture of earnest money and to avoid incurring losses on account of fall in market prices. The respondent submitted that any arbitrary exit from the

project shall have severe adverse effect on the respondent as well as on the project.

19. The respondent further submitted that there is no misrepresentation or violations of any Rules or Act, nor any defect or delay in the offer of the possession of said flat as the due date of handing over of the possession is 28.04.2020 and project is moving at fast pace.

20. The respondent clearly denied that the officials of respondent harassed the complainant for payment through messages or showed any misconduct, the complainant was made clear that sending reminder for payment is a part of routine process.

21. The respondent submitted that the invoice dated 04.12.2017 was wrongly raised by customer care team under a mistaken belief that finishing (brick and plaster) for the entire tower has been done. Actually, invoices for the construction milestone are raised when our PMC (Project management consultant) issues a certificate that particular milestone has been achieved. On 04.12.2017, PMC raised the internal plaster milestone for concerned

tower for 1<sup>st</sup> to 24<sup>th</sup> floor and not for ground floor. However, the mistake was corrected immediately on realizing the same and on 14.12.2017, the demand was reversed in the system. It is pertinent to mention here that the said milestone (internal plaster) was completed on 28.02.2018. However, the company has inadvertently not raised any demand for the same.

22. The respondent submitted that the respondent duly addressed all the grievances of the complainant in timely manner. In fact, the respondents representative (Head of customer relations team) personally met the complainant and answered all queries. It is reiterated that the complainant wants to exit the project without deduction of earnest money and other charges. Respondent is carrying out the construction as promised, and the project is near completion.

23. The respondent denied that the structure stability certificate was not provided by the respondent and the structure of the project and finishing work was not done by the respondent. The respondent strictly adhered to the

payment schedule and raised the invoices only after completion of agreed milestone. The respondent is doing RERA compliances in a timely manner and has filed quarterly compliance report for quarter ending in December 2018 for Iconic on 11.02.2019 with the authority. The respondent has obtained all the requisite permission/certificate including the structural stability certificate.

24. The respondent denied that the respondent committed breach of trust, cheating or the complainant have made payments till now only upon the promises made by the Respondent as alleged.

#### **Determination of issues**

After considering the facts submitted by the complainant, reply by the respondent and perusal of record on file, the issue wise findings of the authority are as under:

25. With respect to the **first issue** raised by the complainant, the respondent stated that the invoice dated 04.12.2017 was wrongly raised by the customer care team under the

mistaken belief that finishing (brick and plaster) for the entire tower has been done. On 04.12.2017, project management consultant raised the internal plaster milestone for concerned tower for 1 to 24 floor and not ground floor. The mistake was corrected on 14.12.2017 and the demand was reversed in the system as per the statement of account annexed by the respondent dated 29.01.2019. Thus, this issue is decided in negative.

26. With respect to the **second issue** raised by the complainant, the complainant asked for structural safety certificate from the respondent. However, the same has not been provided. Whereas the counsel for respondent has stated at bar that they have already supplied a copy of structural safety certificate to complainant and also filed the same with the reply.

### **Findings of the authority**

27. The authority has complete jurisdiction to decide the complaint in regard to non-compliance of obligations by the promoter as held in ***Simmi Sikka V/s M/s EMAAR MGF Land Ltd.*** leaving aside compensation which is to be

decided by the adjudicating officer if pursued by the complainant at a later stage. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Department of Town and Country Planning, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District. In the present case, the project in question is situated within the planning area of Gurugram district, therefore this authority has complete territorial jurisdiction to deal with the present complaint.

28. An amendment to the complaint was filed by the complainant along with the complaint wherein it is stated that the complainant is appearing before the authority for the refund of amount received by the respondent in respect of the apartment allotted to them and reserves the right to seek compensation from the promoter for which they shall make separate application to the adjudicating officer, if required.

29. The complainant made a submission before the authority under section 34 (f) to ensure compliance/obligations cast upon the promoter. The complainant requested that

necessary directions be issued to the promoter to comply with the provisions and fulfil obligation under section 37 of the Act.

30. Arguments heard. As per clause 4.2 of the buyer's agreement dated 05.01.2016 for unit no. 003, tower 'Iconic' in project "Godrej ICON" Sector-88A and 89A, Gurugram, the possession was to be handed over to the complainant within a period of 48 months from the date of issuance of allotment letter dated 28.10.2015 + 6 months grace period which comes out to be 28.04.2020. Complainant has already paid Rs.49,44,011/- to the respondent against a total sale consideration of Rs.1,14,39,756/-.

31. An issue has been raised by the complainant that they had asked for structural safety certificate from the respondent. However, the same has not been provided. Whereas the counsel for respondent has stated at bar that they have already supplied a copy of structural safety certificate to the complainant and has also filed the same alongwith the reply. Since the actual date of delivery of possession is

28.04.2020, as such, the cognizance of complainant cannot be taken at this juncture.

### **Decision and directions of the authority**

32. After taking into consideration all the material facts adduced by both the parties, the authority exercising powers vested in it under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby advises the complainant to approach the authority after getting the possession of the flat, if any, structural defect is noticed, he can pursue the matter as per the provisions of section 14 (3) of the RERA Act for which the respondent is liable to get the defects removed and if the respondent/builder fails to do so then the complainant/buyer himself can get the defects rectified and seek adequate compensation on this count.

33. Since the actual date of delivery of possession is 28.04.2020 and, as such, complainant is liable to make timely payments to the respondent and in case of delayed payments



complainant is also liable to pay interest at the prescribed rate of interest i.e. 10.70% per annum to the respondent.

34. Complaint stands disposed of in above terms.

35. The order is pronounced.

36. Case file be consigned to the registry.

**(Samir Kumar)**  
Member

**(Subhash Chander Kush)**  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 24.04.2019

Judgement Uploaded on 29.05.2019



HARERA  
GURUGRAM